

DESIGN-BUILD CONTRACT

INTRODUCTION

THIS CONTRACT IS BETWEEN:

**Yamhill County, acting by and through its Health and Human Services Department
Lindsey Manfrin, Director of Yamhill County HHS
Yamhill County Board of Commissioners**

And

Haworth, Inc., an Oregon corporation

**Name, Title: Troy Haworth, President
Address: 13500 SW Hwy 99W
City, State Zip: McMinnville, OR 97128
Phone: (503) 472-2452
E-mail: Troy@HaworthInc.net
CCB# 82433**

The Project is: Yamhill County HHS Behavioral Health Housing Project

**DBC's Representative is:
Troy Haworth, President**

**HHS's Representative is:
Lindsey Manfrin, Director**

HHS BEHAVIORAL HEALTH HOUSING PROJECT DESIGN BUILD CONTRACT

THIS AGREEMENT (“Design-Build Contract”) is between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Health and Human Services Department (“HHS”) and Haworth Inc., an Oregon corporation, located at 13500 SE Hwy 99, McMinnville, Oregon, referred to as DBC in this Design-Build Contract for the project known as the HHS Behavioral Health Housing Project for which proposals were opened on October 17, 2025 (referred to in this Design-Build Contract as the “Project”)

WHEREAS, through the Solicitation Documents (as defined herein) HHS 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 an 8-unit studio (each unit approximately 350-500 square feet) apartment complex with office space, restrooms and storage (total complex size approximately 4,000 square feet). HHSs’ minimum requirements for the Project have been further set forth in the Solicitation Documents and preliminary drawings. The Project is to include: all associated accessories including but not limited to demolition, debris removal and proper disposal of the two existing residential structures currently located on the Project site, architectural, site/civil including coordination with planning/land use, mechanical, structural, geotechnical, and electrical engineering necessary to support the requirements of the Project. Clearing grading, concrete, paving and installation of utilities, flashing, trim and closures; doors and frames including hardware; framed openings designed to accept specified windows; 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 as an alternate and controls for HVAC equipment are part of the Scope of Work (as defined in the sample Design-Build Contract) for the Project. Also including the installation of landscaping and fencing including planting of trees and shrubbery and installation of lawn (no irrigation system) around the building in conformance with the Design-Build Criteria and Scope of Work as part of the Project; and,

WHEREAS, HHS 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, **Haworth Inc.** (“DBC”) was selected by HHS 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 HHS’s design and performance requirements and other terms and conditions of the Design-Build Contract described herein; and

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

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

CONTRACT

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 Contract and Contract Documents. The agreement between the Parties pertaining to the Project consists of this Design-Build Contract and the related documents listed in Article 15, together with such Change Orders as the Parties may execute hereafter (the “Contract Documents”) all of which are incorporated herein by this reference and made a part hereof for all purposes.

1.3 Parties Understanding. This Design-Build Contract 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 Contract shall become effective on the date on which every Party has signed this Design-Build Contract (the “Effective Date”).

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

- 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 Contract, 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 HHS.
- 1.4.6 **“Contract Time”** means the amount of time allowed under the Design-Build Contract 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 Contract. Notwithstanding any other term or provision in the Design-Build Contract, DBC shall perform all functions and obligations ascribed to an Architect or Engineer by the Design-Build Contract when such Architect or Engineer would be retained directly by HHS, 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.
- 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 Contract.
- 1.4.9 **“Design-Build Contract”** or **“Contract”** means this document entitled, “Design-Build Contract,” including exhibits and material incorporated herein by reference.
- 1.4.10 **“Design-Build Criteria”** means the Project Specifications (as defined under 1.4.23) and including HHS’s Minimum Requirements as provided in the Solicitation Documents.
- 1.4.11 **“Design Services”** means all services identified in Section 2.2 of this Design-Build Contract, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.4.12 **“Early Work”** shall mean Construction Services authorized by Change Order that the Parties agree should be performed in advance of HHS’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 HHS’s final approval of the Design Work Product will materially affect the critical path schedule of the Project.
- 1.4.13 **“Early Work Change Order”** shall mean a Change Order executed by and between the Parties to authorize Early Work.

- 1.4.14 “General Conditions”** means the General Conditions, as modified and included in this Design-Build Contract as part of the Contract Documents. Any reference in the General Conditions to “State of Oregon” or “State” as the owner of the Project or as the public contracting entity shall be deemed to refer to HHS.
- 1.4.15 “General Contractor”** means the DBC.
- 1.4.16 “RESERVED”**
- 1.4.17 “HHS”** means Yamhill County, a political subdivision of the State of Oregon, acting by and through its Health and Human Services Department.
- 1.4.18 “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.
- 1.4.19 “Notice to Proceed (Construction)”** means HHS’s written directive to the DBC to proceed with Construction Services (other than those authorized by an Early Work Change Order).
- 1.4.20 “Notice to Proceed (Design)”** means HHS’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
- 1.4.21 RESERVED**
- 1.4.22 “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.
- 1.4.23 “Project Specifications”** means the specifications which are included in the Design-Build Criteria, together with all specifications developed subsequently by DBC and approved by HHS.
- 1.4.24 “Proposal”** means the DBC’s offer to perform Project Services in response to the RFP.
- 1.4.25 “Record Documents”** mean the as-built Plans, Plans and Specifications, product data, samples, shop drawings, Change Orders, and other documents listed in the RFP.
- 1.4.26 “Request for Proposals” or “RFP”** means the Solicitation Document or Solicitation Documents.
- 1.4.27 “Design”** means the preliminary design development to be used as the basis for the Design Work Product to be provided by DBC to HHS pursuant to Section 5.3 of this Design Build Contract.
- 1.4.28 “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.
- 1.4.29 “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.
- 1.4.30 “Design Work Product”** means the written submission to HHS by DBC, including the Supporting Documents, in accordance with Section 5.3 of this Design-Build Contract.
- 1.4.31 “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.
- 1.4.32 “Services”** means all Work required to be performed under the Design-Build Contract, portions of which are sometimes herein designated as either “Design Services” or “Construction Services.”
- 1.4.33 “Supporting Documents”** are defined in Section 5.3 of this Design-Build Contract.
- 1.4.34 “Value Engineering”** means alterations in design, materials, methods, finishes, or techniques jointly

agreed upon by HHS 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 Contract and all Construction Services identified in Section 2.3 of this Design-Build Contract, 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 HHS's selection of the DBC, the DBC agrees that it shall not substitute its architect or engineer without HHS's prior written consent. The DBC also agrees to support HHS's efforts to create a collaborative and cooperative team between the DBC, its design professionals and Consultants, and HHS's Representative. The DBC, however, shall remain solely liable to HHS for proper completion and timely delivery of all Design Services and Construction Services required under the Design-Build Contract.

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 HHS'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 HHS's review and for approval of submittals by the Authorities. Once HHS has accepted it, the DBC shall not exceed the time limits established in the Design Schedule.

Within seven (7) Days after HHS accepts the Design Schedule, the DBC shall submit for HHS's review the detailed and finalized schedule for the performance of the Construction Services (the "Construction Schedule"). Once HHS 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 Contract upon their acceptance by HHS.

2.1.4 The DBC's Representative shall be reasonably available to HHS'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 HHS's Representative, and shall have the authority to act on behalf of the DBC in all things relating to performance of the Design-Build Contract. The DBC's Representative may not be replaced prior to Design-Build Contract completion without HHS's prior written consent.

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

1. The roles of the personnel for HHS, 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 Contract, 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 HHS.

2.1.6 Subsequent to the pre-design conference, the DBC shall meet with HHS at least once each week for the duration of the Design-Build Contract, 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 Contract, 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 HHS a comprehensive list of:
 - a. matters that require resolution,
 - b. matters that require HHS'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 HHS's review or approval of, and response to, any of the matters presented at HHS/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.

2.2 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 Contract 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 HHS 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 Contract and all Legal Requirements. Any deviation from the specified materials and/or manufacturers requires the submission to and approval by HHS.
- (b) After review and approval of the Design Work Product by HHS and issuance of the Notice to Proceed (Construction) by HHS, 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 HHS, 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 HHS 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 HHS 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 HHS, 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 HHS, 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 HHS's approval;
- (d) Submission to HHS 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 HHS 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 HHS 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 HHS. Approval of the Design Work Product and finalization of Construction Documents shall not preclude further identification and implementation by the DBC and HHS 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 demolition, debris removal and proper disposal of the two existing residential structures currently located on the Project site, installation of all utilities, described in the Design-Build Contract 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 HHS complete, fully functional housing units, capable of being legally occupied and fully used for the purposes described herein, and installed utilities sufficient to support the facilities, 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 Contract 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 Contract 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 Contract, 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 Contract cannot be modified except by written Change Order executed by the Parties hereto, and including all required approvals by HHS and the Yamhill County Board of Commissioners, if any.
- 2.3.4** Except as may be otherwise provided in the Design-Build Contract and Contract Documents, HHS 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 HHS 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 Contract 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 HHS's approval and execution, and shall obtain HHS's written approval, in the form of a Change Order or HHS'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 HHS 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 HHS 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. 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:
- (a) employees of HHS, 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;
 - (b) the Project Site, and all materials and equipment to be incorporated into the Project; and
 - (c) 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 Contract. 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 Contract, 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 Contract, the DBC shall include language in all subcontracts that the "General Conditions and Supplemental General Conditions, to the extent not inconsistent with the Design-Build Contract, shall apply to the work of the subcontractor."
- 2.3.15** Construction Documents. Upon notification of HHS'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:

- (a) 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;
- (b) Comply with all applicable Laws; and
- (c) 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 HHS;

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 HHS, update CAD drawings and submit the appropriate electronic media (e.g. compact disks, thumb drive) - 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 Contract.

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 Contract, HHS will reimburse the DBC for expenses associated with Design Services under the following circumstances, and no other:

2.5.1 HHS 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 HHS requests Design Services in excess of those identified or necessarily implied in the Design-Build Contract and Contract Documents, but within the scope of the Solicitation Documents. Provided, however, HHS 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 Contract and not an officer, employee, or agent of HHS 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 Contract and Contract Documents.

3.2 HHS's Representative. HHS's Representative is HHS's exclusive representative to the DBC with respect to the Project and this Design-Build Contract, unless HHS designates another representative and notifies the DBC in writing of that designation. All communications from HHS to the DBC will be issued or made through HHS's Representative. HHS's Representative shall have the authority to establish procedures, consistent with the Design-Build Contract, to be followed by the DBC and to call periodic conferences to be attended by the DBC throughout the term of the Design-Build Contract. HHS's Representative shall have no authority to amend the Design-Build Contract, 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 HHS with

respect to the Project and this Design-Build Contract, unless the DBC designates another representative and notifies HHS in writing of that designation. Provided, the DBC's Representative shall not be replaced during the Project without the written permission of HHS, which shall not be unreasonably withheld. All communications from the DBC to HHS 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 HHS, which shall not be unreasonably withheld. If the DBC intends to substitute key personnel, a request must be given to HHS at least 30 Days prior to the intended time of substitution. When HHS 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 HHS. If the DBC intends to substitute a Consultant, it must submit a request to HHS at least 30 Days prior to the intended time of substitution, and include the identity of the proposed replacement. HHS shall be deemed to have consented to the employment of such Consultant unless HHS objects to the employment of such Consultant in writing within such 30-Day period; provided that if HHS subsequently discovers information which leads HHS to reasonably believe a Consultant selected by the DBC and approved by HHS is unqualified to perform the Work, the DBC shall replace such Consultant upon the request of HHS.

3.6 The DBC's Architect. If the DBC intends to substitute its architect, the DBC must submit a written request to HHS at least 30 Days prior to the intended date of substitution. Upon HHS's approval, the original and replacement architects shall work concurrently during a transition period of at least 10 working days. HHS 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 Contract upon complete execution of this Design-Build Contract 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 HHS. 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 HHS.

4.3 Notices to Proceed. HHS will issue its Notice to Proceed (Design) at time of Design-Build Contract execution. HHS 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 Contract and the Contract Documents are of the essence. No provision of the Design-Build Contract shall preclude recovery of actual damages for delay by the DBC. It is agreed that any delay in the completion of the Project would cause HHS 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 HHS for each Day of delay in achieving Substantial Completion of the Project that is not excused by an extension of time granted by HHS under the provisions of this Design-Build Contract. This amount is estimated by HHS and the DBC to be a reasonable approximation of HHS'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 Contract shall take effect on the Effective Date and the DBC shall

perform this Design-Build Contract 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, HHS 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 HHS. Changes to the Contract Sum shall only be authorized by Change Order that includes any necessary approvals by HHS, including any approvals by HHS'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 One Hundred Twenty Thousand Three Hundred Forty-Five Dollars and 00/100 (\$120,345.00). 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. HHS 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 HHS 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 Contract 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 Contract, 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 HHS to review the Design Work Product and the written statement of its basis. If HHS discovers any inconsistencies or inaccuracies in the Design Work Product, HHS shall promptly notify the DBC, who shall make appropriate adjustments to the Design Work Product, its basis or both.
- 5.3.5** Prior to HHS'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 HHS 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 HHS 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 HHS, or if HHS 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 HHS, HHS may terminate this Design-Build Contract without liability, and the DBC shall not receive additional compensation beyond the amount of the Design Fee previously approved under this Design-Build Contract 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 HHS's convenience. The DBC further agrees that HHS shall not be liable for any damages whether actual, consequential or otherwise for termination of the Design-Build Contract under this provision.

5.5 Renegotiation of Cost of the Work. If HHS 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, HHS shall so notify the DBC, and the DBC covenants to negotiate in good faith with HHS 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 HHS shall thereupon issue a Notice to Proceed (Construction). If the parties cannot agree on an adjustment to the Cost of the Work, HHS at its option may either issue a Notice to Proceed (Construction) based upon the unadjusted Cost of the Work or terminate this Design-Build Contract in accordance with Section 5.4 above.

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

5.7 HHS Savings. If the final Cost of the Work (as defined in Article 7.1) is less than the total listed, all savings shall accrue solely to HHS.

5.8 Reallocating Projected Cost Under-runs after Bid (Offer) Buyout. As soon as possible after the primary Subcontractors are selected for the work, DBC shall review projected costs and provide HHS with a buy-out status report showing any projected cost under-runs, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by the DBC to develop the Design Work Product. The DBC shall include with its report any underlying documentation requested by HHS used to develop or support such report.

The DBC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the DBC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost under-runs to an HHS-controlled contingency fund to be held within the Cost of the Work to pay for additional costs arising from

- (a) any HHS-directed or approved change to the Work,
- (b) schedule changes that would otherwise entitle the DBC to an increase in the Cost of the Work,
- (c) Allowance items after exhaustion of all Allowances,
- (d) selection by HHS of more expensive alternates than those used for development of the Design Work Product,
- (e) HHS selection of substitutions that increase the Cost of the Work, or
- (f) any other costs which otherwise would entitle the DBC to an increase in the Cost of the Work pursuant to Article 6.2. Any transfer of projected cost under-runs from the DBC's contingency to the HHS-controlled contingency fund will not affect the DBC's obligation to complete the Project within the Cost of the Work.

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

- (a) in the event of a change in the Scope of Work or
- (b) as otherwise expressly provided in this Design-Build Contract, 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 HHS'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 HHS'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 HHS may, at any time, submit a Cost of the Work Change Request requesting a reduction of the

Cost of the Work, which shall include HHS'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 HHS 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 HHS 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 HHS's position. The DBC shall submit the Reconciled Cost of the Work Change Request to HHS, 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 HHS, the DBC agrees to work with HHS to provide a Cost of the Work Change Request that is acceptable to HHS.
- 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 HHS and to allow HHS access and opportunity to view such documents at DBC's offices. Upon HHS's reasonable notice, the DBC shall deliver two (2) copies of such documents to HHS 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 HHS. Only the duly authorized personnel of HHS 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 Contract, 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 One Million Two Hundred Eighty Thousand Dollars and 00/100 (\$1,280,000.00).

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 HHS.

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 HHS at the completion of the Work or, at HHS'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 HHS 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 HHS at HHS's option may require that the DBC deliver to HHS (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 HHS 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 HHS.

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 Contract 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 HHS.

7.6 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 HHS. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to HHS, and the DBC shall make provisions so that they can be secured

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

ARTICLE 10 - INSURANCE PROVISIONS

During the term of the Design-Build Contract 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 Contract.

10.3 Builder's All-Risk/Direct Risk of Physical Damage. During the term of the Design-Build Contract, 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 Contract. 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 HHS as an additional insured, as their interests may appear (the DBC shall provide HHS 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 HHS 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 Contract. The policy may be either a practice based policy or a policy pertaining to the specific Project; in either event, the policy must cover HHS as 'owner'. 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 HHS 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 Contract.

10.6 Certificate of Insurance. Prior to the signature by HHS to this Design Build Contract, the DBC shall furnish to HHS Certificates of Insurance as evidence of the insurance coverage required under the Design-Build Contract. 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 HHS 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 Contract.

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 HHS and DBC are additional Insureds with respect to the DBC's Services/Work to be provided under the Design-Build Contract. The DBC shall provide HHS with copies of all policy endorsements/amendments confirming the status of HHS and DBC as additional Insured, as required by the Design-Build Contract.

10.8 Prohibited Terms. No insurance required by the Design-Build Contract 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 HHS.
- (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 HHS.

10.9 HHS-Contractor Relationship. Further, notwithstanding anything to the contrary, the DBC agrees that it has a special relationship with HHS because, in part, of the design-build obligations of the DBC, and that HHS is placing its potential monetary liability in the DBC's hands and has authorized the DBC to exercise independent judgment on behalf of HHS. DBC shall exercise such own independent judgment to further HHS's economic interests and HHS shall, without limiting HHS'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 HHS provide entire copies of all insurance policies it is obligated to provide or procure hereunder to HHS, including but not limited to all renewals and all policies on which HHS 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 HHS need not review or reference the actual policy because the certificate certifies that all coverages required by this contract are provided. Further, by receiving such copies, HHS 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 coverages 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 HHS against the DBC arising from or related to the Design-Build Contract 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 Contract.

ARTICLE 11 - OWNERSHIP AND USE OF WORK PRODUCT

11.1 Ownership of Design-Build Contract and Contract Documents. Copies of the Design-Build Contract and Contract Documents, Design and Construction documents, Plans, Specifications, reports, or other materials required elsewhere in the Design-Build Contract to be delivered to HHS, 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 HHS. HHS and the DBC intend that such Work Product be deemed “work made for hire,” for which HHS 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 HHS 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 HHS 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 HHS may reasonably request in order to fully vest such rights in HHS. 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

The DBC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Design-Build Contract; the accounting and control systems shall be satisfactory to HHS. HHS and HHS'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 Contract, and the DBC shall preserve these for a period of ten (10) years after final payment, or until the resolution of any dispute, if any, involving the Design-Build Contract, or for such longer period as may be required by law.

ARTICLE 13 - PAYMENTS

13.1 Schedule of Payments. HHS 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 Contract, the DBC shall submit its application for payment to HHS 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 HHS on the first day of the following calendar month. HHS 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 HHS 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 HHS on the first day of the following calendar month. HHS 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. HHS 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 HHS'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 HHS for payment by the 10th of the month.

ARTICLE 14 - TERMINATION OR SUSPENSION

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

14.1 HHS's Termination.

- 14.1.1** For Convenience. HHS may terminate the Design-Build Contract without penalty for convenience pursuant to Section J.5 of the General Conditions; payment in such case shall be governed by Section E of the General Conditions. However, the amount to be paid to the DBC under the General Conditions shall not in any case exceed the Contract Price as defined in Section E of the General Conditions.
- 14.1.2** Funding/Authority. HHS may terminate the Design-Build Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as HHS may establish in such notice, upon:
 - (a) HHS'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 Contract are prohibited or HHS is prohibited from paying for such Design Services or Construction Services from the planned funding source.
 - (c) DBC may terminate the Design-Build Contract for cause in the event HHS 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. HHS may terminate the Design-Build Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as HHS 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 Contract, fails to perform the Design Services or Construction Services under the Design-Build Contract within the time specified herein or any extension thereof, or so fails to perform the Design Services or Construction Services as to endanger the DBC's performance under the Design-Build Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of HHS's notice, or such longer period of cure as HHSW may specify in such notice.

14.1.4 HHS 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 HHS's intention to make all undisputed payments due hereunder if funds are legally available therefor and in that regard HHS represents and warrants to the DBC that the Design-Build Contract is important to HHS's efficient and economic operation. If, despite the above, HHS 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, HHS may terminate the Design-Build Contract 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 HHS 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 Contract, but HHS shall be obligated to pay all undisputed charges incurred through the end of such fiscal period. HHS 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 Contract for cause if the Work is stopped for 120 Days through no act or fault of the DBC or a Consultant, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the DBC, for any of the following reasons:

- (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 Contract for cause in the event HHS 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 HHS's entitlement to recover liquidated damages in accordance with Section 4.4 of this Design-Build Contract.

ARTICLE 15 - ENUMERATION OF CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract Documents incorporated into this Design-Build Contract 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 HHS's or HHS'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:

- (a) Change Orders, with those of a later date having precedence over those of an earlier date.
- (b) 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.
- (c) This Design-Build Contract, minus all exhibits and material incorporated herein by reference.

- (d) Exhibit A – Standard Conditions for Construction Contracts
- (e) Construction Plans and Specifications to be prepared by DBC.
- (f) 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
- (g) Project Schedule
- (h) Solicitation Documents
- (i) Supplemental General Conditions
- (j) General Conditions
- (k) Remaining documents incorporated into the Contract 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 Contract 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 HHS’s Representative.

ARTICLE 17 - MISCELLANEOUS PROVISIONS

17.1 Governing Law; Jurisdiction; Venue. This Design-Build Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between HHS and the DBC that arises from or relates to the Design-Build Contract 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 HHS 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 Contract, consents to the Personal Jurisdiction of such courts.

17.2 Notices. Except as otherwise expressly provided in the Design-Build Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid, to the DBC or HHS at the addresses or numbers provided on the first page of this Design-Build Contract or as either party may hereafter indicate pursuant to this Section. Any notice to HHS must be given simultaneously to HHS’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 HHS, such facsimile transmission must be confirmed by telephone notice to HHS’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 HHS, such e-mail message must be confirmed by telephone notice to HHS’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 Indemnification. The DBC shall defend, indemnify, and hold harmless HHS, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the DBC in connection with the performance of any services required hereunder. The DBC shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Design-Build Contract.

- a. Environmental Contamination. The DBC will be held responsible for and shall indemnify, defend (with counsel of HHS's choice) and hold harmless HHS 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 Contract which occur as a result of, or are contributed to, the negligence or actions of DBC or its personnel, agents, or subcontractors or any failure to perform in accordance with the Design-Build Contract or Contract Documents, except to the extent otherwise void under ORS 30.140.

17.4 Risk of Loss. The risk of loss or damage to the subject matter of this Contract arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the County has accepted the work and services as provided in this Contract.

17.5 Compliance with ORS 279B.220. For all services provided under this Design-Build Contract, the DBC shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the DBC or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against HHS or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the DBC does not pay promptly any claim that is due for the services furnished to the DBC by any subcontractor in connection with this Design-Build Contract, HHS may pay such claim and charge that payment against any payment due to the DBC under this Design-Build Contract. HHS's payment of a claim does not relieve the DBC or its surety, if any, from their obligations for any unpaid claims.

17.6 Hours of Labor; Compliance with Pay Equity Provisions.

- 17.6.1** Pursuant to ORS 279B.235(3), the DBC shall pay the DBC's employees who perform work under this Design-Build Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
- 17.6.2** Pursuant to ORS 279B.235(1)(b), the DBC shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Design-Build Contract and failure to comply is a breach that entitles HHS to terminate the Design-Build Contract for cause.
- 17.6.3** Pursuant to ORS 279B.235(1)(c), the DBC shall not prohibit any of the DBC's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- 17.6.4** Pursuant to ORS 279B.235(5)(b), the DBC shall notify, in writing, any person employed by the DBC under this Design-Build Contract, either at the time of hire or before work begins on the Design-Build Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the DBC may require the employees to work.

17.7 Compliance with Laws. The DBC shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Design-Build Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by DBC of any applicable law required in the provision of services hereunder shall constitute breach of this Design-Build Contract, and DBC shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.

17.8 Compliance with Procurement Statutes. The DBC shall comply with the following statutory regulations pertaining to public construction contracts:

- 17.8.1** The DBC shall make payment promptly, as due, to all persons supplying to the DBC labor or material for the performance of the Work provided for in this Design-Build Contract. ORS 279C.505(1)(a).
- 17.8.2** The DBC shall pay all contributions or amounts due the Industrial Accident Fund from the DBC or first-tier subcontractor incurred in the performance of this Design-Build Contract. ORS 279C.505(1)(b).
- 17.8.3** The DBC shall not permit any lien or claim to be filed or prosecuted against HHS or the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279C.505(1)(c).
- 17.8.4** The DBC shall pay to the Department of Revenue all sums withheld from employees under ORS 316.617. ORS 279C.505(1)(d).
- 17.8.5** The DBC shall demonstrate upon request that an employee drug testing program is in place. ORS 279C.505(2).
- 17.8.6** The DBC shall salvage or recycle construction and demolition debris if feasible and cost effective. In contracts for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site if feasible and cost-effective. ORS 279C.510(1).
- 17.8.7** The DBC and any subcontractor shall promptly pay, as due, all persons supplying labor and services furnished to the DBC or first-tier subcontractor by any person in connection with this Design-Build Contract as the claim becomes due. If the DBC or subcontractor fails to pay any such claim, HHS may pay the claim and charge the payment against the funds due or to become due the DBC by reason of the Design-Build Contract. ORS 279C.515(1).
- 17.8.8** The DBC and/or any first-tier subcontractor shall make payment to any person furnish labor or materials in connection with this Design-Build Contract within 30 days after receipt of payment from HHS or the DBC. 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(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. 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 30 days after the date when payment was received from the contracting agency or from the DBC, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. ORS 279C.515(2).
- 17.8.9** The DBC or any subcontractor shall make payment to any person furnishing labor or materials in connection with this Design-Build Contract. The person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. ORS 279C.515(3).
- 17.8.10** The DBC and any subcontractor shall comply with all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the Work under the Design-Build Contract. ORS 279C.525.
- 17.8.11** The DBC shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or the needed care and

attention incident to sickness or injury, to the employees of the Design-Build Contract, of all sums that the DBC agrees to pay for the services and all moneys and sums that the DBC collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services, pursuant to ORS 279C.530(1).

- 17.8.12** If the DBC is a subject employer, the DBC shall comply with ORS 656.017. ORS 279C.530(2).
- 17.8.13** No person shall be employed by the DBC for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of 40 hours a week and for Work performed on any legal holiday specified in ORS 279C.540.
- 17.8.14** The DBC shall comply with maximum hours of work, holidays and overtime per ORS 279C.540 and time limit on claims for overtime per ORS 279C.545.
- 17.8.15** The DBC shall comply with ORS 279C.550 through 279C.570 regarding withholding of retainage. The withholding of retainage by the DBC shall be in accordance with ORS 701.420 and 701.430.
- 17.8.16** The DBC shall comply with ORS 279C.570 regarding prompt payment, progress payments, and rate of interest.
- 17.8.17** The 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: (i) a payment clause that obligates the DBC to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the DBC by HHS; and (ii) an interest penalty clause that obligates the DBC, if payment is not made within 30 days after receipt of payment from the contracting agency, 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. These clauses must also be included in each of the DBC's subcontracts and in each of the first-tier subcontractor's subcontracts and each of the first-tier subcontractor's, subcontractors shall include these clauses in their subcontracts with each lower-tier subcontractor or supplier. ORS 279C.580.
- 17.8.18** The DBC and any subcontractor shall comply with ORS 279C.605 regarding Notice of Claim.
- 17.8.19** The DBC shall not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, in the awarding of subcontracts. ORS 279A.110
- 17.8.20** Unless contrary to federal law, the DBC shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Design-Build Contract unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the DBC.
- 17.8.21** Unless contrary to federal law, the DBC shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Design-Build Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- 17.8.22** The following notice is applicable to contractors who perform excavation work:
- ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.***

17.9 Prevailing Wage Regulations.

- 17.9.1** This Design-Build Contract is subject to the following Bureau of Labor and Industries (BOLI) wage

requirements and the prevailing wages rates set forth in the following booklet, as amended, which is incorporated herein by reference with the same force and effect as though fully set forth herein, and is available at the following web link:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

- Prevailing Wage Rates for Public Works Contracts in Oregon issued July, 2025.
- Prevailing Wage Rates Apprenticeship Rates issued July, 2025.

17.9.2 The DBC shall provide HHS with a copy of the certified payroll weekly for recording purposes. ORS 279C.860; OAR 839-025-0010

17.9.3 The DBC and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2); OAR 839-025-0020(e)

17.9.4 Workers employed under this Design-Build Contract shall be paid not less than the applicable state prevailing rate of wage. ORS 279C.830(1)(c); OAR 839-025-0020(3)(a)

17.9.5 If the Project is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, the DBC shall pay the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(b); OAR 839-025-0020(4)(c)

17.9.6 If the DBC fails to pay for labor and services, HHS can pay for them and withhold these amounts from payments to the DBC. ORS 279C.515; OAR 839-025-0020(2)(a)

17.9.7 The DBC must pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540. ORS 279C.520(1); OAR 839-025-0020(2)(b)

17.9.8 The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. ORS 279C.520(2); OAR 839-025-0020(2)(c)

17.9.9 The DBC must make prompt payment for all medical services for which the DBC has agreed to pay, and for all amounts for which the DBC collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d)

17.9.10 The DBC must include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(b); OAR 839-025-0020(2)(e)(B)

17.9.11 The DBC shall certify that all subcontractors performing work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the Design-Build Contract.

17.10 Retainage by HHS. HHS may reserve as retainage from any progress payment an amount not to exceed five (5) percent of the payment. As Work progresses, HHS may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Design-Build Contract payments after 50 percent of the Work under the Design-Build Contract is completed if, in HHS's opinion, such Work is progressing satisfactorily. Any retainage reserved by HHS shall be withheld and released in accordance with ORS 279C.550 to 279C.580. If the Design-Build Contract exceeds \$500,000, HHS shall place amounts deducted as retainage into an interest-bearing escrow account, and if it does, any interest on the retainage amount will be paid to the DBC. In accordance with ORS 279C.5570(2), such interest shall accrue from the date the payment request is approved by HHS until the date the retainage is paid to the DBC to which it is due.

17.11 Warranty of Work. Neither the final payment nor any provision of the Design-Build Contract or Contract Documents shall relieve the DBC from responsibility for defective Work and, unless a longer period is specified, the

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 HHS, except for latent defects which will be remedied by the DBC at any time they become apparent. HHS shall give the DBC notice of defects with reasonable promptness. The DBC shall perform such warranty work within a reasonable time after HHS's demand. If the DBC fails to complete the warranty work within such period as HHS determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, HHS may perform such work and the DBC shall reimburse HHS all costs of the same within ten (10) days after demand without affecting the DBC's obligations.

17.12 Disclosure of Tax Identification Number. The DBC shall provide its Federal Tax ID number to HHS. 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.

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

17.14 Waiver. The failure of HHS to enforce any provision of the Design-Build Contract shall not constitute a waiver by HHS of that provision, or any other provision of the Design-Build Contract.

17.15 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 HHS's prior written authorization. Furthermore, except in the case where HHS specifically authorizes disclosure of HHS's confidential information in writing, the DBC shall maintain the confidentiality of HHS'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 HHS's information.

17.16 Conflict of Interest. Except with HHS'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.

17.17 Merger Clause. THE DESIGN-BUILD CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED THEREIN. THE TERMS OF THE DESIGN-BUILD CONTRACT CANNOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED HHS 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 CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED THEREIN. DBC, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THE DESIGN-BUILD CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THE DESIGN-BUILD CONTRACT 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 CONTRACT is executed in three originals, of which one is to be delivered to the DBC, one to HHS and one to HHS's Representative. By signature on this Design-Build Contract, 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

17.18 Attorney Fees and Costs. In the event that either party to this Design-Build Contract shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Design-Build Contract, 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 Contract that shall be effective as of the last date written below.

HAWORTH INC.


Signature

Troy Haworth
Name (printed)

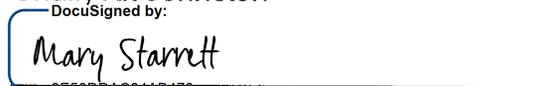
President
Title

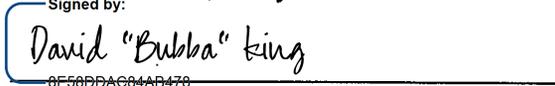
12-5-2025
Date

YAMHILL COUNTY, OREGON

DocuSigned by:

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Chair, Kit Johnston

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Commissioner, Mary Starrett

Signed by:

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Commissioner, David "Bubba" King

Signed by:

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HHS Director, Lindsey Manfrin

12/18/2025
Date

APPROVED AS TO FORM:

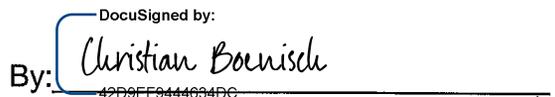
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By: County Counsel, Christian Boenisch

EXHIBIT A

**YAMHILL COUNTY HHS
BEHAVIORAL HEALTH HOUSING PROJECT
GENERAL CONDITIONS OF THE CONTRACT**

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YAMHILL COUNTY HHS
BEHAVIORAL HEALTH HOUSING PROJECT
GENERAL CONDITIONS OF THE CONTRACT

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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 Contract to the extent provided herein or by supplemental instruction of HHS (under which HHS may delegate responsibilities of HHS'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 HHS'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 Contract, including HHS's written change directives as well as changes reflected in a writing executed by the parties to this Design-Build Contract 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 Contract terms, payment of money, extension of Contract Time or other relief pursuant to Section D.3.

A.1.4 CONTRACT, means the written agreement between HHS 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 Contract, General Conditions, Supplemental General Conditions, 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.

A.1.8 CONTRACT TIME, means any incremental period of time allowed under the Design-Build Contract 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 Contract 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.

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

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

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the control of the party to this Design-Build Contract who is asserting Force Majeure.

A.1.14 NOTICE TO PROCEED, means the official written notice from HHS 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 Contract requirements, including the Design Build Contract performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to HHS 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 HHS means Yamhill County, acting by and through its Health and Human Services Department.

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

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 Contract.

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 HHS, 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.

A.1.24 SOLICITATION DOCUMENT, or SOLICITATION DOCUMENTS means the Yamhill County Health and Human Services Behavioral Health Housing Project Request for Proposals, issued October 17, 2025.

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 Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached

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to the Design-Build Contract.

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 HHS 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 HHS's Authorized Representative. The decision of HHS's Authorized Representative is final.

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

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 Contract and the carrying out of duties and obligations imposed by the Design-Build Contract and Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Design-Build Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the Project described in the Design-Build Contract 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 Contract and Contract Documents.

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

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

1. Design-Build Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. Construction Change Directives, with those of a later date having precedence over those of an earlier date.
3. The Design-Build Contract, minus all exhibits and material incorporated herein by reference.
4. The Construction Plans and Specifications to be prepared by DBC.
5. Permits and Orders issued by any government of quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work.
6. The Project Schedule

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7. The RFP

8. The Supplemental General Conditions

9. The General Conditions

10. The remaining documents incorporated into the Design-Build Contract by reference.

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

A.3.3 If the DBC finds discrepancies in, or omissions from the Design-Build Contract and Contract Documents, or if the DBC is in doubt as to their meaning, the DBC shall at once notify HHS or HHS's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Design-Build Contract and Contract Documents will be decided by HHS'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 Contract and Contract Documents will be made in writing by HHS's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of HHS's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Design-Build Contract and Contract Documents. DBC shall not proceed without direction in writing from HHS'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 Contract 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. HHS 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 HHS, or with the Architect/Engineer either before or after the execution of this Design-Build Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, DBC shall have the duty to make inquiry of HHS 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 Contract requirements.

A.4.3 Any design errors or omissions noted by the DBC shall be reported promptly to HHS'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 HHS's Authorized Representative (or Architect/Engineer) in response to the DBC's

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notices or requests for information, the DBC must submit a written request to HHS's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Design-Build Contract 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 HHS'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 HHS 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 Contract are those of an independent contractor. DBC represents and warrants that it is not an officer, employee or agent of HHS 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 Contract. DBC will not be eligible for any benefits from these Design-Build Contract 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, HHS 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 HHS for purposes of performing Work under this Design-Build Contract.

SECTION B ADMINISTRATION OF THE DESIGN-BUILD CONTRACT

B.1 HHS'S ADMINISTRATION OF THE DESIGN-BUILD CONTRACT

B.1.1 HHS's Authorized Representative will provide administration of the Design-Build Contract as described in the Contract Documents (1) during construction, (2) until final payment is due and (3) during the one-year period for correction of Work. HHS's Authorized Representative will act on behalf of HHS to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Design-Build Contract. In performing these tasks, HHS's Authorized Representative may rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 HHS'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 HHS informed about the progress and quality of the portion of the Work completed,

(2) to endeavor to guard HHS 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. HHS's Authorized Representative will not make exhaustive or continuous on- site inspections to check the quality or quantity of the Work. HHS's

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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, HHS and DBC shall endeavor to communicate with each other through HHS's Authorized Representative or designee about matters arising out of or relating to the Design-Build Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the DBC. Communications by and with separate contractors shall be through HHS'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 HHS'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 Contract. If the Design-Build Contract 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 Contract, 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 Contract, 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 Contract 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 HHS's Authorized Representative to determine if they conform to the Design-Build Contract and the Contract Documents. Inspection of the Work by HHS's Authorized Representative does not relieve the DBC of responsibility for the Work in accordance with the Design-Build Contract and Contract Documents.

B.3.4 DBC shall furnish adequate facilities, as required, for HHS's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.3.5 The DBC shall furnish Samples of materials for testing by HHS's Authorized Representative and

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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 HHS 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, HHS 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 Contract. Failure to comply with such requirements shall constitute a breach of this Design-Build Contract and shall be grounds for Design-Build Contract 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. HHS's performance under the Design-Build Contract 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.

(b) DBC shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Design-Build Contract 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 Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 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 Contract 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

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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 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Design-Build Contract and constitute grounds for Design-Build Contract 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 HHS and who shall represent the DBC on the Site. Directions given to the superintendent by HHS's Authorized Representative shall be confirmed in writing to the DBC.

B.7 INSPECTION

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

B.7.2 Inspection of the Work will be made by HHS's Authorized Representative at its discretion. HHS's Authorized Representative will have authority to reject Work that does not conform to the Design-Build Contract and Contract Documents. Any Work found to be not in conformance with the Design-Build Contract and Contract Documents, in the discretion of HHS'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 Contract 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 HHS, or with the appropriate public authority.

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

B.7.4 As required by the Design-Build Contract and Contract Documents, Work done or material used without inspection or testing by HHS'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 completed Work for inspection. After inspection, the DBC shall restore such portions of Work to the standard required by the Design-Build Contract. If the Work uncovered is unacceptable or was done without sufficient notice to HHS'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 HHS'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 Contract and Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for HHS'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 Contract is declared by a court to be illegal or in conflict with any law,

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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 Contract 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 Contract 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 HHS's Authorized Representative access thereto.

B.9.2 DBC shall retain and HHS 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 Contract 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 Contract is involved in litigation, DBC shall retain all such records until all litigation is resolved. HHS and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

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

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 HHS 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 HHS. Where appropriate, DBC shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At HHS's request, DBC shall submit to HHS prior to their execution either DBC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If HHS disapproves such form, DBC shall not execute the form until the matters disapproved are resolved to HHS's satisfaction. HHS's review, comment upon or approval of any such form shall not relieve DBC of its obligations under this Design-Build Contract 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 Contract, in whole or in part, without the prior written approval of HHS. No such written approval shall relieve DBC of any obligations of this Design-Build Contract, 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 Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

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

B.13 HHS'S RIGHT TO DO WORK

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HHS 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. HHS'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, HHS'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, HHS has the right to execute other contracts related to or unrelated to the Work of this Design-Build Contract. The DBC of this Design-Build Contract will fully cooperate with any and all other contractors without additional cost to HHS in the manner described in section B.13.

B.15 GOVERNING LAW

This Design-Build Contract 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 HHS and DBC that arises from or relates to this Design-Build Contract 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 CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

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

B.17.2 Unless otherwise provided in the Design-Build Contract 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 Contract Price but not in the allowances;

(c) whenever costs are more than or less than allowances, the Design-Build Contract 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).

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(d) Unless HHS requests otherwise, DBC shall provide to HHS 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 HHS'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. HHS 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 Contract the way by which the DBC proposes to conform to the information given and the design concept expressed in the Design-Build Contract. 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 Contract 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 Contract 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 responsive action may be so identified in the Design-Build Contract and Contract Documents. Submittals which are not required by the Design-Build Contract 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 Contract and Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Contract and Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of HHS or of separate contractors. Submittals which are not marked as reviewed for compliance with the Design-Build Contract 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 Contract.

B.18.5 The DBC shall perform no portion of the Work for which the Design-Build Contract and Contract

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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 Contract 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 HHS 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 HHS 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 HHS on the Project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by HHS's Authorized Representative.

B.19 SUBSTITUTIONS

The DBC may make Substitutions only with the consent of HHS, after evaluation by HHS'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 Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent, and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to DBC by HHS or HHS's Architect/Engineer shall be used solely for the performance of the Work under this Design-Build Contract. 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 Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by HHS.

B.21 FUNDS AVAILABLE AND AUTHORIZED

HHS reasonably believes at the time of entering into this Design-Build Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Design-Build Contract within HHS'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 Contract, HHS's payment of amounts under this Design-Build Contract attributable to Services performed after the last day of the current biennium is contingent on HHS receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow HHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Design-Build Contract.

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B.22 NO THIRD PARTY BENEFICIARIES

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

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 HHS'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 Contract, 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 Contract.

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, HHS must pay a fee to the Bureau of Labor and Industries equaling 1/10 of 1% of the Design-Build Contract price, however, the fee shall not be less than \$250 nor more than \$7,500, regardless of the Design-Build Contract 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 Contract, 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 HHS'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 Contract.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such DBC or

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Subcontractor incurred in the performance of the Design-Build Contract.

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

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 Contract, and shall maintain during the term of this Design-Build Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

(1) A written employee drug testing policy,

(2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and

(3) Required testing of a Subject Employee when the 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 HHS'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 HHS may pay the claim and charge the amount of the payment against funds due or to become due DBC under this Design-Build Contract. 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 HHS or a contractor, the DBC 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 HHS or from the DBC, but the rate of interest shall not exceed thirty (30) percent. The amount of interest may not be waived.

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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 Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). Every contract related to this Design-Build Contract 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 HHS under the Design-Build Contract;

(b) An interest penalty clause that obligates the DBC if payment is not made within thirty (30) days after receipt of payment from HHS, 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 HHS 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 Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. DBC shall ensure that each of its Subcontractors complies with these requirements.

C.4 HOURS OF LABOR

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

Pursuant to ORS 279C.520 and as a condition to HHS's performance hereunder, no person shall be employed to perform Work under this Design-Build Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, 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 Contract if DBC is currently a party to a collective bargaining agreement with any labor organization.

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

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

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

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Design-Build Contract, HHS's Authorized Representative may at any time, without notice to the sureties and without impairing the Design-Build Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Design Build Contract 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, HHS reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (HHS'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 HHS.

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

- (a) Unit pricing may be utilized at HHS'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 Contract on the parties covering the terms and conditions of the additional Work.
- (b) If HHS 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 Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by HHS without adequate

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justification. Cost and price data relating to Change Orders shall be supplied by DBC to HHS upon request, but HHS 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:

.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. HHS 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 HHS. 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 HHS'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 HHS. If DBC and HHS'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 of, or the Contract Time required for the performance of, any other part of the Work under this Design-Build Contract, the DBC must submit a written request to HHS's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Design-Build Contract 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

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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 HHS's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to DBC for inclusion with DBC's requests submitted to HHS's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. HHS's Authorized Representative and HHS will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Design-Build Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Design-Build Contract 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 HHS'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 Contract. DBC agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by HHS. 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 Contract, or lack of resolution of a dispute with HHS or any other person of matters arising out of or relating to the Design-Build Contract. If DBC fails to submit its final payment application within ninety (90) days after Substantial Completion, and DBC has not obtained written extension by HHS, 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.

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 HHS 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 HHS, HHS's Authorized Representative, or any other employee or agent of HHS, or by separate contractor employed by HHS.

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(b) Caused by any Site conditions which differ materially from what was represented in the Design-Build Contract 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 Contract and Contract Documents. The DBC shall notify HHS's Authorized Representative immediately of differing Site conditions before the area has been disturbed. HHS'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 Contract. If DBC and HHS'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 HHS'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 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 HHS'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

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initial written notification, the DBC shall submit to HHS'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 HHS'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 HHS'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 HHS'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 HHS'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 Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the DBC will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to HHS's Authorized Representative. HHS's Authorized Representative and HHS will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Design-Build Contract. 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 HHS.

D.3.3 HHS'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 HHS in writing of the time required for adequate review and response;
- (3) reject the Claim in whole or in part and identify the reasons for rejection;
- (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or
- (5) propose an alternate resolution.

D.3.4 HHS's Authorized Representative's decision shall be final and binding on the DBC unless appealed by written notice to HHS 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, HHS shall review the materials and render a decision within thirty (30) days after receiving the appeal documents.

D.3.5 The decision of HHS shall be final and binding unless the DBC delivers to HHS its requests for mediation, which shall be a non-binding process, within fifteen (15) days of the date of HHS'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 Contract. Both Parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) days of the commencement of the mediation through the mediation process set forth herein. In the event that a lawsuit must be filed within this sixty (60)

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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 HHS 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 HHS'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 HHS'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 HHS's Authorized Representative, the DBC shall continue to diligently pursue the Work as identified in the Design-Build Contract and Contract Documents. In no case is the DBC justified or allowed to cease Work without a written stop work order from HHS or HHS's Authorized Representative.

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

SECTION E PAYMENTS

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 HHS's Authorized Representative, this schedule shall be used as the basis for reviewing DBC's applications for payment. If objected to by HHS's Authorized Representative, DBC shall revise the schedule of values and resubmit the same for approval of HHS's Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

E.2.1 HHS shall make progress payments on the Design-Build Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by HHS's Authorized Representative. A progress payment shall not be considered

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acceptance or approval of any Work or waiver of any defects therein. HHS 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 HHS'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 Contract or fifteen (15) days after the payment is approved by HHS, 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, HHS 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 HHS, 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 HHS and the DBC.

E.2.2 DBC shall submit to HHS'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 HHS'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 HHS's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The DBC shall name HHS 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 HHS.
- (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 Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

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(h) All required documentation must be submitted with the respective application for payment.

E.2.4 HHS 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 HHS's opinion to protect HHS 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 HHS 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 HHS may issue checks made payable jointly to HHS 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 HHS or another contractor;

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

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

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

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

(a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to HHS 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 HHS pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

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

(d) Subtract any amounts for which HHS'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 HHS that title to all Work covered by an application for payment will pass to HHS 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 HHS 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 HHS's Authorized Representative with regard to any application for payment, DBC nevertheless shall continue to prosecute expeditiously the Work. No payment made

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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 Contract. 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 Contract from any entity other than HHS.

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 HHS may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, HHS may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Design-Build Contract payments after 50 percent of the Work under the Design-Build Contract is completed if, in HHS'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 HHS 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, HHS 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 HHS or in a custodial account or other mutually-agreed account satisfactory to HHS, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of HHS;

(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 HHS, with earnings from such account accruing to the DBC; or

(c) that HHS allow DBC to deposit a surety bond for the benefit of HHS, in a form acceptable to HHS, 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 HHS has accepted the DBC's election of option (a) or (b), HHS may recover from DBC any additional costs incurred through such election by reducing DBC's final payment. Where HHS 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 HHS shall be included in and paid to the DBC as part of the final payment of the Contract Sum. HHS 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 Contract has been completed and accepted and to run until the date DBC shall notify HHS in writing when the DBC considers the Work complete and HHS 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 Contract.

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If HHS 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), HHS shall reduce the amount of the retainage if the DBC notifies the controller of HHS that the DBC has deposited in an escrow account with bank or trust company, in a manner authorized by HHS's Authorized Representative, bonds and securities of equal value of a kind approved by HHS'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 HHS'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 Contract, the DBC shall notify HHS's Authorized Representative, in writing, that DBC has completed DBC's part of the Design-Build Contract and shall request final payment. Upon receipt of such notice HHS's Authorized Representative will inspect the Work, and if acceptable, submit to HHS 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, HHS will notify DBC within fifteen (15) days of DBC's request for final payment. Upon approval of this final estimate by HHS and compliance by the DBC with provisions in Section K. 3 AFFIDAVIT / RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, HHS shall pay to the DBC all monies due under the provisions of this Design-Build Contract and Contract Documents.

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

- (1) a notarized affidavit/release of liens and claims in a form satisfactory to HHS that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which HHS or HHS's property might be responsible or encumbered (less amounts withheld by HHS) have been paid or otherwise satisfied,
- (2) a certificate evidencing that insurance required by the Design-Build Contract and Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to HHS,
- (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 Contract and Contract Documents,
- (4) consent of surety, if any, to final payment and
- (5), if required by HHS, 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 Contract, to the extent and in such form as may be designated by HHS. If a Subcontractor refuses to furnish a release or waiver required by HHS, the DBC may furnish a bond satisfactory to HHS to indemnify HHS against such lien. If such lien remains unsatisfied after payments are made, the DBC shall refund to HHS all money that HHS 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.

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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 Contract and Contract Documents, law, ordinances, permits or directions of HHS's Authorized Representative. DBC shall follow HHS's Authorized Representative's instructions regarding use of HHS 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 HHS's Authorized Representative, HHS's workers and property from injury or loss arising in connection with this Design-Build Contract. DBC shall remedy acceptably to HHS, any damage, injury, or loss, except such as may be directly due to errors in the Design-Build Contract and Contract Documents or caused by authorized representatives or personnel of HHS. DBC shall adequately protect adjacent property as provided by law and the Design-Build Contract 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 Contract 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 HHS's Authorized Representative. HHS'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 HHS 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 Contract 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 HHS and make, or arrange to make, full restitution. DBC shall report, immediately in writing, to HHS's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

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 HHS's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by HHS'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

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shown upon, or reasonably implied by, the Design-Build Contract 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 Contract and Contract Documents, then DBC shall be responsible for restoring such surfaces to the condition specified in the Design-Build Contract and Contract Documents.

F.4 CLEANING UP

From time to time as may be ordered by HHS 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 HHS 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 HHS's choice) and hold harmless HHS 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 Contract 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 Contract 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 HHS 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 HHS and be performed by properly qualified personnel.

F.5.1.2 DBC shall obtain HHS'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 applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from HHS, 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 HHS, such spills, releases, discharges, or leaks to HHS'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 HHS. A written follow-up report shall

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be submitted to HHS 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 HHS.
- (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 Contract, or was caused by the DBC (reference F.5 Environmental Contamination), DBC shall immediately notify HHS of any hazardous substance(s) which DBC discovers or encounters during performance of the Work required by this Design-Build Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying HHS 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, HHS shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

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

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 Contract, 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 Contract.

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G.1.2 To the fullest extent permitted by law, DBC shall indemnify, defend (with counsel approved by HHS) and hold harmless HHS, HHS'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 Contract 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, 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 Contract.

G.2.2 Bond forms furnished by HHS 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.3 INSURANCE

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

G.3.2 Workers' Compensation: All employers, including DBC, that employ subject workers who work under this Design-Build Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Subcontractors who perform the Work without the assistance or labor of any employee need not obtain

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such coverage if the Subcontractor certifies so in writing to DBC. 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 Contract, 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 Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees HHS, 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 Contract, 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 Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Design-Build Contract. This insurance shall include as loss payees the HHS, the DBC and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until HHS has occupied the new housing units.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by HHS and made payable to HHS 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. HHS shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

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 Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to HHS. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Design-Build Contract (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 Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. 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 Contract 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 Contract. 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

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for performance of this Design-Build Contract shall include HHS and DBC, as Additional Insureds but only with respect to the DBC's activities to be performed under this Design-Build Contract. If DBC cannot obtain an insurer to name HHS and DBC as Additional Insureds, DBC shall obtain at DBC's expense, and keep in effect during the term of this Design-Build Contract, HHS's and DBC's Protective Liability Insurance, naming HHS 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 HHS 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 HHS. 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 HHS and DBC.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Design-Build Contract, the DBC shall furnish certificate(s) of insurance to HHS 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 Contract shall be obtained from insurance companies or entities acceptable to HHS 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 HHS. 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 HHS. 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" 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 HHS in writing prior to issuance of a Notice to Proceed and is subject to HHS's approval.

SECTION H SCHEDULE OF WORK

H.1 DESIGN-BUILD CONTRACT PERIOD

H.1.1 Time is of the essence on this Design-Build Contract. 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. HHS 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 HHS shall not waive any rights under the Design-Build Contract 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 HHS. 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

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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 Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by HHSW does not constitute agreement by HHS, 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 Contract completion date is float owned by HHS. HHS reserves the right to negotiate the float if it is deemed to be in HHS'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 HHS 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 HHS 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 Contract 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, HHS 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 HHS that materials and equipment furnished under the Design-Build Contract 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 Contract 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 HHS's Authorized Representative, whether incorporated in the Project or Work or not. Removal and replacement of Work shall be without loss or expense to HHS, 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, HHS 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 HHS may perform such Project work and DBC shall reimburse HHS 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

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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 HHS except for latent defects which will be remedied by the DBC at any time they become apparent.

HHS shall give DBC notice of Project defects with reasonable promptness. DBC shall perform such Project warranty work within a reasonable time after HHS's demand. If DBC fails to complete the warranty work within such period as HHS determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting DBC's obligations, HHS may perform such work and DBC shall reimburse HHS 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 HHS and shall not take effect until affected Work has been accepted in writing by HHS'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 HHS.

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 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 HHS prefers to accept Work which is not in accordance with the requirements of the Contract Documents, HHS 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 HHS'S RIGHT TO SUSPEND THE WORK

J.1.1 HHS and/or HHS'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 Contract;
- (c) Failure of the DBC to carry out orders;
- (d) Conditions, in the opinion of HHS's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing Site conditions;

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(f) Any reason considered to be in the public interest.

J.1.2 HHS 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 HHS may be due compensation by the other party. If the suspension was required due to acts or omissions of DBC, HHS may assess the DBC actual costs of the suspension in terms of administration, remedial work by HHS'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 HHS, 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 HHS, neither party owes the other for the impact.

J.4 HHS'S RIGHT TO TERMINATE CONTRACT

J.4.1 HHS 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 Contract in whole or in part under the following conditions:

- (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 Contract 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 HHS or its Authorized Representative; or
- (f) If DBC is otherwise in material breach of any part of the Design-Build Contract.

J.4.2 At any time that any of the above occurs, HHS may exercise all rights and remedies available to HHS at law or in equity, and in addition, HHS 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 HHS's cost of finishing the Work exceeds the unpaid balance of the Contract Price, DBC shall pay the difference to HHS.

J.5 TERMINATION FOR CONVENIENCE

J.5.1 HHS may terminate the Design-Build Contract in whole or in part whenever HHS determines that

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termination of the Design-Build Contract is in the best interest of the public.

J.5.2 HHS will provide the DBC with seven (7) days prior written notice of a termination for public convenience. After such notice, the DBC shall provide HHS 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 HHS 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 HHS, 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 HHS, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

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

SECTION K DESIGN-BUILD CONTRACT 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 HHS'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 HHS'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 HHS'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 HHS 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. HHS'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 HHS's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the DBC shall submit to HHS's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to HHS, which states that all Subcontractors and suppliers have been paid in full, all disputes with property issues 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 HHS's choice) and hold harmless HHS from all claims for labor and materials finished under this Design-Build Contract. The DBC shall furnish complete

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and valid releases or waivers, satisfactory to HHS, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

K.4.1 DBC shall provide HHS notice of both Substantial Completion and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of HHS 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 punch list accompanying the certificate of Substantial Completion. Both completion notices must be signed by the DBC and HHS to be valid. HHS shall provide the final signature on the notices. The notices shall take effect on the date they are signed by HHS.

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 HHS's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable HHS 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 HHS'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 HHS'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 HHS that all environmental pollution clean-up which was performed as a part of this Design-Build Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.7 CERTIFICATE OF OCCUPANCY

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

K.8 OTHER DBC RESPONSIBILITIES

The DBC shall be responsible for returning to HHS 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 HHS. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if HHS 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 Contract, and all of DBC's other obligations under this Design-Build Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Design-Build Contract.

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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 HHS 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 Contract:

L.2 FEDERAL AGENCIES

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

L.3 STATE AGENCIES

Administrative Services, Department of

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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

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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 Contract shall prepare and submit for HHS's and HHS's Representative's information a preliminary schedule for the Work consistent with the with the requirements of the Design-Build Contract 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 Contract and Contract Documents. The schedule shall not exceed time limits current under the Design-Build Contract 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 Contract 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 HHS.

- A.2 The DBC shall prepare and keep current, for review by HHS's Representative, a schedule of submittals which is coordinated with the Project schedule and allows HHS and HHS'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 HHS's Representative. Neither HHS's Representative nor HHS can represent or guarantee response times from governmental authorities, such as permitting agencies. Neither the DBC's preparation nor HHS'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 HHS and accepted by HHS and shall promptly notify HHS of any deviations from the schedule. Should the DBC fail to comply with the schedule, or in HHS's opinion fail, refuse, or neglect to supply a sufficient amount of labor, materials, equipment or services in the prosecution of the Work, HHS 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 GMP. All schedules submitted shall be in the form acceptable to HHS 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 HHS's use and no float shall be used without HHS's written approval. The DBC shall at all times monitor the progress of the Work for conformance with the CPM schedule accepted by HHS and shall promptly advise HHS and HHS'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.

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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 HHS 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 HHS or HHS'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 HHS will ultimately be the benefit of, if all or any portion of any Subcontractor's Work is deleted. In no instance shall HHS be obligated to pay any fee, profit or overheard 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 HHS 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 HHS or HHS's Representative. Each subcontract agreement shall preserve and protect the rights of HHS and HHS'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 HHS or to another contractor should HHS so elect and consent, provided that:

- (a) assignment is effective only after termination of the Design-Build Contract by HHS and only for those subcontract agreements which HHS 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 HHS (or other contractor) shall only be responsible to the Subcontractor for those obligations that accrue after HHS's or other contractor's exercise of rights under the conditional assignment required hereby.

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C. CHANGES IN THE WORK

C.1 GENERAL

- C.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, 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 HHS, DBC and HHS's Representative; a Construction Change Directive requires agreement by HHS and HHS'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 HHS'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, HHS 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, HHS may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If HHS accepts the proposal in writing, HHS will be immediately bound, the change will be included in a future Change Order, and the change in the Work shall commence expeditiously. HHS may reject the proposal, in which case HHS 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. HHS's Representative may confer directly with Subcontractors of any tier concerning any item proposed to HHS under this Article.

C.2 CHANGE ORDERS

- C.2.1 A Change Order is a written instrument which may be prepared by HHS's Representative and signed by HHS and DBC and which may also be signed by HHS'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 Contract 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.

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C.3 CONSTRUCTION CHANGE DIRECTIVES

- C.3.1 A Construction Change Directive is a written order which may be prepared by HHS's Representative and signed by HHS, and which may also be signed by HHS's Representative, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. HHS may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Contract 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 Contract 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 HHS'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 HHS's adjustment. The DBC's disagreement shall not relieve the DBC of its obligations to comply promptly with any written notice issued by HHS or HHS's Representative. The adjustment shall then be determined by HHS's Representative in accordance with the provisions of the Design-Build Contract 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 HHS'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, 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 HHS's request shall constitute waiver of any Claim for changes in the Contract

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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 HHS'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 HHS for a deletion or change which results in a net decrease in the GMP 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 HHS'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 HHS, 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 HHS.
- C.3.9 When HHS and DBC agree with the determination made by HHS'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 HHS's Representative and HHS 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 HHS and DBC. The DBC shall carry out any and all such written orders promptly. If at the option of HHS, HHS's Representative exercises any authority, right(s) or duty(ies) stated anywhere in this Design-Build Contract or any other Contract Document as an authority, right or duty HHS'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 HHS, 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. HHS's Representative and HHS 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 Contract Time, the adjustment and method shall be referred to HHS'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

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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 HHS.
 - (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 HHS's Representative. Discounts and rebates based on prompt payment may be included, however, if the DBC offers but HHS 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 HHS'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 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:

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- (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 HHS 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 HHS 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

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 Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between HHS and DBC arising out of or relating to the Design-Build Contract. Claims must be initiated by written

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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 Contract, 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 HHS'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 Contract, the DBC shall proceed diligently with performance of the Design-Build Contract and HHS 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 HHS and HHS's Representative promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. HHS'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 HHS'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 Contract is justified, HHS's Representative may so notify HHS and DBC in writing, stating the reasons. Any claim of the DBC arising from HHS'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 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 HHS's Representative,
 - (2) an order by HHS to stop the Work where the DBC was not at fault,

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- (3) a written order for a minor change in the Work issued by HHS's Representative,
- (4) failure of payment by HHS,
- (5) termination of the Design-Build Contract by HHS,
- (6) HHS'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 HHS, the DBC, a Subcontractor of any tier, or HHS'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 HHS and HHS'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 HHS 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 Contract 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

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Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to HHS or the DBC, the applicable unit prices shall be equitably adjusted.

- D.1.10 Time is of the Essence. The parties agree that HHS 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 Contract, or to liquidated damages as provided in the Design-Build Contract, 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 HHS and HHS'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 Contract) 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 Contract). 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, HHS's Representative or HHS 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, HHS's Representative or HHS 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 HHS's receipt of the written Claim, the DBC may require that an officer of the DBC, a principal of HHS's Representative, and HHS's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim during the following 21 days. HHS 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 HHS 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 HHS 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 Contract 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

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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 Contract 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 HHS'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 HHS's Representative or Subcontractors, such parties' representatives, also with the authority to settle the Claim, shall also attend the mediation session. Unless HHS 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 HHS.

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 HHS or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by HHS 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 HHS or HHS's Representative.

PERFORMANCE SPECIFICATIONS

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

General Requirements

Demolish two houses on existing property
Build 8 studio units
Use of abuse resistant materials where applicable
ADA accessibility

Land Use and Permitting

Obtain City of McMinnville building, engineering and conditional use permits.
Submit request for parking variance.
Compliance with City of McMinnville Residential Design Standards

Unit Description

Approximately 350-500 square feet.
Exterior doors for each unit.
Plywood over stud with sheetrock walls.
Kitchenette
Formica countertops
Pre-manufactured cabinetry
Two-burner electric stove
Fridge
Microwave
Bathroom
Shower only
Tile floor with drain
Exhaust fan
No glass
Shatterproof mirrors
Handicap grab bars
Sheet vinyl flooring throughout (except bathroom).
Small compact washer and dryer.

Communications

Wi-Fi connections.
Phone/data system will be installed in house. This will require coordination between the County IT department and the contractor.

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Security

Window and door sensors.

Exterior impact resistant cameras. Minimum 8 cameras to monitor entryway for each unit.

Contractor to work with County IT on installation.

Fire

Fire alarm system.

Pre-action dry sprinkler system in each unit.

Landscaping and Exterior

Wood privacy fencing around property.

Low maintenance landscaping.

Designated smoking area.

Utilities

Coordinate and install all utilities necessary for a complete operating system, water, sanitary to city sewer.

Parking

Driveway for parking space of two vehicles.

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EXHIBIT C

SOLICITATION DOCUMENTS

(See attached)

YAMHILL COUNTY HHS
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EXHIBIT D

PROPOSAL

(See attached)

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

**YAMHILL COUNTY
HEALTH AND HUMAN SERVICES (HHS)
BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN-BUILD
REQUEST FOR PROPOSALS**

OCTOBER 17, 2025

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

RFP POINT OF CONTACT:

Claudia Rubio
Administrative Office Specialist
Health and Human Services
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McMinnville, OR 97128
503-434-7525
rubioc@yamhillcounty.gov

These RFP documents are not for permitting or construction purposes. These documents are for Design-Build RFP process only.

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

DESIGN-BUILD REQUEST FOR PROPOSALS
for
CONSTRUCTION
of the
YAMHILL COUNTY HEALTH AND HUMAN SERVICES (HHS)
BEHAVIORAL HEALTH HOUSING PROJECT

TO: Prospective Design-Build Proposers
SUBJECT: Request for Proposals
ISSUE DATE: October 17, 2025
ISSUED BY: Yamhill County, Health and Human Services Department (HHS)
CONTACT FOR RFP: Claudia Rubio, Administrative Office Specialist, Yamhill County HHS
rubioc@yamhillcounty.gov

PROPOSALS DUE: **November 14, 2025**
2:00 PM Local Time
Yamhill County HHS
638 NE Davis
McMinnville, OR 97128

Mandatory Pre-Proposal Conference: October 30, 2025
1:00 PM
PROJECT ADDRESS:
626 and 636 NE 7th Street
McMinnville, OR 97128

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
 BEHAVIORAL HEALTH HOUSING PROJECT
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REQUEST FOR PROPOSALS ADVERTISEMENT
 RFP DESIGN-BUILD CONTRACTOR

for the Construction of

YAMHILL COUNTY HHS BEHAVIORAL HEALTH HOUSING PROJECT

Date of Issue: October 17, 2025

SECTION A – GENERAL INFORMATION

A.1 Introduction.

Yamhill County, by and through its Health and Human Services Department (“HHS”) requests proposals from experienced Design-Build Contractors for the design and construction of an 8-unit studio complex with office space, restrooms and storage (total complex size approximately 4,000 square feet), as specified in this request for proposals (“RFP”)

Additional details on the scope of services to be provided is included in Section C – Services to be Provided.

HHS anticipates the award of one Design-Build Contract (as defined elsewhere herein) from this RFP. The term of the Design-Build Contract is anticipated to be approximately one year.

A.2 Event Schedule

The list below represents a tentative schedule of events. All times listed are Pacific time All dates listed are subject to change.

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
Advertise RFP	October 17-21, 2025	
RFP Document Available	October 17, 2025	
Mandatory Pre-Proposal conference	October 30, 2025	1:00PM
Deadline for Questions	November 4, 2025	2:00PM
Deadline for Pre-Proposal protests	November 6, 2025	5:00PM
Issue any final Addenda	November 10, 2025	5:00PM
Due Date and Time for Submission of Proposals	November 14, 2025	2:00PM
Interviews	To Be Determined	
Notice of Tentative Intent to Award	November 21, 2025	
Deadline for Selection Protests	November 28, 2025	2:00PM
Execute Contract	December 11, 2025	
Notice to Proceed (Design)	To Be Determined	
Design Approval	To Be Determined	
Permit applications	To Be Determined	
Notice to Proceed (Construction)	Upon Approval of design	
Substantial Completion	To Be Determined	
Final Completion	To Be Determined	

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A.3 Point of Contact.

The Point of Contract (“POC”) for this RFP is identified on the Cover Page of this RFP, along with the POC’s contact information. Proposers shall direct all questions and communications related to any provision of the RFP, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision only to the POC.

A.4 Overview/Authority/Budget

This is a Design-Build project authorized pursuant to ORS 279C.335, OAR 137-049-0670 and Yamhill County Code (“YCC”) 3.20.049.0670. If the selected Design-Build Contractor (“DBC”) is not an Oregon licensed design professional but is proposing to obtain design services, the DBC must disclose in its proposal the Oregon licensed design professional or professionals who will provide design services.

HHS has an estimated budget for this Project of \$1.8-\$2 million USD.

HHS’s minimum requirements for this Project are set forth in these RFP Documents and preliminary drawings included in Performance Specifications at the end of this RFP.

A.5 Interviews

HHS reserves the right to interview one or more of the top finalists. Notice of finalist selection and interview times (if any) will be mutually agreed upon with the finalists.

All Proposers must be registered with the Oregon Construction Contractors Board prior to submitting Proposals and have a current Oregon Public Works bond. Failure to register will be sufficient cause to reject Proposals as non-responsive for this Project. The provisions of ORS 279C.800 through 279C.870, relative to prevailing wage rates apply. The DBC and all subcontractors shall comply with prevailing wage rate requirements.

This solicitation does not obligate HHS to pay any costs incurred in preparation of Proposals or presentations, and HHS reserves the right to reject any Proposal not in compliance with all prescribed requirements. HHS may reject for good cause any or all Proposals upon a written finding that it is in the public interest to do so.

A.6 Design Team

The DBC will be responsible for assembling and contracting with the professional design team, and coordinating all design and construction activities necessary to deliver the Project. The selected professional design team (architect or engineer) must provide professional liability insurance meeting the requirements of the Design-Build Contract, as defined elsewhere herein.

SECTION B - SELECTION OVERVIEW

HHS is seeking a qualified DBC with current relative experience in like type design and construction for the services identified herein related to the design and construction of the Project.

In accordance with ORS279C.335, OAR 137-049-0670 and Yamhill County Code 3.20.047-0600 through 0690, HHS has obtained an exemption from applicable competitive bidding requirements (Exemption Order dated October 16, 2025 and will use the Request for Proposal (RFP) competitive procurement process to select and enter into a Design-Build Contract with the DBC.

HHS has established the Design-Build approach through the exemption process and by filing Findings supporting the

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use of this approach. The Design-Build approach was established in lieu of the more traditional Design-Bid-Build in order to take advantage of a fast-track delivery approach.

The Project scope consists of the design and construction of an 8-unit studio apartment complex with office space, restrooms and storage (total complex size approximately 4,000 square feet). The selection process will be conducted in a fair and impartial manner, where several qualified individuals will evaluate proposals and presentations.

SECTION C - SERVICES TO BE PROVIDED

C.1 Description of Project Work and Services

C.1.1. Project Work. The Project work includes the scope of the design and construction services required by HHS as will be set forth in the Design-Build Contract between HHS and the DBC. The DBC will be responsible for all actions required for furnishing all planning, design and construction services, Project management, materials, labor, equipment, and the sourcing, distribution, and delivery of all building materials and equipment as scheduled with HHS for design and construction of the Project. The DBC will be responsible for assembling and contracting with the professional design team and coordinating all design and construction activities necessary to deliver the Project.

The Project work contemplated under this RFP and the resulting Design-Build Contract with HHS includes the design, complete construction drawings and specifications (See general Performance Specifications and preliminary drawings at the end of this RFP), all labor, materials, transportation, equipment and services necessary for, and reasonably incidental to, the design and construction of an 8-unit studio apartment complex (each unit approximately 350-500 square feet) with office space, restrooms and storage (total complex size approximately 4,000 square feet), including as part of the construction services the demolition, debris removal and proper disposal of two existing structures currently located on the Project site. HHS's minimum requirements have been set forth in the RFP Documents, including preliminary drawings. The Proposal is to include: all associated accessories including but not limited to site work including demolition, debris removal and proper disposal, clearing grading, concrete, paving and installation of utilities, flashing, trim and closures; doors and frames including hardware; framed openings designed to accept specified windows; 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 as an alternate and controls for HVAC equipment are part of the Scope of Work (as defined in the sample Design-Build Contract) for the Project. Also including the installation of landscaping and fencing including planting of trees and shrubbery and installation of lawn (no irrigation system) around the building in conformance with the Design-Build Criteria and Scope of Work as part of the Project.

C.1.2 Design Phase Services: In the Design Phase, the DBC, through their design consultants and in consultation with HHS, shall provide those services necessary to prepare design documents, consisting of drawings and other documents illustrating the general scope, scale and relationship of the Project components for incorporation into the Project for approval by HHS. At the completion of the Design Phase the DBC shall deliver to HHS all Design Work Product and Supporting Documents (as those terms are defined in the sample Design-Build Contract below) and a total Construction Cost estimate based upon the approved design. The Design Work Product and Supporting Documents are collectively referred to herein as the "Design Documents". If any actual subcontract offers are available at the completion of the Design Phase, the DBC shall include those subcontract Offers in the Design based Construction Cost estimate.

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The DBC will be responsible for submitting the Design Documents for permits as early as possible following acceptance by HHS of the Design Documents, but in no event later than fourteen (14) days after the acceptance by HHS of the Design Documents.

C.1.4. Construction Phase Services: During the Construction Phase, the DBC shall provide and pay for any and all additional design services necessary to fully document and describe the details necessary for the construction of the Project.

Construction Phase services include, but are not limited to: all associated accessories including but not limited to site work including demolition, debris removal and proper disposal of the two existing residential structures currently located on the Project site, architectural, site/civil including coordination with planning/land use, mechanical, structural, geotechnical, and electrical engineering necessary to support the requirements of the Project. Clearing grading, concrete, paving and installation of utilities, flashing, trim and closures; doors and frames including hardware; framed openings designed to accept specified windows; 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 as an alternate and controls for HVAC equipment are part of the Scope of Work (as defined in the sample Design-Build Contract) for the Project. Also including the installation of landscaping and fencing including planting of trees and shrubbery and installation of lawn (no irrigation system) around the building in conformance with the Design-Build Criteria and Scope of Work as part of the Project.

During this Construction Phase the DBC shall also provide all materials, tools, equipment, labor, and professional and non-professional services, and shall perform all other acts and supply all other things necessary to fully and properly perform and complete the Project work, as required by the Design Build Contract and Contract Documents, State and local codes and environmental requirements. The DBC will provide all necessary permits and facilitate all Authority (as defined in the sample Design-Build Contract) and building official inspections and approvals and provide all necessary documentation for the successful execution of this Project work. The DBC will be responsible for addressing all issues and costs (if any) raised by Authority and building official inspections as well as quality inspections by HHS. The DBC will also be responsible for ongoing management of the construction budget and Project schedule.

C.2 Prevailing Wage

The selected DBC and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870 relative to Prevailing Wage Rates. No Proposal shall be received or considered by HHS unless the Proposer agrees to be bound by and comply with the provisions of 279C.838, 279C.840. Before starting construction work the DBC shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The DBC shall also include in every subcontract a provision requiring the subcontractors to have a public works bond filed with the Construction Contractors Board before starting work, unless otherwise exempt, and shall verify that the subcontractor has filed a public works bond before permitting the subcontractor to start work.

DBC and subcontractor will be required to comply with the current Oregon prevailing wage rates, as amended, as set forth in the BOLI Prevailing Wage Rates for Public Works Contracts in Oregon.

SECTION D - PROCUREMENT REQUIREMENTS AND EVALUATION

D.1 Mandatory Pre-Proposal Conference

The mandatory pre-proposal conference, which will be held on October 30, 2025 at 1:00 PM Local Time, will be the

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proposer's opportunity to discuss the Project with the RFP Point of Contact, Claudia Rubio and overall Project Manager, Lindsey Manfrin.

The purpose of the pre-proposal conference is to:

- Provide additional description of the Project
- Explain the RFP process; and
- Answer any questions Proposers may have related to the Project or the process.

Statements made at the pre-proposal conference are not binding upon HHS. Proposers may be asked to submit questions in writing.

IT IS MANDATORY THAT THE POTENTIAL PROPOSER'S ATTEND THIS PRE-PROPOSAL CONFERENCE. PROPOSALS WILL NOT BE ACCEPTED FROM PROPOSER'S WHO DO NOT ATTEND.

D.2 Proposal Requirements

D.2.1 Submission Requirements. Proposals should follow the format and reference the sections listed in Section E, "DETAILED PROPOSAL REQUIREMENTS". Responses to each section and subsection should be labeled to indicate the item being addressed. The Proposal must describe in detail how requirements of this RFP will be met and may provide additional related information. Proposers shall submit one (1) original and three (3) additional copies. In addition, Proposers should include one digital copy of their Proposal on CD or USB in PDF format. Proposals shall be submitted in sealed packages or envelopes. To ensure proper identification and handling all packages and envelopes shall be clearly marked as follows:

HHS BH HOUSING PROJECT RFP
ATTN: Claudia Rubio
Yamhill County Health and Human Services Department
638 NE Davis
McMinnville, OR 97128

Proposer is solely responsible for ensuring its Proposal is received by HHS in accordance with the RFP requirements before the closing date and time listed in the Event Schedule A.2, or as amended. HHS is not responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposals received after the specified time shall be rejected. Late Proposals will be returned to the respective Proposer or destroyed. Proposal submitted by any means not authorized may be rejected.

D.2.2 Proposal Content Requirements. All Proposals must include all of the information described in Section E, "DETAILED PROPOSAL REQUIREMENTS". Proposals shall be limited to twenty five (25) double sided 8 ½ by 11 inches pages.

No Faxed or electronic transmitted proposals will be accepted.

D.2.3. Proposer Information and Certification Statement: Attachment A: In addition to the above, Proposals must include a Proposer Information and Certification Statement, attached hereto as Attachment A. The Proposer Information and Certification Statement shall be filled out, signed by an authorized representative of Proposer and shall be included at the beginning of each Proposal. **The Proposer Information and Certification Statement shall bind the Proposer to perform the Project services for no more than the maximum of the estimated fee ranges stated in their Proposal.** Failure to submit a signed Proposer Information and Certification Statement will result in disqualification of the Proposer.

D.2.4. Additional Certifications. In addition to the above, Proposals must include the following certifications, signed in ink

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by an authorized representative of Proposer:

- D.2.4.1 Design and Construction Cost Range Sheet (Attachment B)
- D.2.4.2 Oregon Statute Certification (Attachment C)
- D.2.4.3 Non-Collusion Affidavit (Attachment C)
- D.2.4.4 Prevailing Wage Compliance Statement
- D.2.4.5. Drug Testing Policy Statement

All required certifications are attached hereto and incorporated herein.

D.2.5 Bid Bond/Bonding Capacity: Proposals shall be accompanied by a Certified Check or bid bond in the amount of ten percent (10%) of the total maximum amount of both the Design Cost Range and the Construction Cost Range, to be forfeited to HHS in the event of a breach of RFP and contracting requirements. Additionally, each Proposer must be capable of providing a 100% Performance Bond and 100% Payment Bond if selected for the Project in the amount of the DBC stated estimated maximum price for each cost range. A 100% Performance and 100% Payment Bond for the maximum amount of the Design Cost Range shall be provided at the time of Design-Build Contract award and a 100% Performance Bond and a 100% Payment Bond for the maximum amount of the Construction Cost Range shall be provided at the conclusion of final Design Phase. Performance and Payment Bonds are expected to be in place at the time of the issuance of the Notice to Proceed (Construction).

D.2.6. Recycled Materials. Use of recycled material is encouraged and HHS reserves the right to use recycled material provided the provisions of ORS 279.A.125 are met.

D.2.7 Public Records. This RFP and one copy of the subsequent selected proposal(s), together with copies of all documents pertaining to the award of a Design-Build Contract, shall be kept by HHS and made a part of the RFP file or record, which shall be open to public inspection. All information submitted by a Proposer shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.410 et seq.), except such portions of the proposals for which proposer requests exemption from disclosure consistent with Oregon law. If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2), or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.311 through 192.478), Proposer shall complete and submit an Affidavit of Trade Secret and a fully redacted version of its Proposal. If a Proposer fails to identify the portions of its Proposal that Proposer claims are exempt from disclosure, the Proposer has waived any future claim of non-disclosure of that information. Identifying the Proposal, in whole, as exempt from disclosure is not acceptable.

The fact that a Proposer marks and segregates certain information as exempt from disclosure does not mean that the information is necessarily exempt. Any portion of a Proposal that the Proposer claims constitutes a "trade secret" or is "confidential" must meet the requirements of ORS 192.501(2) and ORS 192.502(4). HHS will make an independent determination regarding exemptions applicable to information that has been properly marked and redacted. Unless expressly provided otherwise in this RFP or in a separate communication, HHS does not agree to withhold from public disclosure any information submitted in confidence by a Proposer unless the information is otherwise exempt under Oregon law.

If HHS refuses to release the records, the Proposer agrees to provide information sufficient to sustain its position to the District Attorney of Yamhill County, who currently considers such appeals. If the District Attorney orders that the records be disclosed, HHS will notify the Proposer in order for the Proposer to take all appropriate legal action. The Proposer further agrees to hold harmless, defend and indemnify HHS for all costs, expenses and attorney fees that may be imposed on HHS as a result of appealing any decision regarding the Proposer's records.

Nondisclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or

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judicial determinations made pursuant to the Public Records Law.

The above restriction may not include fee schedule information, which shall be open to public inspection.

Identifying the Proposal in total as a trade secret is not acceptable. Failure to identify a portion of the Proposal as a trade secret shall be deemed a waiver of any future claim of that information as a trade secret.

D.2.8. Acceptance of Design-Build Contract Terms. By submitting a Proposal, Proposer agrees to comply with the requirements of the RFP and accepts the terms and conditions of HHS's proposed Design-Build Contract (with the exception of those terms listed in F.3.3 for negotiation) as shown in Attachment G, attached hereto and incorporated herein by this reference.

Proposer shall review the attached proposed Design-Build Contract and submit any suggested exceptions to the proposed Design-Build Contract to HHS during the clarification, modification, objection and question period set forth in D.3.4 below. **Unless HHS agrees in writing to modify any of the terms and conditions of the proposed Design-Build Contract, HHS intends to enter a Design-Build Contract with the successful Proposer in substantially the form set forth in this RFP.**

Any subsequent negotiated changes are subject to approval of HHS.

D.3 Procurement Process

D.3.1 RFP Availability/Publication of Notice. This RFP, including all Exhibits and Amendments, are available by contacting the POC. HHS will email this RFP, including all Exhibits and Amendments, upon request but will not be mailing these documents to prospective Proposers unless requested pursuant to Section D.3.2. HHS will also publish notice of the RFP in the "Daily Journal of Commerce", a newspaper of general statewide circulation, and in at least one newspaper of general circulation in the area where the Project is located.

D.3.2 Hard Copy Document Fees & Delivery. Proposers may also request hardcopies of the RFP, Exhibits, and Amendments from the POC. All costs for these documents and any associated delivery fees are at Proposer's expense.

D.3.3 Addenda. Any changes to the original solicitation can be viewed by contacting the POC to make arrangements. Proposers may request automatic notifications of any material changes to the RFP through the POC. Except to the extent required by public interest, HHS shall not issue an addenda less than 72 hours before the Proposal due date and time unless the addenda also extends the due date and time.

D.3.4 Clarifications, Modifications, Objections, and Questions. Any Proposer that finds discrepancies in, or omissions from any provision of the RFP or Exhibits, or has doubt as to the meaning, shall make a request for clarification or modification in writing, to the POC. To be considered, the request for clarification or modification must be received by the POC by the date and time described in the Schedule provided in Section A.2, or as amended. Clarifications, whether verbal or in writing, do not change the RFP, Exhibits, contractual terms, or procurement requirements of this RFP unless a formal addenda has been issued by HHS. If a substantive clarification is in order, a formal addenda will be issued pursuant to Section D.3.3.

D.3.5 Withdrawal of Proposals. If a Proposer wishes to withdraw a submitted Proposal, it shall do so prior to Closing. The Proposer shall submit a written notice signed by an authorized representative of its intent to withdraw its Proposal. The notice must include the RFP number and be submitted to HHS no later than the due date and time identified in Section A.2.

D.3.6 Proposal Rejection. HHS may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including, but not limited to, the requirement that Proposer's authorized representative sign the Proposer

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- Information and Certification Sheet and Oregon Statute Certification in ink.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
 - Proposer makes any contact regarding this RFP with HHS representatives or officials other than the point of contact or those the point of contact authorizes, or inappropriate contact with HHS.
 - Proposer attempts to inappropriately influence any member of the Evaluation Committee.
 - Proposal is conditioned on HHS's acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

D.3.7 Opening of Proposal. A public Proposal opening will be held immediately following the scheduled closing. Each Proposal received prior to the closing time will be publicly opened and the Proposer's name and Design Cost Range and Construction Cost Range will be read aloud irrespective of any irregularities or informalities contained in such proposals. Proposals received will not be available for inspection until after the evaluation process has been completed and the Intent-to-Award Notification is issued. However, the County will record and make available the identity of all Proposers after the opening.

D.3.8 Duration of Proposal. The base Proposal of the successful Proposer shall be irrevocable for a period of sixty (60) days from the date and time of Proposal opening.

SECTION E - DETAILED PROPOSAL REQUIREMENTS

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

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

E.1 Cover Letter

The cover letter should indicate the Proposer's interest in the Project and understanding of the services to be performed and be signed by a person authorized to bind the proposer to a contract with HHS. The letter should include the name of the firm, RFP contact, email, mailing address, and phone number. The cover letter will not be separately scored.

E.2 Experience and Qualifications.

E.2.1. Experience. Proposers must show recent experience in both the design and construction of housing units (_____ square feet or greater of floor area or greater than \$_____ million in cost) 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 five (5) years.

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

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

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i. Project location and completion date.

2. A brief description of the project including (i) amount of contract award or negotiated GMP if applicable, (ii) final contract amount including total number and amount of change orders, and
3. Explain any problems that arose on any of these projects, including but not limited to total project claims going to litigation/arbitration and their final disposition.
4. Identify the key individuals on the referenced projects who will also be participating in this Project, including their roles and responsibilities on the referenced projects.
5. List any endorsements from steel building manufacturers.

E.2.2 Overview of Proposer's Company. Provide an overview of Proposer's company including:

1. Years in business, office locations, and general work history.
- 2.. How long has Proposer been in business in Oregon as a contractor under your present business name and license number?
3. Statement of the number of years in business as a Design-Build Contractor.
4. Confirm that Proposer holds an Oregon Construction Contractors License that is current, valid, and in good standing with the Oregon Construction Contractors Board (CCB). Has the license been suspended or revoked in the past 10 years? If so, please explain.
5. Confirm that Proposer holds an Oregon Public Works Bond and it's dollar value.
6. Has Proposer, Proposer's responsible managing individual(s), or any partner(s), or officer(s) or member(s) ever been licensed in Oregon under a different name or license number? If yes, please list all the name(s) and license number(s).
7. Is Proposer connected with other organizations as a subsidiary, parent, holding or affiliate? If so, please explain.
8. How many like projects of at least 1 Million dollars in actual construction cost has Proposer completed in the past five years? List most current, up to 10.
9. Has Proposer ever failed to enter into a contract after being selected for a construction or modernization project? If so, please explain.
10. Has Proposer ever failed to complete a construction or modernization contract in the past five years? If so, please explain.
11. Has Proposer ever failed to complete a contract in the past five years within the authorized contract time? If so, please explain, including any change orders.
12. Has Proposer been assessed liquidated damages in the past five years? If so, please explain.
13. Has Proposer ever been disqualified from submitting a Proposal or a bid on a State of Oregon, city, county, special district or other local government project, public works project, or other public work? If so, please explain.
14. What is proposer's current total bonding capacity? A letter from proposer's bonding company may be required to verify bonding capacity.
15. What is Proposer's current available bonding capacity?
16. Has Proposer been unable to obtain a bond or been denied a bond for a contract in the past five years? If so,

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please explain.

17. Has Proposer ever defaulted on a contract forcing a surety to suffer a loss? If so, please explain.

18. During the last ten years, has Proposer been denied bond credit by a surety company, or has there ever been a period of time when Proposer had no surety bond in place during a public construction project when one was required? If so, please explain.

19. Has Proposer declared bankruptcy or been placed in receivership in the past ten years? If so, please explain.

20. Has Proposer received a Notice of Default, or Notice of Intent to Terminate, on a public works project in the last five years? If so, please explain.

21. Has Proposer's contract on a public works project been terminated or canceled by the public entity in the last five years? If so, please explain.

22. Is Proposer currently involved in Dispute Resolution defined as Mediation, Arbitration or Litigation related to a construction project? If so, please explain.

23. Has Proposer been involved in Dispute Resolution defined as Mediation, Arbitration or Litigation in the past five years related to a construction project? If so, please explain.

24. Are there currently any liens/stop notices for labor and/or materials filed against Proposer? If so, please explain.

25. How many lien, bond claim, or enforcement lawsuits against proposer have been lost or settled by Proposer in the past five years? Please explain.

26. How many construction-related claims, complaints, and/or cross- complaints has Proposer filed in court in the last seven years? Please explain.

27. How many construction-related claims has Proposer mediated or arbitrated in the last seven years? Please explain.

28. In the past five years, how many unresolved change orders resulted in a claim filed by Proposer? Please explain.

29. Has any employee, individual, or entity filed a complaint in the past seven years against Proposer with the Oregon Construction Contractors Board (CCB)? If so, how many were filed and how were the complaints resolved?

30. Has there been any occasion during the last seven years in which Proposer was required to pay either back wages or penalties for failure to comply with the federal or state prevailing wage laws? If so, please explain.

31. In the past seven years, has any action or administrative proceeding for back wages, penalties or other sanctions been filed against Proposer for failure to pay state or federal prevailing wages or for failure to comply in any way with the state or federal prevailing wage laws? If so, please explain.

32. In the last five years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for Proposer? If so, please explain.

33. Has Proposer or any of its agents, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, for making any false claim or material misrepresentation to any public agency or private entity? If so, please explain.

34. Has Proposer or any of its agents, officers, or partners ever been convicted of a crime involving any federal, state, or local law related to construction? If so, please explain.

35. Has Proposer or any of its agents officers, or partners ever been convicted of a federal or state crime of fraud, theft, or any other act of dishonesty? If so, please explain.

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E.3 Performance (Preliminary) Drawing of Project.

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

E.4 Safety

Provide a general description of Proposer's safety programs, as well as Proposer's most recent Workers Compensation Insurance Experience Modification Factor.

E.5 Staffing & Staff Qualifications

E.5.1 Organization Chart. Provide a Project organization chart showing Proposer's proposed staff for this Project, including all professional staff in the following areas: professional design consultants, project management, corporate oversight and administration, estimating, construction and onsite construction supervision.

E.5.2 Resumes. Include resumes for all individuals listed in the chart. Indicate the proposed percentage that each person will work on this Project during Design Phase and Construction Phase Services. The resumes must include each individual's education, work history, length of tenure with proposer, and prior work experience with similar projects and any experience working with public sector Design-Build and/or GMP projects. **NOTE: Clearly differentiate employees from sub-contractor/consultants.**

E.5.3 Team Members. For those individuals who are not full time, describe how and when they will work on the Project, as well as which Project responsibilities will fill their time. Additionally, describe the prior experience, if any, of the Proposer team members working together on projects (please be specific) and what roles they will fill on the proposed team for this Project.

E.6 Project Approach

E.6.1 General Approach. Describe how Proposer will approach the Design, Construction Documents, Construction, and Construction Management aspects of this Project and how will you ensure that the Project's needs are adequately met.

E.6.2 Completion Plan. Describe Proposer's overall plan to complete the Project. Discuss in detail Proposer's plan, identifying services and deliverables to HHS during the Design Phase. These services shall include, but are not limited, to reviewing the Project and budget, recommendations on feasibility, alternate designs, drawings, constructability reviews, value engineering, scheduling, cost estimating, bidding market, etc. Discuss in detail Proposer's plan during the Construction Phase Services, identifying Proposer's services and deliverables to HHS during this phase. These services shall include, but are not limited, to creating bid packages, bidding, scheduling the work, managing the construction meetings including meeting agendas and tracking action items developed in these meetings, written reports, and cost control etc., so as to provide HHS with the best possible customer service and ensure the greatest possible value for the construction budget.

E.6.3 Critical Systems Plan. Describe how Proposer will ensure all critical systems (HVAC, mechanical, electrical, infrastructure and building systems, etc.) will operate and function to their full potential and will benefit the Project. Describe how each critical system meets the requirement of the Project criteria. Describe how operation and maintenance manuals as well as warranties of all of the Project's critical systems will be organized and provided to HHS.

E.7 Estimated Design Cost Range and Construction Cost Range

The successful Proposer shall be required to include a statement as to the estimated Design Cost Range for the Design Phase as well as a Construction Cost Range for the Construction Phase for the Project as identified in HHS's specifications detailing minimum requirements.

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E.8 General Conditions Work

Proposers are required to complete a table (see Design Cost Range and Construction Cost Range Sheet in Attachment B) to indicate estimated general condition work costs associated with the Project (the "Table"). and submit the completed Table with their Proposal. These costs will be scored and considered as part of the evaluation to select the apparent successful Proposal and, when fully negotiated, will become part of the final Design-Build Contract with the selected DBC. HHS further reserves the right to negotiate the cost of any individual items of general condition work listed in the Table and any item of Work not included in the Table but otherwise described in Article 7 of the sample Design-Build Contract attached to this RFP. Final prices shall be reimbursed as outlined in the fee schedule for the Design Phase and as negotiated in the Construction Phase based upon the approved design.

SECTION F – SELECTION

F.1 Evaluation and Award Criteria

F.1.1 Responsiveness and Responsibility Determination/Mistakes. Proposals received prior to closing will be reviewed for responsiveness to all RFP requirements. If the Proposal is unclear, the POC may request clarification from the Proposer. However, clarifications may not be used to rehabilitate a non-responsive Proposal. If the POC finds the Proposal non-responsive, the Proposal may be rejected; however, HHS may waive mistakes in accordance with YCC 3.20.049. HHS reserves the right to waive technical defects, discrepancies and minor irregularities, and to not award a Design-Build Contract when it finds such action to be in the public interest.

At any time prior to award, HHS may reject a Proposal found to be not responsible in accordance with YCC 3.20.047 and ORS 279B. In doing so, HHS may investigate the Proposer and request information in addition to that already required on the RFP, when HHS, in its sole discretion, considers it necessary or advisable.

F.1.2 Evaluation Criteria. Proposals that met the responsiveness and responsibility determination evaluation will be evaluated using the following criteria. A major deficiency in any one category can disqualify the Proposer. The Proposals shall be comprehensive in nature by addressing all criteria and requirements, the ability to complete the Project within the established timeframe, and the cost of providing the Project, complete and useable to Yamhill County. Maximum total points: 100.

F.1.2.1 Schedule 0-10 points: Proposer's ability to complete the Project within the timeframe established in this RFP, providing overall construction schedule via a flow chart, identifying major milestones through Project completion. Include information in your Proposal on your current workload and how you would accommodate this Project. Outline the design schedule you would implement and describe your methodology and management strategy for ensuring adherence to the schedule including a delineation of the proposed structure, equipment, services, and approach to the Project and a list of subcontractors and their roles in the Project. Clearly identify schedule elements dependent on Yamhill County and HHS to provide. Also include Proposer's process for reviewing schedule as the Project proceeds as well as how delays to the Project schedule will be monitored and dealt with.

F.1.2.2 Experience 0-40 points: Provide requested information on Proposer's experience and qualifications in similar design/build projects and past success/recommendations, including years in business, staffing, project approach, bankruptcy, bonding capability, insurance, contract defaults and litigation. As further detailed under Section E.1, provide specific information about three (3) design/build projects that the Proposer has designed and constructed within the past five (5) years that are most similar to this one. Any preliminary performance drawings submitted by proposers under E.3 will also be evaluated under this section.

F.1.2.3 Cost Range 0-50 points: All Proposals will be evaluated on the Proposer's Design Cost Range, Construction Cost Range and estimated total Project costs and Proposer's proposed methodology to monitor and update Project costs throughout the Project to meet the requirements in this RFP. Cost ranges for both the design and construction

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phases must be outlined and provided as required in this Proposal. Provide additional detailed information on your preliminary design and construction fee structure, fee schedules per component identified in section E.8. General Conditions of Work, reimbursable costs, hourly rates of the professional and support positions of personnel who will be committed to this Project along with an organizational chart and resumes of those individuals.

F.2 Evaluation Committee.

HHS will convene an evaluation committee made up of three to five qualified members to evaluate all Proposals. The evaluation committee will provide an initial ranking of the Proposers and reserves the right to interview one or more of the top ranked Proposers. Based on the results of the interviews (if any), the Proposals may be re-ranked.

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

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

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

F.3 Award and Negotiation

F.3.1 Award Consideration. HHS, if it awards a Design-Build Contract shall award a Design-Build Contract to the highest ranking responsive and responsible Proposer based on the scoring methodology and process described herein.

F.3.2 Intent-to-Award Announcement. HHS will notify all Proposers in writing that it intends to award a Design-Build Contract to the selected Proposer, subject to successful negotiation of negotiable provisions. HHS reserves the right to announce the Intent-to-Award announcement by letter, email, or fax. The Intent-to-Award announcement shall serve as notice to all Proposers that HHS intends to make an award,

F.3.3 Negotiations. HHS and the selected Proposer shall mutually discuss and refine the final scope of services for the Project. It may be possible to negotiate certain provisions of the final Design-Build Contract provided that the general Project scope remains the same and that the field of competition does not change as a result of any material changes to the requirements stated in the RFP. Terms that may be negotiated consist of final fees based on the estimated Design Cost Range and Construction Cost Range, details of performance, methods of construction, timing, assignment of risk in specified areas and other matters that could affect the cost or quality of the Work. However, HHS is not required to make any changes and many provisions cannot be changed.

F.3.4 Insurance Requirements. During the term of any Design-Build Contract resulting from this RFP, the DBC shall maintain, in force, each policy required by the Design-Build Contract and Contract Documents. A Design-Build Contract will not be executed, and HHS will not issue a Notice to Proceed (Design), until acceptable proof of insurance coverage is received.

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SECTION G – PROTEST PROCEDURES

G.1.1 Solicitation Protests. A Proposer may protest terms and conditions of this RFP pursuant to YCC 3.20.049. A Proposer must deliver a written protest to the POC provided herein not less than seven (7) calendar days prior to the closing date. Each protest and request for change must include the reasons for the protest and any proposed changes to the RFP provisions or specifications. HHS is not required to consider a potential Proposer's request for change or protest after the deadline. The purpose of this protest/request for change procedure is to permit HHS to correct, prior to the submission of proposals, specifications, or terms that may be improvident, unlawful or which may unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests, and possible rejection of proposals. HHS will consider each protest or request, amend the RFP accordingly if warranted, and will notify in writing, each prospective proposer of any change. No amendment of this RFP shall be effective unless made in writing.

G.1.2 Design-Build Contract Award Protests.

G.1.2.1 Design-Build Contract Award Protests Generally. An adversely affected or aggrieved Proposer may submit a written protest of HHS's selection for award of a Design-Build Contract in accordance with YCC 3.20.049. In order to be an adversely affected or aggrieved Proposer, the Proposer must show that they are the actual highest-ranked Proposer because all other higher-ranked Proposers failed to meet the RFP requirements, or because the higher-ranked Proposers otherwise are not qualified to perform the services requested under this RFP.

G.1.2.2 Contract Award Protest Deadline. Proposers will have seven (7) calendar days from the date of the Intent-to-Award Announcement within which to file a written protest. Protests submitted after that date will not be considered. Protests must be addressed to the POC provided herein. After expiration of the seven (7) calendar day protest period, and after providing a final response to any protests, HHS will proceed with final contract award. (If HHS receives only one bid HHS may dispense with the protest period and proceed with the award of a contract.)

SECTION H - EXAMINATION OF SITE AND CONDITIONS

Prior to submitting a Proposal for the Project the Proposer shall examine the Project site and ascertain all of the physical conditions in relation thereto. The Proposer shall also make a careful examination of the preliminary drawings, specifications and other draft RFP documents and shall fully inform themselves as to the quantity of materials and the sources of supply of the materials. Failure to take these precautions will not release the successful DBC from entering into a Design-Build Contract, or excuse him from performing the Project work in strict accordance with the terms of any resulting Design-Build Contract.

HHS will not be responsible for any loss or any unanticipated costs that may be suffered by the successful DBC as a result of the DBC's failure to fully inform themselves in advance with regard to all conditions pertaining to the Project work and the character of the Project work required. No statement made by any officer, agent or employee of Yamhill County or HHS in relation to the physical conditions pertaining to the site of the Project work will be binding on Yamhill County or HHS.

SECTION I - SPECIAL INSPECTIONS

HHS retains the right to enter into a separate contract or contracts for special inspections, including, but not limited to, geotechnical, field welding inspections, testing of fill compaction, and all other special testing as required. HHS's election to perform any independent testing does not in any way relieve the successful Proposer from performing its own testing and verification quality of its and subcontractor's work.

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SECTION J - INTERPRETATION OF RFP DOCUMENTS

If any proposer finds discrepancies in, or omission from, or is in doubt as to the true meaning of, any part of the form of RFP documents, they may submit questions to the POC or a written request for an interpretation thereof to be received in the office of the POC no later than November 4, 2025, 2:00 PM local time. The Proposer will be responsible for its delivery prior to the time of RFP closing.

Any official interpretation of the drawings, specifications, and conditions of the Design-Build Contract or forms of RFP documents will be made only by subsequent written addenda issued by HHS. HHS will not be responsible for any other explanation or oral interpretation of the proposed RFP documents.

SECTION K - DESIGN REVIEW MEETINGS

Following selection, HHS shall schedule Project Design review meetings, which the DBC shall attend for the purpose of ensuring that the Design as it develops will meet HHS's needs. The first meeting shall be at the issuance of the Notice to Proceed (Design). The second meeting shall be at the completion of the Design Development Phase. The third meeting shall be at the 50% Construction Document Phase. The final Design review meeting shall be at the 100% Construction Document Phase. HHS reserves the right to schedule additional Project Design review meetings if needed.

SECTION L - SPECIFIED PRODUCTS AND SUBSTITUTIONS

Design/Design Phase Proposal materials must be based upon the use of items named in the RFP specifications or their equivalents. If specific items and manufacturers have been named because of operational or maintenance considerations or ability to meet Project requirements, equivalents capable of meeting the same material requirements are acceptable.

SECTION M - GENERAL STATUTORY PROVISIONS CONCERNING PUBLIC CONTRACTS

1.. In accordance with the provisions of Oregon Revised Statutes (ORS) 279C.505 and 279C.570 (incorporated herein by this reference), it is agreed that the DBC shall make prompt payment, as due, to all persons supplying to the contractor labor or materials for the prosecution of the Work provided for herein, pay all contributions or amounts due the State Industrial Accident Fund from the DBC incurred in the performance of the contract herein, not permit any lien or claims to be filed or prosecuted against HHS on account of any labor or material furnished, and to pay the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. In addition, it is further agreed that the DBC shall demonstrate that an employee drug testing program is in place.

2.. Pursuant to ORS 279C.515, it is agreed that if the DBC fails, neglects or refuses to make prompt payment on any claim for labor or services furnished to the DBC by any persons in connection with the Design-Build Contract as such claim becomes due, the proper officer or officers representing HHS may pay such claim to the person furnishing the labor or service and charge the amount of the payment against the DBC. In addition, if DBC or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Project within 30 days after receiving payment from HHS or a contractor, HHS or the first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580 (which is incorporated herein by this reference). The rate of interest due shall be 9 percent per annum and may not be waived. If HHS or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Project, 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. The payment of a claim in the manner authorized in this paragraph shall not relieve the DBC or his surety from obligation with respect to any unpaid claims.

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3.. Pursuant to ORS 279C.520, it is a condition of the Design-Build Contract that no person shall be employed by the DBC for more than ten (10) hours in any one (1) day, or forty (40) hours in any one (1) week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases, the person shall be paid at least time and a half pay for Work performed on Saturdays and legal holidays specified in ORS 279C.540 and:

- a. for all overtime in excess of eight (8) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is five (5) consecutive days, Monday through Friday; or
- b. For all overtime in excess of ten (10) hours in any one (1) day or forty (40) hours in any one (1) week when the work week is four (4) consecutive days, Monday through Friday.

Additionally, the DBC shall comply with the prohibition set forth in ORS 652.220, that compliance is a material element of the Design-Build Contract and that a failure to comply is a breach that entitled HHS to terminate the Design-Build Contract for cause. The DBC may not prohibit any of DBC's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

4. Pursuant to ORS 279C.525, which is incorporated herein by this reference, the DBC shall comply with the provisions of all federal, state local statues, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the Project. To the best of HHS's knowledge, there are no known conditions at the Project Site that may require the DBC to comply with the above provisions. **In the event any additional environmental inspections, assessments, remediation or related environmental work is required during the course of this Project, and provided such additional environmental assessment, remediation or related environmental work was not caused solely or in part by the DBC, HHS shall be solely responsible for performance and payment of all such environmental assessment, remediation or related environmental work and services.**

5. Pursuant to ORS 279C.527 and 528, DBC, and through the DBC's final Design, the DBC shall ensure compliance with any and all applicable green energy technology requirements, including but not limited to the green energy technology determination required under ORS 279C.527(2).

6.. Pursuant to ORS 279C.530, it is an express condition of the Design-Build Contract that the DBC shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of such DBC, of all sums that the DBC agrees to pay for the services and all moneys and sums that the DBC collected or deducted from the wages of its employees pursuant to any law, contract or agreement for the purposes of providing or paying for such services. The DBC and all subject employers working under the Design-Build Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126. The DBC shall ensure that each of its subcontractors complies with these requirements.

7. The maximum hours of labor shall be in accordance with ORS 279C.540, which is incorporated herein by this reference. Time limitations on overtime shall be in accordance with ORS 279C.545, which is incorporated herein by this reference. The hourly rate of wage to be paid by the DBC (and incorporated in his subcontracts) shall not be less than provided in ORS 279C.800 to ORS 279C.870, and as included in BOLI Wage Rate Requirements. The DBC shall provide monthly wage certifications showing that BOLI Wage Rates are being paid. HHS will verify that these wage certifications before paying current invoices from the DBC.

8. Pursuant to the Oregon Safe Employment Act, ORS 654.001 to 654.295, 654.750 to 654.780 and 654.991, and to OAR Chapter 437, Divisions 1, 2 and 3, the DBC shall comply with the following conditions under any resulting Design-Build Contract to provide HHS with goods or services:

- a. DBC's and their employees shall comply with the requirements of the above cited laws, rules, policies and regulations

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- b. The DBC shall review the Material Safety Data Sheets filed by HHS to determine if there are any chemicals stored at the site of Work which the DBC or any subcontractors will use, or could be exposed to in an emergency
 - c. Workers shall inform the executive officer at the Project location where services are being performed of all hazardous chemicals which they or their sub-contractors bring upon HHS property, and upon request, provide HHS with M.S.D.S. for such chemicals
- 9.. DBC certifies that DBC is, to the best of DBC's knowledge. not in violation of any tax laws described in ORS 305.380(5).
10. DBC certifies that all subcontractor performing Work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.005 to 701.055 before the subcontractors commence work on the Project under the Design-Build Contract.
11. Each proposal shall identify whether the proposer is an Oregon resident, as defined in ORS279A.120.

SECTION N - CONTRACT AND BOND

N.1 Bonds. Upon execution of the Design-Build Contract, DBC shall provide a fully executed performance and payment covering 100% of the maximum Design Cost Range for the Design Phase, properly executed and acceptable to HHS A new performance bond and payment bond covering the Construction Phase will be submitted by the DBC after completion of the Design Phase and submission of the final Construction Cost estimate based upon the final Design Work Product. The Construction Phase performance and payment bond shall cover 100% of the maximum estimated Construction Cost Range.

The cashier's check or proposal bond of the DBC with whom a Design-Build Contract is entered into will be returned once the Design-Build Contract has been properly executed by the DBC and HHS and the required performance and payment bonds have been delivered to and accepted by HHS. The cashier's check or bid bond to each DBC who was not awarded a Design-Build Contract will be returned promptly after Design-Build Contract award and once the required bonds of the successful DBC, have been delivered to and accepted by HHS.

N.2 Damages. Any Proposer to whom the Project is awarded and who shall fail to execute a Design-Build Contract with HHS (including providing the required bonds) shall be liable to HHS for whatever damages, including expenses and attorney's fees, as may be incurred by HHS, whether by a single action or by successive actions, and shall not operate to release any defaulting proposer from said liability. The parties agree that the cashier's check or bid bond amount is a reasonable estimation of the amount of damages which HHS would incur as a result of any such failure on the part of the Proposer and the full amount of such bid bond will be forfeited as liquidated damages and will not constitute a penalty.

SECTION O - SUBSTANTIAL COMPLETION AND LIQUIDATED DAMAGES

O.1 Substantial Completion. Substantial Completion shall occur at 5:00 PM local time on the 365th day after design acceptance and Notice to Proceed (Construction).

O.2 Liquidated Damages. Should the Project not be complete or the building not be ready for occupancy, by the time and date listed above, liquidated damages shall be paid by the DBC to HHS for each calendar day of delay and such liquidated damages shall be included in the terms of any Design-Build Contract awarded hereunder in lieu of a penalty. The amount of liquidated damages shall be \$500.00 per day. HHS will review submittals for dates and substantial completion and liquidated damages will be based on that schedule.

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SECTION P - YAMHILL COUNTY PERSONNEL EXCLUDED FROM THE DESIGN-BUILD CONTRACT

No officer, agent or employee of Yamhill County or HHS shall be permitted any interest in any Design-Build Contract resulting from this RFP.

SECTION Q - RESERVATIONS

HHS expressly reserves the following rights:

- a. To reject all Proposals and not award a Design-Build Contract or award multiple contracts to achieve the objective of the RFP.
- b. To waive any or all minor informalities or irregularities in Proposals submitted.
- c. Accept the Proposal which HHS deems to be the most beneficial to HHS.
- d. Negotiate with any Proposer to further amend, modify, redefine or delineate its Proposal and further question any Proposer to substantiate claims of experience, background knowledge, and ability.,
- e. To consider the responsibility and competency of Proposers in making any award.
- f. To reject any Proposal not in compliance with the prescribed Proposal procedures and requirements.
- g. To reject any Proposal not meeting the specifications set forth herein.
- h. Negotiate and accept, without re-advertising, the Proposal of the next-highest scored proposer, if a Design-Build Contract cannot be successfully negotiated with the selected Proposer, and
- i. In the event any DBC successful Proposer to whom a Design-Build Contract is awarded shall default in executing said formal Design-Build Contract or in furnishing a satisfactory performance and payment bond within the time and in the manner herein before specified, to re-award the Design-Build Contract to the next highest ranking proposer. HHS reserves the right to cash the defaulting Proposer's bid bond or cashier's check to cover HHS's expenses in said re-award process.
- j. Issue subsequent Requests for Proposals for the same or similar goods or services,

SECTION R - ACCEPTANCE OF CONDITIONS

Each Proposer by submission of a Proposal assents to each and every term and condition set forth anywhere in these RFP documents and agrees to be bound thereby.

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**ATTACHMENT A
PROPOSER INFORMATION AND CERTIFICATION STATEMENT**

Legal Name of Proposer: _____
Address: _____ **City, State, Zip:** _____
State of Incorporation: _____ **Entity Type:** _____
Contact Name: _____ **Telephone:** _____ **Email:** _____
Federal Employer Identification Number.: _____
Oregon Business Registry Number (if required): _____
Construction Contractors Board Number: _____

The undersigned, having examined the RFP Documents, including the Request for Proposals, Design-Build Contract and related Project Requirements, preliminary drawings, the General Conditions, the Supplemental General Conditions and any technical Performance Specifications as prepared by HHS, 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

\$ _____ - \$ _____ DOLLARS (\$) Design Phase of 8-Unit Apartment Complex

CONSTRUCTION COST RANGE

\$ _____ - \$ _____ DOLLARS (\$) Construction Phase of 8-Unit Apartment Complex

TIME OF COMPLETION

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

ADDITIONAL REQUIREMENTS

1. Should this proposal not be accepted within sixty (60) calendar days after the date and time of proposal opening, or if the undersigned executes the Design-Build Contract and delivers the required performance and payment bonds, the Bid Bond shall be returned.
2. Proposer's State of Oregon Contractors License Registration Number. _____
3. Receipt of Addenda's _____ is hereby acknowledged. _____

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ATTACHMENT B

**YAMHILL COUNTY HHS BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN AND CONSTRUCTION
COST RANGE SHEET**

Item	Description	Cost Range
1	DESIGN FEE - DESIGN SUBMITTAL AND REVIEW PROCESS, PERMITS	_____
2	FLOOR SLAB CONSTRUCTION INCLUDING PLUMBING TO SLAB ELEVATION AND STEM WALL	_____
3	BUILDING ERECTION INCLUDING ELECTRICAL TO BUILDING MAIN AND SUB-MAIN PANELS	_____
4	INTERIOR WALLS, FLOORING AND FINISHES INCLUDING INTERIOR ELECTRICAL, INTERIOR PLUMBING, ALL PLUMBING AND ELECTRICAL FIXTURES AND CABINETS	_____
5	DESIGN SERVICES DURING CONSTRUCTION - PRODUCT SUBMITTAL REVIEW, CHANGE ORDERS, ETC.	_____
6	OTHER CONSTRUCTION SERVICES	_____

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

PROJECT TOTAL : _____

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**ATTACHMENT C
OREGON STATUTE CERTIFICATION**

(Must be signed and included with Proposal)

We Hereby Certify to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. We Certify also that we shall comply with the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub L No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. We Certify, in the performance of any contract issued from any proposal related to these documents, we will in all respects adhere to the HHS's policy of non-discrimination.

We Certify that we have not and shall not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

We Certify that we, and our subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all of their subject workers, unless such employers are exempt under the law.

We Certify that we accept all the terms and conditions contained herein, including Exhibit C; and in the event of a forthcoming contract containing these same terms and conditions, we would agree without exception. Any exception to these terms and conditions will be made a minimum of five (5) working days before the Proposal deadline.

We Certify, under penalty of perjury, that the Proposer has complied with the tax laws of this state or political subdivisions of this state, including but not limited to ORS 305.620, and ORS chapters 316, 317 and 318.

We Certify that we _____ARE_____ ARE NOT (mark one) a "Resident Bidder" as defined by ORS 279A.120. As defined in ORS 279A.120, "Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a "Resident Bidder".

If not a Resident Bidder as defined in ORS 279A.120, please indicate state of residence: .

The undersigned certifies that it has, to the best of Proposer's knowledge and under penalty of perjury, complied with Oregon tax laws in the period prior to the submission of this Proposal, including:

- (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318,

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- (b) Any tax provisions imposed by a political subdivision of this state that applied to Proposer or its property, goods, services, operations, receipts, income, performance of or compensation for any work performed, and
- (c) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions

Proposer/Contractor _____
(Authorized Official)

Date _____

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**ATTACHMENT D
NON-COLLUSION AFFIDAVIT**

CONTRACT: HHS Behavioral Housing Project

STATE OF OREGON

COUNTY OF YAMHILL

I state that I am the _____ of _____ and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I further state that:

- (1) The price(s) and amount of this Proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, proposer or potential proposer, except as disclosed on the attached appendix.
- (2) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal have been discussed with any other firm or person which is a Proposer or potential Proposer, and they will not be disclosed before Proposal opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this contract, or to submit a proposal higher than this Proposal, or submit a proposal intentionally high or non-competitive or any other form of complementary proposal.
- (4) The Proposal of my firm is made in good faith and pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other non-competitive proposal .
- (5) _____ , its affiliates, and subsidiaries, officers, (NAME OF FIRM) directors and employees are not currently under investigation by any government agency and have not in the last four years been convicted of or found liable for any act prohibited by State and Federal law in the jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as described on the attached appendix.

I further state that _____ understands and acknowledges that the (NAME OF FIRM) above representations are material and important, and will be relied on by HHS in awarding the contract from which

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this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from HHS of the true facts relating to the submission of proposals for the contract.

Name of Proposer/Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Sworn to and subscribed before me this day of , 2025.

(SEAL)

NOTARY PUBLIC OF OREGON

My commission expires:

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ATTACHMENT E
PREVAILING WAGE RATE COMPLIANCE STATEMENT

The Proposer states that provisions of ORS 279C.800 – 279C.870 (Oregon Prevailing Wage Rates) will be complied with on the HHS Behavioral Health Housing Project.

COMPANY NAME _____
SIGNATURE _____
TITLE _____
DATE _____

- Applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitation. ORS 279C.830(1)(c); OAR 839-025-0020(4) and (5) The workers must be paid not less than the applicable state prevailing wage rate. ORS 279C.830; OAR 839-020-0115(3)
- The contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project. ORS 279C.830(2)(a) Every subcontractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(2)(b)
- If the contractor fails to pay for labor and services, HHS can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839.025.0020(2)(a)
- The contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.520; OAR 839-025-020(2)(c)
- The contractor must make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker’s wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020(2)(c)

BOLI Contact:
Bureau of Labor and Industries Wage and Hour Division Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, OR 97232 www.oregon.gov/BOLI

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ATTACHMENT F
DRUG TESTING POLICY STATEMENT

The Proposer states that provisions of ORS 279C.505 [Chapter 794.138] requiring an employee drug testing program will be complied with on the Project.

Company Name

Signature

Title

Date

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**ATTACHMENT G
SAMPLE DESIGN-BUILD CONTRACT**

INTRODUCTION

THIS CONTRACT IS BETWEEN:

**Yamhill County, acting by and through its Health and Human Services Department
Lindsey Manfrin, Director of Yamhill County HHS
Yamhill County Board of Commissioners**

And

DBC:

Contractor:

Name, Title:

Address:

City, State Zip:

Phone:

Fax:

E-mail:

CCB# _____

The Project is: Yamhill County HHS Behavioral Health Housing Project

DBC's Representative is:

Name, Title

HHS's Representative is:

Lindsey Manfrin, Director

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HHS BEHAVIORAL HEALTH HOUSING PROJECT DESIGN BUILD CONTRACT

THIS AGREEMENT (“Design-Build Contract”) is between **Yamhill County**, a political subdivision of the State of Oregon, acting by and through its Health and Human Services Department (“HHS”) and _____, an _____, located at _____, referred to as DBC in this Design-Build Contract for the project known as the HHS Behavioral Health Housing Project for which proposals were opened on _____, 2025 (referred to in this Design-Build Contract as the “Project”)

WHEREAS, through the Solicitation Documents (as defined herein) HHS 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 an 8-unit studio (each unit approximately 350-500 square feet) apartment complex with office space, restrooms and storage (total complex size approximately 4,000 square feet). HHSs’ minimum requirements for the Project have been further set forth in the Solicitation Documents and preliminary drawings. The Project is to include: all associated accessories including but not limited to demolition, debris removal and proper disposal of the two existing residential structures currently located on the Project site, architectural, site/civil including coordination with planning/land use, mechanical, structural, geotechnical, and electrical engineering necessary to support the requirements of the Project. Clearing grading, concrete, paving and installation of utilities, flashing, trim and closures; doors and frames including hardware; framed openings designed to accept specified windows; 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 as an alternate and controls for HVAC equipment are part of the Scope of Work (as defined in the sample Design-Build Contract) for the Project. Also including the installation of landscaping and fencing including planting of trees and shrubbery and installation of lawn (no irrigation system) around the building in conformance with the Design-Build Criteria and Scope of Work as part of the Project; and,

WHEREAS, HHS 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 HHS 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 HHS’s design and performance requirements and other terms and conditions of the Design-Build Contract described herein; and

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

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

CONTRACT

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 Contract and Contract Documents. The agreement between the Parties pertaining to the Project

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consists of this Design-Build Contract and the related documents listed in Article 15, together with such Change Orders as the Parties may execute hereafter (the "Contract Documents") all of which are incorporated herein by this reference and made a part hereof for all purposes.

1.3 Parties Understanding. This Design-Build Contract 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 Contract shall become effective on the date on which every Party has signed this Design-Build Contract (the "Effective Date").

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

- 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 Contract, 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 HHS.
- 1.4.6 "Contract Time"** means the amount of time allowed under the Design-Build Contract 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 Contract. Notwithstanding any other term or provision in the Design-Build Contract, DBC shall perform all functions and obligations ascribed to an Architect or Engineer by the Design-Build Contract when such Architect or Engineer would be retained directly by HHS, 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.
- 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 Contract.
- 1.4.9 "Design-Build Contract" or "Contract"** means this document entitled, "Design-Build Contract," including exhibits and material incorporated herein by reference.
- 1.4.10 "Design-Build Criteria"** means the Project Specifications (as defined under 1.4.23) and including HHS's Minimum Requirements as provided in the Solicitation Documents.
- 1.4.11 "Design Services"** means all services identified in Section 2.2 of this Design-Build Contract, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.4.12 "Early Work"** shall mean Construction Services authorized by Change Order that the Parties agree should be performed in advance of HHS's final approval of the Design Work Product. Permissible Early

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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 HHS’s final approval of the Design Work Product will materially affect the critical path schedule of the Project.

- 1.4.13 **“Early Work Change Order”** shall mean a Change Order executed by and between the Parties to authorize Early Work.
- 1.4.14 **“General Conditions”** means the General Conditions, as modified and included in this Design-Build Contract as part of the Contract Documents. Any reference in the General Conditions to “State of Oregon” or “State” as the owner of the Project or as the public contracting entity shall be deemed to refer to HHS.
- 1.4.15 **“General Contractor”** means the DBC.
- 1.4.16 **“RESERVED”**
- 1.4.17 **“HHS”** means Yamhill County, a political subdivision of the State of Oregon, acting by and through its Health and Human Services Department.
- 1.4.18 **“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.
- 1.4.19 **“Notice to Proceed (Construction)”** means HHS’s written directive to the DBC to proceed with Construction Services (other than those authorized by an Early Work Change Order).
- 1.4.20 **“Notice to Proceed (Design)”** means HHS’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
- 1.4.21 **RESERVED**
- 1.4.22 **“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.
- 1.4.23 **“Project Specifications”** means the specifications which are included in the Design-Build Criteria, together with all specifications developed subsequently by DBC and approved by HHS.
- 1.4.24 **“Proposal”** means the DBC’s offer to perform Project Services in response to the RFP.
- 1.4.25 **“Record Documents”** mean the as-built Plans, Plans and Specifications, product data, samples, shop drawings, Change Orders, and other documents listed in the RFP.
- 1.4.26 **“Request for Proposals”** or **“RFP”** means the Solicitation Document or Solicitation Documents.
- 1.4.27 **“Design”** means the preliminary design development to be used as the basis for the Design Work Product to be provided by DBC to HHS pursuant to Section 5.3 of this Design Build Contract.
- 1.4.28 **“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.
- 1.4.29 **“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.
- 1.4.30 **“Design Work Product”** means the written submission to HHS by DBC, including the Supporting Documents, in accordance with Section 5.3 of this Design-Build Contract.
- 1.4.31 **“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

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Design Work Product and the Construction Documents with the concepts outlined in the Scope of Work.

- 1.4.32 “Services”** means all Work required to be performed under the Design-Build Contract, portions of which are sometimes herein designated as either “Design Services” or “Construction Services.”
- 1.4.33 “Supporting Documents”** are defined in Section 5.3 of this Design-Build Contract.
- 1.4.34 “Value Engineering”** means alterations in design, materials, methods, finishes, or techniques jointly agreed upon by HHS 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 Contract and all Construction Services identified in Section 2.3 of this Design-Build Contract, 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 HHS’s selection of the DBC, the DBC agrees that it shall not substitute its architect or engineer without HHS’s prior written consent. The DBC also agrees to support HHS’s efforts to create a collaborative and cooperative team between the DBC, its design professionals and Consultants, and HHS’s Representative. The DBC, however, shall remain solely liable to HHS for proper completion and timely delivery of all Design Services and Construction Services required under the Design-Build Contract.
- 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 HHS’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 HHS’s review and for approval of submittals by the Authorities. Once HHS has accepted it, the DBC shall not exceed the time limits established in the Design Schedule.

Within seven (7) Days after HHS accepts the Design Schedule, the DBC shall submit for HHS’s review the detailed and finalized schedule for the performance of the Construction Services (the “Construction Schedule”). Once HHS 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 Contract upon their acceptance by HHS.

- 2.1.4** The DBC’s Representative shall be reasonably available to HHS’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 HHS’s Representative, and shall have the authority to act on behalf of the DBC in all things relating to performance of the Design-Build Contract. The DBC’s

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Representative may not be replaced prior to Design-Build Contract completion without HHS's prior written consent.

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

1. The roles of the personnel for HHS, 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 Contract, 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 HHS.

2.1.6 Subsequent to the pre-design conference, the DBC shall meet with HHS at least once each week for the duration of the Design-Build Contract, 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 Contract, 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 HHS a comprehensive list of:
 - a. matters that require resolution,
 - b. matters that require HHS'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 HHS's review or approval of, and response to, any of the matters presented at HHS/DBC meetings shall not relieve the DBC of its sole responsibility for design or of its obligation to complete the Work

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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.

2.2 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 Contract 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 HHS 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 Contract and all Legal Requirements. Any deviation from the specified materials and/or manufacturers requires the submission to and approval by HHS.
- (b) After review and approval of the Design Work Product by HHS and issuance of the Notice to Proceed (Construction) by HHS, 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 HHS, 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 HHS 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 HHS 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 HHS, 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 HHS, 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 HHS's approval;

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- (d) Submission to HHS 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 HHS 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 HHS 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 HHS. Approval of the Design Work Product and finalization of Construction Documents shall not preclude further identification and implementation by the DBC and HHS 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 demolition, debris removal and proper disposal of the two existing residential structures currently located on the Project site, installation of all utilities, described in the Design-Build Contract 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 HHS complete, fully functional housing units, capable of being legally occupied and fully used for the purposes described herein, and installed utilities sufficient to support the facilities, 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 Contract 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 Contract 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 Contract, including those post-construction responsibilities enumerated in the RFP and in Section K of the General Conditions.

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- 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 Contract cannot be modified except by written Change Order executed by the Parties hereto, and including all required approvals by HHS and the Yamhill County Board of Commissioners, if any.
- 2.3.4** Except as may be otherwise provided in the Design-Build Contract and Contract Documents, HHS 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 HHS 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 Contract 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 HHS's approval and execution, and shall obtain HHS's written approval, in the form of a Change Order or HHS'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 HHS 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 HHS 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. 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:
- (a) employees of HHS, 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;
 - (b) the Project Site, and all materials and equipment to be incorporated into the Project; and
 - (c) other property at or adjacent to the Project Site.

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- 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 Contract. 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 Contract, 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 Contract, the DBC shall include language in all subcontracts that the “General Conditions and Supplemental General Conditions, to the extent not inconsistent with the Design-Build Contract, shall apply to the work of the subcontractor.”
- 2.3.15** Construction Documents. Upon notification of HHS'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:
 - (a) 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;
 - (b) Comply with all applicable Laws; and
 - (c) 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 HHS;
- 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 HHS, update CAD drawings and submit the appropriate electronic media (e.g. compact disks, thumb drive) - 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 Contract.

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 Contract, HHS will reimburse the DBC for expenses associated with Design Services under the following circumstances, and no other:

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

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ARTICLE 3 - RELATIONSHIP AND ROLES OF THE PARTIES

3.1 Independent Contractor. The DBC is an independent contractor under this Design-Build Contract and not an officer, employee, or agent of HHS 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 Contract and Contract Documents.

3.2 HHS's Representative. HHS's Representative is HHS's exclusive representative to the DBC with respect to the Project and this Design-Build Contract, unless HHS designates another representative and notifies the DBC in writing of that designation. All communications from HHS to the DBC will be issued or made through HHS's Representative. HHS's Representative shall have the authority to establish procedures, consistent with the Design-Build Contract, to be followed by the DBC and to call periodic conferences to be attended by the DBC throughout the term of the Design-Build Contract. HHS's Representative shall have no authority to amend the Design-Build Contract, 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 HHS with respect to the Project and this Design-Build Contract, unless the DBC designates another representative and notifies HHS in writing of that designation. Provided, the DBC's Representative shall not be replaced during the Project without the written permission of HHS, which shall not be unreasonably withheld. All communications from the DBC to HHS 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 HHS, which shall not be unreasonably withheld. If the DBC intends to substitute key personnel, a request must be given to HHS at least 30 Days prior to the intended time of substitution. When HHS 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 HHS. If the DBC intends to substitute a Consultant, it must submit a request to HHS at least 30 Days prior to the intended time of substitution, and include the identity of the proposed replacement. HHS shall be deemed to have consented to the employment of such Consultant unless HHS objects to the employment of such Consultant in writing within such 30-Day period; provided that if HHS subsequently discovers information which leads HHS to reasonably believe a Consultant selected by the DBC and approved by HHS is unqualified to perform the Work, the DBC shall replace such Consultant upon the request of HHS.

3.6 The DBC's Architect. If the DBC intends to substitute its architect, the DBC must submit a written request to HHS at least 30 Days prior to the intended date of substitution. Upon HHS's approval, the original and replacement architects shall work concurrently during a transition period of at least 10 working days. HHS 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 Contract upon complete execution of this Design-Build Contract 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 HHS. The DBC shall achieve Substantial Completion and Final Completion of the Construction Services by no later than the dates set therefor in the Project

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Schedule accepted by HHS.

4.3 Notices to Proceed. HHS will issue its Notice to Proceed (Design) at time of Design-Build Contract execution. HHS 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 Contract and the Contract Documents are of the essence. No provision of the Design-Build Contract shall preclude recovery of actual damages for delay by the DBC. It is agreed that any delay in the completion of the Project would cause HHS 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 HHS for each Day of delay in achieving Substantial Completion of the Project that is not excused by an extension of time granted by HHS under the provisions of this Design-Build Contract. This amount is estimated by HHS and the DBC to be a reasonable approximation of HHS'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 Contract shall take effect on the Effective Date and the DBC shall perform this Design-Build Contract 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, HHS 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 HHS. Changes to the Contract Sum shall only be authorized by Change Order that includes any necessary approvals by HHS, including any approvals by HHS'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 _____ (\$_____). 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. HHS 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 HHS 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 Contract 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

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Documents"), which shall include:

- (a) A list of the Plans and Specifications, including all addenda thereto and the conditions of this Design-Build Contract, 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 HHS to review the Design Work Product and the written statement of its basis. If HHS discovers any inconsistencies or inaccuracies in the Design Work Product, HHS shall promptly notify the DBC, who shall make appropriate adjustments to the Design Work Product, its basis or both.

5.3.5 Prior to HHS'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 HHS 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 HHS 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 HHS, or if HHS 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 HHS, HHS may terminate this Design-Build Contract without liability, and the DBC shall not receive additional compensation beyond the amount of the Design Fee previously approved under this Design-Build Contract 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 HHS's convenience. The DBC further agrees that HHS shall not be liable for any damages whether actual, consequential or otherwise for termination of the Design-Build Contract under this provision.

5.5 Renegotiation of Cost of the Work. If HHS 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, HHS shall so notify the DBC, and the DBC covenants to negotiate in good faith with HHS to attempt to reach agreement on an appropriate reduction in the

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Cost of the Work. If such agreement is achieved, the parties shall execute a Change Order confirming the reduced Cost of the Work and HHS shall thereupon issue a Notice to Proceed (Construction). If the parties cannot agree on an adjustment to the Cost of the Work, HHS at its option may either issue a Notice to Proceed (Construction) based upon the unadjusted Cost of the Work or terminate this Design-Build Contract in accordance with Section 5.4 above.

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

5.7 HHS Savings. If the final Cost of the Work (as defined in Article 7.1) is less than the total listed, all savings shall accrue solely to HHS.

5.8 Reallocating Projected Cost Under-runs after Bid (Offer) Buyout. As soon as possible after the primary Subcontractors are selected for the work, DBC shall review projected costs and provide HHS with a buy-out status report showing any projected cost under-runs, reconciling accepted Offers and other reasonably anticipated costs, to the cost estimate used by the DBC to develop the Design Work Product. The DBC shall include with its report any underlying documentation requested by HHS used to develop or support such report. The DBC shall also consider the reduced risk associated with known subcontracting costs, and the impact that reduced risk has on the amount of the DBC's Contingency. The parties shall negotiate in good faith to execute a Change Order transferring an appropriate portion of any projected cost under-runs to an HHS-controlled contingency fund to be held within the Cost of the Work to pay for additional costs arising from

- (a) any HHS-directed or approved change to the Work,
- (b) schedule changes that would otherwise entitle the DBC to an increase in the Cost of the Work,
- (c) Allowance items after exhaustion of all Allowances,
- (d) selection by HHS of more expensive alternates than those used for development of the Design Work Product,
- (e) HHS selection of substitutions that increase the Cost of the Work, or
- (f) any other costs which otherwise would entitle the DBC to an increase in the Cost of the Work pursuant to Article 6.2. Any transfer of projected cost under-runs from the DBC's contingency to the HHS-controlled contingency fund will not affect the DBC's obligation to complete the Project within the Cost of the Work.

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

- (a) in the event of a change in the Scope of Work or
- (b) as otherwise expressly provided in this Design-Build Contract, 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

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HHS'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 HHS'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** HHS may, at any time, submit a Cost of the Work Change Request requesting a reduction of the Cost of the Work, which shall include HHS'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 HHS 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 HHS 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 HHS's position. The DBC shall submit the Reconciled Cost of the Work Change Request to HHS, 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 HHS, the DBC agrees to work with HHS to provide a Cost of the Work Change Request that is acceptable to HHS.
- 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 HHS and to allow HHS access and opportunity to view such documents at DBC's offices. Upon HHS's reasonable notice, the DBC shall deliver two (2) copies of such documents to HHS 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 HHS. Only the duly authorized personnel of HHS have authority to execute Change Orders.

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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 Contract, 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 _____ (\$_____).

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 HHS.

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 HHS at the completion of the Work or, at HHS'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 HHS 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 HHS at HHS's option may require that the DBC deliver to HHS (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 HHS 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 HHS.

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 Contract 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 HHS.

7.6 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.

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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 HHS. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to HHS, and the DBC shall make provisions so that they can be secured

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

ARTICLE 10 - INSURANCE PROVISIONS

During the term of the Design-Build Contract 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 Contract.

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10.3 Builder's All-Risk/Direct Risk of Physical Damage. During the term of the Design-Build Contract, 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 Contract. 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 HHS as an additional insured, as their interests may appear (the DBC shall provide HHS 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 HHS 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 Contract. The policy may be either a practice based policy or a policy pertaining to the specific Project; in either event, the policy must cover HHS as 'owner'. 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 HHS 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 Contract.

10.6 Certificate of Insurance. Prior to the signature by HHS to this Design Build Contract, the DBC shall furnish to HHS Certificates of Insurance as evidence of the insurance coverage required under the Design-Build Contract. 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 HHS 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 Contract.

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 HHS and DBC are additional Insureds with respect to the DBC's Services/Work to be provided under the Design-Build Contract. The DBC shall provide HHS with copies of all policy endorsements/amendments confirming the status of HHS and DBC as additional Insured, as required by the Design-Build Contract.

10.8 Prohibited Terms. No insurance required by the Design-Build Contract 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 HHS.
- (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;

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- (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 HHS.

10.9 HHS-Contractor Relationship. Further, notwithstanding anything to the contrary, the DBC agrees that it has a special relationship with HHS because, in part, of the design-build obligations of the DBC, and that HHS is placing its potential monetary liability in the DBC's hands and has authorized the DBC to exercise independent judgment on behalf of HHS. DBC shall exercise such own independent judgment to further HHS's economic interests and HHS shall, without limiting HHS'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 HHS provide entire copies of all insurance policies it is obligated to provide or procure hereunder to HHS, including but not limited to all renewals and all policies on which HHS 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 HHS need not review or reference the actual policy because the certificate certifies that all coverages required by this contract are provided. Further, by receiving such copies, HHS 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 coverages 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 HHS against the DBC arising from or related to the Design-Build Contract 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 Contract.

ARTICLE 11 - OWNERSHIP AND USE OF WORK PRODUCT

11.1 Ownership of Design-Build Contract and Contract Documents. Copies of the Design-Build Contract and Contract Documents, Design and Construction documents, Plans, Specifications, reports, or other materials required elsewhere in the Design-Build Contract to be delivered to HHS, 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 HHS. HHS and the DBC intend that such Work Product be deemed "work made for hire," for which HHS 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 HHS 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 HHS 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 HHS may reasonably request in order to fully vest such

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rights in HHS. 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

The DBC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Design-Build Contract; the accounting and control systems shall be satisfactory to HHS. HHS and HHS'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 Contract, and the DBC shall preserve these for a period of ten (10) years after final payment, or until the resolution of any dispute, if any, involving the Design-Build Contract, or for such longer period as may be required by law.

ARTICLE 13 - PAYMENTS

13.1 Schedule of Payments. HHS 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 Contract, the DBC shall submit its application for payment to HHS 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 HHS on the first day of the following calendar month. HHS 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 HHS 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 HHS on the first day of the following calendar month. HHS 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. HHS 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 HHS'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 HHS for payment by the 10th of the month.

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ARTICLE 14 - TERMINATION OR SUSPENSION

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

14.1 HHS's Termination.

- 14.1.1** For Convenience. HHS may terminate the Design-Build Contract without penalty for convenience pursuant to Section J.5 of the General Conditions; payment in such case shall be governed by Section E of the General Conditions. However, the amount to be paid to the DBC under the General Conditions shall not in any case exceed the Contract Price as defined in Section E of the General Conditions.
- 14.1.2** Funding/Authority. HHS may terminate the Design-Build Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as HHS may establish in such notice, upon:
- (a) HHS'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 Contract are prohibited or HHS is prohibited from paying for such Design Services or Construction Services from the planned funding source.
 - (c) DBC may terminate the Design-Build Contract for cause in the event HHS 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. HHS may terminate the Design-Build Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as HHS 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 Contract, fails to perform the Design Services or Construction Services under the Design-Build Contract within the time specified herein or any extension thereof, or so fails to perform the Design Services or Construction Services as to endanger the DBC's performance under the Design-Build Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of HHS's notice, or such longer period of cure as HHSW may specify in such notice.
- 14.1.4** HHS 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 HHS's intention to make all undisputed payments due hereunder if funds are legally available therefor and in that regard HHS represents and warrants to the DBC that the Design-Build Contract is important to HHS's efficient and economic operation. If, despite the above, HHS 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, HHS may terminate the Design-Build Contract by notice to the DBC without penalty, effective at the end of the current fiscal period for which funds have been allocated, and

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if not so terminated HHS 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 Contract, but HHS shall be obligated to pay all undisputed charges incurred through the end of such fiscal period. HHS 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 Contract for cause if the Work is stopped for 120 Days through no act or fault of the DBC or a Consultant, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the DBC, for any of the following reasons:

- (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 Contract for cause in the event HHS 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 HHS's entitlement to recover liquidated damages in accordance with Section 4.4 of this Design-Build Contract.

ARTICLE 15 - ENUMERATION OF CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract Documents incorporated into this Design-Build Contract 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 HHS's or HHS'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:

- (a) Change Orders, with those of a later date having precedence over those of an earlier date.
- (b) 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.
- (c) This Design-Build Contract, minus all exhibits and material incorporated herein by reference.
- (d) Exhibit A – Standard Conditions for Construction Contracts
- (e) Construction Plans and Specifications to be prepared by DBC.
- (f) 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
- (g) Project Schedule
- (h) Solicitation Documents
- (i) Supplemental General Conditions
- (j) General Conditions
- (k) Remaining documents incorporated into the Contract by reference.

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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 Contract 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 HHS's Representative.

ARTICLE 17 - MISCELLANEOUS PROVISIONS

17.1 Governing Law; Jurisdiction; Venue. This Design-Build Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between HHS and the DBC that arises from or relates to the Design-Build Contract 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 HHS 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 Contract, consents to the Personal Jurisdiction of such courts.

17.2 Notices. Except as otherwise expressly provided in the Design-Build Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid, to the DBC or HHS at the addresses or numbers provided on the first page of this Design-Build Contract or as either party may hereafter indicate pursuant to this Section. Any notice to HHS must be given simultaneously to HHS'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 HHS, such facsimile transmission must be confirmed by telephone notice to HHS'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 HHS, such e-mail message must be confirmed by telephone notice to HHS'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 Indemnification. The DBC shall defend, indemnify, and hold harmless HHS, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the DBC in connection with the performance of any services required hereunder. The DBC shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Design-Build Contract.

- a. Environmental Contamination. The DBC will be held responsible for and shall indemnify, defend (with counsel of HHS's choice) and hold harmless HHS 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 Contract which occur as a result of, or are contributed to, the negligence or actions of DBC or its personnel, agents, or subcontractors or any failure to perform in accordance with the Design-Build Contract or Contract Documents, except to the extent otherwise void under ORS 30.140.

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17.4 Risk of Loss. The risk of loss or damage to the subject matter of this Contract arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the County has accepted the work and services as provided in this Contract.

17.5 Compliance with ORS 279B.220. For all services provided under this Design-Build Contract, the DBC shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the DBC or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against HHS or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the DBC does not pay promptly any claim that is due for the services furnished to the DBC by any subcontractor in connection with this Design-Build Contract, HHS may pay such claim and charge that payment against any payment due to the DBC under this Design-Build Contract. HHS's payment of a claim does not relieve the DBC or its surety, if any, from their obligations for any unpaid claims.

17.6 Hours of Labor; Compliance with Pay Equity Provisions.

17.6.1 Pursuant to ORS 279B.235(3), the DBC shall pay the DBC's employees who perform work under this Design-Build Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

17.6.2 Pursuant to ORS 279B.235(1)(b), the DBC shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Design-Build Contract and failure to comply is a breach that entitles HHS to terminate the Design-Build Contract for cause.

17.6.3 Pursuant to ORS 279B.235(1)(c), the DBC shall not prohibit any of the DBC's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

17.6.4 Pursuant to ORS 279B.235(5)(b), the DBC shall notify, in writing, any person employed by the DBC under this Design-Build Contract, either at the time of hire or before work begins on the Design-Build Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the DBC may require the employees to work.

17.7 Compliance with Laws. The DBC shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Design-Build Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by DBC of any applicable law required in the provision of services hereunder shall constitute breach of this Design-Build Contract, and DBC shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.

17.8 Compliance with Procurement Statutes. The DBC shall comply with the following statutory regulations pertaining to public construction contracts:

17.8.1 The DBC shall make payment promptly, as due, to all persons supplying to the DBC labor or material for the performance of the Work provided for in this Design-Build Contract. ORS 279C.505(1)(a).

17.8.2 The DBC shall pay all contributions or amounts due the Industrial Accident Fund from the DBC or first-tier subcontractor incurred in the performance of this Design-Build Contract. ORS 279C.505(1)(b).

17.8.3 The DBC shall not permit any lien or claim to be filed or prosecuted against HHS or the state or a county,

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school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279C.505(1)(c).

- 17.8.4** The DBC shall pay to the Department of Revenue all sums withheld from employees under ORS 316.617. ORS 279C.505(1)(d).
- 17.8.5** The DBC shall demonstrate upon request that an employee drug testing program is in place. ORS 279C.505(2).
- 17.8.6** The DBC shall salvage or recycle construction and demolition debris if feasible and cost effective. In contracts for lawn and landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site if feasible and cost-effective. ORS 279C.510(1).
- 17.8.7** The DBC and any subcontractor shall promptly pay, as due, all persons supplying labor and services furnished to the DBC or first-tier subcontractor by any person in connection with this Design-Build Contract as the claim becomes due. If the DBC or subcontractor fails to pay any such claim, HHS may pay the claim and charge the payment against the funds due or to become due the DBC by reason of the Design-Build Contract. ORS 279C.515(1).
- 17.8.8** The DBC and/or any first-tier subcontractor shall make payment to any person furnish labor or materials in connection with this Design-Build Contract within 30 days after receipt of payment from HHS or the DBC. 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(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. 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 30 days after the date when payment was received from the contracting agency or from the DBC, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived. ORS 279C.515(2).
- 17.8.9** The DBC or any subcontractor shall make payment to any person furnishing labor or materials in connection with this Design-Build Contract. The person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. ORS 279C.515(3).
- 17.8.10** The DBC and any subcontractor shall comply with all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the Work under the Design-Build Contract. ORS 279C.525.
- 17.8.11** The DBC shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or the needed care and attention incident to sickness or injury, to the employees of the Design-Build Contract, of all sums that the DBC agrees to pay for the services and all moneys and sums that the DBC collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services, pursuant to ORS 279C.530(1).
- 17.8.12** If the DBC is a subject employer, the DBC shall comply with ORS 656.017. ORS 279C.530(2).
- 17.8.13** No person shall be employed by the DBC for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases the laborer shall be paid at least time-and-a-half pay for all overtime in excess of 40 hours a week and for Work performed on any legal holiday specified in ORS 279C.540.

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- 17.8.14** The DBC shall comply with maximum hours of work, holidays and overtime per ORS 279C.540 and time limit on claims for overtime per ORS 279C.545.
- 17.8.15** The DBC shall comply with ORS 279C.550 through 279C.570 regarding withholding of retainage. The withholding of retainage by the DBC shall be in accordance with ORS 701.420 and 701.430.
- 17.8.16** The DBC shall comply with ORS 279C.570 regarding prompt payment, progress payments, and rate of interest.
- 17.8.17** The 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: (i) a payment clause that obligates the DBC to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the DBC by HHS; and (ii) an interest penalty clause that obligates the DBC, if payment is not made within 30 days after receipt of payment from the contracting agency, 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. These clauses must also be included in each of the DBC's subcontracts and in each of the first-tier subcontractor's subcontracts and each of the first-tier subcontractor's, subcontractors shall include these clauses in their subcontracts with each lower-tier subcontractor or supplier. ORS 279C.580.
- 17.8.18** The DBC and any subcontractor shall comply with ORS 279C.605 regarding Notice of Claim.
- 17.8.19** The DBC shall not discriminate against a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, in the awarding of subcontracts. ORS 279A.110
- 17.8.20** Unless contrary to federal law, the DBC shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Design-Build Contract unless such subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the DBC.
- 17.8.21** Unless contrary to federal law, the DBC shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Design-Build Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.
- 17.8.22** The following notice is applicable to contractors who perform excavation work:
- ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.***

17.9 Prevailing Wage Regulations.

- 17.9.1** This Design-Build Contract is subject to the following Bureau of Labor and Industries (BOLI) wage requirements and the prevailing wages rates set forth in the following booklet, as amended, which is incorporated herein by reference with the same force and effect as though fully set forth herein, and is available at the following web link:

http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx

- Prevailing Wage Rates for Public Works Contracts in Oregon issued [Month, Year of Solicitation].
- Prevailing Wage Rates Apprenticeship Rates issued [Month, Year of Solicitation].

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- 17.9.2** The DBC shall provide HHS with a copy of the certified payroll weekly for recording purposes. ORS 279C.860; OAR 839-025-0010
- 17.9.3** The DBC and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2); OAR 839-025-0020(e)
- 17.9.4** Workers employed under this Design-Build Contract shall be paid not less than the applicable state prevailing rate of wage. ORS 279C.830(1)(c); OAR 839-025-0020(3)(a)
- 17.9.5** If the Project is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, the DBC shall pay the higher of the applicable state or federal prevailing rate of wage. ORS 279C.830(1)(b); OAR 839-025-0020(4)(c)
- 17.9.6** If the DBC fails to pay for labor and services, HHS can pay for them and withhold these amounts from payments to the DBC. ORS 279C.515; OAR 839-025-0020(2)(a)
- 17.9.7** The DBC must pay daily, weekly, weekend and holiday overtime as required in ORS 279C.540. ORS 279C.520(1); OAR 839-025-0020(2)(b)
- 17.9.8** The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. ORS 279C.520(2); OAR 839-025-0020(2)(c)
- 17.9.9** The DBC must make prompt payment for all medical services for which the DBC has agreed to pay, and for all amounts for which the DBC collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- 17.9.10** The DBC must include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt. ORS 279C.830(2)(b); OAR 839-025-0020(2)(e)(B)
- 17.9.11** The DBC shall certify that all subcontractors performing work described in ORS 701.005(2) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence work under the Design-Build Contract.

17.10 Retainage by HHS. HHS may reserve as retainage from any progress payment an amount not to exceed five (5) percent of the payment. As Work progresses, HHS may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Design-Build Contract payments after 50 percent of the Work under the Design-Build Contract is completed if, in HHS's opinion, such Work is progressing satisfactorily. Any retainage reserved by HHS shall be withheld and released in accordance with ORS 279C.550 to 279C.580. If the Design-Build Contract exceeds \$500,000, HHS shall place amounts deducted as retainage into an interest-bearing escrow account, and if it does, any interest on the retainage amount will be paid to the DBC. In accordance with ORS 279C.5570(2), such interest shall accrue from the date the payment request is approved by HHS until the date the retainage is paid to the DBC to which it is due.

17.11 Warranty of Work. Neither the final payment nor any provision of the Design-Build Contract or Contract Documents shall relieve the DBC from responsibility for defective Work and, unless a longer period is specified, the 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 HHS, except for latent defects which will be remedied by the DBC at any time they become apparent. HHS shall give the DBC notice of defects with reasonable promptness. The DBC shall perform such warranty work within a reasonable time after HHS's demand. If the DBC fails to complete the warranty work within such period as HHS determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, HHS may perform such work and the DBC shall reimburse HHS all costs of the same within ten (10) days after demand without affecting the DBC's obligations

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17.12 Disclosure of Tax Identification Number. The DBC shall provide its Federal Tax ID number to HHS. 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.

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

17.14 Waiver. The failure of HHS to enforce any provision of the Design-Build Contract shall not constitute a waiver by HHS of that provision, or any other provision of the Design-Build Contract.

17.15 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 HHS's prior written authorization. Furthermore, except in the case where HHS specifically authorizes disclosure of HHS's confidential information in writing, the DBC shall maintain the confidentiality of HHS'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 HHSs information.

17.16 Conflict of Interest. Except with HHS'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.

17.17 Merger Clause. THE DESIGN-BUILD CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED THEREIN. THE TERMS OF THE DESIGN-BUILD CONTRACT CANNOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED HHS 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 CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED THEREIN. DBC, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THE DESIGN-BUILD CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THE DESIGN-BUILD CONTRACT 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 CONTRACT is executed in three originals, of which one is to be delivered to the DBC, one to HHS and one to HHS's Representative. By signature on this Design-Build Contract, 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

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17.18 Attorney Fees and Costs. In the event that either party to this Design-Build Contract shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Design-Build Contract, 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 Contract that shall be effective as of the last date written below.

Contractor

By: _____

Title: _____

Date: _____

Federal ID #: _____

HHS

By: _____

Lindsey Manfrin

Title: _____

Director

Date: _____

By: _____

Board of Commissioners

Title: _____

Date: _____

By: _____

Board of Commissioners

Title: _____

Date: _____

By: _____

Board of Commissioners

Title: _____

Date: _____

By: _____

Approved as to Form

Title: _____

County Counsel

Date: _____

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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 Contract to the extent provided herein or by supplemental instruction of HHS (under which HHS may delegate responsibilities of HHS'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 HHS'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 Contract, including HHS's written change directives as well as changes reflected in a writing executed by the parties to this Design-Build Contract 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 Contract terms, payment of money, extension of Contract Time or other relief pursuant to Section D.3.

A.1.4 CONTRACT, means the written agreement between HHS 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 Contract, General Conditions, Supplemental General Conditions, 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.

A.1.8 CONTRACT TIME, means any incremental period of time allowed under the Design-Build Contract 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 Contract 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.

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

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 Contract who is asserting Force Majeure.

A.1.14 NOTICE TO PROCEED, means the official written notice from HHS 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 Contract requirements, including the Design Build Contract performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to HHS 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 HHS means Yamhill County, acting by and through its Health and Human Services Department.

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

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 Contract.

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 HHS, 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.

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A.1.24 SOLICITATION DOCUMENT, or SOLICITATION DOCUMENTS means the Yamhill County Health and Human Services Behavioral Health Housing Project Request for Proposals, issued October 17, 2025.

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 Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Design-Build Contract.

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 HHS 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 HHS's Authorized Representative. The decision of HHS's Authorized Representative is final.

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

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 Contract and the carrying out of duties and obligations imposed by the Design-Build Contract and Contract Documents.

A.2 SCOPE OF WORK

The Work contemplated under this Design-Build Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the Project described in the Design-Build Contract 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 Contract and Contract Documents.

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

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

1. Design-Build Contract amendments and Change Orders, with those of later date having precedence

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over those of an earlier date;

2. Construction Change Directives, with those of a later date having precedence over those of an earlier date.
3. The Design-Build Contract, minus all exhibits and material incorporated herein by reference.
4. The Construction Plans and Specifications to be prepared by DBC.
5. Permits and Orders issued by any government of quasi-governmental unit or political subdivision having jurisdiction over the Project, the Site, or the Work.
6. The Project Schedule
7. The RFP
8. The Supplemental General Conditions
9. The General Conditions
10. The remaining documents incorporated into the Design-Build Contract by reference.

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

A.3.3 If the DBC finds discrepancies in, or omissions from the Design-Build Contract and Contract Documents, or if the DBC is in doubt as to their meaning, the DBC shall at once notify HHS or HHS's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Design-Build Contract and Contract Documents will be decided by HHS'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 Contract and Contract Documents will be made in writing by HHS's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of HHS's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Design-Build Contract and Contract Documents. DBC shall not proceed without direction in writing from HHS'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 Contract 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. HHS 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 HHS, or with the Architect/Engineer either before or after the execution of this Design-Build Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details

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of construction of any aspect of the Work, DBC shall have the duty to make inquiry of HHS 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 Contract requirements.

A.4.3 Any design errors or omissions noted by the DBC shall be reported promptly to HHS'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 HHS'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 HHS's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Design-Build Contract 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 HHS'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 HHS 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 Contract are those of an independent contractor. DBC represents and warrants that it is not an officer, employee or agent of HHS 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 Contract. DBC will not be eligible for any benefits from these Design-Build Contract 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, HHS 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 HHS for purposes of performing Work under this Design-Build Contract.

SECTION B ADMINISTRATION OF THE DESIGN-BUILD CONTRACT

B.1 HHS'S ADMINISTRATION OF THE DESIGN-BUILD CONTRACT

B.1.1 HHS's Authorized Representative will provide administration of the Design-Build Contract as described in the Contract Documents (1) during construction, (2) until final payment is due and (3) during the one-year period for correction of Work. HHS's Authorized Representative will act on behalf of HHS to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Design-Build Contract. In performing these tasks, HHS's Authorized Representative may

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rely on the Architect/Engineer or other consultants to perform some or all of these tasks.

B.1.2 HHS'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 HHS informed about the progress and quality of the portion of the Work completed,

(2) to endeavor to guard HHS 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. HHS's Authorized Representative will not make exhaustive or continuous on- site inspections to check the quality or quantity of the Work. HHS's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, HHS and DBC shall endeavor to communicate with each other through HHS's Authorized Representative or designee about matters arising out of or relating to the Design-Build Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the DBC. Communications by and with separate contractors shall be through HHS'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 HHS'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 Contract. If the Design-Build Contract 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 Contract, 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 Contract, DBC shall employ

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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 Contract 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 HHS's Authorized Representative to determine if they conform to the Design-Build Contract and the Contract Documents. Inspection of the Work by HHS's Authorized Representative does not relieve the DBC of responsibility for the Work in accordance with the Design-Build Contract and Contract Documents.

B.3.4 DBC shall furnish adequate facilities, as required, for HHS's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.

B.3.5 The DBC shall furnish Samples of materials for testing by HHS'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 HHS 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, HHS 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 Contract. Failure to comply with such requirements shall constitute a breach of this Design-Build Contract and shall be grounds for Design-Build Contract 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. HHS's performance under the Design-Build Contract 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.

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(b) DBC shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Design-Build Contract 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 Contract unless such Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 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 Contract 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 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Design-Build Contract and constitute grounds for Design-Build Contract 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 HHS and who shall represent the DBC on the Site. Directions given to the superintendent by HHS's Authorized Representative shall be confirmed in writing to the DBC.

B.7 INSPECTION

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

B.7.2 Inspection of the Work will be made by HHS's Authorized Representative at its discretion. HHS's Authorized Representative will have authority to reject Work that does not conform to the Design-Build Contract and Contract Documents. Any Work found to be not in conformance with the Design-Build Contract and Contract Documents, in the discretion of HHS'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 Contract 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 HHS, or with the appropriate public authority.

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

B.7.4 As required by the Design-Build Contract and Contract Documents, Work done or material used without inspection or testing by HHS'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

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completed Work for inspection. After inspection, the DBC shall restore such portions of Work to the standard required by the Design-Build Contract. If the Work uncovered is unacceptable or was done without sufficient notice to HHS'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 HHS'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 Contract and Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for HHS'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 Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Design-Build Contract 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 Contract 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 HHS's Authorized Representative access thereto.

B.9.2 DBC shall retain and HHS 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 Contract 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 Contract is involved in litigation, DBC shall retain all such records until all litigation is resolved. HHS and/or its agents shall continue to be provided full access to the records during litigation.

B.10 WAIVER

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

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 HHS 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 HHS. Where appropriate, DBC shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At HHS's request, DBC shall submit to HHS prior to their execution either DBC's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If HHS disapproves such form, DBC shall not execute the form until the matters disapproved are resolved to HHS's satisfaction. HHS's review, comment upon or approval of any such form shall not relieve DBC of its obligations under this Design-Build

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Contract 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 Contract, in whole or in part, without the prior written approval of HHS. No such written approval shall relieve DBC of any obligations of this Design-Build Contract, 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 Contract as if no assignment had occurred.

B.12 SUCCESSORS IN INTEREST

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

B.13 HHS'S RIGHT TO DO WORK

HHS 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. HHS'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, HHS'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, HHS has the right to execute other contracts related to or unrelated to the Work of this Design-Build Contract. The DBC of this Design-Build Contract will fully cooperate with any and all other contractors without additional cost to HHS in the manner described in section B.13.

B.15 GOVERNING LAW

This Design-Build Contract 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 HHS and DBC that arises from or relates to this Design-Build Contract 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 CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

B.17 ALLOWANCES

B.17.1 The DBC shall include in the Design-Build Contract Price all allowances stated in the Design-Build Contract and Contract Documents. Items covered by allowances shall be supplied for such amounts and

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by such persons or entities as HHS may direct.

B.17.2 Unless otherwise provided in the Design-Build Contract 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 Contract Price but not in the allowances;

(c) whenever costs are more than or less than allowances, the Design-Build Contract 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 HHS requests otherwise, DBC shall provide to HHS 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 HHS'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. HHS 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 Contract the way by which the DBC proposes to conform to the information given and the design concept expressed in the Design-Build Contract. 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 Contract 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 Contract 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 responsive action may be so identified in the Design-Build Contract and Contract Documents. Submittals which are not required by the Design-Build Contract and Contract Documents may be returned by the Architect/Engineer without action.

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B.18.3 The DBC shall review for compliance with the Design-Build Contract and Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Contract and Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of HHS or of separate contractors. Submittals which are not marked as reviewed for compliance with the Design-Build Contract 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 Contract.

B.18.5 The DBC shall perform no portion of the Work for which the Design-Build Contract 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 Contract 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 HHS 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 HHS 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 HHS on the Project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by HHS's Authorized Representative.

B.19 SUBSTITUTIONS

The DBC may make Substitutions only with the consent of HHS, after evaluation by HHS'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 Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent, and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

B.20 USE OF PLANS AND SPECIFICATIONS

Plans, Specifications and related Contract Documents furnished to DBC by HHS or HHS's Architect/Engineer shall be used solely for the performance of the Work under this Design-Build Contract. 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 Contract, and no such interest shall attach. Unless otherwise

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indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by HHS.

B.21 FUNDS AVAILABLE AND AUTHORIZED

HHS reasonably believes at the time of entering into this Design-Build Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Design-Build Contract within HHS'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 Contract, HHS's payment of amounts under this Design-Build Contract attributable to Services performed after the last day of the current biennium is contingent on HHS receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow HHS, in the exercise of its reasonable administrative discretion, to continue to make payments under this Design-Build Contract.

B.22 NO THIRD PARTY BENEFICIARIES

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

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 HHS'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 Contract, 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 Contract.

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, HHS must pay a fee to the Bureau of Labor and Industries equaling 1/10 of 1% of the Design-Build Contract price, however, the fee shall not be less than \$250 nor more than \$7,500, regardless of the Design-Build Contract price. The fee shall be paid on or before the first progress payment or sixty (60) Days from the date Work first began on

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the Design-Build Contract, 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 HHS'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 Contract.

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 Contract.

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

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 Contract, and shall maintain during the term of this Design-Build Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

(1) A written employee drug testing policy,

(2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and

(3) Required testing of a Subject Employee when the 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 HHS'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 HHS may pay the claim and charge the amount of the payment against funds due or to become due DBC under this Design-Build Contract. 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

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furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from HHS or a contractor, the DBC 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 HHS 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 Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). Every contract related to this Design-Build Contract 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 HHS under the Design-Build Contract;

(b) An interest penalty clause that obligates the DBC if payment is not made within thirty (30) days after receipt of payment from HHS, 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 HHS 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 Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. DBC shall ensure that each of its Subcontractors complies with these requirements.

C.4 HOURS OF LABOR

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

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

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- (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 Contract 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 Contract.

SECTION D CHANGES IN THE WORK

D.1 CHANGES IN WORK

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

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Design-Build Contract, HHS's Authorized Representative may at any time, without notice to the sureties and without impairing the Design-Build Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Design Build Contract 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, HHS reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (HHS'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 HHS.

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

- (a) Unit pricing may be utilized at HHS'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 Contract

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on the parties covering the terms and conditions of the additional Work.

(b) If HHS 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 Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by HHS without adequate justification. Cost and price data relating to Change Orders shall be supplied by DBC to HHS upon request, but HHS 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:

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

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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 HHS's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to DBC for inclusion with DBC's requests submitted to HHS's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. HHS's Authorized Representative and HHS will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Design-Build Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Design-Build Contract 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 HHS'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 Contract. DBC agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by HHS. 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 Contract, or lack of resolution of a dispute with HHS or any other person of matters arising out of or relating to the Design-Build Contract. If DBC fails to submit its final payment application within ninety (90) days after Substantial Completion, and DBC has not obtained written extension by HHS, 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.

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.

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

(b) Caused by any Site conditions which differ materially from what was represented in the Design-Build Contract 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 Contract and Contract Documents. The DBC shall notify HHS's Authorized Representative immediately of differing Site conditions before the area has been disturbed. HHS'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 Contract. If DBC and HHS'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 HHS'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 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

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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 HHS'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 HHS'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 HHS'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 HHS'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 HHS'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 HHS'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 Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the DBC will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to HHS's Authorized Representative. HHS's Authorized Representative and HHS will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Design-Build Contract. 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 HHS.

D.3.3 HHS'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 HHS in writing of the time required for adequate review and response;
- (3) reject the Claim in whole or in part and identify the reasons for rejection;
- (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or
- (5) propose an alternate resolution.

D.3.4 HHS's Authorized Representative's decision shall be final and binding on the DBC unless appealed by written notice to HHS 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, HHS shall review the materials and render a decision within thirty (30) days after receiving the appeal documents.

D.3.5 The decision of HHS shall be final and binding unless the DBC delivers to HHS its requests for mediation, which shall be a non-binding process, within fifteen (15) days of the date of HHS's decision. The

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

D.3.6 The mediator shall be an individual mutually acceptable to both Parties, but in the absence of agreement each Party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each Party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two Parties. Both Parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both HHS 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 HHS'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 HHS'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 HHS's Authorized Representative, the DBC shall continue to diligently pursue the Work as identified in the Design-Build Contract and Contract Documents. In no case is the DBC justified or allowed to cease Work without a written stop work order from HHS or HHS's Authorized Representative.

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

SECTION E PAYMENTS

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 HHS's Authorized Representative, this schedule shall be used as the basis for reviewing DBC's applications for payment. If objected to by HHS's Authorized Representative, DBC shall revise the schedule of values and resubmit the same for approval of HHS's Authorized Representative.

E.2 APPLICATIONS FOR PAYMENT

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E.2.1 HHS shall make progress payments on the Design-Build Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by HHS's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. HHS 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 HHS'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 Contract or fifteen (15) days after the payment is approved by HHS, 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, HHS 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 HHS, 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 HHS and the DBC.

E.2.2 DBC shall submit to HHS'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 HHS'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 HHS's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The DBC shall name HHS 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 HHS.
- (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.

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(g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Design-Build Contract for the rejection of the Work or materials not in conformance with the Contract Documents.

(h) All required documentation must be submitted with the respective application for payment.

E.2.4 HHS 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 HHS's opinion to protect HHS 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 HHS 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 HHS may issue checks made payable jointly to HHS 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 HHS or another contractor;

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

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

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

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

(a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to HHS 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 HHS pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;

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

(d) Subtract any amounts for which HHS'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 HHS that title to all Work covered by an application for payment will pass to HHS 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 HHS shall be free and clear of liens, claims, security interests or encumbrances in favor of the DBC, Subcontractors, material suppliers, or other persons or

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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 HHS'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 Contract. 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 Contract from any entity other than HHS.

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 HHS may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, HHS may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Design-Build Contract payments after 50 percent of the Work under the Design-Build Contract is completed if, in HHS'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 HHS 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, HHS 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 HHS or in a custodial account or other mutually-agreed account satisfactory to HHS, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of HHS;

(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 HHS, with earnings from such account accruing to the DBC; or

(c) that HHS allow DBC to deposit a surety bond for the benefit of HHS, in a form acceptable to HHS, 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 HHS has accepted the DBC's election of option (a) or (b), HHS may recover from DBC any additional costs incurred through such election by reducing DBC's final payment. Where HHS 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 HHS shall be included in and paid to the DBC as part of the final payment of the Contract Sum. HHS 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

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Contract has been completed and accepted and to run until the date DBC shall notify HHS in writing when the DBC considers the Work complete and HHS 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 Contract. If HHS 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), HHS shall reduce the amount of the retainage if the DBC notifies the controller of HHS that the DBC has deposited in an escrow account with bank or trust company, in a manner authorized by HHS's Authorized Representative, bonds and securities of equal value of a kind approved by HHS'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 HHS'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 Contract, the DBC shall notify HHS's Authorized Representative, in writing, that DBC has completed DBC's part of the Design-Build Contract and shall request final payment. Upon receipt of such notice HHS's Authorized Representative will inspect the Work, and if acceptable, submit to HHS 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, HHS will notify DBC within fifteen (15) days of DBC's request for final payment. Upon approval of this final estimate by HHS and compliance by the DBC with provisions in Section K. 3 AFFIDAVIT / RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, HHS shall pay to the DBC all monies due under the provisions of this Design-Build Contract and Contract Documents.

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

- (1) a notarized affidavit/release of liens and claims in a form satisfactory to HHS that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which HHS or HHS's property might be responsible or encumbered (less amounts withheld by HHS) have been paid or otherwise satisfied,
- (2) a certificate evidencing that insurance required by the Design-Build Contract and Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to HHS,
- (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 Contract and Contract Documents,
- (4) consent of surety, if any, to final payment and
- (5), if required by HHS, 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 Contract, to the extent and in such form as may be designated by HHS. If a Subcontractor refuses to furnish a release or waiver required by HHS, the DBC may furnish a bond satisfactory to HHS to indemnify HHS against such lien. If such lien remains unsatisfied after payments are made, the DBC shall refund to HHS all money that HHS 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

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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 Contract and Contract Documents, law, ordinances, permits or directions of HHS's Authorized Representative. DBC shall follow HHS's Authorized Representative's instructions regarding use of HHS 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 HHS's Authorized Representative, HHS's workers and property from injury or loss arising in connection with this Design-Build Contract. DBC shall remedy acceptably to HHS, any damage, injury, or loss, except such as may be directly due to errors in the Design-Build Contract and Contract Documents or caused by authorized representatives or personnel of HHS. DBC shall adequately protect adjacent property as provided by law and the Design-Build Contract 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 Contract 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 HHS's Authorized Representative. HHS'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 HHS 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 Contract 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 HHS and make, or arrange to make, full restitution. DBC shall report, immediately in writing, to HHS's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

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 HHS's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by HHS'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

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

F.4 CLEANING UP

From time to time as may be ordered by HHS 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 HHS 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 HHS's choice) and hold harmless HHS 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 Contract 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 Contract 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 HHS 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 HHS and be performed by properly qualified personnel.

F.5.1.2 DBC shall obtain HHS'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 applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from HHS, 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 HHS, such spills, releases, discharges, or leaks to HHS'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,

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regardless of quantity, DBC must telephonically report all releases to HHS. A written follow-up report shall be submitted to HHS 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 HHS.
- (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 Contract, or was caused by the DBC (reference F.5 Environmental Contamination), DBC shall immediately notify HHS of any hazardous substance(s) which DBC discovers or encounters during performance of the Work required by this Design-Build Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying HHS 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, HHS shall arrange for the proper disposition of such hazardous substance(s).

F.7 FORCE MAJEURE

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

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 Contract, 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 Contract.

G.1.2 To the fullest extent permitted by law, DBC shall indemnify, defend (with counsel approved by HHS)

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and hold harmless HHS, HHS'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 Contract 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, 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 Contract.

G.2.2 Bond forms furnished by HHS 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.3 INSURANCE

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

G.3.2 Workers' Compensation: All employers, including DBC, that employ subject workers who work under this Design-Build Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Subcontractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Subcontractor certifies so in writing to DBC. DBC shall ensure that each of its

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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 Contract, 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 Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake and flood deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees HHS, 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 Contract, 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 Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Design-Build Contract. This insurance shall include as loss payees the HHS, the DBC and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until HHS has occupied the new housing units.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by HHS and made payable to HHS 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. HHS shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

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 Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to HHS. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Design-Build Contract (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 Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. 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 Contract 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 Contract. 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 Contract shall include HHS and DBC, as Additional Insureds but only

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with respect to the DBC's activities to be performed under this Design-Build Contract. If DBC cannot obtain an insurer to name HHS and DBC as Additional Insureds, DBC shall obtain at DBC's expense, and keep in effect during the term of this Design-Build Contract, HHS's and DBC's Protective Liability Insurance, naming HHS 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 HHS 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 HHS. 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 HHS and DBC.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Design-Build Contract, the DBC shall furnish certificate(s) of insurance to HHS 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 Contract shall be obtained from insurance companies or entities acceptable to HHS 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 HHS. 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 HHS. 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" 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 HHS in writing prior to issuance of a Notice to Proceed and is subject to HHS's approval.

SECTION H SCHEDULE OF WORK

H.1 DESIGN-BUILD CONTRACT PERIOD

H.1.1 Time is of the essence on this Design-Build Contract. 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. HHS 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 HHS shall not waive any rights under the Design-Build Contract 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 HHS. 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

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Design-Build Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by HHSW does not constitute agreement by HHS, 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 Contract completion date is float owned by HHS. HHS reserves the right to negotiate the float if it is deemed to be in HHS'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 HHS 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 HHS 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 Contract 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, HHS 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 HHS that materials and equipment furnished under the Design-Build Contract 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 Contract 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 HHS's Authorized Representative, whether incorporated in the Project or Work or not. Removal and replacement or Work shall be without loss or expense to HHS, 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, HHS 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 HHS may perform such Project work and DBC shall reimburse HHS 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 HHS except for latent defects which will be remedied by the DBC at any time they become apparent.

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HHS shall give DBC notice of Project defects with reasonable promptness. DBC shall perform such Project warranty work within a reasonable time after HHS's demand. If DBC fails to complete the warranty work within such period as HHS determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting DBC's obligations, HHS may perform such work and DBC shall reimburse HHS 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 HHS and shall not take effect until affected Work has been accepted in writing by HHS'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 HHS.

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 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 HHS prefers to accept Work which is not in accordance with the requirements of the Contract Documents, HHS 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 HHS'S RIGHT TO SUSPEND THE WORK

J.1.1 HHS and/or HHS'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 Contract;
- (c) Failure of the DBC to carry out orders;
- (d) Conditions, in the opinion of HHS'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 HHS 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

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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 HHS may be due compensation by the other party. If the suspension was required due to acts or omissions of DBC, HHS may assess the DBC actual costs of the suspension in terms of administration, remedial work by HHS'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 HHS, 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 HHS, neither party owes the other for the impact.

J.4 HHS'S RIGHT TO TERMINATE CONTRACT

J.4.1 HHS 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 Contract in whole or in part under the following conditions:

- (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 Contract 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 HHS or its Authorized Representative; or
- (f) If DBC is otherwise in material breach of any part of the Design-Build Contract.

J.4.2 At any time that any of the above occurs, HHS may exercise all rights and remedies available to HHS at law or in equity, and in addition, HHS 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 HHS's cost of finishing the Work exceeds the unpaid balance of the Contract Price, DBC shall pay the difference to HHS.

J.5 TERMINATION FOR CONVENIENCE

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

J.5.2 HHS will provide the DBC with seven (7) days prior written notice of a termination for public convenience. After such notice, the DBC shall provide HHS 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 HHS under this provision will be

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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 HHS, 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 HHS, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

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

SECTION K DESIGN-BUILD CONTRACT 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 HHS'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 HHS'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 HHS'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 HHS 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. HHS'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 HHS's Authorized Representative.

K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS

As a condition of final payment, the DBC shall submit to HHS's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to HHS, which states that all Subcontractors and suppliers have been paid in full, all disputes with property issues 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 HHS's choice) and hold harmless HHS from all claims for labor and materials finished under this Design-Build Contract. The DBC shall furnish complete and valid releases or waivers, satisfactory to HHS, of all liens arising out of or filed in connection with the Work.

K.4 COMPLETION NOTICES

K.4.1 DBC shall provide HHS notice of both Substantial Completion and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of HHS and DBC for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which

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the DBC shall finish all items on the punch list accompanying the certificate of Substantial Completion. Both completion notices must be signed by the DBC and HHS to be valid. HHS shall provide the final signature on the notices. The notices shall take effect on the date they are signed by HHS.

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 HHS's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable HHS 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 HHS'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 HHS'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 HHS that all environmental pollution clean-up which was performed as a part of this Design-Build Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

K.7 CERTIFICATE OF OCCUPANCY

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

K.8 OTHER DBC RESPONSIBILITIES

The DBC shall be responsible for returning to HHS 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 HHS. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if HHS 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 Contract, and all of DBC's other obligations under this Design-Build Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Design-Build Contract.

SECTION L LEGAL RELATIONS & RESPONSIBILITIES

L.1 LAWS TO BE OBSERVED

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which HHS 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 Contract:

L.2 FEDERAL AGENCIES

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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

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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

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A. DBC'S CONSTRUCTION SCHEDULES

- A.1 The DBC, promptly and within twenty (20) days after being awarded the Design-Build Contract shall prepare and submit for HHS's and HHS's Representative's information a preliminary schedule for the Work consistent with the with the requirements of the Design-Build Contract 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 Contract and Contract Documents. The schedule shall not exceed time limits current under the Design-Build Contract 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 Contract 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 HHS.
- A.2 The DBC shall prepare and keep current, for review by HHS's Representative, a schedule of submittals which is coordinated with the Project schedule and allows HHS and HHS'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 HHS's Representative. Neither HHS's Representative nor HHS can represent or guarantee response times from governmental authorities, such as permitting agencies. Neither the DBC's preparation nor HHS'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 HHS and accepted by HHS and shall promptly notify HHS of any deviations from the schedule. Should the DBC fail to comply with the schedule, or in HHS's opinion fail, refuse, or neglect to supply a sufficient amount of labor, materials, equipment or services in the prosecution of the Work, HHS 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 GMP. All schedules submitted shall be in the form acceptable to HHS 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 HHS's use and no float shall be used without HHS's written approval. The DBC shall at all times monitor the progress of the Work for conformance with the CPM schedule accepted by HHS and shall promptly advise HHS and HHS'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 HHS or subcontractors of a separate contractor.

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

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The DBC shall not change a Subcontractor, person or entity previously selected if HHS or HHS'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 HHS will ultimately be the benefit of, if all or any portion of any Subcontractor's Work is deleted. In no instance shall HHS be obligated to pay any fee, profit or overheard 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 HHS 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 HHS or HHS's Representative. Each subcontract agreement shall preserve and protect the rights of HHS and HHS'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 HHS or to another contractor should HHS so elect and consent, provided that:

- (a) assignment is effective only after termination of the Design-Build Contract by HHS and only for those subcontract agreements which HHS 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 HHS (or other contractor) shall only be responsible to the Subcontractor for those obligations that accrue after HHS'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 Contract, and without invalidating the Design-Build Contract, solely by Change Order, Construction Change

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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 HHS, DBC and HHS's Representative; a Construction Change Directive requires agreement by HHS and HHS'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 HHS'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, HHS 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, HHS may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If HHS accepts the proposal in writing, HHS will be immediately bound, the change will be included in a future Change Order, and the change in the Work shall commence expeditiously. HHS may reject the proposal, in which case HHS 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. HHS's Representative may confer directly with Subcontractors of any tier concerning any item proposed to HHS under this Article.

C.2 CHANGE ORDERS

- C.2.1 A Change Order is a written instrument which may be prepared by HHS's Representative and signed by HHS and DBC and which may also be signed by HHS'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 Contract 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 HHS's Representative and signed by HHS, and which may also be signed by HHS's Representative, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. HHS may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build

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- Contract 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 Contract 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 HHS'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 HHS's adjustment. The DBC's disagreement shall not relieve the DBC of its obligations to comply promptly with any written notice issued by HHS or HHS's Representative. The adjustment shall then be determined by HHS's Representative in accordance with the provisions of the Design-Build Contract 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 HHS'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, 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 HHS'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 HHS'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 HHS for a deletion or change which results in a net decrease in the GMP shall be the largest of

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- (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 HHS'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 HHS, 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 HHS.

C.3.9 When HHS and DBC agree with the determination made by HHS'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 HHS's Representative and HHS 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 HHS and DBC. The DBC shall carry out any and all such written orders promptly. If at the option of HHS, HHS's Representative exercises any authority, right(s) or duty(ies) stated anywhere in this Design-Build Contract or any other Contract Document as an authority, right or duty HHS'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 HHS, 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. HHS's Representative and HHS 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 Contract Time, the adjustment and method shall be referred to HHS'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

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is not included unless pre-approved by HHS.

- (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 HHS's Representative. Discounts and rebates based on prompt payment may be included, however, if the DBC offers but HHS 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 HHS'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 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.

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Upon request, the DBC shall provide HHS 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 HHS 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

- 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 Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between HHS and DBC arising out of or relating to the Design-Build Contract. 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 Contract, 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

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the Claim, whichever is later. Claims must be initiated by written notice to HHS'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 Contract, the DBC shall proceed diligently with performance of the Design-Build Contract and HHS 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 HHS and HHS's Representative promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. HHS'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 HHS'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 Contract is justified, HHS's Representative may so notify HHS and DBC in writing, stating the reasons. Any claim of the DBC arising from HHS'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 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 HHS's Representative,
 - (2) an order by HHS to stop the Work where the DBC was not at fault,
 - (3) a written order for a minor change in the Work issued by HHS's Representative,
 - (4) failure of payment by HHS,
 - (5) termination of the Design-Build Contract by HHS,

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- (6) HHS'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 HHS, the DBC, a Subcontractor of any tier, or HHS'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 HHS and HHS'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 HHS 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 Contract 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 HHS or the DBC, the applicable unit prices shall be equitably adjusted.

YAMHILL COUNTY HHS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

D.1.10 Time is of the Essence. The parties agree that HHS 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 Contract, or to liquidated damages as provided in the Design-Build Contract, 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 HHS and HHS'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 Contract) 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 Contract). 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, HHS's Representative or HHS 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, HHS's Representative or HHS 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 HHS's receipt of the written Claim, the DBC may require that an officer of the DBC, a principal of HHS's Representative, and HHS's Superintendent or designee (all with authority to settle) meet, confer, and attempt to resolve the Claim during the following 21 days. HHS 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 HHS 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 HHS 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 Contract 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

YAMHILL COUNTY HHS
DESIGN BUILD
SUPPLEMENTAL GENERAL CONDITIONS
SECTION 00650

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 Contract 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 HHS'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 HHS's Representative or Subcontractors, such parties' representatives, also with the authority to settle the Claim, shall also attend the mediation session. Unless HHS 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 HHS.

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 HHS or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by HHS 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 HHS or HHS's Representative.

END OF SECTION

YAMHILL COUNTY HHS
BEHAVIORAL HEALTH HOUSING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

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

General Requirements

- Demolish two houses on existing property
- Build 8 studio units
- Use of abuse resistant materials where applicable
- ADA accessibility

Land Use and Permitting

- Obtain City of McMinnville building, engineering and conditional use permits.
- Submit request for parking variance.
- Compliance with City of McMinnville Residential Design Standards

Unit Description

- Approximately 350-500 square feet.
- Exterior doors for each unit.
- Plywood over stud with sheetrock walls.
- Kitchenette
 - o Formica countertops
 - o Pre-manufactured cabinetry
 - o Two-burner electric stove
 - o Fridge
 - o Microwave
- Bathroom
 - o Shower only
 - o Tile floor with drain
 - o Exhaust fan
 - o No glass
 - o Shatterproof mirrors
 - o Handicap grab bars
- Sheet vinyl flooring throughout (except bathroom).
- Small compact washer and dryer.

Communications

- Wi-Fi connections.
- Phone/data system will be installed in house. This will require coordination between the County IT department and the contractor.

Security

- Window and door sensors.
- Exterior impact resistant cameras. Minimum 8 cameras to monitor entryway for each unit. Contractor to work with County IT on installation.

Fire

- Fire alarm system.
- Pre-action dry sprinkler system in each unit.

YAMHILL COUNTY HHS
BEHAVIORAL HEALTH HOUSING PROJECT
PERFORMANCE SPECIFICATION
DIVISIONS 3-33

Landscaping and Exterior

- Wood privacy fencing around property.

Low maintenance landscaping.

- Designated smoking area.

Utilities

- Coordinate and install all utilities necessary for a complete operating system, water, sanitary to city sewer.

Parking

- Driveway for parking space of two vehicles.

YAMHILL COUNTY
HEALTH & HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING
PROJECT

BID DATE:
NOV. 14TH, 2025
2:00PM

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



13500 SW HWY 99W MCMINNVILLE, OR 97128

Claudia Rubio
Administrative Office Specialist
Yamhill County Health and Human Services
638 NE Davis
McMinnville, OR 97128

RE: Proposal Submission – Yamhill County HHS Behavioral Health Housing Project (Design-Build RFP)

Haworth Inc. is pleased to submit our Proposal for the Yamhill County Health and Human Services Behavioral Health Housing Project. We are highly interested in this opportunity and fully understand the scope of services required to design and construct the 8-unit studio complex with supporting spaces as outlined in the RFP. Our team is prepared to provide the expertise, coordination, and resources needed to deliver a functional, cost-efficient, and high-quality facility that supports HHS's mission and project objectives.

The undersigned is authorized to bind Haworth Inc. to a contract with HHS. Please find our contact information as required:

RFP Contact: Troy Haworth, President

Email: troy@haworthinc.net

Phone: (503) 472-2452

Mailing Address: 13500 SW Hwy 99W McMinnville, OR 97128.

We appreciate your consideration and look forward to the possibility of partnering with Yamhill County HHS on this important project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Haworth", is written over a horizontal line.

E.2.1 Experience – Projects Completed by Haworth Inc.

PROJECT: Aspen Ridge Apartments 1944 Baker St. McMinnville, OR – Completed 2020

Description: This 16-Unit complex was built for Yamhill County HHS and consisted of (1) office and a mix of (1) and (2) bedroom units.



Contact Name: John Eshleman
Phone Number: (503) 930-8986
Email: eshleman62@gmail.com
Project Dollar Value: \$2 MM
Consultants Used: MultiTech Engineering
Architect: Jeremy Grenz (503) 363-9227
Contractor: Haworth Inc (503) 550-3272
Change Orders – (0), Project Conflicts or Claims (0)

PROJECT: Eagle Point Apartments 625 NE Sheridan Rd Sheridan, OR – Completed March 2023

Description: This 66-Unit complex with Recreation Center and Admin Offices was built for Yamhill County HHS. Project consisted of (36) 1-bedroom units, (24) 2-berooms units, and (6) 3-berooms units.



Contact Name: John Eshleman
Phone Number: (503) 930-8986
Email: eshleman62@gmail.com
Project Dollar Value: \$8.3 MM
Consultants Used: MultiTech Engineering
Architect: Jeremy Grenz (503) 363-9227
Contractor: Haworth Inc (503) 550-3272
Change Orders – (0) Project Conflicts or Claims (0)

PROJECT: Baker Street Lofts 110 SE Handley St McMinnville, OR – Completed September 2024

Description: This 24-Unit complex was constructed as affordable housing close to downtown and replaced the Baker Street Apartments that were destroyed by fire in 2020. Features (12) Studios and (12) 1-bedroom units.



Contact Name: Nate Ball

Phone Number: (541) 961-3253

Email: nateball@gmail.com

Project Dollar Value: \$3.2 MM

Consultants Used: Andrew Roe, Hayden Consulting Engineers (503) 968-9994

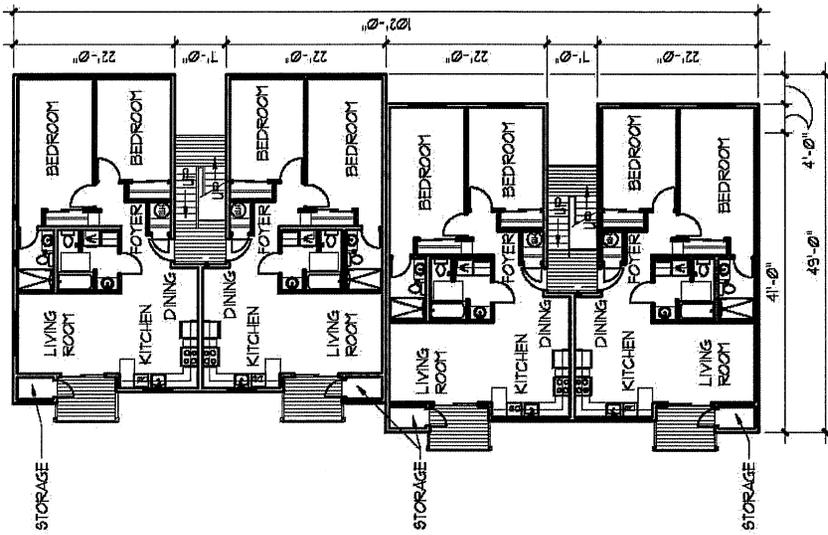
Architect: Christopher Nestlerode, PDS Design (503) 382-8000

Contractor: Haworth Inc (503) 550-3272

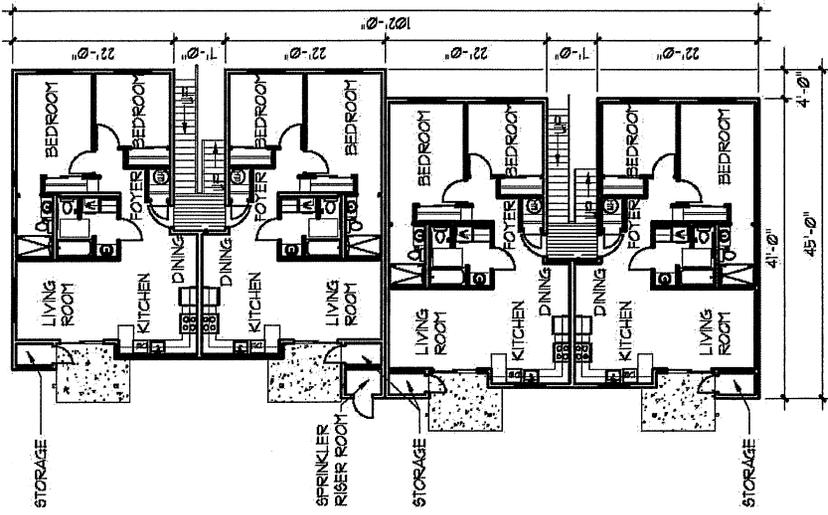
Change Orders – (0) Project Conflicts or Claims (0)



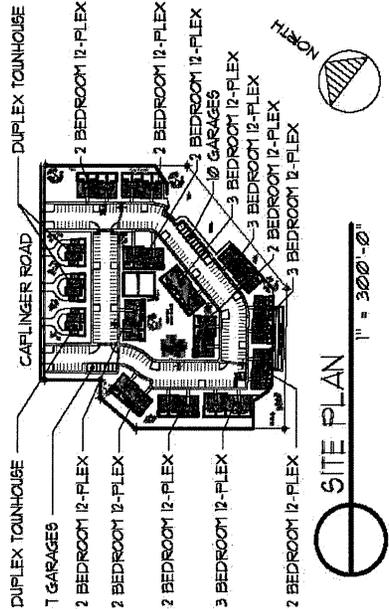




2nd FLOOR PLAN
12-FLEX APARTMENT
TYPE 'A' UNITS
1/16" = 1'-0"



1st & 3rd FLOOR PLAN
12-FLEX APARTMENT
TYPE 'A' UNITS
1/16" = 1'-0"



SITE PLAN
1" = 30'0"-0"

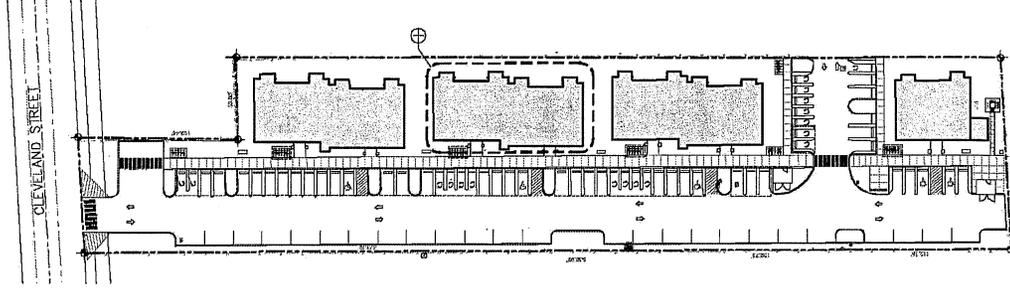
RSS ARCHITECTURE, P.C.
Bryan S. Rasmussen Licensed Professional Architect
10000 WOODBURN ROAD SUITE 200
WOODBURN, OREGON 97151
PROJECT NO. 08040
MARCH 2009



ARCHITECTURE, P.C.

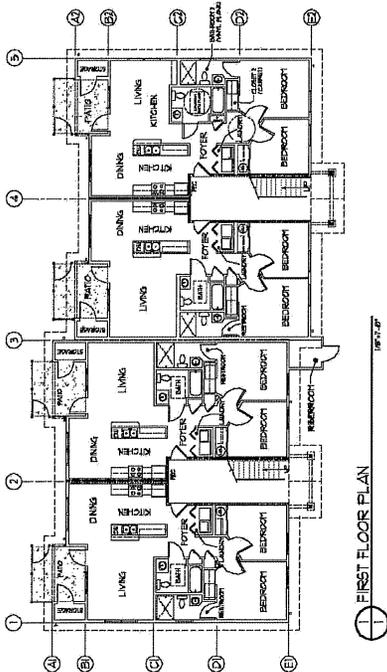
1430 CLEVELAND STREET
WOODBURN, OREGON 97151

PHONE: (503) 966-2222
FAX: (503) 966-2222
WWW: WWW.KSSARCH.COM

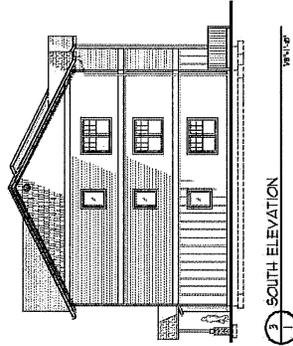


1 SITE PLAN

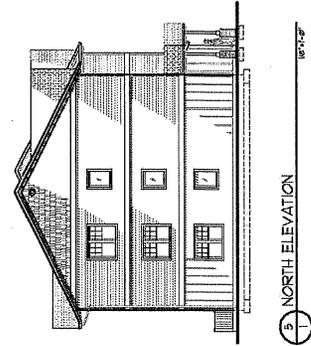
WOODBURN HOUSING DEVELOPMENT - APARTMENTS
FOR
DOUG TEMPLETON
1430 CLEVELAND STREET
WOODBURN OREGON 97151



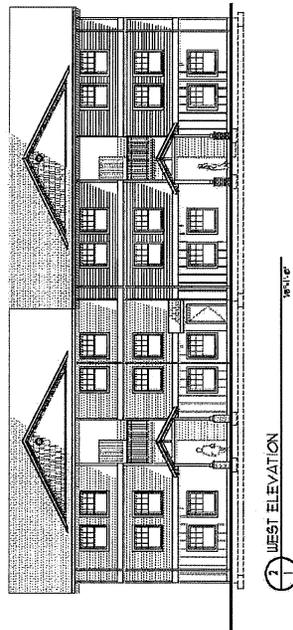
1 FIRST FLOOR PLAN



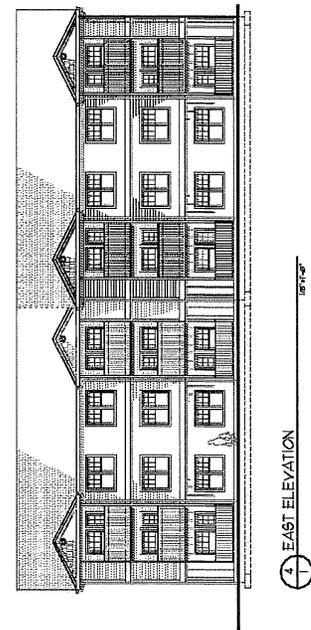
2 SOUTH ELEVATION



3 NORTH ELEVATION



4 WEST ELEVATION



5 EAST ELEVATION

YAMHILL COUNTY PROJECT EXPERIENCE - MCMINNVILLE, OREGON

Courthouse Accessibility Study and Design

Courthouse Second Floor Space Planning Study

Courthouse 2nd Floor Door Opening

County Jail and Courthouse Jail Property Storage Remodel

County Jail and Courthouse Jail Medical Cells Remodel

County Jail Control Room Remodel

County Jail and Courthouse Addition Structural Analysis/Report

County Jail North Canopy

County Jail Inmate Worker Housing Remodel

County Sheriff's Office Remodel - Room 143

County Juvenile Detention Facility Expansion and Remodel

County Romain Building Site Parking Plan

County Old Post Office Remodel For The County Clerk

County 7th Street and Galloway Street Block Feasibility Study and Site Master Plan

Courthouse Space Planning and Remodeling Preliminary Design

County Clerk Building Basement Access Ramp Preliminary Design

County Clerk Building Dumbwaiter

Courthouse Departments Relocation Remodeling

County Jail Miscellaneous Additions and Remodeling Preliminary Design

County Jail Miscellaneous Additions and Remodeling

County Clerk/Commissioners/Planning Department Parking Lot Remodel

County Sheriff Department Business Office Remodeling - Phase One

Courthouse Security Upgrades and HVAC System Renovation

County Courthouse Campus Master Plan

County Jail 2012 Remodeling

White House Re-roof Specifications

Courthouse HVAC Controls Remodeling

County-wide Energy Efficiency, Safety, and Maintenance Projects

YAMHILL COUNTY REFERENCES - MCMINNVILLE, OREGON

Bill Michielsen
Public Health Manager
(503) 434-7525

Lindsey Manfrin
Health and Human Services Director
(503) 434-7525

Blanca Marquez
(503) 434-7523

Joe Moore
Facilities Manager
(503) 434-7471

PROPOSED DESIGN SUB-CONSULTANTS

**Mechanical, Electrical, and
Plumbing Engineering:**

CBD ENGINEERING, LLC
35468 Riverside Drive Southwest
Albany, Oregon 97321
(541) 619-7287
David Bachmeier, P.E.

CBD ENGINEERING, LLC has assisted **RSS ARCHITECTURE, P.C.** with consulting services for over seven years, including all of our Yamhill County projects.

Structural Engineering:

HAYDEN CONSULTING ENGINEERS
12480 Southwest 68th Avenue
Tigard, Oregon 97223
(503) 968-9994
Darron Hayden, Principal/P.E.; S.E.

HAYDEN CONSULTING ENGINEERS has assisted **RSS ARCHITECTURE, P.C.** with consulting services for over ten years, including all of our Yamhill County projects.

Professional Cost Estimating:
(if needed)

CONSTRUCTION FOCUS INCORPORATED
740 Almaden Street
Eugene, Oregon 97402
(541) 686-2031
Steve Gunn, President

CONSTRUCTION FOCUS INCORPORATED has assisted **RSS ARCHITECTURE, P.C.** with consulting services for all of our Tillamook County Courthouse projects.

Interior Design Consultant:
(if needed)

BEAMAN ARCHITECTURE, LTD
1634 Southeast 54th Street
Portland, Oregon 97215
(503) 236-3300
Laura Beaman, Interior Designer

Landscape Architect:

LAURUS DESIGNS, LLC
1012 Pine Street
Silverton, Oregon 97381
(503) 784-6494
Laura Antonson, Landscape Architect

LAURUS DESIGNS, LLC assisted **RSS ARCHITECTURE, P.C.** with consulting services for our Tillamook Peoples Utility District projects.

Civil Engineering:
(if needed)

UDELL ENGINEERING & LAND SURVEYING, LLC
63 East Ash Street
Lebanon, Oregon 97355
(541) 451-5125
Brian Vandetta; P.E., P.L.S.

UDELL ENGINEERING & LAND SURVEYING, LLC assisted **RSS ARCHITECTURE, P.C.** with consulting services for our Tillamook Peoples Utility District projects.

WE ALSO HAVE , ENVIRONMENTAL ENGINEERING, TRAFFIC ENGINEERING, ACOUSTICAL ENGINEERING, AND LOW VOLTAGE ENGINEERING CONSULTANTS AVAILABLE IF NEEDED OR DESIRED.

E.2.2 Overview of Proposers Company

- 1. Haworth Inc. Established in May 1992, the organization is headquartered in McMinnville. We are premier provider of commercial and industrial design/build services serving Yamhill County and the surrounding area.**
- 2. 33 years in business under CCB license #82433**
- 3. 33 years as a Design-Build Contractor**
- 4. CCB License is current, valid and in good standing with Oregon CCB. It has never been suspended or revoked.**
- 5. Haworth Inc. holds an Oregon Public Works Bond for \$30,000**
- 6. Proposer, Proposer's responsible managing individuals, any partners, officers or members have not been licensed in Oregon under a different name or license number.**
- 7. Haworth Inc. is not connected with any other Organizations as a subsidiary, parent, holding or affiliate.**
- 8. Like Projects completed in the last 5 years are as follows;**
 - Eagle Point Apartments - Sheridan, OR**
 - Aspen Ridge Apartments, McMinnville**
 - Baker Street Lofts, McMinnville**
- 9. Haworth Inc. has never failed to enter into a construction or modernization contract.**
- 10. Haworth Inc. has never failed to complete a construction or modernization contract in the past five years.**
- 11. Haworth Inc. has not failed to complete a contract in the past five years within the authorized contract time.**
- 12. Haworth Inc. has not been assessed for liquidated damages in the past five years.**
- 13. Haworth Inc has never been disqualified from submitting a Proposal or Bid on a State of Oregon, city, county, special district or other local government project.**
- 14. Haworth Inc Bond Capacity – Aggregate - \$20MM / Single Project Limit - \$15MM**
- 15. Current available bonding capacity is \$8MM**
- 16. Haworth Inc has never been unable to or been denied a bond.**
- 17. Haworth Inc has never defaulted on a Contract.**
- 18. Haworth Inc has never been denied bond credit by a surety company.**
- 19. Haworth Inc has never declared bankruptcy or been placed in receivership.**
- 20. Haworth Inc has never received a Notice of Default or Notice of Intent to Terminate.**
- 21. Haworth Inc. has never had a Public Works contract terminated or cancelled.**
- 22. Haworth Inc is not currently involved in any Dispute Resolution.**

- 23.** Haworth Inc. has not been involved in Dispute Resolution, Arbitration or Litigation in the past five years related to a construction project.
- 24.** There are No Liens/ Stop Notices for Labor and/or Materials filed against Haworth Inc.
- 25.** Haworth Inc has Zero (0) lien, bond claim or enforcement lawsuits.
- 26.** Haworth Inc has filed Zero (0) construction-related claims or complaints in the last seven years.
- 27.** Haworth Inc has mediated or arbitrated Zero (0) construction related claims
- 28.** In the past five years Haworth Inc. has had Zero (0) unresolved change orders.
- 29.** Haworth Inc has had No complaints filed in the last seven years against them to the CCB.
- 30.** Haworth Inc. has never been required to pay back wages or penalties due to failure to comply with state or federal Prevailing Wage laws.
- 31.** Haworth Inc. has never had any action or administrative proceedings for back wages, penalties or other sanctions filed against us for failure to pay state or federal prevailing wages or failure to comply in any way with the state or federal prevailing wage laws.
- 32.** Haworth Inc. has never had an insurance carrier refuse to renew a policy.
- 33.** Haworth Inc. nor any of its agents or officers or partner have ever been found liable in a civil suit or found guilty in a criminal action for making false claim or material misrepresentation to any public agency or private entity.
- 34.** Haworth Inc. nor any of its agents or officers or partner have ever been convicted of a federal or state or local law related to construction.
- 35.** Haworth Inc. nor any of its agents or officers or partner have ever been convicted of a federal or state crime of fraud, theft or any other act of dishonesty.

E.3 Performance (Preliminary) Drawing of Project
 PROPOSED HEALTH AND HUMAN SERVICES (HHS) BEHAVIORAL HEALTH HOUSING PROJECT

PLOT DATE/TIME: DATE: 03/20/15 TIME: 14:25 FILE: CONCEPT DRAWING			
<p>○ FIRST FLOOR PLAN</p> <p>○ SECOND FLOOR PLAN</p> <p>○ EXTERIOR ELEVATION</p>	<p style="text-align: center;">3 UNIT APARTMENT BUILDING TWO STORY OPTION CONCEPT DRAWING</p>		
<p>REVISIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50px; height: 20px;"> </td> <td style="width: 50px;"> </td> </tr> </table>			<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p style="font-size: 10px;"> 2233 COUNTRY CLUB ROAD WOODBURN, OREGON 97071 (503) 962-1211 </p> <p style="font-size: 10px;"> A PROFESSIONAL CORPORATION </p> </div> <div style="width: 45%; font-size: 8px;"> <p> 50300 NE 71st Suite 100 Portland, OR 97218 (503) 253-1100 www.mssarchitect.com </p> </div> </div>

E.4 Safety

Haworth Inc. maintains a comprehensive safety program that complies with OR OSHA regulations. We conduct weekly job-site tailgate meetings, random drug testing, and monthly safety committee reviews. Our current Workers Compensation Insurance Experience Modification Factor is **.73**

Copies of our Safety and Substance policies are available on request.

E.5 Staffing & Staff Qualifications

E.5.1 Organization Chart

Organizational Chart & Staff Commitment

Name	Role	Phase Assignment	Time Commitment
Randal Saunders	Architect	Full Term	100%
Troy Haworth	Site Superintendent	Full Term	100%
Steve Weiher	Project Foreman	Construction	100%
Taylor Haworth	Project Manager/Estimating	Construction	100%
Kyle Grimland	Project Manager/Estimating	Pre-construction /Construction	100%
Cassandra Haworth	Administrative	Admin	100%

E.5.2 Resumes – On following pag



Troy Haworth

McMinnville, OR 97128
Troy@haworthinc.net
503-550-3272

Owner and President of Haworth Inc. with 30+ years of experience in commercial, municipal, and industrial construction. Proven leadership in project management, field supervision, and client coordination. Deep expertise delivering complex civil, infrastructure, and facility projects across Yamhill County and surrounding regions. Skilled at guiding teams, ensuring regulatory compliance, maintaining quality standards, and completing projects on time and within scope.

Accomplishments

Successfully managed and supervised numerous public works, commercial, and industrial construction projects, including:

- 1st & 2nd Street Improvements – City of McMinnville
- 5th Street Improvements – City of McMinnville
- Bridge Street Improvements – City of Lafayette
- MW&L Carlton Emergency Intertie – City of Carlton
- 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

Work History

Superintendent/President *Haworth Inc., McMinnville, OR | 1991 - Current*

Commercial and Residential Sales and Management *Pella Window and Door Company, McMinnville, OR | 1989 - 1991*

Carpenter *Haworth Inc., McMinnville, OR | 1983 - 1989*

Education

EMT 3 in Fire Life & Safety Program Chemeketa Community College, McMinnville, OR | 1988

High School Diploma McMinnville High School, McMinnville, OR | 1984



McMinnville, OR 97128
steve@haworthinc.net

Steve Weiher

Steve Weiher brings over 17 years of experience as a foreman at Haworth Inc., with a strong background in managing day-to-day site operations across public and commercial construction projects. His leadership spans work on civic buildings, fire stations, educational facilities, and industrial remodels. Steve has deep roots in the local construction community and a track record of safety, quality, and schedule compliance on projects requiring active site coordination.

Qualifications

- 17+ years of foreman-level construction site leadership
- Extensive experience coordinating subcontractors and field crews
- Strong knowledge of Oregon public project practices and seismic retrofit execution
- Skilled in daily schedule enforcement, jobsite safety, and quality control
- Committed to full-time site supervision for the duration of project construction

Work History

Construction Foreman *Haworth Inc. , McMinnville, OR | 2005 - Current*

Relevant Project Experience

- Yamhill County Public Works Facility (McMinnville, OR) – Multi-building public infrastructure construction,
- Yamhill County Transit Center (McMinnville, OR) – Transit operations and administrative offices,
- Carlton Fire Station (Carlton, OR) – Seismic and structural improvements,
- Recology Transfer Station (McMinnville, OR) – Industrial upgrade and safety improvements,
- McMinnville High School Technical Building (McMinnville, OR) – Educational facility addition,
- Yamhill Valley Heritage Center (McMinnville, OR) – Community cultural and historical building

Qualifications

- 17+ years of foreman-level construction site leadership
- Extensive experience coordinating subcontractors and field crews
- Strong knowledge of Oregon public project practices and seismic retrofit execution
- Skilled in daily schedule enforcement, jobsite safety, and quality control
- Committed to full-time site supervision for the duration of project construction



Kyle Grimland

McMinnville, OR 97128

kyle@haworthinc.net

(971) 241-5569

Strategic Construction Project Manager and Military Veteran with demonstrated success assessing project scope and adhering to deadlines. Safety-conscious and detail-oriented with industry background. Well-versed in team leadership and task delegation to drive project progress.

Work History

Project Manager, Estimator *Haworth Inc. , McMinnville, OR | March 2025 - Current*

- Planned, designed, and scheduled phases for large projects.
- Managed projects from procurement to commission.
- Negotiated and managed third-party contracts related to project deliverables.
- Analyzed designs and performed accurate cost analysis.
- Tracked project costs and expenses to monitor progress and identify and mitigate deviations from original estimate.
- Analyzed and calculated field measurements, survey plans, and plot plans to create proposals and process work orders.

Project Manager, PMO *Henkels & McCoy, Portland, OR | January 2023 - March 2025*

Managed both transmission and distribution projects to include underground civil (HHD) and aerial projects.

- Bid opportunities.
- Negotiated and managed third-party contracts related to project deliverables.
- Effectively managed project budget, timeline and resources.
- Coordinated material procurement and required services

Project Manager *Potelco Inc, Hubbard | June 2022 - January 2023*

Maintenance Supervisor *US Army, Fairbanks, AK | September 2016 - November 2022*

Construction Laborer/ Equipment Operator *Haworth Inc, McMinnville, OR | June 2012 - September 2016*

Education

Construction Management *University of Alaska Fairbanks, Fairbanks, AK*

U.S. Army Ordnance Center And School, Fort Lee, VA | 2017



Taylor Haworth

McMinnville, OR 97128
Taylor@haworthinc.net
971-237-5872

Resourceful Project Manager and estimator with 5 years of expertise in construction operations, financial oversight, and resource management. Leads procurement of resources, including equipment and materials. Monitors projects by adhering to production schedule and budget, identifying problems, and providing solutions. Knowledgeable in budget and financial management.

Work History

Project Manager, Estimator *Haworth Inc. , McMinnville, OR | March 2020 - Current*

- Adhered to building codes and regulations in planning and construction phases for full project compliance.
- Managed large-scale construction projects within cost, quality and time constraints,
- Obtained construction permits and verified compliance with relevant regulations.
- Analyzed building plans and prepared bids to deliver timely, cost-effective project completion.
- Collaborated with architects and subcontractors to devise cost-effective construction solutions.

Laborer Operator *Haworth Inc. , McMinnville, OR | June 2015 - March 2020*

- Operated a range of heavy equipment on a regular basis with advanced skill.
- Interpreted blueprints and executed plans to complete construction projects to specifications.
- Worked on a construction team to build commercial and industrial steel PMB facilities.

Education

Bachelor of Science in Engineering And Technology *Indiana State University, Terre Haute, IN |*
May 2022

Mr. Randal S. Saunders, Architect/President of **RSS ARCHITECTURE, P.C.** coordinates all design, working drawing, bid, and construction observation services for the firm. The County would see Mr. Saunders from start to finish on a project; he will work on everything from schematic drawings to project closeout paperwork. Randy may be accompanied by other staff when interacting with the County or Contractors, but he is specifically aware of the project throughout its lifetime. As President of the firm Mr. Saunders believes in being responsible for the firm's activities, not handling Clients off to a back room draftsman.

Randy is the lead person the County would be interacting with. Christopher Proctor and/or Ali Keyhan-Fard would be specifically assisting Randy with the work. Additional technical and/or clerical staff may be utilized depending upon the project schedule. Those individuals would be brought to the Tribe's attention.

RANDAL SCOTT SAUNDERS, ARCHITECT (RANDY)

- Born: January 13, 1957
- Education: Oregon State University, 1975-76
Montana State University, 1976-78
University of Oregon, 1978-80
- Degree: Bachelor of Architecture, University of Oregon; August 29, 1980
- Licensing: State of Oregon: No. 2720; State of Washington: No. 4525

Community Service Activities

- Chairman, Board of Directors, Sigma Corporation of Kappa Delta Rho; 1989.
- Member, Salem Chapter, Construction Specifications Institute, 1992 - 2008; Charter member.
- Member, Oregon Historic Preservation League; 1990 - current.
- Technical Advisor/Member, Molalla Multi-Purpose Development Committee; 1991.
- Member and Chairman, Appeals Board, City of Salem Building Code Review Committee; 1994-1998.
- Member, National Board of Directors, Housing Corporation of Kappa Delta Rho; 1995 - current.
- Vice President & President, Capitol (Salem) Chapter, Construction Specifications Institute; 1996-2000.
- President, Woodburn Rotary Club; 2000 - 2001.
- Board Member, Willamette Valley Chapter, American Red Cross; 2005-2014.
- Most Valuable Player, Chicago White Sox Fantasy Baseball Camp, 2001, 2009, and 2011.
- Manager, Oregon Tigers, Willamette Valley MSBL; 2002 -2012.
- Member, Courthouse Square Solutions Citizens Task Force Committee; 2010 - 2011.
- Member, National Board of Directors - Kappa Delta Rho; 2012 - 2023.
- Chair, Board of Directors - Willamette Chapter, American Red Cross; 2012-2014.

Key individuals for **RSS ARCHITECTURE, P.C.:**

Randal S. Saunders (Randy)	Principal in Charge of all Projects
Chris Proctor	Project Manager
Ail Keyhan	Project Assistant

Chris Proctor has been a Project Manager with over 5 years of experience in the profession. Chris has worked on firm commissions for Lincoln County, Marion County, City of Brownsville, City of Mt. Angel, American Red Cross, and Oregon Military Department. Mr. Proctor has recently been assisting with design and documents for the Transformation of the Oregon Military Department Woodburn Armory - including implementation of SEED criteria. Mr. Proctor is a graduate of Portland State University with a Bachelor of Architecture degree.

Ali Keyhan-Fard is an Intern working towards Architectural licensing. Ali is currently working on the Middle Grove School Remodel for the Mid Willamette Valley Community Action Agency and the Scio High School Vocational Building Remodel/Addition. Mr. Keyhan is a graduate of Washington State University with a Bachelor of Architecture degree.

E.5.3 Team Members and Working Structure

All primary team members assigned to this Project are full-time Haworth Inc. employees and will be dedicated to the Project at the levels identified in the staffing table. Part-time or shared staff are **not** proposed; the structure ensures consistent management presence, daily on-site leadership, and clear lines of authority.

The proposed personnel have extensive experience working together on numerous public-sector and municipal facilities, including multiple fire stations, civic buildings, and county infrastructure projects. This established working relationship enhances communication efficiency, accelerates decision-making, and ensures cohesive delivery throughout the Design and Construction Phases

E.6 Project Approach

E.6.1 General Approach

Haworth Inc. will deliver this project using a fully integrated Design-Build methodology that emphasizes early coordination, transparent communication, and proactive schedule and cost management. During design, our team will work collaboratively with HHS to ensure the design meets behavioral health housing criteria, MEP systems, and constructability. Once Construction Documents begin, our team will maintain weekly check-ins, formal milestone reviews, and thorough quality control to ensure all documents support reliable pricing and the project's performance requirements.

During construction, we will maintain a full-time on-site management team responsible for subcontractor coordination, safety compliance, schedule control, and cost transparency. Regular progress meetings will ensure HHS is fully informed, with action items tracked and reported. Our approach emphasizes minimizing resident and neighborhood disruption, prioritizing safety, and maintaining HHS operational needs at all times.

E.6.2 Completion Plan

During the **Design Phase**, Haworth Inc. will lead feasibility and constructability reviews, evaluate alternates, and confirm design alignment with the budget. Deliverables will include, value engineering options, design schedule updates, and early bid package strategies. We will assess site logistics, safety planning, and identify procurement items with long lead times. A comprehensive review of code requirements and building system performance criteria will be incorporated into design development.

During the **Construction Phase**, Haworth Inc. will create bid packages based on the approved Construction Documents, conduct competitive subcontractor bidding, and recommend award strategies to ensure best value. Our team will manage construction meetings, issue agendas, track meeting action items, prepare written weekly reports, and maintain transparent cost control logs. Progress schedules will be updated regularly, and all work will be monitored for quality, safety, and compliance. This structured process ensures high-quality service delivery and optimized use of the project's construction budget.

E.6.3 Critical Systems Plan

Haworth Inc. will ensure that all critical systems—including HVAC, mechanical, electrical, building controls, and infrastructure—are designed and constructed to meet the project’s performance criteria. During design, our team will review system sizing, equipment selections, energy efficiency requirements, and operational expectations. We will utilize cross-discipline coordination to eliminate conflicts and ensure smooth installation.

At project closeout, Haworth will compile all warranties, O&M manuals, commissioning reports, and system documentation in a structured digital format for HHS. Training sessions will be provided for HHS staff, and written procedures for equipment maintenance and operational use will be delivered to ensure long-term performance and ease of facility management.

E.7 Estimated Design Cost Range and Construction Cost Range

Per RFP requirements, Haworth Inc. will provide a complete Design Cost Range and Construction Cost Range consistent with HHS specifications and Attachment B. These ranges will reflect discipline-specific design services, preconstruction services, construction labor and materials, project contingencies, and escalation allowances as required. The enclosed cost range sheet summarizes these values and confirms that Haworth Inc. understands and complies with the minimum requirements outlined by HHS.

E.8 General Conditions Work

Haworth Inc. has completed the General Conditions Cost Table included in Attachment B as required by Section E.8 of the RFP. These costs reflect staffing, site supervision, temporary facilities, equipment, safety provisions, project administration, and required on-site resources necessary for the successful delivery of the project. Once negotiated and approved, these General Conditions costs will form part of the final Design-Build Contract and will be reimbursed in accordance with the fee schedule for the Design Phase and the negotiated terms for the Construction Phase.

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
DESIGN BUILD - REQUEST FOR PROPOSALS

**ATTACHMENT A
PROPOSER INFORMATION AND CERTIFICATION STATEMENT**

Legal Name of Proposer: Hawoth Inc.
Address: 13500 SW Hwy 99W **City, State, Zip:** McMinnville, OR 97128
State of Incorporation: Oregon **Entity Type:** Corporation
Contact Name: Troy Haworth **Telephone:** (503) 550-3272 **Email:** troy@haworthinc.net
Federal Employer Identification Number.: 93-1078712
Oregon Business Registry Number (if required): 28669-80
Construction Contractors Board Number: 82433

The undersigned, having examined the RFP Documents, including the Request for Proposals, Design-Build Contract and related Project Requirements, preliminary drawings, the General Conditions, the Supplemental General Conditions and any technical Performance Specifications as prepared by HHS, 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

\$ 82,857.00 - \$ 120,345.00 DOLLARS (\$) Design Phase of 8-Unit Apartment Complex

CONSTRUCTION COST RANGE

\$ 1,040,000.00 - \$ 1,280,000.00 DOLLARS (\$) Construction Phase of 8-Unit Apartment Complex

TIME OF COMPLETION

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

ADDITIONAL REQUIREMENTS

- Should this proposal not be accepted within sixty (60) calendar days after the date and time of proposal opening, or if the undersigned executes the Design-Build Contract and delivers the required performance and payment bonds, the Bid Bond shall be returned.
- Proposer's State of Oregon Contractors License Registration Number. 82433
- Receipt of Addenda's 1 is hereby acknowledged. Troy Haworth

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
 BEHAVIORAL HEALTH HOUSING PROJECT
 DESIGN BUILD - REQUEST FOR PROPOSALS

ATTACHMENT B

**YAMHILL COUNTY HHS BEHAVIORAL HEALTH HOUSING PROJECT
 DESIGN AND CONSTRUCTION
 COST RANGE SHEET**

Item	Description	Cost Range
1	DESIGN FEE - DESIGN SUBMITTAL AND REVIEW PROCESS, PERMITS	<u>\$126,601.00</u>
2	FLOOR SLAB CONSTRUCTION INCLUDING PLUMBING TO SLAB ELEVATION AND STEM WALL	<u>\$174,000.00</u>
3	BUILDING ERECTION INCLUDING ELECTRICAL TO BUILDING MAIN AND SUB-MAIN PANELS	<u>\$348,000.00</u>
4	INTERIOR WALLS, FLOORING AND FINISHES INCLUDING INTERIOR ELECTRICAL, INTERIOR PLUMBING, ALL PLUMBING AND ELECTRICAL FIXTURES AND CABINETS	<u>\$580,000.00</u>
5	DESIGN SERVICES DURING CONSTRUCTION - PRODUCT SUBMITTAL REVIEW, CHANGE ORDERS, ETC.	<u>\$58,000.00</u>
6	OTHER CONSTRUCTION SERVICES (Demo Existing Structure)	<u>\$25,000.00</u>

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

PROJECT TOTAL : \$1,311,601.00

*** The total project cost on Attachment "B" is a midrange based on Attachment "A": and includes an estimated permit cost to the City of McMinnville of \$25,000.00**

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
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**ATTACHMENT C
OREGON STATUTE CERTIFICATION**

(Must be signed and included with Proposal)

We Hereby Certify to comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. We Certify also that we shall comply with the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub L No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws. We Certify, in the performance of any contract issued from any proposal related to these documents, we will in all respects adhere to the HHS's policy of non-discrimination.

We Certify that we have not and shall not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

We Certify that we, and our subcontractors, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law, and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all of their subject workers, unless such employers are exempt under the law.

We Certify that we accept all the terms and conditions contained herein, including Exhibit C; and in the event of a forthcoming contract containing these same terms and conditions, we would agree without exception. Any exception to these terms and conditions will be made a minimum of five (5) working days before the Proposal deadline.

We Certify, under penalty of perjury, that the Proposer has complied with the tax laws of this state or political subdivisions of this state, including but not limited to ORS 305.620, and ORS chapters 316, 317 and 318.

We Certify that we X ARE ARE NOT (mark one) a "Resident Bidder" as defined by ORS 279A.120. As defined in ORS 279A.120, "Resident Bidder" means a bidder that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder is a "Resident Bidder".

If not a Resident Bidder as defined in ORS 279A.120, please indicate state of residence: .

The undersigned certifies that it has, to the best of Proposer's knowledge and under penalty of perjury, complied with Oregon tax laws in the period prior to the submission of this Proposal, including:

- (a) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318,

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
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- (b) Any tax provisions imposed by a political subdivision of this state that applied to Proposer or its property, goods, services, operations, receipts, income, performance of or compensation for any work performed, and
- (c) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions

Proposer/Contractor



(Authorized Official)

Date

11/14/25

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
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**ATTACHMENT D
NON-COLLUSION AFFIDAVIT**

CONTRACT: HHS Behavioral Housing Project

STATE OF OREGON

COUNTY OF YAMHILL

I state that I am the President of Haworth Inc. and that I am authorized to make this affidavit on behalf of my firm, and its owners, directors and officers. I am the person responsible in my firm for the price(s) and the amount of this bid.

I further state that:

- (1) The price(s) and amount of this Proposal have been arrived at independently and without consultation, communication or agreement with any other contractor, proposer or potential proposer, except as disclosed on the attached appendix.
- (2) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal have been discussed with any other firm or person which is a Proposer or potential Proposer, and they will not be disclosed before Proposal opening.
- (3) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this contract, or to submit a proposal higher than this Proposal, or submit a proposal intentionally high or non-competitive or any other form of complementary proposal.
- (4) The Proposal of my firm is made in good faith and pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other non-competitive proposal .
- (5) Haworth Inc. , its affiliates, and subsidiaries, officers,
(NAME OF FIRM)
directors and employees are not currently under investigation by any government agency and have not in the last four years been convicted of or found liable for any act prohibited by State and Federal law in the jurisdiction, involving conspiracy or collusion with respect to bidding or proposing on any public contract, except as described on the attached appendix.

I further state that Haworth Inc. understands and acknowledges that the
(NAME OF FIRM)
above representations are material and important, and will be relied on by HHS in awarding the contract from which

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
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this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from HHS of the true facts relating to the submission of proposals for the contract.

Name of Proposer/Contractor: Haworth Inc.

Signature: *Troy Haworth*

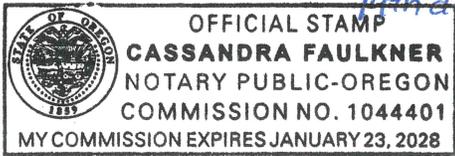
Print Name: Troy Haworth

Title: President

Sworn to and subscribed before me this day of , 2025.

14th day of November 2025

(SEAL)



NOTARY PUBLIC OF OREGON

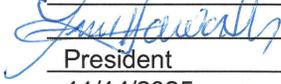
Cassandra Faulkner

My commission expires: *1/23/28*

YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
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ATTACHMENT E
PREVAILING WAGE RATE COMPLIANCE STATEMENT

The Proposer states that provisions of ORS 279C.800 – 279C.870 (Oregon Prevailing Wage Rates) will be complied with on the HHS Behavioral Health Housing Project.

COMPANY NAME Haworth Inc.
SIGNATURE 
TITLE President
DATE 11/14/2025

- Applicable prevailing wage rates are those in effect at the time the initial specifications are first advertised for bid solicitation. ORS 279C.830(1)(c); OAR 839-025-0020(4) and (5) The workers must be paid not less than the applicable state prevailing wage rate. ORS 279C.830; OAR 839-020-0115(3)
- The contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the Project. ORS 279C.830(2)(a) Every subcontractor is required to have a public works bond filed with the Construction Contractors Board before starting work on the project. ORS 279C.830(2)(b)
- If the contractor fails to pay for labor and services, HHS can pay for them and withhold these amounts from payments to the contractor. ORS 279C.515; OAR 839.025.0020(2)(a)
- The contractor must pay daily, weekly, weekend and holiday overtime as required. ORS 279C.520; OAR 839-025-020(2)(c)
- The contractor must make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages. ORS 279C.530; OAR 839-025-0020(2)(d)
- The employer must give written notice to the workers of the number of hours per day and days per week they may be required to work. OAR 839-025-0020(2)(c)

BOLI Contact:
Bureau of Labor and Industries Wage and Hour Division Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, OR 97232 www.oregon.gov/BOLI

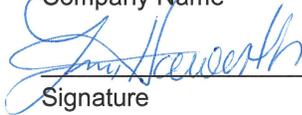
YAMHILL COUNTY HEALTH AND HUMAN SERVICES
BEHAVIORAL HEALTH HOUSING PROJECT
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**ATTACHMENT F
DRUG TESTING POLICY STATEMENT**

The Proposer states that provisions of ORS 279C.505 [Chapter 794.138] requiring an employee drug testing program will be complied with on the Project.

Haworth Inc.

Company Name


Signature

President

Title

11/14/2025

Date

AIA[®] Document A310[™] – 2010

Bid Bond

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-2SHS
HARTFORD, CONNECTICUT 06183

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

YAMHILL COUNTY HHS
638 NE DAVIS
MCMINNVILLE OR 97128

BOND AMOUNT:

NOT TO EXCEED TEN PERCENT OF AMOUNT BID***** (****10%****)

PROJECT:

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

BEHAVIORAL HEALTH HOUSING PROJECT

Project Number, if any:

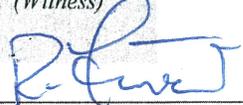
The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the 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.

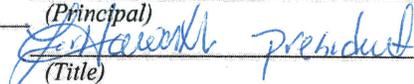
If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

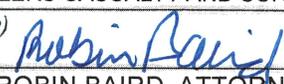
When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement 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 12 day of NOVEMBER 2025


(Witness)


(Witness)

HAWORTH, INC.
(Principal)

(Title)

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA
(Surety)

(Title) ROBIN BAIRD, ATTORNEY-IN-FACT

(Seal)

(Seal)

Init.

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Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Robin Baird** of **SPRINGFIELD**, **Oregon**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **21st** day of **April**, 2021.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **21st** day of **April**, 2021, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies 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**, 2026




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, 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 each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **12** day of **NOVEMBER**, 2025




Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.