

This addendum forms a part of the Request for Proposal and modifies the original Documents dated **APRIL 15, 2025** as noted below. Acknowledge receipt of this addendum in the space provided on Attachment B – Certifications / Residency Form. Failure to do so may subject the Proposer to disqualification.

### **REVISION TO RFQ/RFP SECTION III.A.2 – SCOPE- POSSIBLE ALTERNATES**

Change **original**

From: ~~Possible Alternates:~~

- ~~• Add new floor drain in Family Restroom. Tie the drain into the existing drainage system.~~
- ~~• Replace existing window system~~

To: Possible Alternates:

- Add new floor drain in Family Restroom. Tie the drain into the existing drainage system.
- Replace existing window system
- Locker Room Floor Resurfacing

### **REVISION TO RFQ/RFP SECTION 2.B – SCHEDULE FOR SELECTION, PROJECT MILESTONE**

Change **original**

From:

Interviews, if needed	May 14, 2025
Notice of Tentative Intent to Award	May 15, 2025
Deadline for Selection Protests	May 22, 2025
Board Action to Award Contract	May 22, 2025
Execute Contract	May 27, 2025
Notice to Proceed (Design)	June 1, 2025

To:

Interviews, if needed	May 16, 2025
Notice of Tentative Intent to Award	May 19, 2025
Deadline for Selection Protests	May 26, 2025
Board Action to Award Contract	May 29, 2025



Execute Contract	June 3, 2025
Notice to Proceed (Design)	June 10, 2025

**REVISION TO 00 5000 – DESIGN BUILD AGREEMENT**

*Disregard original section 00 5000 Design Build Agreement and replace with the **attached 00 5000 Design Build Agreement in its entirety.***

**REVISION TO 00 6000 – DESIGN BUILD GENERAL CONDITIONS**

*Disregard original section 00 6000 General Conditions and replace with the **attached 00 6000 General Conditions in its entirety.***

**REVISION TO 00 6500 – DESIGN BUILD SUPPLEMENTAL GENERAL CONDITIONS**

*Disregard original section 00 6500 Supplemental General Conditions and replace with the **attached 00 6500 Supplemental General Conditions in its entirety.***

**PRE-BID MEETING SIGN IN SHEET**

Please review the attached sign-in sheet; if corrections are required please send them to [courtney.fastenau@hmkco.org](mailto:courtney.fastenau@hmkco.org)

**END OF ADDENDUM 2**



## DESIGN-BUILD AGREEMENT

### INTRODUCTION

#### THIS AGREEMENT IS BETWEEN:

**OWNER:** Lebanon Community Schools  
485 South 5<sup>th</sup> Street  
Lebanon, OR 97355

**And**

**Design-Build Contractor (or "DBC"):** Contractor  
Name, Title  
Address  
City, State Zip  
Phone:  
Fax:  
E-mail:

**The Project is:** Lebanon Community School  
Lebanon Community Pool Renovation

**Design-Build Contractor's Representative is:** Name, Title

**Owner's Representative is:** HMK Company  
Attn: David McKay, Principal in Charge  
PO Box 3223  
Salem, OR 97302  
Phone: (971) 304-0677

- A. GUARANTEED MAXIMUM PRICE:
- B. SCHEMATIC DESIGN FEE:
- C. PROPOSAL ALTERNATE ONE:
- D. MAXIMUM CONTRACT PRICE ("A"+"B"+"C"):

## RECITALS

**WHEREAS**, Owner has property located in Lebanon, Oregon, and wishes to construct the following:

The primary scope of work at Lebanon Community School Pool involves addressing: Decking and gutter systems, including replacing piping and drains, and plaster and tile for both lap pool and warm pool.

Owners' minimum requirements have been set forth in Division 0-1 contained in the RFP/RFQ Documents and follow ("Design-Build Criteria"):

- Demolish current deck and gutter. Approx. three (3') feet around perimeter of Lap Pool and Warm Pool, including dividing wall
- Replace current gutter system with stainless steel gutter
- Replace concrete decking with broom finish concrete and concrete fill around stainless gutter
- Replace current main drains with wall mounted drains
- Run new piping from main drains and gutter into surge tank
- Run new return piping into Lap Pool and Warm pool
- Plaster and waterline tile

**WHEREAS**, Owner has developed certain Design-Build Criteria for the Project, and requires a design-build contractor design and construction the following:

The primary scope of work at Lebanon Community Pool involves addressing: Decking and gutter systems, including replacing piping and drains, and plaster and tile for both lap pool and warm pool.

Owners' minimum requirements have been set forth in Division 0-1 contained in the RFP/RFQ Documents. The proposal is to include all associated accessories to complete the work:

- Demolish current deck and gutter. Approx. three (3') feet around perimeter of Lap Pool and Warm Pool, including dividing wall
- Replace current gutter system with stainless steel gutter
- Replace concrete decking with broom finish concrete and concrete fill around stainless gutter
- Replace current main drains with wall mounted drains
- Run new piping from main drains and gutter into surge tank
- Run new return piping into Lap Pool and Warm pool
- Plaster and waterline tile

**WHEREAS**, Owner requires final completion of the Project and full and unrestricted use and occupation of the Facility and grounds within no later than 5:00 PM PST, DATE.

**WHEREAS**, Owner requires a Design-Build Contractor (DBC) to perform all design and construction work necessary for completion of the Project within the time specified and in accordance with Owner's Design-Build Criteria and other terms and conditions of the Contract described herein; and

**WHEREAS**, the Design-Build Contractor ("DBC") is prepared to complete such work within the time allotted and under the terms and conditions set forth in the Contract described herein.

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

## AGREEMENT

### ARTICLE 1

#### GENERAL PROVISIONS

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

**1.2 Contract and Contract Documents.** The agreement between the Parties pertaining to the Project (the "Contract") consists of this document entitled "Design-Build Agreement" and sometimes referred to as "the Agreement," and the 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** This Contract is intended to reflect the entire understanding of the Parties as to their respective rights and responsibilities concerning the subject matter hereof. There are no understandings, agreements, representations or inducements, oral or written, not incorporated herein. The Contract shall become effective on the date on which every Party has signed this Design-Build Agreement (the "Effective Date").

**1.4 Defined Terms.** Unless defined in this Section 1.4 or elsewhere in the body of this Design-Build Agreement, capitalized terms in the Contract Documents 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"** 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.
- 1.4.4 "Construction Services"** means all services identified in Section 2.3 of this Agreement, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.4.5 "Consultants"** mean individuals performing design and professional services for the Design-Build Contractor on the Project with the approval of Owner.
- 1.4.6 "Contract Time"** means the amount of time allowed under the Contract to complete the Work or any portion of the Work, and established in the Owner-approved Project Schedule.
- 1.4.7 "Design-Build Agreement" or "Agreement"** means this document entitled, "Design-Build Agreement," excluding exhibits and material incorporated herein by reference.
- 1.4.8 "Design-Build Contractor" or "DBC"** is named above and means the "Contractor" wherever that term is used in the Contract Documents.
- 1.4.9 "Design-Build Contractor's Representative" or "DBC Representative"** means the individual identified in writing by the Design-Build Contractor to act on behalf of the

Design-Build Contractor for this Project, and to give and receive all notices and communications required under the Contract.

- 1.4.10 “Design-Build Criteria”** means the Owner’s Minimum Requirements in the Request for Proposals, as stated on the first page of this Agreement.
- 1.4.11 “Design Services”** means all services identified in Section 2.2 of this Design-Build Agreement, as more fully described in the Design-Build Criteria and elsewhere in the Contract Documents.
- 1.4.12 “Early Work”** shall mean Construction Services authorized by Change Order that the parties agree should be performed in advance of Owner’s final approval of the Schematic 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 Owner’s final approval of the Schematic 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 Section 00600, as modified and included in 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 **Lebanon Community School**.
- 1.4.15 “General Contractor”** means the entity responsible for performing and managing the Construction Services for the Design-Build Contractor.
- 1.4.16 “Guaranteed Maximum Price” or “GMP”** is the amount stated above labeled as such and means the total price for the construction portion of the Project including 1) the cost to complete Construction Documents (final design) beyond Schematic design; 2) the total actual cost to construct the Project; and 3) a contingency amount that the DBC believes should be available to cover changes.
- 1.4.17 “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.
- 1.4.18 “Notice to Proceed (Construction)”** means the Owner’s written directive to the DBC to proceed with Construction Services (other than those authorized by an Early Work Change Order).
- 1.4.19 “Notice to Proceed (Design)”** means the Owner’s written directive to the DBC to initiate the Schematic Design Phase and to perform those Design Services necessary to prepare and produce the Schematic Design Work Product
- 1.4.20 “Owner”** means the Lebanon Community Schools.
- 1.4.21 “Owner’s Representative” or “HMK COMPANY”** means Harlan McKay Company LLC. Notwithstanding any other term or provision in any of the Contract Documents, HMK Company shall perform all functions and obligations ascribed to an Architect or Engineer by the Contract Documents when such Architect or Engineer would be retained directly by the Owner, 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. HMK Company is not a licensed architect or a registered engineer, and nothing herein or in any of the Contract Documents shall be deemed to require or allow HMK Company 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 Subject to those limitations, the terms “Architect” and “Engineer” as used in the Contract Documents shall be deemed to be amended automatically to read “Owner’s Representative.”

- 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 **“Plans and Specifications”** means the construction plans and specifications ready for submission for permitting and approved in writing by Owner.
- 1.4.24 **“Proposal”** means the DBC’s offer to perform Services in response to the RFP.
- 1.4.25 **“Record Documents”** mean the As-Built Plans, 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 document issued by Owner entitled “Request for Qualifications and Request for Proposals” for the Project, dated April 16, 2025.
- 1.4.27 **“Schematic Design”** means the preliminary design development to be used as the basis for the Schematic Design Work Product to be provided by DBC to Owner pursuant to Section 5.3 of this Design Build Agreement.
- 1.4.28 **“Schematic Design Fee”** is the amount stated above labeled as such, which is a maximum and not a fixed fee, and is defined in Section 5.2 of this Agreement.
- 1.4.29 **“Schematic Design Phase”** means the period of time during which the DBC shall perform all Schematic Design Services.
- 1.4.30 **“Schematic Design Work Product”** means the written submission to Owner by DBC, including the Supporting Documents, in accordance with Section 5.3 of this Agreement.
- 1.4.31 **“Scope of Work”** includes the Design-Build Criteria, and all Work reasonably inferable therefrom. When DBC is developing the Schematic Design Work Product and the Construction Documents, DBC shall conform the Schematic 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 Contract, portions of which are sometimes herein designated as either “Design Services” or “Construction Services.”
- 1.4.33 **“Supporting Documents”** is defined in Section 5.3 of this Agreement.
- 1.4.34 **“Value Engineering”** means alterations in design, materials, methods, finishes, or techniques jointly agreed upon by Owner and the Design-Build Contractor regarding the design or construction of the Project and resulting in cost savings, improved efficiency, or sustainability.



## **ARTICLE 2**

### **DESIGN AND CONSTRUCTION SERVICES**

**2.1 General Standards for the Work.** Concerning the general standards and terms of performance for all Design Services identified in Section 2.2 of this Design-Build Agreement and all Construction

Services identified in Section 2.3 of this Design-Build Agreement, the Parties agree as follows:

**2.1.1** All Services constituting the practice of architecture shall be provided by a duly qualified and Oregon-licensed architect either employed by the Design-Build Contractor or hired by the Design-Build Contractor 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 Design-Build Contractor or hired by the Design-Build Contractor to act as a Consultant. Because the expertise of the Design-Build Contractor's designated architect and engineer was a material factor in Owner's selection of the Design-Build Contractor, the Design-Build Contractor agrees that it shall not substitute its architect or engineer without Owner's prior written consent. The Design-Build Contractor also agrees to support Owner's efforts to create a collaborative and cooperative team between the Design-Build Contractor, its design professionals and Consultants, and Owner's Representative. The Design-Build Contractor, however, shall remain solely liable to Owner for proper completion and timely delivery of all Design Services required under the Contract.

**2.1.2** The Design-Build Contractor 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 mutual execution of this Agreement, the Design-Build Contractor shall submit for Owner'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 Owner's review and for approval of submittals by the Authorities. Once Owner has accepted it, the Design-Build Contractor shall not exceed the time limits established in the Design Schedule.

Within seven (7) Days after Owner accepts the Design Schedule, the Design-Build Contractor shall submit for Owner's review the detailed and finalized schedule for the performance of the Construction Services (the "Construction Schedule"). Once Owner has accepted it, the Design-Build Contractor 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 become Contract Documents and shall automatically be incorporated into the Contract upon their acceptance by Owner.

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

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



1. The roles of the personnel for the Owner, 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 Contract Documents, 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 the Owner.

**2.1.6** Subsequent to the pre-design conference, the Design-Build Contractor shall meet with the Owner at least once each week for the duration of the 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 Design-Build Contractor 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 Contract Documents, 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 Design-Build Contractor shall submit to Owner a comprehensive list of:
  - a. matters that require resolution,
  - b. matters that require Owner'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** The Owner's review or approval of, and response to, any of the matters presented at Owner/Design-Build Contractor meetings shall not relieve the Design-Build Contractor 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 Design-Build Contractor of its complete and exclusive control over the means, methods, and sequences for work execution.

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

**2.2.1** The Construction Documents: The Design-Build Contractor shall provide such Plans and Specifications as may be necessary that comply with and implement the Design-Build Criteria and Legal Requirements, and shall provide Plans and Specifications based on the approved Schematic 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 Design-Build Contractor 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 Design-Build Contractor shall provide Owner 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 Contract Documents and all Legal Requirements. Any deviation from the specified materials and/or manufacturers requires the submission to and approval by Owner.
- (b) Both the Schematic Design Work Product and the Plans and Specifications shall be subject to the Owner's prior written review and approval. After review and approval of the Schematic Design Work Product and prior to review of the Plans and Specifications by Owner and issuance of the Notice to Proceed (Construction) by Owner, the Design-Build Contractor 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 Owner, and any modifications required for compliance with all Legal Requirements and the Design-Build Criteria. Design-Build Contractor shall cause the resulting final Construction Document submittal 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 Design-Build Contractor shall provide Owner with an analysis of Legal Requirements, including a code analysis pertaining to the Project, by the date established in the Design Schedule.
- (d) The Design-Build Contractor shall provide Owner with copies of Construction Documents as they are completed during construction, as well as the Record Drawings following completion of construction.

**2.2.2** The Design-Build Contractor shall provide professional services, which constitute the practice of architecture and engineering. Such services include the following:

- (a) In consultation with Owner, 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 Owner, 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 Schematic Design documents for Owner's approval;
- (d) Submission to Owner 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 of the technical requirements necessary to implement the 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, mechanical, plumbing 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 the City of Lebanon, or appropriate local jurisdiction during the permit process.

**2.2.3** During development of the Schematic Design Work Product and prior to final approval of such documents, the Design-Build Contractor and Owner 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 Owner. Approval of the Schematic Design Work Product and finalization of Construction Documents shall not preclude further identification and implementation by the Design-Build Contractor and Owner of additional Value Engineering options during construction.

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

**2.3.1** The Design-Build Contractor 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 Design-Build Contractor shall be responsible for maintaining the Construction Schedule and for any failure to carry out the Work in accordance with the Contract Documents. The Design-Build Contractor 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 Design-Build Contractor's responsibility to provide the Construction Services under the Contract commences with the issuance of the Notice to Proceed (Construction) and terminates upon the Design-Build Contractor's completion of all obligations set forth in the Contract, including those post-construction responsibilities enumerated in the RFP and in the General Conditions.
- 2.3.3** The Design-Build Contractor shall supervise and administer all construction activities in performance of the Work.
- 2.3.4** The Design-Build Contractor's duties, responsibilities and scope of authority as set forth in the Contract cannot be modified except by written Change Order executed by the Parties hereto, and including all required approvals by Owner's board, if any.
- 2.3.5** Except as may be otherwise provided in the Contract Documents, Owner shall direct all its communications to the DBC regarding Construction Services through the DBC's Representative.
- 2.3.6** At its own expense, the DBC shall correct Construction Services which do not conform to the Design-Build Criteria, Construction Documents, or Legal Requirements.
- 2.3.7** The DBC warrants to Owner 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 Contract Documents.
- 2.3.8** 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.
- 2.3.9** 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.
- 2.3.10** The DBC shall prepare Change Order Proposals for Owner's approval and execution, and shall obtain Owner's written approval, in the form of a Change Order or Owner's directive for any changes, whether minor or material, in the design or construction of the Project after the Construction Documents have been approved.
- 2.3.11** The Record Documents shall be delivered to Owner on compact disk 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 Owner for the accuracy of the information upon which the Record Documents are based.
- 2.3.12** 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.

**2.3.13** The DBC shall take reasonable precautions to ensure the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- 1) employees of Owner, employees of the Design-Build Contractor, and other persons who may be present on the Project Site or in a position to be affected by construction activities;
- 2) the Project Site, and all materials and equipment to be incorporated into the Project; and
- 3) other property at or adjacent to the Project Site.

**2.3.14** 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 Contract. This subparagraph shall in no way affect the applicability or diminish the scope of coverage of the bonds and insurance required under Subsections G.2 and G.3 of the General Conditions or Article 10 of this Agreement or diminish the scope or allocation of responsibility or the indemnity provided for under Subsection G.1 of the General Conditions.

**2.3.15** In addition to the requirements of Section B.3 of the Supplemental General Conditions, 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 Agreement, shall apply to the work of the subcontractor."

**2.3.16 Construction Documents.** Upon notification of Owner's approval of the Schematic 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:

**2.3.17** Comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) latest version, as interpreted and required by the City of Lebanon or appropriate local jurisdiction during the permit process;

**2.3.18** Comply with all applicable Laws; and

**2.3.19** 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 Design-Build Contractor shall:

**2.4.1** Attend a pre-construction conference at a site to be determined by Owner;

**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 Owner, update CAD drawings and submit the appropriate compact disks - compatible with most current AutoCAD version, along with digital copy in PDF Format on flash drive, 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 the 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 the Contract, Owner will reimburse the Design-Build Contractor for expenses associated with Design Services under the following circumstances, and no other:

- 2.5.1** Owner requests reproduction of documents in excess of the number required herein, reimbursement to be limited to the Design-Build Contractor's reproduction costs only.
- 2.5.2** Owner requests Design Services in excess of those identified or necessarily implied in the Contract Documents, but within the scope of the solicitation. Provided, however, Owner and the Design-Build Contractor 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 Design-Build Contractor is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.

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

**3.3 Design-Build Contractor's Representative.** The DBC's Representative shall be the DBC's exclusive representative to Owner with respect to the Contract, unless the DBC designates another representative and notifies Owner in writing of that designation. Provided, the DBC's Representative shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld. All communications from the DBC to Owner 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 Design-Build Contractor'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 Owner, which shall not be unreasonably withheld. If the DBC intends to substitute key personnel, a request must be given to Owner at least 30 Days prior to the intended time of substitution. When Owner 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 Design-Build Contractor'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 Owner. If the DBC intends to substitute a Consultant, it must submit a request to Owner at least 30 Days



prior to the intended time of substitution and include the identity of the proposed replacement. Owner shall be deemed to have consented to the employment of such Consultant unless Owner objects to the employment of such Consultant in writing within such 30-Day period; *provided that* if Owner subsequently discovers information which leads Owner to reasonably believe a Consultant selected by the DBC and approved by Owner is unqualified to perform the Work, the DBC shall replace such Consultant upon the request of Owner.

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

**4.2 Completion of Project.** The DBC will complete the Schematic Design Work Product and Construction Documents (the permit set) on or before the dates set therefor in the Project Schedule accepted by Owner. 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 Owner.

**4.3 Notices to Proceed.** Owner 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; Liquidated Damages.** All time limits stated in the Contract Documents are of the essence. No provision of the Contract shall preclude recovery of actual damages for delay by the DBC. It is agreed that any delay in the completion of the Project would cause the Owner to suffer substantial damages for loss of use, 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 \$1,000.00 per Day, which sum the DBC will pay to the Owner (or which the Owner may withhold or collect from the DBC) for each Day of delay in achieving Substantial Completion of the Project that is not excused by an extension of time granted by the Owner under the provisions of this Contract. This amount is estimated by Owner and the DBC to be a reasonable approximation of the Owner's actual damages for loss of use in the event of a delay and is agreed to as liquidated damages and not as a penalty. The DBC's obligation to pay liquidated damages for the applicable period shall not require Owner's establishment of any actual damages for such delay. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation additional Owner costs related to the Project, and the right to collect consequential damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the DBC from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, or other damages that are not expressly covered by liquidated damages.

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



## **ARTICLE 5**

### **CONTRACT SUM AND GUARANTEED MAXIMUM PRICE**

**5.1 Contract Sum.** If a Notice to Proceed (Construction) is issued, Owner shall pay the DBC, as payment for the Work, the "Contract Sum" which shall equal the sum of the Schematic Design Fee plus the actual Cost of the Work, but for this purpose the actual Cost of the Work shall not exceed the GMP. The "Cost of the Work" is defined in Article 7. Cost of the Work in excess of the GMP shall be paid by the DBC without reimbursement from Owner. Changes to the GMP shall only be authorized by Change Order that includes any necessary approvals by Owner, including any approvals by Owner's board.

**5.2 Schematic Design Fee.** The Schematic Design Fee shall be payable to DBC on a cost reimbursement basis up to a maximum sum of **AMOUNT 00/100 (\$XXX,XXX)** which shall cover constructability review, value engineering, cost estimating, identification of cost effective energy conservation measures, program refinement, schematic design development, and all other services necessary to develop the Schematic Design Work Product, as described in this Article 5. If the DBC's costs for provision of Design Services during the Schematic Design Phase exceed the maximum Schematic Design Fee, the DBC shall pay such additional cost without reimbursement. The DBC shall not be entitled to any DBC Fee upon the Schematic Design Fee. Owner shall pay the Schematic Design Fee on a cost-reimbursement basis with each application for payment up to the time the Notice to Proceed (Construction) is issued. No Schematic Design Fee or other fee, compensation or reimbursement for Schematic Design Services shall be payable to DBC after issuance of the Notice to Proceed (Construction).

**5.3 The Schematic Design Work Product.** Notwithstanding any other provision in this Design-Build Agreement or any of the Contract Documents, the GMP shall be the sum stated as the "GUARANTEED MAXIMUM PRICE" immediately after the designation of parties in the Introduction of this Agreement, unless an adjustment in the GMP is approved in writing by Owner as provided herein.

**5.3.1** The DBC shall deliver to Owner all Supporting Documents and any proposed adjustment in the GMP (collectively "the Schematic Design Work Product") at the completion of the Schematic Design Phase. If any actual subcontract Offers are available at the completion of the Schematic Design Phase, the DBC shall include those subcontract Offers in the Schematic 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 Schematic Design Work Product is prepared, the DBC shall provide, in the Schematic Design Work Product, for further development of the Plans and Specifications by the design team that is consistent with 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, shall be incorporated by Change Order.

**5.3.3** The DBC shall include with the Schematic 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 the Contract, which were used in preparation of the Schematic 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 Schematic Design Work Product to supplement the information contained in the Plans and Specifications.
- (d) Any proposed adjustment in the GMP, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the associated fees that comprise the GMP 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 the Owner to review the Schematic Design Work Product and the written statement of its basis. If the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly notify the DBC, who shall make appropriate adjustments to the Schematic Design Work Product, its basis or both.

**5.3.5** Prior to the Owner's acceptance of the DBC's Plans and Specifications 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 GMP shall include the DBC's contingency, a sum established by the DBC for the DBC's exclusive use to cover additional development of Plans and Specifications and unforeseen costs which are properly reimbursable as Cost of the Work but which are not the basis for a Change Order.

**5.3.7** The DBC shall work with the Owner 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 Schematic Design Work Product that the GMP includes the entire cost of all components and systems required for a complete, fully functional facility.

**5.3.9** In developing the Schematic Design Work Product, the DBC shall include and identify such contingencies within the GMP as may be necessary to pay for unforeseen elements that are required for a complete, fully functional facility.

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

**5.5 Renegotiation of GMP.** If Owner is satisfied with the non-monetary aspects of the Schematic Design Work Product but believes that a deductive adjustment in the GMP is appropriate, Owner shall so notify the DBC, and the DBC covenants to negotiate in good faith with Owner to attempt to reach

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

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

**5.7 Owner Savings.** If the final Cost of the Work (as defined in Article 5.1), is less than the GMP, the savings shall accrue 100% to the Owner.

**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 the Owner 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 Schematic Design Work Product. The DBC shall include with its report any underlying documentation requested by

Owner 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 Owner-controlled contingency fund to be held within the GMP to pay for additional costs arising from

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

## **ARTICLE 6**

### **CHANGES IN THE WORK**

**6.1 Price Adjustments.** Adjustments to the GMP due to changes in the Work shall be determined in accordance with Section C.3.3 of the Supplemental General Conditions.

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

- (1) in the event of Scope Changes or
- (2) as otherwise expressly provided in this 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 Scope Change so that it can be determined if an adjustment to the GMP is warranted.

- 6.2.2** Changes to the GMP shall be initiated by written notice by one party to the other ("GMP Change Request"). The DBC shall deliver any such GMP Change Request to the Owner's Authorized Representative within seven (7) calendar days after becoming aware of any Scope Change if, in the DBC's opinion, it constitutes grounds for adjustment of the GMP. Any GMP Change Request shall include a proposal as to the appropriate GMP adjustment with respect to the Scope Change at issue.
- 6.2.3** The DBC shall submit its GMP Change Requests as soon as possible, and the DBC shall not be entitled to claim a GMP increase unless the DBC submitted a GMP Change Request to Owner'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 Scope Change; or
  - (c) in any event, prior to the DBC's signing of a Change Order for the Scope Change.
- 6.2.4** Owner may, at any time, submit a GMP Change Request requesting a reduction of the GMP, which shall include Owner's basis for such request, which may include, for example, reduction of the DBC's Contingency after further development of the Plans and Specifications that form the basis for the Schematic Design Work Product, or unused Allowances.
- 6.2.5** The DBC shall work with the Owner to reconcile all differences in the DBC's GMP Change Request within seven days from the date of submission of the GMP Change Request. "Reconciled" means that the DBC and the Owner have verified that their assumptions about the various categories are the same, and that identifies the reason for differences in the GMP Change Request and the Owner's position. The DBC shall submit the Reconciled GMP Change Request to Owner, which submission shall be a condition to any DBC claim for a GMP increase.
- 6.2.6** If the Reconciled GMP Change Request is not acceptable to Owner, the DBC agrees to work with the Owner to provide a GMP Change Request that is acceptable to Owner.
- 6.2.7** The DBC agrees to make all records, calculations, drawings and similar items relating to GMP Change Request available to Owner and to allow Owner access and opportunity to view such documents at DBC's offices. Upon Owner's reasonable notice, the DBC shall deliver two (2) copies of such documents to Owner at any regular meeting or at the Site.
- 6.2.8** GMP increases, if any, shall not exceed the increased Cost of the Work arising from the Scope Change (whether based on agreed fixed pricing, or the estimated Cost of the Work increase based on cost-reimbursable pricing), reconciled in accordance with the above provisions, as arising from the incident justifying the GMP increase, plus or minus the Design Build Fee applicable to such change in the Cost of the Work.
- 6.2.9** Except as provided in this Article 6.2, adjustments to the GMP shall be reconciled in accordance with Section C.3.3 of the Supplemental General Conditions.

**6.3 Execution by Owner.** Only the duly authorized personnel of the Owner 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 Work and specifically identified in this Article 7, and only to the extent that they are directly related to the Project.

#### **7.2 Labor Costs.**

**7.2.1** Wages of construction workers directly employed by the DBC to perform the construction of the Work at the site.

**7.2.2** Wages and salaries of the DBC's supervisory and administrative personnel

(1) stationed at the site, or

(2) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work with Owner, or otherwise engaged and off the site when specifically related to the Project, in each case under this clause; and

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

**7.2.3** Fringe benefit costs paid or incurred by the DBC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining contracts and, for personnel not covered by such contracts, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Articles 7.2.1 and 7.2.2.

#### **7.3 Subcontract Costs.**

**7.3.1** 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 Owner.

#### **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 Owner at the completion of the Work or, at Owner'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 Owner as a deduction from the Cost of the Work.

#### **7.5 Costs of Miscellaneous Equipment and Other Items; Equipment Rental Charges.**

**7.5.1** Costs, including transportation, installation, maintenance, dismantling and removal, of



materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by 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 Owner at Owner's option may require that the DBC deliver to Owner (at no charge) at the end of the Project any of such items procured for this Project. Cost for items previously used by the DBC shall mean fair market value. The DBC shall charge no additional administrative or other mark-up for purchased items. The DBC shall document all small tools purchased for the Project via invoices in monthly billing and shall document the disposition of small tools which have an individual price that exceeds \$100. A copy of such disposition log shall accompany the payment application whenever these items are included in the application.

**7.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the DBC at the site and are rented from others, and cost of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed 100% of the rental rates published from time to time by the American Association of Equipment Dealers in effect at the time of rental, shall not exceed acquisition costs, and for individual items exceeding \$500.00, will be subject to Owner's prior approval. The DBC shall deliver to Owner a list of published rates from time to time at Owner's request. For all items rented or leased, the DBC shall charge Owner only the rental charge incurred by the DBC with no additional administrative or other mark-up. The DBC shall make efforts and use its best skills and judgment to procure equipment in the most expeditious and economical manner consistent with the interest of the Owner. Efforts shall include, but not be limited to, providing Owner with a rent/buy analysis so that Owner may elect for DBC to procure the item in lieu of rental if the facility at issue is expected to be rented for six months or longer. Such rent/buy analysis shall include, where available, a leasing rate commensurate with the expected term of rental of the facility at issue. Inclusions to and exclusions from rental rates will be made in accordance with American Association of Equipment Dealer standards.

**7.5.3** Costs of removal of debris from the site.

**7.5.4** Cost of long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Work.

**7.5.5** That portion of the travel and subsistence expenses of the DBC's personnel determined by Owner 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 Owner.

## **7.6 Other Costs.**

**7.6.1** That portion of premiums for insurance directly attributable to this Contract for builders all/risk insurance (but excluding premiums for professional liability/errors & omissions insurance related to the Project design, as well as comprehensive general liability, automobile and worker's compensation coverage that is not Project Specific), and payment and performance bonds as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner).

**7.6.2** Sales use or similar excise taxes imposed by a governmental authority which are directly related to the Work and for which the DBC is liable; provided, only those taxes which are in effect or which have been enacted as of the Effective Date are reimbursable Cost of

the Work, and provided there shall be no reimbursement of Corporate Activity Tax.

**7.6.3** Fees and assessments for the building permit and for other permits, licenses and inspections for which the DBC is required by the Contract Documents to pay.

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

**7.7 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 except as allowed under Articles 7.2.2 and 7.2.3.

**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, except as provided in Article 7.5.2

**8.1.6** Any cost associated with the Project not specifically and expressly described in Article 7.

**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 Schematic Design Phase Services.

**8.1.12** Travel, lodging, food, or relocation expenses, except as provided in Section 7.5.5.

**8.1.13** Bonuses, profit sharing, incentive compensation, or other discretionary payments.

**8.1.14** Costs of preparation of, and response to inquiries relating to, Construction Manager's required reports to Owner.

**8.1.15** Corporate Activity Tax.



**8.1.16** Any costs that would cause the GMP to be exceeded.

## **ARTICLE 9**

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

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

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

## **ARTICLE 10**

### **INSURANCE PROVISIONS**

During the term of the 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 or by Section G.3 of the General Conditions 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 Contract.

**10.3 Builder's All-Risk/Direct Risk of Physical Damage.** During the term of the 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 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 Owner as an additional insured, as their interests may appear (the DBC shall provide Owner 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 Owner 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 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 the District as "owner." Professional Liability insurance to be provided shall have a combined single limit of not less than \$1,000,000 per occurrence/\$1,000,000 annual aggregate. The Design-Build Contractor shall execute such documents and agreements and obtain such insurer consents, endorsements, and acknowledgments as shall be necessary to provide Owner with direct access to the coverage afforded

under each professional liability/errors & omissions policy covering the Design Services to be performed pursuant to the Contract.

**10.6 Certificate of Insurance.** Prior to the signature by Owner to this Design Build Agreement, the DBC shall furnish to Owner Certificates of Insurance as evidence of the insurance coverage required under the 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 Owner 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 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 Owner is listed additional Insureds with respect to the DBC's Services/Work to be provided under the Contract. The DBC shall provide Owner with copies of all policy endorsements/amendments confirming the status of Owner as additional Insured, as required by the Contract.

**10.8 Prohibited Terms.** No insurance required by the 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 the Owner.
- (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 the Owner.

**10.9 Owner-Contractor Relationship.** Further, notwithstanding anything to the contrary, the DBC agrees that it has a special relationship with the Owner because, in part, of the design-build obligations of the DBC, and that the Owner is placing its potential monetary liability in the Contractor's hands and has authorized the DBC to exercise independent judgment on behalf of the Owner. DBC shall exercise such own independent judgment to further the Owner's economic interests and Owner shall, without limiting the Owner'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 Owner provide entire copies of all insurance policies it is obligated to provide or procure hereunder to the Owner, including but not limited to all renewals and all policies on which the Owner 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 the Owner need not review or reference the actual policy because the certificate certifies that the all coverages required by this contract are provided. Further, by receiving such copies, Owner shall never be estopped or deemed to have waived any claim if such policies do not provide any of the required coverages.

**10.11 Duration of Coverage.** The DBC shall maintain all of the required insurance coverage's in full force and effect for ten (10) years 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 the Owner against the DBC arising from or related to the 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 Agreement.

## **ARTICLE 11**

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

**11.1 Ownership of Contract Documents.** Copies of Plans, Specifications, reports, or other materials required elsewhere in the Contract to be delivered to Owner, including without limitation materials identified as "instruments of service" in any agreement between the DBC and any of its Consultants or Subcontractors ("Work Product") shall be the exclusive property of Owner. Owner and the DBC intend that such Work Product be deemed "work made for hire," for which Owner 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 Owner 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 Owner 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 Owner may reasonably request in order to fully vest such rights in Owner. 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.

**11.3 Release.** In the event the Owner, Owner's representative or any other party uses the Work Product on other projects, without the professional involvement of the DBC and any of its consultants, then the Owner shall release the DBC and any of its Consultants from any claims and damages resulting from such use except to the extent such claims and damages result from the negligence of the DBC and any of its Consultants or any person or entity employed by or affiliated therewith in performing their services in pursuant to this Agreement.

## **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 Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's Representative shall be afforded reasonable and regular access to the DBC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract, and the DBC shall preserve these for a period of ten (10) years after final payment, or until the resolution of any dispute, if any, involving the Contract, or for such longer period as may be required by law.

## **ARTICLE 13**

### **PAYMENTS**

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

- 13.1.1 Design Services.** On the first (1st) day of each month following execution of the Design Build Agreement, the DBC shall submit its application for payment to Owner 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 Owner on the first day of the following calendar month. Owner will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt 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 Owner 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 Owner on the first day of the following calendar month. Owner will make payment of the amount rightfully due and payable to the DBC within 30 Days of receipt of each application for payment.
- 13.1.3 Retainage.** Owner 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 the Owner'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 the Owner for payment by the 10<sup>th</sup> of the month.

## **ARTICLE 14**

### **TERMINATION OR SUSPENSION**

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

**14.1 Owner's Termination.**

- 14.1.1** For Convenience. Owner may terminate the Contract without penalty for convenience pursuant to Section J.5 of the General Conditions; payment in such case shall be governed by Section E of the General Conditions. However, the amount to be paid to the DBC under the General Conditions shall not in any case exceed the Contract Price. In the event Owner terminates for cause, Owner may, at any time at Owner's election, convert such termination to a termination for convenience.
- 14.1.2** Funding/Authority. Owner may terminate the Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as Owner may establish in such notice, upon:
- (a) Owner'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 Contract are prohibited or Owner is prohibited from paying for such Design Services or Construction Services from the planned funding source.
- 14.1.3** For Cause. Owner may terminate the Contract, in whole or in part, immediately upon notice to the DBC, or at such later date as Owner 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 Contract, fails to perform the Design Services or Construction Services under the Contract within the time specified herein or any extension thereof, or so fails to perform the Design Services or Construction Services as to endanger the DBC's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.
- 14.1.4** Owner 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 Owner's intention to make all payments due hereunder if funds are legally available therefor and, in that regard, Owner represents and warrants to the Design-Build Contractor that the Contract is important to Owner's efficient and economic operation. If, despite the above, Owner 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, Owner may terminate the 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 Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Contract, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner 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 Termination of Contract by the Design-Build Contractor.**



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

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

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

The Contract Documents 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 the Owner's or Owner'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.

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

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

This Design Build Agreement, including the Design-Build Criteria.

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

Construction Plans and Specifications to be prepared by DBC as approved by Owner

Project Schedule

RFP

Supplemental General Conditions

General Conditions

Remaining documents incorporated into the Contract by reference.

## **ARTICLE 15**

### **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 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 Owner’s Representative.

## **ARTICLE 16**

### **MISCELLANEOUS PROVISIONS**

**16.1 Governing Law; Jurisdiction; Venue.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively “Claim”) between Owner and the DBC that arises from or relates to the Contract shall be brought and conducted solely and exclusively within Linn 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 the District of Oregon. In no event shall this Section be construed as a waiver by Owner of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. DBC, by execution of this Design Build Agreement, consents to the Personal Jurisdiction of such courts.

**16.2 Notices.** Except as otherwise expressly provided in the Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, e-mail, or mailing the same, postage prepaid, to the DBC or Owner at the addresses or numbers provided on the first page of this Design Build Agreement or as either party may hereafter indicate pursuant to this Section. Any notice to Owner must be given simultaneously to Owner’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 Owner, such facsimile transmission must be confirmed by telephone notice to Owner’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 Owner, such e-mail message must be confirmed by telephone notice to the Owner’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.

**16.3 Disclosure of Tax Identification Number.** The DBC shall provide its Federal Tax ID number to Owner. 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.

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

**16.5 Waiver.** The failure of Owner to enforce any provision of the Contract shall not constitute a waiver by Owner of that provision, or any other provision of the Contract.

**16.6 Media Contacts; Confidentiality.** The DBC shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner’s prior written authorization. Furthermore, except in the case where Owner specifically authorizes disclosure of Owner’s





confidential information in writing, the DBC shall maintain the confidentiality of Owner'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 Owner's information.

**16.7 Conflict of Interest.** Except with Owner'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.

**16.8 Merger Clause.** THE CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED THEREIN. THE TERMS OF THE 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 OWNER 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 CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED THEREIN. DESIGN-BUILDER, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THE CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THE 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 AGREEMENT** is executed in three originals, of which one is to be delivered to the Design-Build Contractor, one to Owner and one to the Owners Representative. By signature on this Design Build Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the Design-Build Contractor and has authority and knowledge regarding the payment of taxes, and that the Design-Build Contractor 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

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

**Contractor**

**LEBANON COMMUNITY SCHOOLS**

**By:**

\_\_\_\_\_

**By:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Federal ID #:**

\_\_\_\_\_

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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 the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner'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 the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 in administering the Contract, including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.
- A.1.3 CLAIM**, means a demand or assertion by Contractor seeking, as a matter of right, adjustment or interpretation of 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 the Owner 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 State of Oregon Public Improvement Agreement Form, 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 Contract to complete any portion of the Work as reflected in the project schedule.
- A.1.9 CONTRACTOR**, means the Person awarded the Contract for the Work contemplated.
- A.1.10 DAYS**, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.
- 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 Work; and the additional costs of field personnel directly attributable to the Work.

- A.1.12 FINAL COMPLETION**, means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding corrective 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 Contract who is asserting Force Majeure.
- A.1.14 NOTICE TO PROCEED**, means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.
- 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 Contractor'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 Contractor'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 OWNER**, means the LEBANON COMMUNITY SCHOOLS.
- A.1.19 OWNER'S AUTHORIZED REPRESENTATIVE**, means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.
- 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 Work to be done under the Contract.
- A.1.22 PUNCHLIST**, means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.
- 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 Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

- A.1.24 SOLICITATION DOCUMENT**, means an invitation to bid or request for proposal or request for quotes.
- 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 Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.
- A.1.26 SUBCONTRACTOR**, means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.
- A.1.27 SUBSTANTIAL COMPLETION**, means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose, and the other requirements for Substantial Completion set forth in the Contract have been fulfilled. 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 the Owner's Authorized Representative. The decision of the Owner'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 Contract.
- A.1.30 WORK**, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

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

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

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

- A.3.1** Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:



1. 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 Agreement, 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 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 the Owner or Owner's Authorized Representative's interpretation in writing.

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

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

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

**A.4.1** It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated

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

- A.4.2** Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.
- A.4.3** Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.
- A.4.4** If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Contractor does not concur with the decision of the Owner's Authorized Representative regarding time and cost impacts of the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

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

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

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

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

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

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

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

**B.1.1** The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents

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

**B.1.2** The Owner's Authorized Representative will visit the site at intervals appropriate to the stage of the Contractor's operations

- (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed,
- (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and
- (3) to determine in general if Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

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

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

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

**B.2.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give

specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

- B.2.2** The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3** The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

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

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

### **B.4 PERMITS**

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

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

- B.5.1** Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable:
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. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS Chapter 279C, which are incorporated by reference herein.
- B.5.2** Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (a) Contractor 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) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3** Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS Chapter 701 under this 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 Contractor.
- B.5.4** Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS Chapter 671, performing Work under this 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 Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

**B.6 SUPERINTENDENT**

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

**B.7 INSPECTION**

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

**B.7.2** Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

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

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

**B.7.4** As required by the Contract Documents, Work done, or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.

**B.7.5** If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

**B.7.6** If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

**B.7.7** When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their



interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

## **B.8 SEVERABILITY**

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

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

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

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

## **B.10 WAIVER**

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

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

**B.11.1** Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless

- (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or
- (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

**B.11.2** At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

**B.11.3** Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and bound to perform in

accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

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

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

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

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

## **B.14 OTHER CONTRACTS**

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

## **B.15 GOVERNING LAW**

This 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 ARBITRATION**

**B.16.1** Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively through arbitration as provided herein. In no event shall this section be construed as a waiver by the Owner on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE ARBITRATION SERVICE REFERENCED IN THIS SECTION B.16.

**B.16.2** The arbitration, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland ("Arbitration Service") in accordance with the applicable Arbitration Rules of the Arbitration Service in effect on the date of the Agreement, except there shall be a single arbitrator. The Arbitration shall be conducted in the place where the Project is located, unless another location is

mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

- B.16.3** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.
- B.16.4** The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- B.16.5** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.
- B.16.6** Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner, or with Owner approval the Design-Build Contractor, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- B.16.7** Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner, or with Owner approval the Design-Build Contractor, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- B.16.8** Design-Build Contractor's agreements with its subconsultants and subcontractors and of any tier and material suppliers shall require such parties, upon demand by Owner, to participate in the mediation and (if applicable) arbitration herein, in accordance with the procedures set forth in this Agreement, and to be bound thereby.
- B.16.9** With respect to any claim for allegedly defective work or warranty item asserted by or against Owner, or its assignee, successor or subrogee, through court action or arbitration ("Defect Claims"), Owner shall have the right to join Design-Build Contractor in the proceeding. In the event a proceeding under this Agreement is pending relating to a matter of common fact in the Defect Claim proceeding, the Owner may stay such proceeding under this Agreement pending resolution of the Defect Claim proceeding to the extent allowed by law.
- B.16.10** The Design-Build Contractor may bring no action on Claims unless such Claims have been properly raised and considered in the procedures of Section 15. All unresolved Claims of the Contractor shall be waived and released unless the Design-Build Contractor has complied with the time limits of the Contract Documents, and demand for arbitration is served and filed within the earlier of (a) 120 days after the Date of

Substantial Completion approved in writing by the Owner or (b) 60 days after Final Completion. This requirement cannot be waived except by an explicit written waiver signed by the Owner.

- B.16.11** Attorneys' Fees. In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law. The prevailing party shall be the party receiving the net award/determined as to each separate claim.

## **B.17 ALLOWANCES**

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

- B.17.2** Unless otherwise provided in the Contract Documents:

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

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

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

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

**B.18.2** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

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

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

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

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

- (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 Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

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

## **B.19 SUBSTITUTIONS**

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product, represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise, certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent, and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

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

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

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

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

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

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



**SECTION C WAGES AND LABOR****C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to the Contract Documents.

**C.2 PAYROLL CERTIFICATION AND FEE REQUIREMENTS**

- C.2.1** In accordance with ORS 279C.845, the Contractor and every subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the subcontractor that the Contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor 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 Contractor or subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

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

- C.2.2** Pursuant to ORS 279C.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, the District must pay a fee to the Bureau of Labor and Industries equaling 1/10 of 1% of the Contract price, however, the fee shall not be less than \$250 nor more than \$7,500, regardless of the 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 Contract, whichever come 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  
1800 SW 1<sup>st</sup> Ave #500  
Portland, Oregon 97201

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

- C.3.1** Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:
- C.3.1.1** Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.
- C.3.1.2** Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

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

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

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

- (a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:
  - (1) A written employee drug testing policy,
  - (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
  - (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

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

- (b) Contractor shall require each Subcontractor providing labor for the project to:
  - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
  - (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

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

**C.3.2.1** If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

**C.3.2.2** If the Contractor 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 Owner or a contractor, the contractor or first-tier Subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (3)(a) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). The rate of interest charged to the Contractor 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 Owner or from the Contractor, 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 Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5)(b). Every contract related to this Contract shall contain a similar clause.

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

- (a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Owner under the Contract;
- (b) An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Owner, 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. Contractor or first-tier Subcontractor shall not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty 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 Contractor'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 Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

**C.4 PAYMENT FOR MEDICAL CARE**

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

**C.5 HOURS OF LABOR**

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

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

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

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

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

**SECTION D CHANGES IN THE WORK****D.1 CHANGES IN WORK**

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

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

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

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, Owner reserves the right to unilaterally impose a deductive change and to self perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

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

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

- (a) Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the additional Work.
- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In

fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

- (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Contractor's or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Contractor's or Subcontractor's own forces:

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

- D.1.4** Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred.

The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If Contractor and Owner's Authorized Representative cannot agree on additional compensation or additional Contract Time needed to perform Change Order Work, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

- D.1.5** If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the



Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) days after receipt of the Change Order by Contractor.

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

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

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

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

## **D.2 DELAYS**

**D.2.1** Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

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

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

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

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

- (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, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

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

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays described in Section D.2.1.2 (a) and (b).
- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d), but not additional compensation.

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

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

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

**D.3.2** The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension

requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

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

- (1) request additional supporting information from the Contractor;
- (2) inform the Contractor and Owner in writing of the time required for adequate review and response;
- (3) reject the Claim in whole or in part and identify the reasons for rejection;
- (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or
- (5) propose an alternate resolution.

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

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

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

**D.3.6** The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good

faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

**D.3.7** Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any Claim of Contractor 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 the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

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

## **SECTION E PAYMENTS**

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

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

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

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



exceed thirty (30) percent. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

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

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

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

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

- (a) The request for stored material shall be submitted at least thirty (30) days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a bonded warehouse and Owner's Authorized Representative shall be granted the right to access the material for the purpose of removal or inspection at any time during the Contract Period.
- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.



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

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

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

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

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, 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 the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner's Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

- E.2.6** Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.
- E.2.7** The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.
- E.2.8** If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

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

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

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

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

### **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** Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.
- E.5.1.2** In accordance with the provisions of ORS 279C.560, HB 4006, OAR 125-249-0820 and OAR 137-049-0820, Contractor may request in writing:
- (a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds and securities of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner;

- (b) that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Contractor; or
- (c) that the Owner accept from Contractor the deposit of a surety bond for the benefit of Owner, in a form required by statute, 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 the Owner has accepted the Contractor's election of option (a), (b), or (c), Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Contractor elects option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

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

**E.5.1.4** In accordance with the provisions of ORS 279C.560(4), Owner shall reduce the amount of the retainage if the Contractor notifies the controller of the Owner that the Contractor has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner's Authorized Representative, bonds and securities of equal value of a kind approved by the Owner's Authorized Representative.

**E.5.1.5** Contractor agrees that if Contractor 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 Owner's retainage from any progress payment due to Contractor.

## **E.6 FINAL PAYMENT**

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

**E.6.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative

- (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied,
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner,
- (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- (4) consent of surety, if any, to final payment and
- (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

## **SECTION F JOB SITE CONDITIONS**

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

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

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

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

**F.2.2** Contractor shall take all necessary precautions for the safety of all personnel on the job site and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury

to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

- F.2.3** Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall report, immediately in writing, to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.
- F.2.4** Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.
- F.2.5** Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.
- F.2.6** In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

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

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

### **F.4 CLEANING UP**

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

### **F.5 ENVIRONMENTAL CONTAMINATION**

- F.5.1** Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses,

damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

**F.5.1.1** Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

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

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

**F.5.2** Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities 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, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.



- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

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

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

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

## **F.7 FORCE MAJEURE**

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

**SECTION G INDEMNITY, BONDING, AND INSURANCE****G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

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

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

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

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

**G.2 PERFORMANCE AND PAYMENT SECURITY**

**G.2.1** When the Contract Price is \$100,000 or more the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than \$100,000, if required by the Contract Documents.

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

### **G.3 INSURANCE**

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

- G.3.2** Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the

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

#### **G.3.3 Builder's Risk Insurance:**

- G.3.3.1** Builder's Risk: During the term of this Contract, for new construction the Contractor 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 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 the Owner, the Contractor and its Subcontractors as their interests may appear.

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

- G.3.3.3** Such insurance shall be maintained until Owner has occupied the facility.

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

**G.3.4 Liability Insurance:**

**G.3.4.1 Commercial General Liability:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the State. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this 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:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$2,000,000.00, 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 Contract for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Contractor 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 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 Contract shall include Lebanon Community Schools, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract. If Contractor cannot obtain an insurer to name Lebanon Community Schools Additional Insureds, Contractor shall obtain at Contractor's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming Lebanon Community Schools as Named Insureds with not less than a \$1,000,000.00 limit per occurrence. This policy must be kept in effect for 12 months following Final Completion. As evidence of coverage, Contractor shall furnish the actual policy to Owner 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 Contractor or its insurer(s) to the Owner. 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 Lebanon Community Schools.

**G.3.7 Certificate(s) of Insurance:** As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner 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 Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the

requirements of applicable Oregon law and are approved by the Owner. 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 the Owner. To the extent Certificates of Insurance contain words to the effect that Contractor shall "endeavor to send notice of cancellation" or similar language, Contractor 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 Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior to issuance of a Notice to Proceed and is subject to Owner's approval.

## **SECTION H SCHEDULE OF WORK**

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

- H.1.1 Time is of the essence on this Contract.** The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) days of Notice to Proceed, unless directed otherwise.
- H.1.2** Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.
- H.1.3** The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete the Work or any part of it after the date described in Section H.1.2 above.

### **H.2 SCHEDULE**

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

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

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



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

## **SECTION I CORRECTION OF WORK**

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

The Contractor warrants to the Owner that (i) all design work product including the Plans and Specifications shall meet or exceed the Design-Build Criteria, shall comply with applicable laws and codes, shall meet the applicable standard of care and shall be free of defects ("Design Warranty"), and (ii) materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents ("Construction Warranty"). Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than sixty (60) days for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, without affecting Contractor's obligations Owner may perform such work and Contractor shall reimburse Owner all costs of the same within thirty (30) days after demand.

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

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

The Owner shall give Contractor notice of Construction Warranty defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, without affecting Contractor's obligations, Owner may perform such work and Contractor shall reimburse Owner 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 Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.
- I.2.4** The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.
- I.2.5** Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.
- I.2.6** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not final payment has been made.

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

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

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

### **J.2 CONTRACTOR'S RESPONSIBILITIES**

- J.2.1** During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to,

protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

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

### **J.3 COMPENSATION FOR SUSPENSION**

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

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

- J.4.1** The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) days written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:
- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
  - (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;
  - (c) If a receiver should be appointed on account of Contractor's insolvency;
  - (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
  - (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
  - (f) If Contractor is otherwise in material breach of any part of the Contract.
- J.4.2** At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

**J.5 TERMINATION FOR CONVENIENCE**

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

**J.6 ACTION UPON TERMINATION**

- J.6.1** Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.
- J.6.2** As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

**SECTION K CONTRACT CLOSE OUT****K.1 RECORD DOCUMENTS**

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

**K.2 OPERATION AND MAINTENANCE MANUALS**

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

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

As a condition of periodic and final payments, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner. The final affidavit/release shall state that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary

claims and indebtedness have been paid, and that there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

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

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

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

#### **K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

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

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

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

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

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

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

**K.9 OTHER CONTRACTOR RESPONSIBILITIES**

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

**K.10 SURVIVAL**

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

**SECTION L LEGAL RELATIONS & RESPONSIBILITIES****L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract, and Section L.5 includes a nonexclusive list of laws that Design-Build Contractor must comply with in accordance with OAR 137-049-0200.

**L.2 FEDERAL AGENCIES**

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

Bureau of Indian Affairs

Bureau of Mines

Bureau of Reclamation

Geological Survey

Minerals Management Service

U.S. Fish and Wildlife Service

Labor, Department of

Mine Safety and Health Administration

Occupation Safety and Health Administration

Transportation, Department of

Federal Highway Administration

Water Resources Council

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

Administrative Services, Department of

Agriculture, Department of

Soil and Water Conservation Commission

Columbia River Gorge Commission

Energy, Department of

Environmental Quality, Department of

Fish and Wildlife, Department of

Forestry, Department of

Geology and Mineral Industries, Department of

Human Resources, Department of

Consumer and Business Services, Department of

Land Conservation and Development Commission

Parks and Recreation, Department of

State Lands, Division of

Water Resources, Department of



**L.4 LOCAL AGENCIES**

City Councils

County Courts

County Commissioner, Board of

Design Commissions

Historical Preservation Commission

Planning Commissions

**L.5 LAWS, RULES AND REGULATIONS**

**L.5.1** The following laws, rules and regulations are incorporated herein by this reference whether or not specifically mentioned above. The Contractor shall comply and cause its subcontractors to comply with the obligations therein:

(A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));

(B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));

(C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;

(D) If the Contract calls for lawn or landscape maintenance, a condition requiring Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));

(E) Payment of claims by public officers (ORS 279C.515(1));

(F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;

(G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));

(H) Hours of labor in compliance with ORS 279C.520;

(I) Environmental and natural resources regulations (ORS 279C.525);

(J) Payment for medical care and attention to employees (ORS 279C.530(1));

(K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));

(L) Maximum hours, holidays and overtime (ORS 279C.540);

- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(2));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (R) Contractor's relations with subcontractors (ORS 279C.580);
- (S) Notice of claim (ORS 279C.605);
- (T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
- (U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) 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 Contract.

**END OF SECTION**

**A. DESIGN-BUILD CONTRACTOR'S CONSTRUCTION SCHEDULES**

- A.1 The Design-Build Contractor (DBC), promptly and within twenty (20) days after being awarded the Contract, shall prepare and submit for the Owner's and Owner's Representative's information a preliminary schedule for the Work consistent with the with the requirements of the Contract Documents. Prior to submitting its first Application for Payment, the Design-Build Contractor, after consultation with its subcontractors, shall submit one (1) electronic PDF copy of the Project schedule consistent with the requirements of the Contract Documents. The schedule shall not exceed time limits current under the 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 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 the Owner.
- A.2 The Design-Build Contractor shall prepare and keep current, for review by Owner's Representative, a schedule of submittals which is coordinated with the Project schedule and allows the Owner and the Owner's Representative reasonable time to review in accordance with the Specifications and submittal procedures. The Design-Build Contractor should expect a response time of approximately ten (10) days from the Owner's Representative. Neither the Owner's Representative nor the Owner can represent or guarantee response times from governmental authorities, such as permitting agencies. Neither the Design-Build Contractor's preparation nor the Owner's Representative's receipt or review shall modify the Design-Build Contractor's responsibility to make required submittals or to do so in a timely manner.
- A.3 The Design-Build Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and accepted by the Owner and shall promptly notify the Owner of any deviations from the schedule. Should the Design-Build Contractor fail to comply with the schedule, or in the Owner's opinion fail, refuse, or neglect to supply a sufficient amount of labor, materials, equipment or services in the prosecution of the Work, the Owner shall have the right to direct the Design-Build Contractor to furnish such additional labor, materials, equipment or services to comply with the schedule, and all costs thereof shall be borne by the Design-Build Contractor and shall not increase the GMP. All schedules submitted shall be in the form acceptable to the Owner 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 the Owner's use and no float shall be used without the Owner's written approval. The Design-Build Contractor shall at all times monitor the progress of the Work for conformance with the CPM schedule accepted by the Owner and shall promptly advise the Owner and the Owner's Representative of any impacts or delays or potential impacts or delays. The Design-Build Contractor 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 the Owner or subcontractors of a separate contractor.

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

The Design-Build Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Owner's Representative makes reasonable objection to such substitute. The Design-Build Contractor shall require bids and contracts from Subcontractors to be

submitted in a format which specifically sets for the amount of any credit that the Owner will ultimately be the benefit of, if all or any portion of any Subcontractor's Work is deleted. In no instance shall the Owner be obligated to pay any fee, profit or overheard for Work which is deleted from any Subcontractor's scope or from that of the Design-Build Contractor.

### **B.3 SUBCONTRACTUAL RELATIONS**

The Contractor shall be responsible to the Owner for acts and omissions of the Contractor'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 Contractor 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 Design-Build Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Build Contractor by terms of the Contract Documents, and to assume toward the Design-Build Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner or Owner's Representative. Each subcontract agreement shall preserve and protect the rights of the Owner and Owner'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 Design-Build Contractor shall require each Subcontractor to enter into similar agreements with other Subcontractors, either of the same tier or of a different tier. The Design-Build Contractor 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 Design-Build Contractor to the Owner or to another contractor should Owner so elect and consent, provided that:

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

## **C. CHANGES IN THE WORK**

### **C.1 GENERAL**

C.1.1 Changes in the Work may be accomplished after execution of the Design-Build Agreement, and without invalidating the 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 the Owner, Design-Build Contractor and Owner's Representative; a Construction Change Directive requires agreement by the Owner and Owner's Representative and may or may not be agreed to by the Design-Build Contractor; an order for a minor change in the Work may be issued by the Owner's Representative alone.
- C.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Design-Build Contractor 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, the Owner may request the Design-Build Contractor 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 Design-Build Contractor 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 Design-Build Contractor and major Subcontractors. If the Design-Build Contractor fails to respond within this time, the Owner may withhold some or all of a progress payment otherwise due until the tardy proposal is received. If the Owner accepts the proposal in writing, the Owner will be immediately bound, the change will be included in a future Change Order, and the change in the Work shall commence expeditiously. The Owner may reject the proposal, in which case the Owner 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. The Owner's Representative may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

## C.2 CHANGE ORDERS

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

Work within the general scope of the 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 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 Design-Build Contractor shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Design-Build Contractor shall advise the Owner's Representative in writing of the Design-Build Contractor'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 Design-Build Contractor'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 Design-Build Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Design-Build Contractor's disagreement shall not relieve the Design-Build Contractor of its obligations to comply promptly with any written notice issued by the Owner or the Owner's Representative. The adjustment shall then be determined by the Owner's Representative in accordance with the provisions of the Contract Documents.

C.3.5 A Construction Change Directive signed by the Design-Build Contractor indicates the agreement of the Design-Build Contractor 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 Design-Build Contractor 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 Design-Build Contractor shall keep and present, itemized in the categories of Section C.5 and in such form as the Owner'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 the Owner'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 the Owner's Representative (subject to appeal through the dispute resolution procedure of Section D), of the items in Section



C.5. Unless otherwise agreed in writing by the Owner, 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. The Owner's Representative and the Owner may communicate directly with Subcontractors concerning costs of any Work included in a Construction Change Directive. If the Design-Build Contractor disagrees with the method for the adjustment in the Contract Time, the adjustment and method shall be referred to the Owner'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.3.7 The amount of credit to be allowed by the Design-Build Contractor to the Owner 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 the Owner'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 Design-Build Contractor adds a reservation of rights that has not been initialed by the Owner, 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 the Owner.

C.3.9 When the Owner and Design-Build Contractor agree with the determination made by the Owner'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 The Owner's Representative and the Owner 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 affected by written order and shall be binding on the Owner and Design-Build Contractor. The Design-Build Contractor shall carry out any and all such written orders promptly. If at the option of the Owner, the Owner's Representative exercises any authority, right(s) or duty(ies) stated anywhere in this Agreement or any other Contract Document as an authority, right or duty the Owner's Representative may perform, the Design-Build Contractor 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.5.1 The total cost of any changed Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:

- (a) Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved by the Owner.
- (b) Fringe benefits: Fringe benefits paid by the Design-Build Contractor 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 Design-Build Contractor 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 the Owner's Representative. Discounts and rebates based on prompt payment may be included, however, if the Design-Build Contractor offers but the Owner 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 Design Build Contractor 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 the Owner'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) Design-Build Contractors' liability insurance: The cost (expressed as a percentage) of any changes in the Design-Build Contractor'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 Design-Build Contractor's premium for the Design-Build Contractor's bond arising directly from the changed Work.

Upon request, the Design-Build Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

C.5.5 Subcontractor costs: These are payments the Design-Build Contractor 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 the Owner 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 Design-Build Contractor shall receive 15% of the cost of any materials supplied or work properly performed by the Design-Build Contractor's own forces.
- (b) The Design-Build Contractor 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 Design-Build Contractor 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 Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Build Contractor arising out of or

relating to the 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 Agreement, Claims by Design-Build Contractor must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Owner's Representative and the other party, in accordance with Section D.3 of the General Conditions.
- D.1.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as otherwise provided in the Design-Build Agreement, the Design-Build Contractor shall proceed diligently with performance of the Contract and the Owner 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 Design-Build Contractor shall give written notice to the Owner and the Owner's Representative promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner's Representative may promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Build Contractor'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 the Owner'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 Contract is justified, the Owner's Representative may so notify the Owner and Design-Build Contractor in writing, stating the reasons. Any claim of the Design-Build Contractor arising from the Owner's Representative's determination shall be made in accordance with the dispute resolution procedures set forth in the General Conditions. 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 Design-Build Contractor's prior visits, observations, tests or for which the Design-Build Contractor assumed any responsibility to verify.
- D.1.5 Claims for Additional Cost. If the Design-Build Contractor 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 Design-Build Contractor believes additional cost is involved for reasons including, but not limited to
- (1) a written interpretation from the Owner's Representative,
  - (2) an order by the Owner to stop the Work where the Design-Build Contractor was not at fault,

- (3) a written order for a minor change in the Work issued by the Owner's Representative,
- (4) failure of payment by the Owner,
- (5) termination of the Contract by the Owner,
- (6) Owner'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 Design-Build Contractor 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 the Owner, the Design-Build Contractor, a Subcontractor of any tier, or the Owner's Representative, or anyone acting on behalf of any of them, the Design-Build Contractor 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 Design-Build Contractor, a Subcontractor of any tier, or anyone acting on behalf of any of them, the Design-Build Contractor 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 Contractor) at the time the adverse weather conditions occurred. Neither the Contract Time nor the Contract Sum will be adjusted for normal inclement weather. The Design-Build Contractor shall be entitled to a change in the Contract Time only if the Design-Build Contractor can substantiate to the reasonable satisfaction of the Owner and Owner'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 the Owner 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 Design-Build Contractor 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 Owner and Owner's Representative within a reasonable time not exceeding 14 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 the Owner or the Design-Build Contractor, the applicable unit prices shall be equitably adjusted.

- D.1.10 Time is of the Essence. The parties agree that the Owner shall be entitled to all of its actual damages for each day or partial day that each improvement is not completed and occupied as required by this Agreement, or to liquidated damages as provided in the Design-Build Agreement, whichever amount is greater.

## D.2 RESOLUTION OF CLAIMS AND DISPUTES

- D.2.1 In an effort to reduce the incidence and costs to all parties of extended disputes, all Claims, direct or indirect, arising out of, or relating to, the Contract Documents or the breach thereof, except claims which have been waived under the terms of the Contract Documents, shall be decided exclusively by the alternative dispute resolution procedure stated in the General Conditions unless the parties mutually agree in writing otherwise.

- D.2.2 The Design-Build Contractor shall submit a written notice of any Claim to the Owner and the Owner's Representative within the applicable number of days of the occurrence of the event giving rise to such Claim (14 days unless a different period is specified in the Design-Build Agreement) and shall include a clear description of the event leading to or causing the Claim. The Design-Build Contractor shall submit a written Claim as provided herein within 30 days of the notice (unless a different period is specified in the Design-Build Agreement). Claims shall include a clear description of the Claim and any proposed change in the Contract Sum (showing all components and calculations) and/or Contract Time (showing cause of and analysis of the resultant delay in the critical path) resulting from the Claim and shall provide data fully supporting the Claim. Failure to properly submit the notice of Claim or the written Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Design-Build Contractor (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 Design-Build Contractor.

- D.2.3 Upon receipt of a Claim against the Design-Build Contractor or at any time thereafter, the Owner's Representative or the Owner 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 Design-Build Contractor's default, the Owner's Representative or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

## D.3 MEDIATION

- D.3.1 Any Claim arising out of or relating to the 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 mutually agree otherwise shall be in accordance with the Arbitration Service rules currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the Arbitration Service. 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 Linn 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 Design-Build Contractor and the Owner'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 the Owner's Representative or Subcontractors, such parties' representatives, also with the authority to settle the Claim, shall also attend the mediation session. Unless the Owner and the Design-Build Contractor mutually agree in writing otherwise, all unresolved Claims shall be considered at a single mediation session which shall occur prior to Final Acceptance by the Owner.

**D.4 ADDITIONAL CLAIM TERMS**

D.4.1 The Design-Build Contractor may bring no action on Claims unless such Claims have been properly raised and considered in accordance with the procedures required by the Contract. All unresolved Claims of the Design-Build Contractor shall be deemed waived and released unless the Design-Build Contractor has complied with the time limits of the Contract Documents, and demand for arbitration is served and filed not later than the Claim time period, and in any event even if within such period not later than the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner and the Design-Build Contractor. 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 Design-Build Contractor nor a Subcontractor of any tier, whether claiming under a lien statute or otherwise, shall be entitled to attorneys' fees directly or indirectly from the Owner or the Owner's Representative.

**END OF SECTION**



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