



REQUEST FOR PROPOSALS #FP-2021-01F

EOU GRAND STAIRCASE DESIGN BUILD SERVICES

ISSUE DATE: OCTOBER 16, 2023

SITE WALK & MEETING:

Monday, October 23, 2023 at 10:00 AM
Construction Entrance of Inlow Hall, EOU Campus
One University Blvd, La Grande, OR 97850

PROPOSAL DUE DATE & TIME

Monday, November 6, 2023 at 1:00 PM via email
submission to bids@eou.edu

REQUEST FOR CLARIFICATIONS OR CHANGE OR PROTEST BID DOCUMENTS:

Must be received in writing by October 30, 2023 5:00 PM

PROJECT NUMBER 2021-01-FP

Eastern Oregon University is seeking Design Build Proposals for the Project described below pursuant to this REQUEST FOR PROPOSALS (RFP). By submitting a Proposal, the Offer represents that they have carefully read the terms and conditions of this RFP, including all attachments and addenda, and agrees to be bound by them.

Contract Administrator

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It is the Offeror's responsibility to continue to monitor the ORPU.org website for Addenda. Failure to acknowledge any Addenda in the Transmittal Letter may cause your Bid to be considered non-responsive.

[EOU Policy 3.15.01 – Procurement and Contracting of Goods and Services](#) govern this solicitation unless otherwise referenced in this or stated.

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1. SECTION 1: GENERAL INFORMATION

1.1. General

This RFP is a single step procurement process for the Project. This RFP incorporates the terms, definitions, and schedules and any Addenda issued thereto; however, to the extent that the RFP conflicts with and any Addenda thereto, the RFP shall prevail and shall be considered an addendum to previously published information. Offerors must submit their Proposals pursuant to the schedule set forth in this RFP. This RFP is not an offer to enter into a contract but is merely a solicitation of entities interested in submitting a Proposal to the Owner for the Project. Exhibits remain current and valid.

1.2. Project Funding

This project is funded by the American Rescue Plan Act (ARPA). ARPA required contract provision are provided in Section 11.2 in Article 11 of the **Agreement between the Owner and Design Builder**.

1.3. Design Build Project Schedule

The following is a revised Procurement Schedule. The Owner reserves the right to modify the schedule via Addenda.

Table 1.1 –Procurement Schedule

Date	Activity
October 16, 2023	Issue RFP
October 23, 2023	Site Walk & Meeting
October 30, 2023	Last Date to Submit Proposed Changes to Contract or ATC's
October 31, 2023	Last Date to Issue Owner Addenda
November 6, 2023	Written & Price Proposals Due Date
November 8, 2023	Interviews with Short Listed Offerors, if necessary
November 15, 2023	Notification of Preferred Offeror
November 15, 2023	Notice to Proceed for Construction Document Development, GMP Development and Demolition Services
February 29, 2024	Construction Documents & Permitting Completed
March 15, 2024	GMP Amendment Issued for Reconstruction
November 30, 2024	Project Completion

1.4. Owner's Program

1.4.1. Attachment A to this RFP is the Owner's Program. The Owner's Program describes the Project scope and contains the Owner's Project goals and objectives as well as the performance criteria for the Project. This Owner's Program will become part of the Contract Documents as defined in Section 2.1 of the **Agreement between the Owner and Design-Builder** and part of the Basis of Design Documents in Section 1.2.3 of the **Owner's General Conditions of Contract Between**

Owner and Design-Builder. All submittals from Offerors must be consistent with and designed to achieve the criteria set forth in the Owner's Program.

1.4.2. Offerors shall be entitled to reasonably rely on the accuracy of the information represented in the design or prescriptive specifications set forth in the RFP and their compatibility with other information set forth in Owner's Program for the purposes of developing the Offerors Written and Price Proposals. However, the selected Design-Builder will be required to perform an independent evaluation of all information provided by the Owner, including but not limited to such design or prescriptive specifications to validate the information and prototype information provided by the Owner. Further, regardless of the inclusion of design or prescriptive specifications, the selected Design-Builder shall remain responsible for meeting the performance requirements of the Project, including but not limited to the requirements that the Project meet the Basis of Design Documents as well as all applicable Legal Requirements. Provided the selected Design-Builder complies with all requirements set forth in the Contract, including but not limited to those regarding notice of claims to the Owner and identification of differing site conditions, and only to the extent that the Contract allows the selected Design-Builder to an adjustment in the Contract Price and Project Schedule, the selected Design-Builder will be entitled to an adjustment in the Contract Price and Project Schedule. Such adjustment shall be limited to the extent Design-Builder's actual documented costs or the critical path of the Project Schedule have been adversely impacted by materially inaccurate design or prescriptive specifications that are inconsistent with meeting the Project's performance requirements.

1.4.3. The Owner assumes no responsibility for conclusions or interpretations made by the Offeror based on the information provided by the Owner. Oral statements made by the Owner representatives are not binding on the Owner unless the Owner confirms the statements and changes by written Addendum to the RFP. In the event of a conflict between codes, industry standards and the Owner's Program, the most stringent requirements shall apply and Offerors shall submit their Proposals based on the most stringent requirements.

1.5. Contract Documents

Attachment B to this RFP is the proposed Contract forms between the Owner and Design-Builder. The Contract includes the following documents:

1.5.1. Agreement Between Owner and Design-Builder – Cost Plus Fee with an Option for a Guaranteed Maximum Price.

1.5.1.1. Exhibit A of the Agreement – Design Builders Insurance Requirements.

1.5.2. Owner's Program, Basis of Design Documents: Plans, Specifications, Design Review Comments, electronic Revit files, topographic survey (including data and TIN). Refer to Attachment C

2. SECTION 2: RFP PROCUREMENT PROCESS

To be responsive to the RFP, Offerors must submit responsive Proposals and participate fully in the following RFP Procurement Process

2.1. Non-Mandatory Site Walk Through

2.1.1. The Non-Mandatory Site Walk Through will be held on October 23, 2023 at 10:00AM and will begin at EOU Facilities Office

2.1.2. Offeror will have an opportunity to view the following aspects of the Project during the Mandatory Site Walk Through.

- Review of the existing Grand Staircase site/location.
- Site/location ingress and egress.
- Possible lay-down, stock piling area, and haul off routes.
- Other items that each Offeror may need to observe to develop an Alternative/Design Technical Concept, Written Proposal, and Price Proposal.

2.1.3. Offerors should be prepared to do the following at the Site Walk Through.

- Walk/drive/travel from the Facilities Office area to the existing Grand Staircase

2.1.4. Offerors may have up to three (3) people at the Site Walk Through.

2.1.5. Offerors must follow the procedures set forth herein prior to attending the Site Walk Through. EOU does not have any security or badging requirements.

2.1.6. Offerors may ask questions during the Site Walk Through; however, Offerors may not rely on any information provided orally during the Mandatory Site Walk Through unless such information is provided in writing as an Addendum to this RFP.

2.2. Proposed Changes in the Design Build Contract Documents

2.2.1. Submission of a Proposal pursuant to this procurement is a representation by the Offeror that it has reviewed the Contract Documents, including but not limited to the Owner's Program, and the Offeror is willing to perform the Work set forth in the Owner's Program and generally overall for the terms set forth in the Contract Documents.

2.2.2. Prior to the date set forth in the schedule, Offerors may propose changes to the Contract Documents. The Owner's goals in requesting such proposed changes are: i). to discover provisions in the Contract Documents that unnecessarily increase the cost of the Project, not adequately protect risks via insurance or sureties, uncover contract provisions that are not insurable, or complicate the performance of the Work, and ii). to identify contract provisions and commercial terms the Design-Builder intends to negotiate if selected. Therefore, with every proposed change, Offerors must include the following information:

- The document and section number;
- Proposed alternate language;
- An explanation for the requested change; and
- Any impact the requested change has on any commercial term in the Contract Documents or Owner's Program.

2.2.3. The Owner reserves the right to reject any and all proposed changes and to accept any proposed change to the Contract Documents via Addendum to the RFP. The Owner also reserves the right to negotiate such provisions with the selected Offeror. If a suggested change is rejected, the selected Offeror may negotiate the same change during contract negotiations without bias.

2.3. Alternative Technical or Management Concepts

- 2.3.1.** Prior to the date set forth in the schedule, Offerors may confidentially submit Alternative Technical or Management Concepts (“Alternative Concepts” or “ATCs”) that are not consistent with the Owner’s Program. The Owner’s goal in requesting Alternative Concepts is to encourage innovation by Offerors to better meet the Owner’s Project Objectives
- 2.3.2.** ATCs should meet or exceed the performance requirements set forth in the Owner’s Program; however, Offerors may submit ATCs that contain solutions that are substantially equal to the performance requirements set forth in the Owner’s Program if the solution provides a guaranteed cost savings for the Project. ATCs that merely cut a portion of the scope of Work or provide a lesser standard of performance or materials are not considered ATCs, unless the Offeror can fully explain how the Design Build Budget limitations affect the ATC while still obtaining building occupancy and limit disruptions to future improvements as future funding may become available.
- 2.3.3.** Offerors must identify the portion of the Owner’s Program that is inconsistent with the solution presented in the ATC. By identifying any cost savings as a result of the Owner’s acceptance of the ATC, the Offeror guarantees the cost savings to the Owner if the ATC is accepted.
- 2.3.4.** The Owner reserves the right to consider Alternative Concepts and accept or reject such Alternative Concepts in whole or in part. If the Owner accepts an Alternative Concept that is contrary to the Owner’s Program, the Owner shall issue an Addendum to this RFP altering that portion of the RFP that is inconsistent with the accepted Alternative Concept. Such Addenda will be issued prior to the date set forth in the schedule.
- 2.3.5.** The Owner will make an independent determination with respect to the extent to which the Alternative Concept is consistent with the Owner’s Program as well as any changes necessary to the Owner’s Program to allow the Owner to accept the Alternative Concept. Notwithstanding any consideration, acceptance, or rejection of an Alternative Concept as part of the procurement, the Owner reserves the right to consider such Alternative Concepts during the performance of the Project and amend the Owner’s Program to include the Alternative Concept.
- 2.3.6.** If an Offeror claims that any portion of a submitted Alternative Concept is proprietary or confidential information, the Offeror shall identify that portion of the Alternative Concept that it considers to be proprietary. The Owner will consider the request to keep such information proprietary but reserves the right to make its own determination regarding the proprietary nature of the Alternative Concept. If the Owner disagrees with the Offerors designation of the information as proprietary, the Owner will provide written notice to the Offeror and an opportunity to withdraw or modify the proprietary information prior to disclosure.

2.4. Interviews

Interviews may be conducted after the Offerors submit the Written and Price Proposal and at the sole discretion of the Owner. The purpose of the interviews will be to clarify the Written Proposal, Price Proposal, if necessary, to better determine differentiation between Offerors. The Owner may select to interview, one, two, or all three Offerors.

- 2.4.1.** The Owner may conduct an individual Interview with each Short Listed Offeror. The Interview shall be less than 1.5 hours and will occur after the submission of the Written Proposal.

2.4.2. The Owner reserves the right to ask questions of the Offeror, including but not limited to questions regarding the Offeror's, Written Proposal, and /or Price Proposal.

2.4.3. The proposed Design-Build Team will have an opportunity during the Interview to take a maximum of 30 minutes to provide a presentation to the Owner regarding its Written Proposal and a maximum of 20 minutes for the Price Proposal.

2.4.4. Offerors should include in the presentation an explanation of the design solution and how the design solution meets or exceeds the Owner's Project Goals and the definition of Design Excellence for this Project.

2.4.5. Any presentations at the Interview should be made available to the Owner in electronic format.

2.4.6. Offerors will have access to the following equipment for their presentations: Projector and Screen. Although the Offeror can bring their own projector.

2.5. Written Proposal

Offerors shall submit the Written Proposal pursuant to the instructions set forth herein at or before the time set forth in the schedule. Offerors are encouraged to focus on the concerns of the Owner as set forth below in submitting their Proposal.

2.6. Price Proposal

2.6.1. Offerors will submit Price Proposals pursuant to the Procurement Schedule and pursuant to the instructions set forth in Attachment C. Price Proposals shall be based on the RFP and Contract Documents as amended by Addenda. The intent of the Price Proposal is to:

- Establish a Fee to conduct all services necessary for the Design-Builder to furnish complete the Construction Documents and to develop an Guaranteed Maximum Price (GMP) Proposal for reinstallation.
- Establish and estimate to remove the Grand Staircase in accordance with the Archaeological permit, Basis of Design Documents, and with limited disruption to the adjacent building renovation and residential stakeholders. The removal may be contracted via an Early Work Amendment is necessary.

Offerors shall keep all elements of their Price Proposals open for ninety (90) days after submission of their Price Proposal. Offerors shall be entitled to rely on the written information provided by the Owner in the RFP and any Addenda in developing their Price Proposal; however, the selected Design-Builder will be required to validate all Project information as set forth in the Contract Documents. By submitting a Price Proposal, the Offeror represents and warrants that it will enter into a negotiated Agreement set forth in Attachment B.

2.7. Selection of Preferred Offeror

2.7.1. The Owner will evaluate each Offeror pursuant to the selection criteria and weights established herein. The Owner will determine the Preferred Offeror and notify all Offerors in writing of its determination. The "Preferred Offeror" is the Offeror that the Owner determines achieves the apparent "Best RFP Ranking."

2.7.2. At the Owner's discretion, the Owner will initiate negotiations with the Preferred Offeror. If the Owner cannot reach agreement with the Preferred Offeror, the Owner shall cease negotiations with

the Preferred Offeror and provided that such negotiations are terminated in writing, shall initiate negotiations with the next ranked Offeror. The Owner shall continue with this process with each such Offeror until it reaches agreement or cancels the procurement. Offerors should not anticipate or expect that any portion of the proposed Contract will be changed or modified. By submitting a Proposal pursuant to the RFP, the Offeror represents and warrants that it will enter into contract negotiations provided by the Owner subject to the terms set forth in its Proposal.

2.8. Selection De-Briefing

2.8.1. All Offerors may request a de-briefing from the Owner with respect to the Procurement; however, the Owner shall conduct no such de-briefings until it has either reached an agreement on the Project or canceled the Procurement.

3. SECTION 3: DOCUMENTATION REQUIREMENTS

3.1. Submittal Process

3.1.1. Offerors must submit the Written Proposal and Price Proposal electronically. Hard copy submittals will not be accepted. Submissions must be delivered through email in searchable PDF format, to Lowann VanLeuven, ProposalsFP@eou.edu, (office 541-962-3020) and must be electronically received by **3:00PM Pacific Time, Monday November 6, 2023**. Email subject line must include the titles listed below for the Written Proposal and Price Proposal.

3.1.2. The Written Proposal and the Price Proposal shall be submitted in separate emails, and the emails shall include the following titles in the subject line, as applicable:

- a. **“Written Proposal: RFP #FP-2021-01F”**
- b. **“Price Proposal: RFP #FP-2021-01F”**

3.1.3. The Written Proposal and the Price Proposal shall be submitted in separate emails, and the emails shall include the following titles in the subject line, as applicable. The Owner will use the time stamp on the submittal e-mail to determine timeliness.

3.1.4. Offerors are responsible for ensuring timely delivery of submittals. Offerors should telephone and confirm electronic receipt of the completed email document(s) before the time and date above. Proposals delayed or lost by email filtering systems or failures, may be considered at EOU's sole discretion.

3.1.5. Formatted in searchable .pdf format.

3.1.6. Late submittals will not be evaluated.

3.2. Evaluation and Ranking of Offerors

In the evaluation and ranking of Offerors, the Owner will consider the information submitted in the Written and Price Proposals as well as the meetings with the Offerors with respect to the evaluation criteria set forth in the RFP. The result of the evaluation will be a comparative ranking of Offerors.

To select and evaluate Offerors, the evaluation criteria will be given the following relative weights:

Table 3.1 – Proposal Scoring

Written Proposal		Total Score Available: 70 Points
	Overall Management Approach	10 points
	Project Controls, Cost Tracking, and GMP Development	15 points
	Collaboration and Integration	5 points
	Project Sequencing & Scheduling	20 points
	Proposed Contract Document/Final Design Approach	10 points
	Previous Project Experience Pertaining to Renovations of Structures on the National Historical Registry	10 points
Price Proposal	See Attachment C	Total Score Available: 30 Points
Interviews, if Necessary		Not Scored

The Price Proposal with the most competitive fees will be awarded the maximum points available. Other Offeror's will receive a score that is calculated by dividing the most competitive fee by their fee and multiplying the result by the total score available. The Owner has the final authority to determine the best interest of EOU and may reject any or all Written/Price Proposals.

3.3. Submittal Format Requirements

All submittals shall comply with the following format requirements:

3.3.1. Organized in accordance with the RFP.

3.3.2. When printed, shall be limited to the page limitation set forth in the instructions for each section.

3.3.3. The only documentation that is not included in the page count is the following:

- a. Cover Letter
- b. Appendices (must be less than 10 pages each appendices). Note that EOU is not interested in marketing material or verbose appendices. Including appendices that do not clearly and concisely enhance the proposal will likely negatively impact the overall Written Proposal.

- c. Table of contents or tabs will not be counted against the page count as long as these items are used exclusively for organization and contain no substantive written or graphic content.

3.3.4. If the page limit is exceeded, the Owner, at its sole discretion, reserves the right to remove pages from the sections of any non-conforming submittals to bring each non-conforming submittal within the page count requirement.

3.3.5. A “page” shall be defined as one single-sided piece of paper that has words, charts, tables, pictures, or graphics. Pages shall be 8.5 x 11 inches, with the exception of two (2) pages, which may be presented in 11 x 17-inch format; however, larger pages may only contain graphics and/or designs and may not be used for an Offeror’s narrative.

3.3.6. The font on any portion of the submittal, including graphics, should be no smaller than 10 point.

3.4. Cover Letter

Offeror’s must include a cover letter that includes the following: (1) name, address, telephone number, and e-mail address for each Proposed Design-Build Team Member. Note that changes to the Proposed Design-Build Team continue to be subject to the and Offerors should include an explanation justifying the changes to the Proposed Design-Build Team. The cover letter shall be a maximum of two (2) pages.

3.5. Written Proposal

The Written Proposal may not be longer than fifty (50) pages. Offerors should focus their discussions in the Written Proposal on their approach to the Project and are encouraged to include and reference insights gained from the Confidential Individual Meetings.

3.5.1. Overall Management Approach

Describe the Offeror’s overall management approach to the Project. In responding to this evaluation factor, Offerors should address the following:

- a. What strategies will the Proposed Design-Build Team employ to achieve a thorough and clear understanding of the Owner’s goals and objectives?
- b. Based on the information provided in the RFP, and Confidential Individual Meetings, what is the Proposed Design-Build Team’s current understanding of the goals and objectives of this Project?
- c. Identify three (3) key challenges to the Project, and for each challenge identified,
 - Propose a strategy to mitigate the potential negative impacts of the challenge.
 - Identify any unique approaches, strengths, and/or differentiating resources (including specific Key Team Members) that will assist the Proposed Design-Build Team to implement the strategy and assist the Owner in achieving its goals.

3.5.1.1. A/E Team Approach.

The Owner recognizes the importance of the entire design-build team, including specialty design-build subcontractors. For those subcontractors and subconsultants not proposed as part of the Design-Build Team,

- a. Describe the Design-Build Team's overall approach to subcontractor and subconsultant procurement for the Project.
- b. Identify the challenges in the selection of subcontractors and subconsultants for the Project and how the Design-Build Team will address those challenges.
- c. If applicable, describe in detail the Design-Build Team's approach to early subcontractor involvement, including proposed design-build and design-assist subcontractors, and identify which scopes of Work are candidates for design-build or design-assist subcontracts.

3.5.1.2. Subcontractor Procurement Approach.

The Owner recognizes the importance of the entire design-build team, including specialty design-build subcontractors. For those subcontractors and subconsultants not proposed as part of the Design-Build Team,

- a. Describe the Design-Build Team's overall approach to subcontractor and subconsultant procurement for the Project.
- b. Identify the challenges in the selection of subcontractors and subconsultants for the Project and how the Design-Build Team will address those challenges.
- c. If applicable, describe in detail the Design-Build Team's approach to early subcontractor involvement, including proposed design-build and design-assist subcontractors, and identify which scopes of Work are candidates for design-build or design-assist subcontracts.

3.5.1.3. Quality Assurance/Quality Control ("QA/QC").

Provide the following information regarding the Proposed Design-Build Team's approach on QA/QC. Include the following information:

- a. The overall approach to both design and construction QA/QC;
- b. The Proposed Design-Build Team's processes and tools to facilitate QA/QC; and
- c. The reporting and functional relationship(s) between the Quality Management personnel and the Proposed Design-Build Team as a whole.

3.5.1.4. Safety.

Describe the Design-Build Team's commitment to safety and what innovations the Team will bring to the Project to enhance safety.

3.5.1.5. Information provided in response to this section of the RFP will be scored based on the following:

- The Proposed Design-Build Team's understanding of the delivery method;
- The degree to which the Proposed Design-Build Team understands the Owner's goals and objectives with respect to the Project; and
- The strength of the Proposed Design-Build Team's management plan for the Project, including not only the specific topics and specialized components outlined in the

RFP but also any other component or element that the Proposed Design-Build Team deems essential to the success of the Project.

3.5.2. Project Controls, Cost Tracking, and GMP Development

3.5.2.1. Describe the Design-Builder's processes and tools for monitoring, reporting, and managing cost, including but not limited to:

- a. Design to budget control and reporting processes.
- b. Scope, cost, and schedule baseline development and management/change control processes and the participation and interaction among the scheduling and estimating teams, project, design, construction, and operations management teams to execute these processes.
- c. Risk management processes and how quantified risk cost and schedule values are factored into the cost and schedule baseline, projected cost and schedule performance, and cash flow reporting.
- d. Cash flow reporting processes and basis for monthly cash flow estimated values.
- e. Process to plan, track, cash flow, and correctly bill per funding requirement
- f. Document control system integration with work breakdown structure and responsibility assignment matrix or organizational structure.
- g. Describe how the Design Builder will craft a solution that we can afford. A solution that fits the Owner's \$4M budget.
- h. The Design Builder's ability and strategy to offset price increases with scope modifications instead of project budget increases. Note: Contract change orders are contractually required to submit potential scope modifications to offset the change order cost, refer to Attachment B.

3.5.2.2. What are the primary challenges with respect to project cost controls on this project and how will those challenges be addressed?

3.5.2.3. Describe the Design-Builder's processes and tools for developing a Guaranteed Maximum Price and addressing such issues as:

- a. The optimum time to establish the GMP and how the GMP will be calculated;
- b. How the Design-Builder proposes to deal with unknown issues such as contingencies, allowances, and escalation factors;
- c. The Design-Builder's conceptual estimating process;
- e. Input from specialty contractors;
- f. The primary challenges in establishing the GMP; and
- g. The differentiating resources of the Proposed Design-Build Team that will meet the challenges of establishing the GMP.

3.5.2.4. The information provided in response to this Section of the RFP will be evaluated based on the following considerations:

- a. The robust nature of the Proposed Design-Build Team's plan for tracking and measuring the metrics for the Project, including but not limited to costs and schedule;
- b. The Proposed Design-Build Team's plan to collaborate in the development and communication of budget, costs, and schedule to the Owner; and
- c. The differentiators outlined by each Offeror regarding their resources & approach

3.5.3. Collaboration and Integration

One of the primary goals for the Project is to create a highly functioning, collaborative, and integrated team as early as possible and to incorporate the Owner's staff and consultants as part of that team.

3.5.3.1. Explain the Design-Build Team's approach to creating a collaborative environment for the Project.

3.5.3.2. Describe how the Design-Build Team will engage the Project Stakeholders and incorporate their input into the Project.

3.5.3.3. Provide the Design-Builder's approach to conflict resolution between the Owner and the Design-Builder and among members of the Design-Build Team.

3.5.3.4. The information provided in response to this Section of the RFP will be evaluated based on the following considerations:

- a. The strength and viability of the Design-Build Team's plan to communicate and collaborate with the Owner, including not only the specific topics on which the Owner has requested discussion but any other topics that the Proposed Design-Build Team deems essential to the success of the Project;
- b. The ideas and innovations submitted by the Design-Build Team that will enhance and foster collaboration and integration; and
- c. The differentiating resources that the Design-Build Team will bring to the Project and how those differentiating resources will enhance the Project.

3.5.4. Project Sequencing and Scheduling

The construction schedule should promote efficiency, demonstrate the design consultant's productivity, include an understanding of local weather conditions, and have the least amount of impact on Owner operations and the Project stakeholders as possible, and maximize the Owner's Design Build budget.

3.5.4.1. Provide a full, complete, detailed schedule in a clear and concise manner, assuming a NTP/signed Agreement is obtained on November 15, 2023. Include the date and duration of construction removal activities, final design activities, GMP Proposal submittal, construction installation activities and a date when substantial completion will occur.

3.5.4.2. Describe the Proposed Design-Build Team's overall approach to scheduling and construction sequencing for the Project. In addition to the overall approach, include a description as to

how the Design-Build Team will address regulatory and stakeholder approvals for the permitting process.

- 3.5.4.3.** Identify the challenges in scheduling the construction for the Project and how the Design-Build Team will address those challenges. Describe any impact your proposed schedule has on the cost of the Project. Indicate where cost savings may occur or not occur due to weather limitation and/or acceleration of construction.
- 3.5.4.4.** Provide details regarding the tools used in developing optimal sequencing and coordination of the Work and how those tools will assist the Design-Builder in achieving those goals.
- 3.5.4.5.** Describe the tools and methodology for the development of the baseline schedule including durations, sequencing and logic, and skilled labor availability for determining manpower projections.
- 3.5.4.6.** The information provided in response to this Section of the RFP will be evaluated based on the following considerations:
 - a. The DBC's project's start/stop of various construction activities with emphasis on accuracy and sequencing in order to install the project in the most effective and efficient manner possible. Include not only the specific topics on which the Owner has requested discussion above but any other topics that the Design-Build Team deems essential to the success of the Project; and
 - b. The differentiating resources that the Design-Build Team will bring to the Project and how those differentiating resources will enhance the Project.

3.5.5. Proposed Contract Document/Final Design Approach

The Owner recognizes that the Basis of Design document (i.e. Bridging Documents) are two stamped and seals contract bid packages with 97 independent design review comments, some of which may go away when merging the two (2) packages into one (1) package per Review Comment #1.

The Offeror shall submit a design narrative on how the Design Builder intends on utilizing the Basis of Design Documents merge them into one bid package while addressing all Review Comments. This includes all necessary analysis and designs to fully "make it your own" in accordance with the Professional Standard of Care. The Owner recognizes that the Design Builder cannot take on another professional's design nor does the Owner request so of the Design Builder.

The information provided in response to this Section of the RFP will be scored based on the following:

- a. An understanding of the current Basis of Design Documents and the Team's approach on how best to merge the into one contract document set while addressing all Review Comments. Are the Basis of Design Documents sufficient to complete final design?
- b. An acknowledgement that the design professionals are to "make it their own" design in accordance with the Professional Standard of Care.
- c. How the Design Builder intends to use design services to craft a solution that Owner can afford. Describe if, based on the Project Budget, phasing is likely and if so, where does the Design Builder proposed phasing should start and stop.

- d. A description of the final design services duration and sequencing in the project schedule to ensure construction activities can be completed within the Project Completion Date.

3.5.6. Previous Project Experience Pertaining to Renovations of Structures on the National Historic Registry

Describe your DB team's experience - include number of years in restoration construction and specific accomplishments of the firm.

Describe in your own words how you will proceed through the contract requirement to perform the work applicable to your firm.

Provide information regarding the manufacturing capacity and equipment that pertains to your ability to perform historic work.

Select three projects to provide as examples. Is any of the DB team's experience performed on properties on the National Register of Historic Places.

List the Superintendent and Lead Forman's specific training (state formal academic training and on-the-job training), experience record (special commendations, unusual projects involved with), years with your firm, total years performing this specialty work, and a list of previous projects and dates they have worked on for your firm which were performed on projects of similar size and complexity to this project.

ATTACHMENT A – OWNER’S PROGRAM

Eastern Oregon University (EOU), Oregon’s Rural University, is located in La Grande, Oregon (population 13,200) and has approximately 1,450 students living on campus. The campus is approximately 108 acres and is situated south of downtown La Grande.

1. Section 1: Project’s Functional & Performance Requirement

1.1. Owner’s Vision

EOU’s vision is to remove and re-install the Grand Staircase to current code, industry best practices, permit requirements, and within the current budget constraints. Phasing is an option if funding is inadequate.

1.2. Owner’s Project Goals and Objectives

Maintain a safe, injury free work site and implement Quality Assurance and Quality Control (QA/QC) throughout the project.

Establish a collaborative relationship between the Owner and Design-Build Team to deliver a quality design and construction, on-time and within budget.

Maximize scope within the Project Budget while installing infrastructure that will last another 75 years. EOU does not want to re-visit installed infrastructure on this project within the standard lifecycle of the infrastructure installed.

Minimize impacts to the Owner’s students, faculty, and staff through close coordination with the Owner.

1.3. Owner’s Constraints

Budget constraints may limit the ability to fully re-install the Grand Staircase at this time, requiring additional funding for future installation with limited to no impact on infrastructure installed at this time.

2. Section 2 Project Budget

2.1. Project Design-Build

The Project Design Build Budget is \$4 Million Dollars (\$4,000,000) and those funds are available for all Design Build cost and fees to design, permit, and construct the Project.

EOU’s vision is to remove and re-install the Grand Staircase to current code, industry best practices, permit requirements, and within the current budget constraints. Phasing is an option if funding is inadequate.

2.2. Additive Alternates

The Owner does not anticipate all the items listed in the above criteria of the Owner’s Program that will be accomplished within the \$4M budget. The Design Build team is to clearly identify which items (including partial items), and the item’s associated costs, fall outside of the \$4M budget and to develop an approach that when future additional funds are secured, these items can be installed in a manner that minimize impacts to the Grand Staircase.

3. Section 3 – Design Build Contractor’s (DBC) Scope of Work

The following is an anticipated preliminary scope of work that may be modified during contract negotiations with the selected DBC:

3.1. SHPO & Archaeological Permit

The Owner has secured a State Historic Preservation Office Permit and an Archaeological Permit. The DBC shall become familiar with these permits and then meet with the Owner and the Owner’s Team (PMA, the Historic Architect, and ANIW, the Archeologist) to discuss these permits in detail. At the conclusion of this meeting, the Owner will issue the Project Notice to Proceed.

3.2. Site Investigations, Basis of Design Documents, Lot Line Adjustment

The Owner has conducted extensive investigations and design services prior to this Design Build. The DBC shall become familiar with the Basis of Design Documents, all available information, including site investigations, topographic survey of existing conditions, subsurface utility investigations, and the site. The DBC shall then meet with the Owner to discuss the basis of design, additional information, investigations, or permitting necessary to commence demolition, construction document development, and construction activities to re-install the Grand Staircase, including laydown and staging areas.

The project requires a Lot Line Adjustment. The Owner will be conducting the lot line adjustment separately and may require the assistance of the DBC in discussions, especially speaking to site safety, impacts to the public right-of-way, and impacts to the residential area during construction.

3.3. Topographic Basemap

The Design-Builder shall review the Topographic Survey in the Basis of Design Documents and determine sufficiency of use as the basemap for final design services. If the DBC believes additional information is required, the DBC shall update the topographic survey and/or create the basemap accordingly.

The topographic survey was developed by BGB Surveyors in La Grande, OR. The contact is Jeff Hsu at (307) 248-0150, jeff@bgbsurveyors.com

3.4. Construction Document Development

The DBC shall take the Basis of Design Documents and prepare and finalizing the plans and specifications into one final signed and sealed construction document (CD) set that resolves all Review Comments, integrates any innovations or modifications proposed by the DBC (i.e. Alternative Technical Concept(s)), documents staging/work limits and traffic control in accordance with local agency requirements, and provides a solution that the Owner can afford to install.

Prepare and provide project schedule, Conduct regularly, biweekly design meetings, discussing progress toward a solution the Owner can afford.

Develop a Guaranteed Maximum Price (GMP) Proposal when the CD’s are at a level sufficient to Develop a GMP Proposal

Construction documents shall be produced in digital PDF format and AutoCAD building information Modeling (BIM software).

3.5. Permits, Reviews, and Approvals

The CD's shall be reviewed by Owner and the Owner's Historic Architect for conformance with SHPO permit requirements and that the DBC is develop a solution that the Owner can afford. At a minimum the CD's shall be reviewed when 90% complete and prior to signing and sealing the plans and specifications.

The CD's shall be reviewed by the City of La Grande any other regulatory agencies whose approval is necessary for the reinstallation of the Grand Staircase. The DBC shall submit plans and applications to regulatory agencies, the Owner will pay for the plan review or permit fees separately.

3.6. Construction Administration

Provide construction administration and observation associated with the site improvements including, pre administration and observation associated with the site improvements including preconstruction conference, weekly site observation and meetings for processing pay requests.

Provide interpretations of prepared drawings and specifications, shop drawing review and approval as well as preparation of change orders and construction change directives for Owner's review, approvals, or denials.

3.7. Construction Activities

Provide construction activities for demolition of the Grand Staircase in accordance with permit requirements, with the Owner providing archaeological monitoring, on a Cost Plus Basis.

Provide construction activities for installation of the Grand Staircase in accordance with permit requirements, in a GMP.

3.8. Construction Closeout

Prepare Record Drawings, establish warranties and guarantees, project closeout, punch-list documentation and resolution, final inspection and acceptance, O&M manuals, and permit and project closeout.

3.9. Relationship with the Owner and Design Build Contractor

The DBC and the Owner accepts a relationship of trust and confidence between the DBC and the University. The DBC agrees to furnish their best skill and best judgement in furthering the interests of the Owner and the Project. The DBC shall furnish efficient design services, engineering reviews, business administration, field supervision and shall use their best efforts to perform the work in the best and most expeditious, economical manner consistent with the interests of the Owner, and in strict conformity with the contract document, including reasonable implications therein.

3.10. Project Delivery

At all times and project stages the DBC Team shall act in the best interest of the Owner and use their efforts to deliver the project in an expeditious and cost-effective manner consistent with the Owner's project requirements, time constraints, and budget. The DBC shall develop a contractually obligated overall schedule and will be responsible for the methods of construction, safety, scheduling, and coordination of all Work in addition to miscellaneous contracts required for completion of the project within the determined budgets limits and schedule.

The Owner expects all parties on the project to work closely together and deal appropriately with project conditions to finish the job successfully. A spirit of cooperation, collaboration, and a commitment among

professional design and construction service provides to work in the best interest of the project is of the utmost importance.

3.11. Quality Assurance/Quality Control (QA/QC)

The DBC shall submit a QA/QC Plan for both design and construction to the Owner for review and approval prior to the start of design phase services. Along with the QA/QC Plan submittal, the Design and Quality Assurance Manager shall meet with the Owner to present the QA/QC Plan for both design and construction related scenarios.

3.12. Topographic Survey

The Owner has completed the topographic survey under the following *EOU Standard* control survey:

Horizontal: North American Datum of 1983/2011 (NAD83(2011)) in the Oregon State Plan Coordinate System, North Zone 3601, in International feet.

Vertical: North American Datum of 1988 (NAVD 88)

The selected DBC will be responsible for all topographic information to complete final design and construction services within the professional and industry standard of care. No local datums will be accepted.

3.13. Geotechnical Requirements and Information

The Owner has completed geotechnical investigations that were utilized to develop the Basis of Design Documents and in the Available Information. This information is critical to the project. Professional judgement by the DBC shall be used to determine if additional investigation beyond that provided in the report is required to successfully complete the project.

3.14. Stormwater Management Plan and Erosion Sediment Control Plan

The DBC shall develop a Stormwater Management Plan (SWMP) and Erosion and Sediment Control Plan (ESCP) and both must be prepared in accordance with local and state regulations. The SWMP and ESCP must be design and stamped by a licensed Oregon Professional Engineer. The DBC will be responsible for compliance with construction related permit conditions and shall assume all obligations and cost incurred by complying with all terms and conditions of the permits. Any fines associated with permit or regulatory violations shall be the responsibility of the DBC and at no cost to the Owner.

Any land disturbing activity greater than 1-acre must have coverage under the Oregon Department of Environmental Quality (ODEQ) General Construction Permit or 1200-C Permit program. The DBC has the sole responsibility and authority to secure the required construction related permits and shall comply with all terms and conditions of the permit(s). Any fines associated with permit or regulatory violations shall be the sole responsibility of the DBC and at no cost to the Owner.

3.15. Work Restrictions

Unless otherwise approved in writing by the Owner, no restrictions to the northeast, south, and west access of Inlow Hall shall occur. The DBC can restrict the northwest access. The DBC shall be responsible for developing staging/work limits within the EOU campus and the public right-of-way. Any staging/work limits within the public right-of-way requires a City permit and traffic control that will maintain safety in a campus and residential environment

Work on weekdays shall commence no earlier than 7:00AM including warming up equipment and shall cease no later than 7:00PM during weekdays. Work on weekends shall commence no earlier than 8:00AM and shall cease no later than 5:00PM. No work shall occur on a Holiday that is on a weekend. Holiday work on a weekday shall be on a case-by-case basis.

3.16. Work Space

The Owner will not provide workspace for the DBC Team. The selected DBC Team is responsible for providing its own workspace. A trailer can be placed on the project location as long as it does not interfere with ongoing operations and functions of EOU or the adjacent residents.

3.17. Agency Coordination

The DBC shall conduct all required agency coordination related to the design and construction of the project, except that of environmental and cultural clearances. All meetings shall include an EOU representative and the DBC shall include EOU on all correspondence with Agencies.

3.18. Purpose of the Design Build Contract with a GMP

The DBC will assemble and lead the project Design Build Team consisting of the contractor, the A/E and other consultants. It is the responsibility of the DBC to provide the necessary services and work to design and construct the project within the Design Build Budget.

Preconstruction Services

During the pre-construction services, the DBC will utilize their skills and knowledge of construction to manage the design process and the design professional, develop schedules, prepare construction cost models/estimates, conduct value engineering studies/analysis, study labor conditions, identify and address constructability issues, address space requirements and planning criteria from the Owner's functional and performance requirements, and advise on the sequencing of construction work for the project – all to enable the DBC to furnish the Owner with a GMP.

Cost of the Work

The DBC will be paid for DB services via a Cost plus Fee, with a Guaranteed Maximum Price (GMP). It is EOU's intent to pay for preconstruction services, demolition service, and a fee limit to develop a GMP on a Cost Plus Fee basis. The GMP will then be established and if accepted, the Agreement will be amended to add the final GMP Proposal.

Each Preferred Offeror shall provide a price limit in the Price Proposal to provide services necessary to enable the DBC to complete demolition of the grand staircase, preconstruction final design services, and a fee to furnish the Owner with a GMP Proposal.

At no point shall the price limit to furnish the Owner with a GMP Proposal and the GMP Proposal exceed four million dollars (\$4,000,000). The GMP Proposal shall include a controlled construction contingency to protect the DBC against risks assumed in providing the GMP for the Project. The Owner and the DBC acknowledge that the contingency is included to adjust the estimate for eventualities, which have not been taken into precise account in establishment of the GMP.

The GMP contingency is not allocated to any particular item of the Cost of the Work, and is established for the DBC's use as may be required for increased in costs incurred in the Work from unforeseeable causes or details not capable of reasonable anticipation. It is understood that the GMP contingency is the maximum sum available to the DBC to cover costs incurred as a result of such unanticipated causes or details, and that cost overruns in excess of the amount in the GMP contingency will be borne by the DBC.

The GMP contingency may be applied to at any time within the Cost of the Work without the necessity of a change order, without constituting a change in the Work, and without resulting in a change in the GMP.

The DBC will notify the Owner of the intent to apply any part of the GMP contingency to any item within the Cost of the Work prior to such an application. The transfer of contingency funds requires the review and approval by the Director of Facilities and Planning and/or the Vice President of Finance and Administration. The DBC shall continually monitor and track contingency changes in a clear, concise, and understandable manner. The amount of the GMP contingency is to be reviewed by the Owner as part of its review of the GMP and must be provided in Attachment C – Price Proposal Form

GMP Savings

The Owner requests any GMP Savings be converted into additional scope of services to install additional infrastructure.

Construction Phase Services

During the all construction phase(s), the DBC will manage the design professionals and all construction activities, trades, subcontractors as well as provide services for change order reviews, shop drawing reviews, quality assurance/inspections, City building inspection and permitting requirements, schedule maintenance, cost controls, meetings, processing/monitoring RFI's, substitution requests, claims resolution and coordination, and communication of the activities of the team throughout the construction phase.

Auditing

The project will be an "open book" job where the Owner may attend any and all meetings, have access to any and all DBC records on the project, including design professional fees and applicable reimbursement costs.

The Owner will secure a third party auditing professional to perform construction auditing services. The primary objective of the audit will be to ensure that all billings are accurate, appropriate and in accordance with the respective contract documents. The audit will include reviews of the underlying transactions and cost information of the Designer-Builder and their respective trade contractors to ensure that such transactions adequately and appropriately represent the cost basis specified in the contract documents. A secondary objective, will be to identify material errors, deficiencies or other problems.

Periodic and Final Audits of the Cost of the Work and any reimbursable costs associated with the Project will be conducted, at the Owner's discretion. The Owner intends to conduct a final audit of reimbursable costs prior to Contract closeout. An initial audit meeting will be held with the Owner's auditor and the DBC prior to start of the project.

3.19. Owner's Contingency

An Owner's construction contingency will be established outside of the Project DB Budget. Expenditures against this contingency will be available to cover all costs from the following items only with the Owner's written review and approval by the Vice President of Finance and Administration via a written authorization or contract amendment issued by the Owner's Facility and Planning Department.:

- Changes in scope initiated by the Director of Facilities and/or the Vice President of Finance and Administration.
- Unforeseen field conditions.

All Change Orders that impact the Owner's Contingency must include proposed scope reductions to fully offset the costs.

ATTACHMENT B – CONTRACT DOCUMENTS

EOU AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER

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Standard Form of Owner Agreement Between Owner and Design-Builder

This **AGREEMENT** is made as of the _____ day of _____ in
the year of 2023, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

DESIGN-BUILDER:

(Name and address)

PROJECT:

EOU Grand Staircase Project

EOU Project Number FP-2021-01

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

1. Article 1

Scope of Work

- 1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

2. Article 2

Contract Documents

- 2.1. The Contract Documents are comprised of the following:
- 2.1.1. All written modifications, amendments, minor changes, Work Change Directives, and Change Orders to this Agreement issued in accordance with *General Conditions of Contract Between Owner and Design-Builder* ("General Conditions of Contract");
 - 2.1.2. The GMP Exhibit referenced in Section 6.8.1.1 herein or, if applicable, the GMP Proposal accepted by Owner in accordance with Section 6.8.2 herein;
 - 2.1.3. This Agreement, including Owner Program, Written Proposal, Price Proposal, Basis of Design Documents, and, if applicable, the GMP Exhibit;
 - 2.1.4. The General Conditions of Contract; and
 - 2.1.5. Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

3. Article 3

Interpretation and Intent

- 3.1. Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.8.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal.
- 3.2. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.
- 3.3. Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in this Agreement or the General Conditions of Contract.

- 3.4. If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification. Consistent with Section 3.5, however, it is expressly agreed that the reliance permitted by this Section 3.4 shall not apply to Owner Design Documents as defined in Section 3.5.
- 3.5. To the extent that the Basis of Design Documents include drawings, specifications, and other detailed design documents prepared by the Owner's other professional design consultants ("Owner Design Documents"), such Owner Design Documents are provided as a resource for the Design-Builder to use during the Design-Builder's process in developing the Construction Documents. The Owner disclaims any representation, warranty, or other assurance as to the accuracy, consistency, or completeness of such information. To the extent Design-Builder utilizes the Owner Design Documents in creating the Construction Documents, Design-Builder does so at the Design-Builder's risk. Design-Builder is solely responsible for the completed Construction Documents.
- 3.6. The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

4. Article 4

Ownership of Work Product

- 4.1. **Work Product.** All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service. Design-Builder shall be deemed the author of such Work Product and Owner shall be deemed to own all ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below. This provision shall survive any termination of the Agreement.
- 4.2. **Design-Builder's Limited License.** Design-Builder and Subcontractors are authorized to use and reproduce the Work Product, solely and exclusively for execution of the Work. The Design-Builder and Subcontractors may not use the Work Product on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner. Notwithstanding the forgoing, nothing herein shall limit the Design-Builder's ownership of or right to use its basic know-how, expertise, and skills or grants Owner any ownership or usage rights to any of the Design-Builder's bona fide proprietary systems, processes, products, or tools, to the extent that they were not developed as a necessary part of carrying out the Work.
- 4.3. **Owner's Indemnification for Use of Work Product.** If Owner uses or alters the Work Product without the Design-Builder's involvement or authorization, then Owner shall defend, indemnify and hold harmless Design-Builder from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.

5. Article 5

Contract Time

5.1. Date of Commencement. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.

5.2. Substantial Completion and Final Completion.

5.2.1. Substantial Completion of the entire Work shall be achieved no later than November 30, 2024 (TBD) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2. Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:

Start of Pre-Construction Services: November 15, 2023

GMP Proposal Due: March 2024

Start of Construction Services: TBD

5.2.3. Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4. All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3. Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4. Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages for loss of use, which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by December 31, 2024 (30) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Two Thousand Dollars (\$2,000) as liquidated damages for loss of use for each day that Substantial Completion extends beyond the LD Date. Owner and Design-Builder agree that the liquidated damages provided for in this section shall be the Owner's exclusive remedy for loss of use damages resulting from a delay in achieving Substantial Completion, but this provision shall not in any way limit Owner's other remedies for delay.

6. Article 6

Contract Price

6.1. Contract Price.

6.1.1. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.8 hereof and any adjustments made in accordance with the General Conditions of Contract.

6.1.2. For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited preliminary services, such as a lump sum or cost-plus arrangement for preliminary design, programming, or services necessary to enable Design-Builder to furnish Owner with a GMP before execution of this Agreement.)*

6.2. Design-Builder's Fee.

6.2.1. Design-Builder's Fee shall be _____ Dollars (\$ _____), as adjusted in accordance with Section 6.2.2 below and as provided or negotiated as Attachment C of the RFP.

6.2.2. Design-Builder's Fee will be adjusted as follows for any changes in the Work in accordance with Article 9 of the General Conditions.

6.2.3. For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall the Costs of the Work incurred for that Change Order. All additive Change Orders require the submittal of an equivalent scope reduction to offset the Change Order costs. Acceptance of scope changes is the sole responsibility of the Director of Facilities.

6.2.4. For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall require the submittal of an equivalent scope increase to offset the Change Order costs. Acceptance of scope changes is the sole responsibility of the Director of Facilities.

6.3. Costs To Be Reimbursed

6.3.1. Cost of the Work The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at ACTUAL COST or, if approved in advance and in writing by Owner, at Stipulated Rates. The Cost of the Work shall include only the items set forth in Section 6.3.

6.3.2. Labor Costs

6.3.2.1. Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site workshops.

6.3.2.1.1. Cost to be reimbursed will be the actual wages paid to the individuals performing the work and the actual wages will be subject to wage maximums which shall be subject to the approval of the Owner.

6.3.2.2. Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site with the Owner's approval. No Design-Builder personnel stationed at the Design-Builder's home or branch offices shall be charged to the Cost of the Work. Non-field office based Design-Builder management and support personnel are expected to provide service and advice from time to time throughout the job and their time devoted to project matters is considered to be covered by the Design-Builder's Fee.

6.3.2.3. Wages and salaries of the Design-Builder's supervisory or administrative personnel who would normally be stationed at the field office in accordance with Section 6.3.2.2 but who

become engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Such charges will only be allowed for Design-Builder personnel who are authorized to charge time to the project in accordance with the provisions outlined in Section 6.3.1 and 6.3.2.

6.3.2.4. Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, 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 Subparagraphs 6.3.1 through 6.3.3. Any taxes on the income or profit of the Design-Builder, any real or personal property taxes, any franchise or similar taxes or fees, and any corporate activity tax shall not be considered Cost of the Work.

6.3.2.4.1. When computing actual costs chargeable to the Cost of the Work for payroll taxes, the Design-Builder shall give proper consideration to the annual limitations of the wages subject to certain payroll taxes. The Design-Builder may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocated same to all jobs by individual based on the time worked on each job by the individual. Alternatively the Design-Builder may use an estimated net effective payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, if 50% of the wages paid to an employee during the year were chargeable to the Cost of the Work, then only 50% of the actual annual costs of payroll taxes would be allocable to the Cost of the Work, etc.

6.3.2.4.2. Cost of the Work shall include the actual net cost to the Design-Builder for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this agreement. The actual net cost of worker's compensation shall take into consideration all cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, etc. The Design-Builder may charge an estimated amount for worker's compensation insurance costs, but will make appropriate cost adjustments to actual costs within 30 days of receipt of actual cost adjustments from the insurance carrier.

6.3.2.4.3. Overtime wages paid to salaried personnel (if approved in advance in writing by the Owner) will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the project will be allowed if the individual is not paid for the overtime worked.

6.3.2.4.4. Any overtime premium or shift differential expense to be incurred by Design-Builder for hourly workers shall require Owner's advance written approval before the incremental cost of the overtime premium or shift differential will be considered a reimbursable cost. If the Design-Builder is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Design-Builder or anyone they are responsible for, the overtime premium and/or shift differential expense portion of the

payroll expense and related labor burden costs will be considered as cost not to be reimbursed.

6.3.2.4.5. Any payroll burden related costs to be reimbursed which are not required by law shall be subject to advance written approval by Owner to be considered reimbursable. Fringe benefit costs typically falling into this category include but are not limited to pension, employee stock option plans, bonuses, medical and dental benefits, life and accident insurance, etc. The Design-Builder shall submit a detailed breakdown of all such payroll burden costs along with all representation as to how the proposed actual billable cost will be computed. Such information must be reviewed and approved in advance writing by Owner before Design-Builder may include such items as reimbursable costs. In order to be binding, the advance approvals required in this contract provision must be documents in a mutually agreed upon contract change order. All such payroll burden costs shall be billable as reimbursable costs at actual verifiable cost subject to provisional maximums agreed upon in writing in advance by both parties. It should be noted that certain fringe benefit costs such as funding of pension or profit sharing funds in excess of the minimum amounts required by law may not be considered reimbursable payroll burden costs by Owner. Payroll burden fringe benefit items which are not approved in advance in writing by Owner will be considered as non-reimbursable overhead cost to be covered by the Design-Builder's Fee. During the job and prior to contract close-out, adjustments will be made to account for actual costs which may be less than the provisional maximum costs previously billed.

6.3.2.4.6. Employee bonuses will not be considered reimbursable labor or labor burden costs. Bonuses paid to Design-Builder's employees will be considered a non-reimbursable cost considered to be covered by the Design-Builder's Fee.

6.3.3. Subcontract Costs

6.3.3.1. Payments made by the Design-Builder to Subcontractors in accordance with the requirements of the subcontracts.

6.3.3.2. Design-Builder shall not enter into any subcontract, contract, purchase order, or other agreement ("Arrangement") in connection with the Work with any affiliate Related Party, unless such arrangement has been approved in writing by Owner, after full disclosure in writing by Design-Builder to Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The terms of any such Arrangement must conform to the requirements of the Contract Documents. If any Related Party undertakes any portion of the Work pursuant to a subcontract with Design-Builder, such subcontract shall provide for payment in an amount equal to the Cost of the Work performed thereunder, not to exceed a guaranteed maximum cost and for the right to audit all of the books and records pertaining to the Work undertaken by such Related Party, which audit may be undertaken by Owner or its representatives at any time from time to time. All other terms and provisions of any such subcontract are also subject to Owner's written approval. All savings under any such subcontract shall be applied to reduce the Cost of the Work under this Agreement, and no profit or fee shall be payable to any such Related Party. For purposes of this Section, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common

ownership of, or sharing common management with, the Design-Builder; (2) any entity in which any stockholder in, or management employee of, the Design-Builder holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Design-Builder; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Design-Builder.

6.3.3.3. Design-Builder (with respect to its suppliers, subcontractors and all lower tier subcontractors) shall provide Owner advance written notice and shall obtain Owner's approval for any proposed subcontract change order, material purchase order, or other financial commitment in an amount in excess of \$5,000 prior to placing such order or entering into such agreement (regardless of whether or not any such commitment will affect the prime contract Guaranteed Maximum Cost). It is agreed that sums applicable to any subcontract change order, purchase order or other financial commitment entered into in violation of the above notice and approval requirement shall not be included in the amounts owing to Design-Builder, Subcontractors or Suppliers whether as Costs of the Work or as reasonable termination costs in the event of termination.

6.3.4. Costs of Materials and Equipment Incorporated in the Completed Construction

6.3.4.1. Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

6.3.4.2. Costs of materials described in the preceding Subparagraph 6.3.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, in any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

6.3.5. Costs of Other Materials and Equipment, Temporary Facilities and Related Items

6.3.5.1. Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. Cost for items previously used by the Design-Builder shall mean fair market value.

6.3.5.2. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

6.3.5.2.1. The projected usage for each piece of equipment to be rented for use on the project and the estimated total rentals shall be considered by the Design-Builder before the piece of equipment is rented so that an appropriate rent versus buy decision can be made. Purchased equipment shall be considered "job owned". At the completion of the project, the Design-Builder shall transfer title and possession of all remaining job-owned

equipment to the Owner, or Design-Builder may keep any such equipment for an appropriate fair market value credit to job cost, which will be mutually agreed to by Owner and Design-Builder.

- 6.3.5.2.2.** Each piece of equipment to be rented shall have hourly, daily, weekly and monthly rates) and the most economical rate available shall be reimbursed based on the circumstances of actual need and usage of the piece of equipment while it is stationed at the jobsite. When the piece of equipment is no longer needed for the work, no rental charges will be reimbursed if the piece of equipment remains at the jobsite for the convenience of the Design-Builder.
- 6.3.5.2.3.** The reimbursable equipment rental rates shall not exceed 75% of the published rates based on the latest edition of "Rental Rates and Specifications" published by the Associated Equipment Distributors (AED). If the AED publication does not contain information related to the type of equipment rented, the Design-Builder will be allowed to use a maximum equipment rental rate equal to 75% of the current competitive rental rates from local third party equipment rental companies.
- 6.3.5.2.4.** The aggregate rentals chargeable for each piece of Design-Builder owned tools or equipment shall not exceed 50% of the fair market value of such equipment at the time of its commitment to the Work. The original purchase price and date of purchase of the equipment will be documented with a copy of the purchase invoice for the piece of equipment. Such aggregate limitations will apply and no further rentals shall be charged even if a piece of equipment is taken off the job and is later replaced by a similar piece of equipment. For purposes of computing the aggregate rentals applicable to aggregate rental limitations, rental charges for similar pieces of equipment will be combined if the pieces of equipment were not used at the same time.
- 6.3.5.2.5.** Fair market value for used material and equipment as referred to in this contract shall mean the estimated price a reasonable purchaser would pay to purchase the used material or equipment at the time it was initially needed for the job. Note: This is usually lower than the price a reasonable purchaser would pay for similar new construction material or construction equipment.
- 6.3.5.2.6.** Rental charges for equipment which is not owned by Design-Builder or a Related Party (as defined above) and is rented from third parties for use in proper completion of the Work shall be considered reimbursable, will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.
- 6.3.5.2.7.** All losses resulting from lost, damaged or stolen tools and equipment shall be the sole responsibility of the Design-Builder, and not the Owner, and the cost of such losses shall not be reimbursable under this contract.
- 6.3.5.2.8.** The Design-Builder shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through

aggregate rentals) and such inventory shall be submitted to Owner each month. For each piece of equipment, such inventory should contain at a minimum (1) original purchase price or acquisition cost (2) acquisition date (3) approved FMV at the time the piece of equipment was first used on the job and (4) final disposition.

6.3.5.2.9. All costs incurred for minor maintenance and repairs shall be reimbursed at actual cost. Such costs include routine and preventative maintenance, minor repairs and other incidental costs. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary, consequently such costs are not reimbursable and are intended to be covered by the rental rates.

6.3.5.3. Costs of removal of debris from the site.

6.3.5.4. Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

6.3.5.5. That portion of the reasonable expenses of the Design-Builder's personnel incurred while traveling in discharge of duties connected with the Work.

6.3.5.5.1. No travel expenses will be reimbursed to Design-Builder's representatives unless Project related travel required them to travel to a destination more than 50 miles from the project location. Any travel involving airfare will require advance written approval by an authorized Owner's representative.

6.3.5.6. Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in writing in advance by the Owner.

6.3.5.7. Reproduction costs will be the actual costs of reproduction subject to a maximum of five cents (\$.05) per square foot for prints and a maximum of five cents (\$.05) per 8 1/2 by 11 inch page for offset print or photo copied contract documents, specifications, etc. Telephone costs will be the actual costs paid to the third party telephone company for the field office telephone.

6.3.6. Miscellaneous Costs

6.3.6.1. That portion of insurance and bond premiums that can be directly attributed to this Contract:

6.3.6.1.1. The Design-Builder's actual cost for insurance shall be considered to be included within the Maximum limit for General Conditions costs. All premiums for any insurance and bonds required for the project shall reflect the net actual costs to Design-Builder after taking into consideration cost adjustments due to experience modifiers, premium discounts, policy dividends, retrospective rating plan premium adjustments, assigned risk pool rebates, refunds, etc.

6.3.6.1.2. In the event that the Design-Builder elects to utilize worker's compensation insurance programs that involve either self-insurance and/or large deductibles, the maximum amount to be considered reimbursable costs under this contract will not exceed an amount equal to 40% of the standard state worker's compensation rates applicable Design-Builder straight time wages. Any Design-Builder costs incurred in connection with the Design_builder elected worker's compensation insurance program that exceeds

the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Design-Builder's Fee.

6.3.6.1.3. In the event that the contractor elects to utilize a Design-Builder Controlled Insurance Program (CCIP) the maximum to be considered reimbursable costs under this contract will be 2% of the final agreed upon Guaranteed Maximum Price of this contract. This 2% cost factor will cover all insurance required to be carried by the prime contractor and all applicable subcontractors covered by this agreement (specifically worker's compensation insurance, general liability insurance, excess liability insurance, umbrella liability insurance). Any contractor costs incurred in connection with the contractor's elected CCIP program that exceeds the amount reimbursed by the Owner under the formula in this paragraph will be considered to be covered by the Design-Builder's Fee.

6.3.6.2. Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

6.3.6.3. Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Contract Documents to pay.

6.3.6.4. Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work and which do not fall within the scope of Subparagraph 1.7.3.

6.3.6.5. Royalties and license fees paid for the use of a particular design, process or prt required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder Fee or subject to the Guaranteed Maximum Price.

6.3.6.6. Data processing costs related to the Work.

6.3.6.6.1. However, any such data processing costs will be limited to the cost of personal computer hardware used at the field office in the normal day to day administration, management and control of the project. The aggregate charges for any such hardware shall not exceed the FMV of the at the time it was brought to the field office. If the total charges for any particular piece of hardware reach an amount equal to the FMV, that particular piece of hardware and software shall be turned over to the Owner whenever they are no longer needed for the project. If the Design-Builder elects to keep the particular piece of hardware and software, the job costs shall be credited with a mutually agreeable amount which shall represent the FMV of the particular piece of hardware at the time it was no longer needed for the job. Software or other costs associated with the use of computer programs shall not be considered to be a reimbursable cost and will be considered to be covered by the Design-Builder's Fee.

6.3.6.7. Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

6.3.6.8. Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder or those resulting from the fault or negligence

of the Design-Builder (or those for whom it is responsible), reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's prior written approval; which approval shall not be unreasonably withheld.

6.3.6.9. Expenses incurred in accordance with the Design-Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in writing by the Owner. At the current time, it is not anticipated that any such costs will be necessary to staff the Project. If, however, the Design-Builder determines that such expenses will be necessary to properly staff the job, the Owner's advance written approval will be required before any such costs are considered reimbursable. The reimbursable amounts will be subject to maximums which may be stipulated by the Owner.

6.3.7. Other Costs and Emergencies

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

6.3.7.2. Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

6.3.7.3. Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Subcontractors or suppliers.

6.4. Costs To No Be Reimbursed

6.4.1. The Cost of the Work shall not include:

6.4.1.1. Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Subparagraphs 6.3.2.2 and 6.3.2.3.

6.4.1.2. Expenses of the Design-Builder's principal office and offices other than the site office.

6.4.1.3. Overhead and general expenses, except as may be expressly included in Section 6.3.

6.4.1.3.1. Costs of Design-Builder's home office computer services or other outside computer processing services shall be considered overhead and general expense. Accordingly the Design-Builder should not plan to perform any such computer related services or alternatives at the field office when such services or functions can be performed at the Design-Builder's home or branch offices, or other outside service locations.

6.4.1.3.2. Any personal computer applications and related costs or remote job entry data functions and related costs which will be incurred by personnel at the job site must receive advance written approval from Owner to be considered a reimbursable cost, otherwise the associated costs will be considered non-reimbursable.

6.4.1.4. The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

6.4.1.5. Rental costs of machinery and equipment, except as specifically provided in Subparagraph 6.3.5.2.

6.4.1.6. Except as provided in Subparagraph 6.3.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Design-Builder, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts of them may be liable.

6.4.1.7. Any cost not specifically and expressly described in Section 6.3.

6.4.1.8. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

6.4.1.9. Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), other than those costs expressly described as reimbursable in Section 6.3.7.3.

6.4.1.10. Costs related to subcontractor default insurance (sometimes referred to as Subguard).

6.5. Discounts, Rebates, & Refunds

6.5.1. Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment therefore from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales or surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

6.5.1.1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any contractor controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.

6.5.1.2. "Cash" discounts which may accrue to the Design-Builder will be limited to a maximum of 1% of indirect cost. All "Cash" discounts greater than 1% shall automatically accrue to Owner if the Design-Builder is eligible to take advantage of the discounts.

6.5.2. Amounts that accrue to the Owner in accordance with the provisions of Paragraph 3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

6.6. Subcontracts and Other Agreements

6.6.1. Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed under subcontracts or other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from which the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine, with the advice of the Design-Builder, which bids

will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

- 6.6.1.1.** Design-Builder shall invite bids from, and enter into contracts and material orders with, only subcontractors and suppliers who have first been approved by Owner. After receiving such bids, Design-Builder shall always analyze them and make recommendations for awards, accompanying its recommendation with all pertinent data required for decision upon the award, and certifying that, to the best of its knowledge, the bid of the recommended subcontractor or supplier is bona fide, fair and reasonable.
- 6.6.1.2.** When Owner has determined the award of any such subcontract or purchase order, Design-Builder shall contract in its own name and behalf, and not in the name or behalf of Owner, with the specified subcontractor or supplier. Design-Builder's subcontract and purchase order forms shall be subject to approval of Owner and shall provide that subcontractor shall perform its portion of the Work and all applicable provisions of this Agreement and the Contract Documents.
- 6.6.1.3.** Design-Builder shall add specific Owner directed contract clauses to the standard subcontract and purchase order forms to be used for the project. Design-Builder shall submit its subcontract and purchase order forms to Owner for approval prior to use in connection with the Project, and shall promptly deliver to Owner a copy of all executed subcontracts and purchase orders entered into in connection with the Project.
- 6.6.1.4.** If the net effect of Owner's designation as the selected subcontractors and suppliers (taking into account both subcontractors and suppliers whose bids exceed those of bidders recommended by Design-Builder and those whose bids are less than bidders recommended by Design-Builder) is the selection of subcontractors and suppliers whose bids, in the aggregate, exceed those of the bidders recommended by the Design-Builder, the Guaranteed Maximum Cost shall be increased by the lesser (i) the amount by which the bids of the designated subcontractors and suppliers exceed the bids of the bidders recommended by Design-Builder or (ii) the amount by which the bids of the designated subcontractors and suppliers exceed the amount utilized by the Design-Builder in calculating the Guaranteed Maximum Cost. The Design-Builder's Fee shall not be increased on account of Owner's designation of subcontractors or suppliers, regardless of the number of such designations or the resulting increase in the Guaranteed Maximum Cost, if any.

- 6.6.2.** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without prior consent of the Owner.

6.7. Contingency Fund

- 6.7.1.** The Owner and Design-Builder agree that a not-to-exceed fund for "contingency" costs totaling \$ _____ (from RFP Attachment C) has been included in the contract Guaranteed Maximum Price. If there is a savings sharing provision in the contract, any unused contingency amounts shall be credited to the guaranteed maximum contract price before computing the savings to be shared.

6.8. The Guaranteed Maximum Price (“GMP”).

6.8.1. [Intentionally deleted.]

6.8.2. GMP Established after Execution of this Agreement.

6.8.2.1. GMP Proposal. If requested by Owner, Design-Builder shall submit a GMP Proposal to Owner which shall include the following, unless the parties mutually agree otherwise:

6.8.2.1.1. A proposed GMP, which shall be the sum of:

- i. Design-Builder’s Fee as defined in Section 6.2.1 hereof;
- ii. The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of any Design-Builder’s Contingency as defined in Section 6.7 hereof; and
- iii. If applicable, any prices established under Section 6.1.2 hereof.

6.8.2.1.2. The Basis of Design Documents, which may include, by way of example, Owner’s Project Criteria, which are set forth in detail, and are attached to the GMP Proposal;

6.8.2.1.3. A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

6.8.2.1.4. The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based;

6.8.2.1.5. If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

6.8.2.1.6. If applicable, a schedule of alternate prices;

6.8.2.1.7. If applicable, a schedule of unit prices;

6.8.2.1.8. If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if authorized in writing by Owner and performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

6.8.2.1.9. The time limit for acceptance of the GMP Proposal.

6.8.2.2. Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner’s notice, make appropriate adjustments to the GMP Proposal.

6.8.2.3. Agreement to GMP. If Owner accepts the GMP proposal or Owner and Contractor separately reach agreement on the GMP, the GMP and its basis shall be set forth in a written and signed amendment to this Agreement.

6.8.2.4. Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or if Owner fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

6.8.2.4.1. Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.8.2.3 above;

6.8.2.4.2. Owner may authorize Design-Builder to in writing continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1 hereof without a GMP, in which case all references in this Agreement to the GMP shall not be applicable; or

6.8.2.4.3. Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

6.8.2.4.4. If Owner fails to exercise any of the above options, Design-Builder shall suspend performance of Work.

6.8.3. Savings.

6.8.3.1. If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be as follows:

6.8.3.1.1. All Savings shall be converted to additional scope of services.

6.8.3.2. Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

6.9. Allowance Items and Allowance Values.

6.9.1. Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit or GMP Proposal and are included within the GMP.

6.9.2. Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.9.3. No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price. Design-Builder shall also provide written notice to the Owner before

the amount of any Allowance Item is exceeded and shall not perform additional Work on that Allowance item until it receives further written direction from the Owner.

6.9.4. The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Guaranteed Maximum Price and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

6.9.5. Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.9.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

7. Article 7

Procedure for Payment

7.1. Progress Payments.

7.1.1. Design-Builder shall submit to Owner on the First (1st) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2. Owner shall make payment within ten (10) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3. If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

7.2. Retainage on Progress Payments.

7.2.1. Owner will retain Five percent (5%) of the cost of the Work, exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.

7.2.2. Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work that Owner agrees in writing to accept separately, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of

Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3. Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.4. Examination of Records

7.4.1. Whenever the Owner enters into any type of contractual arrangement (including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts), Design-Builder's and all Subcontractors' Records (as defined below) shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an Owner's representative or an outside representative engaged by Owner. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three (3) years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Design-Builder employees, field and agency labor, subcontractors, and vendors.

7.4.2. Design-Builder's "Records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such Records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with approved plans and specifications
- (c) Compliance with Owner's business ethics expectations

- (d) Compliance with contract provisions regarding the pricing of change orders
- (e) Accuracy of Design-Builder representations regarding the pricing of invoices
- (f) Accuracy of Design-Builder representations related to claims submitted by the Design-Builder or any of his payees.

7.4.3. Design-Builder shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Design-Builder and payee. Design-Builder will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.

7.4.4. Owner's authorized representative or designee shall have reasonable access to the Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

7.4.5. If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Design-Builder to the Owner in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Design-Builder. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Design-Builder.

8. Article 8

Termination for Convenience

- 8.1.** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:
 - 8.1.1.** All Work executed and for proven loss, cost or expense in connection with the Work;
 - 8.1.2.** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
 - 8.1.3.** The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.
- 8.2.** Under no circumstance should Design-Builder be entitled to compensation for unperformed or terminated Work, including but not limited to lost profit or overhead on such unperformed or terminated Work.
- 8.3.** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

9. Article 9

Representatives of the Parties

9.1. Owner's Representatives.

9.1.1. Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.1.2. Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2. Design-Builder's Representatives.

9.2.1. Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

9.2.2. Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

10. Article 10

Bonds and Insurance

10.1. **Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2. **Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required ☐ Not Required

Other Performance Security.

☐ Required ☒ Not Required

11. Article 11

Other Provisions

11.1. Other provisions, if any, are as follows:

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

11.2. State of Oregon General Fund Grant Contract Requirements. Design-Builder acknowledges that the Project is subject to funding provided under a State of Oregon General Fund Grant Contract between Owner and the State of Oregon, acting by and through the Higher Education Coordinating Commission (the "Grant Contract"), a copy of which is attached hereto as an Exhibit to the Contract. Design-Builder agrees to comply with the applicable portions of the Grant Contract in performing its Work and administering the Contract. This includes, but is not limited to, complying with the following:

11.2.1. Employee Whistleblower Protection. Design-Builder will comply and ensure compliance by its Subcontractors with 41 U.S.C. 4712, Program for Enhancement of Employee Whistleblower Program and will inform Subcontractors and employees of whistleblower rights under that law. Design-Builder is hereby informed of the following whistleblower rights:

(a) Prohibition of reprisals.-

- (1) In general.--**An employee of a contractor, subcontractor, grantee, subgrantee, or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (2) information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.
- (2) Persons and bodies covered.--**The persons and bodies described in this paragraph are the persons and bodies as follows:
 - (A)** A Member of Congress or a representative of a committee of Congress.
 - (B)** An Inspector General.
 - (C)** The Government Accountability Office.
 - (D)** A Federal employee responsible for contract or grant oversight or management at the relevant agency.
 - (E)** An authorized official of the Department of Justice or other law enforcement agency.
 - (F)** A court or grand jury.

(G) A management official or other employee of the contractor, subcontractor, grantee, subgrantee, or personal services contractor who has the responsibility to investigate, discover, or address misconduct.

(3) Rules of construction.--For the purposes of paragraph (1)--

(A) an employee who initiates or provides evidence of contractor, subcontractor, grantee, subgrantee, or personal services contractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract or grant shall be deemed to have made a disclosure covered by such paragraph; and

(B) a reprisal described in paragraph (1) is prohibited even if it is undertaken at the request of an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Investigation of Complaints.

(1) Submission of complaint.--A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General of the executive agency involved. Unless the Inspector General determines that the complaint is frivolous, fails to allege a violation of the prohibition in subsection (a), or has previously been addressed in another Federal or State judicial or administrative proceeding initiated by the complainant, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor, subcontractor, grantee, subgrantee, or personal services contractor concerned, and the head of the agency.

11.2.2. Federal Funds; Federal False Claims. Design-Builder certifies that neither it nor its employees or Subcontractors are currently employed by an agency or department of the federal government. Design-Builder acknowledges that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject Design-Builder to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise under 18 U.S.C § 1001; 31 U.S.C. §§ 3729-3733 and 3801-3812.

11.2.3. Federal Non-Discrimination. Design Builder will comply and require all Subcontractors to comply with all federal laws, regulations, and executive orders prohibiting discrimination to the extent applicable to the Contract. Without limiting the foregoing, Design-Builder specifically agrees to comply and require all Subcontractors to comply with the following, to the extent applicable to the Contract: (a) Title VI and VII of the Civil Rights Act of 1964, (b) Sections 503 and 504 of the Rehabilitation Act of 1973, (c) the Age Discrimination in Employment Act of 1967, and the Age Discrimination Act of 1975, (d) the Americans with Disabilities Act of 1990, and (e) all other applicable requirements of federal civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to this Contract and required by law to be so incorporated.

11.2.4. Equal Employment Opportunity. To the extent not otherwise required in the Contract Documents, Design-Builder will comply and require all Subcontractors to comply with the following:

- (a) Not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (b) In all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (c) Not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (d) Send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (e) Comply with all provisions of Executive Order 11246 of September 24, 1965, as amended and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (f) Furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (g) In the event of noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with

procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (h) Include this Section 11.2.4 in every Subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Subcontractor or vendor. Take such action with respect to any Subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
- (i) Be subject to sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Grantee, its contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246 of September 24, 1965, as amended.

11.2.5. Prevailing Wage.

- (a) **State of Oregon Prevailing Wage for Public Works.** If this contract is for a “public work” as defined by ORS 279C.800(6)(a), and not otherwise exempt under ORS 279C.810:
 - (1) All workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840;
 - (2) Every contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless the contractor or subcontractor is exempt under ORS 279C.836 (4), (7), (8) or (9); and
 - (3) If a contractor is required to file certified statements under ORS 279C.845, the contractor must comply with all provisions of ORS 279C.845 and Grantee shall retain 25 percent of any amount earned by the contractor on the public works until the contractor has filed with the certified statements as provided by ORS 279C.845.
- (b) **Davis-Bacon – Federal Prevailing Wage.** If this is a prime construction contract exceeding \$2,000, Design-Builder must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, Design-Builder must pay and ensure Subcontractors pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Design-Builder and Subcontractor must pay wages not less than once a week. Design-Builder acknowledges and accepts and will require Subcontractors to acknowledge and acceptance the current prevailing wage determination issued by the Department of Labor.
- (c) **When Subject to Both State and Federal Prevailing Wage.** If this Contract is subject to ORS 279C.800 to ORS 279C.870 (State of Oregon Prevailing Wage) and 40 U.S.C. 3141 et

seq. (Davis-Bacon Act – Federal Prevailing Wage), Design-Builder and all Subcontractors are required to pay wages at not less than the higher of the applicable state or federal prevailing rate of wage, and as further provided by the Commissioner of the Bureau of Labor and Industries.

- 11.2.6. Anti-Kickback.** Design-Builder must comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Design Builder and each Subcontractor is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which the person is otherwise entitled. Design-Builder acknowledges all suspected or reported violations will be reported to the appropriate Federal awarding agency.
- 11.2.7. Contract Work Hours and Safety Standards Act.** For all contracts exceeding \$100,000 that involve the employment of mechanics or laborers, Design-Builder must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Design-Builder and Subcontractors must compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work exceeding the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 11.2.8. Federal Rights to Inventions Made Under a Contract or Agreement.** The federal funding agency, as the awarding agency of the funds used, at least in part, for the Project under the Grant Contract, may have certain rights as set forth in the federal requirements pertinent to these funds. For purposes of this subsection, the terms “grant” and “award” refer to funding issued by the federal funding agency to the State of Oregon. Design-Builder agrees that it has been provided the following notice:
- (a)** The federal funding agency reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use the any intellectual property created under this Contract, and to authorize others to do so, for Federal Government purposes with respect to:(a) The copyright in any intellectual property developed under a grant, subgrant or contract under a grant or subgrant; and (b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.
 - (b)** If the Grant Contract meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and Grantee, its contractors or subcontractors, wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” Grantee, its contractors or subcontractors, must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business

Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

- (c) The parties are subject to applicable requirements and regulations of the federal funding agency regarding rights in data first produced under a grant, subgrant or contract under a grant or subgrant.

11.2.9. Debarment and Suspension. Design-Builder certifies and will require Subcontractors to certify that they are not listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

11.2.10. Byrd Anti-Lobbying Amendment. Design-Builder must comply with 31 U.S.C. 1352. In addition, Design-Builder must certify to Owner and each tiered Subcontractor must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Design-Builder and all Subcontractors must forward all certifications to the State. By signing this Contract, the Design-Builder certifies, to the best of the Design-Builder’s knowledge and belief that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of Design-Builder, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Design-Builder shall complete and submit Standard Form LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- (c) Design-Builder shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.
- (d) This certification is a material representation of fact upon which reliance was placed when this Contract was made or entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed by Section 1352, Title 31 of the U.S. Code. Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

11.2.11. Prohibition on certain telecommunications and video surveillance services or equipment

(Huawei and ZTE). Design-Builder is prohibited from obligating or expending funds received under this Contract to:

- (a) Procure or obtain;
- (b) Extend or renew a contract to procure or obtain; or
- (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (2) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

11.2.12. Buy USA Preference. Design-Builder must, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all Subcontracts including all contracts and purchase orders for work or products under this contract. For purposes of this section:

- (a) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (b) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

11.2.13. Procurement of Recovered Materials. Design-Builder must comply with all applicable requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource

Conservation and Recovery Act. In addition, in the performance of this Contract, Design-Builder must make maximum use of products containing recovered materials designated by the Environmental Protection Agency (EPA) at 40 CFR part 247, unless the product cannot be acquired:

- (a) Competitively within a timeframe providing for compliance with the contract performance schedule;
- (b) Meeting contract performance requirements; or
- (c) At a reasonable price.

Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,
<https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

11.2.14. Unique Entity Identifier (UEI). All Contractors, subcontractors, and consultants **must** obtain or a UEI number from Sams.gov and provide them to the Owner, updating the list monthly as additional subcontractors or subconsultants are added and perform work

AGREEMENT BETWEEN OWNER AND DESIGN BUILDER - SIGNATURE PAGE:

OWNER:

DESIGN-BUILDER:

Eastern Oregon University

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

LeeAnn Case

Interim Vice President of Finance & Administration

(Printed Name)

(Title)

Date: _____

Date: _____

END OF AGREEMENT

EOU GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER

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1. Article 1

General

1.1 Mutual Obligations

- 1.1.1** *Owner and Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions

- 1.2.1** *Agreement* refers to the executed *Agreement Between Owner and Design-Builder* as modified.
- 1.2.2** *Basis of Design Documents* are as follows: *Agreement Between Owner and Design-Builder*, as modified, the Basis of Design Documents provided as Attachment D in the Request for Proposal.”
- 1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.
- 1.2.4** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- 1.2.5** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.
- 1.2.6** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.
- 1.2.7** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.
- 1.2.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner and, with respect to Design-Builder, affects the Design Builder’s performance of the Work, and may include the events of war, floods, labor disputes specific to the Project, earthquakes, epidemics, adverse weather conditions at the Site not reasonably anticipated, and other acts of God.
- 1.2.9** *General Conditions of Contract* refer to this *General Conditions of Contract Between Owner and Design-Builder*, as modified.
- 1.2.10** *GMP Exhibit* means any attachment or exhibit in the RFP and any exhibit(s) that will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.
- 1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.8 of the Agreement.

- 1.2.12** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.
- 1.2.13** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.
- 1.2.14** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may also include other conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.
- 1.2.15** *Site* is the land or premises on which the Project is located.
- 1.2.16** *Subcontractor* is any person or entity directly or indirectly retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers. Subcontractor includes Sub-Subcontractors at all tiers but does not include the Owner's separate contractors.
- 1.2.17** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.
- 1.2.18** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work that Owner agrees in writing to accept separately, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes without meaningful interruption.
- 1.2.19** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

2 Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

- 2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.
- 2.1.2** Design-Builder shall provide Owner with a status report at least monthly or as otherwise reasonably requested by Owner, detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Standard Form of

Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

- 2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and approval. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but no less frequently than monthly, and such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review or approval of the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.
- 2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

- 2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

- 2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing on projects of similar size, scope and complexity, and under similar conditions and circumstances as the Project.

2.4 Design Development Services.

- 2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in

accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

- 2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve in writing, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.
- 2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner nor relieve Design-Builder of its sole responsibility for the design, including the Construction Documents.
- 2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

- 2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.
- 2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

- 2.6.1** Except the Archaeological Permit and SHPO Permit, the Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.
- 2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility, if any.

2.7 Design-Builder's Construction Phase Services.

- 2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.
- 2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.
- 2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with Owner's own forces or Owner's separate contractors, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such forces or separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- 2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work that Owner agrees in writing to separately accept, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.8 Design-Builder's Responsibility for Project Safety.

- 2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes sole responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make

routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder and Subcontractors shall, at a minimum, comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement nor do any Owner-specific requirements relieve Design-Builder of its sole obligation for safety in performance of the Work. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the Work will conform with the Construction Documents, that all materials and equipment furnished as part of the construction will be fit for the purpose for which they are intended and will be new and of good quality unless otherwise specified in the Contract Documents, and that the Work will be free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.9.2 Design-Builder shall obtain for Owner's benefit the same warranty as set forth in this Section 2.9 from all Subcontractors. Warranties in the Contract Documents shall survive termination, completion, acceptance, and final payment.

2.9.3 Design-Builder hereby assigns to the Owner, effective upon the written demand of the Owner, upon the insolvency, bankruptcy, dissolution or other incapacity of the Design Builder, or automatically upon Final Completion of the Work, any and all Subcontractors' warranties relating to the Work, and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

2.9.4 Design-Builder shall collect and assemble in a binder or electronic folder and submit to the Owner written warranties and related documents provided by Subcontractors, including but not limited to suppliers of equipment, appliances and other components of the Project. All benefits under such written warranties shall extend to the Owner.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year

from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

- 2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces or separate contractors. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.
- 2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

3 Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

- 3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.
- 3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.
- 3.1.3** Owner may endeavor to give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents; provided, however, that nothing in this Section shall relieve Design-Builder of its sole responsibility for defective and non-conforming Work.

3.2 Furnishing of Services and Information.

- 3.2.1** Unless expressly stated to the contrary in the Contract Documents, if requested by Design-Builder, Owner shall provide, to the extent available, for Design-Builder's information and use the following, all of which Design-Builder is entitled to reasonably rely upon in performing the Work:
- 3.2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
- 3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

3.2.1.3 Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

3.2.1.4 A legal description of the Site;

3.2.1.5 Record drawings of any existing structures at the Site; and

3.2.1.6 Environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

3.3 Financial Information.

3.3.1 At Design-Builder's request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative may endeavor to provide Design-Builder with notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work; provided, however that nothing under this Section shall relieve Design-Builder of its sole responsibility and liability for the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and

coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

4 Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

- 4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and immediately notify Owner in writing and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.
- 4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.
- 4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.
- 4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend, reimburse, and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.
- 4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend, reimburse, and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

- 4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the

Work are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder may be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Condition.

- 4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than seven (7) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

5 Article 5

Insurance and Bonds

5.1 Design-Builder’s Insurance Requirements.

- 5.1.1** Design-Builder is responsible for procuring and maintaining the insurance consistent with and for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.
- 5.1.2** Design-Builder’s insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.
- 5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder’s information and belief.

5.2 Owner’s Liability Insurance.

- 5.2.1** Owner may procure and maintain its usual liability insurance.

5.3 Owner’s Property Insurance.

- 5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis subject to self-insurance and deductibles. The Owner’s property insurance coverage shall be no less than the full insurable value of the Project. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section 5.3.1 to be covered,

whichever is later. This insurance shall include the interests of the Owner, Design-Builder, and Subcontractors in the Project as insureds. The Design-Builder shall be responsible for property losses to the Work not paid by the insurance discussed in Section 5.3.1 due to self-insurance retention and deductibles, to a maximum of Ten Thousand Dollars (\$10,000) per occurrence, except to the extent such losses are caused by (1) the negligent or other wrongful acts or omissions of the Owner or Owner's separate consultants or contractors, or their respective agents or employees or (2) Acts of God.

- 5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. The Design-Builder shall be responsible for property losses to the Work not paid by the insurance discussed in Section 5.3.2 due to self-insurance retention and deductibles, to a maximum of Ten Thousand Dollars (\$10,000) per occurrence, except to the extent such losses are caused by (1) the negligent or other wrongful acts or omissions of the Owner or Owner's separate consultants or contractors, or their respective agents or employees or (2) Acts of God.
- 5.3.3** Upon the written request of Design-Builder, prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Upon the written request of Design-Builder, Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.
- 5.3.4** Any loss covered under Owner's property insurance shall be adjusted by Owner and made payable to the Owner for the insureds as their interests may appear, subject to any applicable mortgage clause. Owner shall pay the Contractor its just share of insurance proceeds received by Owner, and the Design-Builder shall make payments to Subcontractors and by appropriate written agreements shall require its Subcontractors to make payment to their sub-subcontractors in a similar manner. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.
- 5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

- 5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

- 5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

6 Article 6

Payment

6.1 Schedule of Values.

- 6.1.1** Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.
- 6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

- 6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.
- 6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.
- 6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.
- 6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

- 6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall

indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof. Among other bases for withholding payment under the Contract, Owner may also withhold payment for the following reasons:

- 6.3.1.1** defective or nonconforming Work not remedied or incomplete work;
- 6.3.1.2** third party claims, including but not limited to construction lien claims and/or bond claims, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Design-Builder;
- 6.3.1.3** failure of the Design-Builder to make payments properly to Design-Builder's employees or Subcontractors or suppliers for labor, services, materials or equipment;
- 6.3.1.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- 6.3.1.5** damage or potential damage to the Owner the Owner's separate contractors that is caused by or is the responsibility of Design-Builder or any Subcontractor or other person or entity for which Design-Builder is responsible;
- 6.3.1.6** reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- 6.3.1.7** repeated or substantial failure to carry out the Work in accordance with the Contract Documents; or
- 6.3.1.8** determination that the Work has not progressed to the point indicated in Design-Builder's Applications for Payment and already paid by Owner.

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

- 6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work that Owner agrees in writing to separately accept, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof that Owner agrees in writing to separately accept, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.
- 6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work that Owner agrees in writing to separately accept, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to one hundred fifty percent (150%) of the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.
- 6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

- 6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.
- 6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:
- 6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
 - 6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
 - 6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;
 - 6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

6.7.2.5 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

6.7.3 Owner's making of final payment shall not constitute a waiver of claims against Design-Builder.

6.7.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment one hundred fifty percent (150%) of the reasonable value of completion of such deficient work until such work is completed.

7 Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner and the State of Oregon based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify, reimburse, and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising solely from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification.

7.2.1 If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability,

penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

7.3 Payment Claim Indemnification.

- 7.3.1** Provided that the claim or mechanic's lien does not arise out of Owner's failure to make an undisputed payment to Design-Builder for the Work in question, Design-Builder shall indemnify, reimburse, defend and hold harmless Owner and the State of Oregon from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure or alleged failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond or taking other appropriate action. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

- 7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, reimburse, hold harmless and defend Owner and the State of Oregon, and their respective officers, directors, representatives, board members, trustees, and employees from, for, and against claims, losses, damages, liabilities, costs, and expenses, including attorneys' fees and experts' fees and expenses and including for bodily injury, sickness or death, and property damage or destruction (including to the Work itself), to the extent resulting from the breach of the Contract or the negligent or wrongful acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.
- 7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

8 Article 8

Time

8.1 Obligation to Achieve the Contract Times.

- 8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

8.2 Delays to the Work.

- 8.2.1** To the extent Design-Builder is delayed in the performance of the Work due to acts or omissions of Owner or anyone under Owner's control (including Owner's separate contractors), changes in the

Work, Differing Site Conditions, Hazardous Conditions, or Force Majeure Events, the Contract Time(s) for performance shall be reasonably extended by Change Order.

- 8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events.

9 Article 9

Pricing of Contract Change Orders and Time

9.1 Change Orders.

- 9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

- 9.1.1.1** The scope of the change in the Work, if any;
- 9.1.1.2** The amount of the adjustment to the Contract Price; and
- 9.1.1.3** The extent of the adjustment to the Contract Time(s), if any.

- 9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

- 9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

- 9.1.4** It is specifically understood and agreed that no additional or different Work, services or reimbursables shall be allowed or compensated unless prior written approval is given by Owner for the specific Work, services or reimbursables at issue.

9.2 Work Change Directives.

- 9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

- 9.2.2** Upon receipt of a Work Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments, if any, to the Contract Price and Contract Time, for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement. If the Owner and Design-Builder cannot agree on the adjustment to the Contract Time, then Owner shall determine the adjustment. If the Owner and Design-Builder cannot agree on the adjustment to the Guaranteed Maximum Price, then the adjustment shall be determined by the Owner in the manner set forth in Section 9.4.1.4. If the Design-Builder disagrees with the Owner's adjustment to the Contract Time or Guaranteed Maximum Price, then the Design-Builder may bring a claim under Section 10.1.1.

9.3 Minor Changes in the Work.

- 9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner prior to commencing Work on such change, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

- 9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:
- 9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
 - 9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
 - 9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or
 - 9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.
- 9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.
- 9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof.

9.5 Emergencies.

- 9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.
- 9.5.2** Notwithstanding the forgoing provisions of Article 9 and the other provisions of the Contract, in no event shall the Design-Builder be entitled to adjustments in the Contract Price, Guaranteed Maximum Price, or Contract Time as a result of changes in the Work to the extent such changes were made necessary by the negligent or other wrongful acts or omissions of the Design-Builder, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

10 Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

- 10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Design-Builder shall provide such notice prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any other specific notice requirement, under all circumstances Design-Builder shall provide written notice shall within a reasonable time, not to exceed fourteen (14) days, after the event or occurrence giving rise to the claim for relief or within fourteen (14) days after Design-Builder reasonably should have recognized the event or condition giving rise to the request, whichever is later. Design-Builder's notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.2 Dispute Avoidance and Resolution.

- 10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to seeking to resolve such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless the Owner and Design-Builder mutually agree in writing otherwise.
- 10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but unless a longer time period is agreed to in writing in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.
- 10.2.4** If after the meeting of the Senior Representatives the parties are unable to resolve the dispute or disagreement on terms satisfactory to both parties, either party may request to submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, they shall apply to the local state court to appoint a mediator. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written and signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. The request may be made concurrently with the filing of

litigation, but in such event, mediation shall proceed in advance of such proceedings, which the parties agree shall be stayed pending mediation for a period of ninety (90) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

10.3 Litigation.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Contract, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be brought and conducted solely and exclusively within the Circuit Court of Union County for the State of Oregon; provided, however, (1) 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, or (2) if jurisdiction cannot be obtained over another person or entity involved in a common issue of law or fact in dispute, then at the Owner's election the Claim may be brought in any such court where jurisdiction may be obtained over such involved person or entity. 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. DESIGN-BUILDER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 10.3.1. The Design-Builder shall ensure a provision equivalent to this Section B.16 is included in all agreements with Subcontractors.

10.3.2 [Intentionally deleted.]

10.3.3 [Intentionally deleted.]

10.3.4 The prevailing party in any litigation or arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party its costs and disbursements, including its reasonable attorneys' fees and expert witnesses' fees expenses as the court or arbitrator may adjudge reasonable, incurred in connection with such dispute before trial or arbitration, at trial or arbitration, upon any motion for reconsideration, upon any appeal or petition for review, and upon any collection efforts or proceedings.

10.4 Duty to Continue Performance.

10.4.1 Unless expressly provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

11 Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

- 11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) to the extent its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

11.2 Owner's Right to Perform and Terminate for Cause.

- 11.2.1** If Design-Builder fails to (i) provide a sufficient number of workers as necessary to advance the Work, (ii) supply the materials or equipment required by the Contract Documents as necessary to advance the Work, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors or Design-Builder's employees or other independent contractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.
- 11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure and to continue such effort to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.
- 11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may upon Owner's election enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder, upon Owner's election, hereby transfers, assigns and sets over to Owner for such purpose. Owner may also employ any person or persons or entity(ies) to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the repurchase and defense of claims arising from Design-Builder's default.
- 11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

11.3 Design-Builder's Right to Stop Work.

- 11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:
- 11.3.1.1** [Intentionally deleted.]

11.3.1.2 Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.1.3 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

11.4.1.1 The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

11.4.1.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

11.4.1.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material

obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

11.5.1.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

12 Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties

understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

- 12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.
- 12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.
- 12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

13 Article 13

Miscellaneous

13.1 Confidential Information.

- 13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

13.2 Assignment.

- 13.2.1** Design-Builder shall not without the written consent of the Owner assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

- 13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

- 13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) when delivered in person to the individual intended to receive such notice, (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.10 Compliance with Law.

13.10.1 Design-Builder will comply with all federal, state, and local laws applicable to the Work under this Contract, and all regulations and administrative rules established pursuant to those laws, including without limitation, the following requirements of the Oregon Public Contracting Code set forth below, even if such requirements ordinarily would not apply to the Work under ORS 352.138. In the event of a conflict between the provisions set forth below and similar provisions in the General Conditions, the provisions set forth below will govern.

13.10.1.1 ORS 279A.110 (Non-discrimination certification): Design-Builder certifies that Design-Builder has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, women, or emerging small business enterprise certified under ORS 200.055.

13.10.1.2 ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting work under this Contract, Design-Builder will execute and deliver to the Owner a good and sufficient performance bond, in a form acceptable to the Owner, in a sum equal to 100 percent of the construction portion of the Guaranteed Maximum Price, and Design-

Builder will execute and deliver to the Owner a good and sufficient payment bond, in a form acceptable to the Owner, in a sum equal to 100 percent of the construction portion of the Guaranteed Maximum Price, solely for the protection of claimants under ORS 279C.600.

13.10.1.3 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Design-Builder will make payment promptly, as due, to all persons supplying to such Design-Builder labor or material for the performance of the Work provided for in such Contract; pay all contributions or amounts due the Industrial Accident Fund from such Design-Builder incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Design-Builder will further demonstrate that an employee drug testing program is in place.

13.10.1.4 ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Design-Builder will salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Design-Builder will compost or mulch yard waste material at an approved site, if feasible and cost-effective.

13.10.1.5 ORS 279C.515 (Failure to Pay Promptly): If Design-Builder fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Design-Builder or a Subcontractor by any person or entity in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Design-Builder by reason of this Contract. The payment of a claim in the manner authorized in this section will not relieve the Design-Builder or the Design-Builder's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Design-Builder or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by the Owner, interest will be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

13.10.1.6 ORS 279C.520 and 279C. 540 (Hours of Labor, Pay Equity, Salary Discussions):

- a. Design-Builder will not employ and will require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer will be paid at least time and a half pay for or all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday;

and for all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).

- b. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week will not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
- c. Design-Builder will and will require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- d. Design-Builder will comply with ORS 652.220 (Prohibition of discriminatory wage rates based on sex; employer not to discriminate against employee who is a complainant). Compliance is a material element of the Contract. Failure to comply is a breach that entitles the Owner to e. terminate the contract for cause.
- e. Design-Builder may not prohibit any of Design-Builder's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person, and may not retaliate against an employee who does so.

13.10.1.7 ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- a. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, 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, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- b. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of 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, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.

- c. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
- d Tribal Governments.

13.10.1.8 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Design-Builder will promptly, as due, make payments to any person, co-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 Design-Builder, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Design-Builder, that employ subject workers who work under this Contract in the State of Oregon will comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Design-Builder will ensure that each of its Subcontractors complies with these requirements.

13.10.1.9 ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Design-Builder or its Subcontractor will be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Design-Builder or Subcontractor within 90 days from the completion of the Contract, providing the Design-Builder or Subcontractor has:

- a. Caused a circular clearly printed in blackface pica type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
- b. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

13.10.1.10 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Design-Builder will promptly, as due, make payments to any person, co-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 Design-Builder, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Design-Builder, that employ subject workers who work under this Contract in the State of Oregon will comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS

656.126. Design-Builder will ensure that each of its Subcontractors complies with these requirements.

13.10.1.11 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

13.10.1.12 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

- a) This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker the Design-Builder, subcontractor or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon. The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml.
- b) If this Contract is also subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx>. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.
- c) The applicable prevailing wage shall be incorporated in the GMP Proposal and GMP Amendment.
- d) Design-Builder and all Subcontractors will keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- e) The Owner will pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee will be paid to the Commissioner under the administrative rule of the Commissioner.
- f) If Design-Builder or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it will post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice will contain information on how and where to make claims and where to obtain future information.

13.10.1.13 ORS 279C.836 (Public Works Bond Required): The Design-Builder will:

- a. file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2) (7) or (8).
- b. Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(2), (7) or (8).

13.10.1.14 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- a. Design-Builder and every Subcontractor will file certified statements with the Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Design-Builder or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work 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 will be verified by the oath of Design-Builder or Design-Builder's surety or Subcontractor or Subcontractor's surety that Design-Builder and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Design-Builder's or Subcontractor's knowledge. The certified statements will 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. .
- b. The certified statement will be delivered or mailed by Design-Builder or Subcontractor to the Owner. Certified statements for each week during which the Design-Builder or Subcontractor employs a worker upon the public work will be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner will retain 25 percent of any amount earned by the Design-Builder until the Design-Builder has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Design-Builder files the certified statements required by this Section.
- c. Design-Builder and each Subcontractor will preserve the certified statements for a period of three years from the date of completion of the Contract.

END OF GENERAL CONDITIONS

EXHIBIT A TO THE GENERAL CONDITIONS – INSURANCE REQUIREMENTS

1. DESIGN-BUILDER'S INSURANCE

Design-Builder shall purchase, and require its Subcontractors on the Project to purchase, the following types and the following minimum limits of insurance from a company or companies rated A/IX or better in the most recent edition of "Best's Insurance Guide." Strict compliance with these insurance requirements is a condition precedent to payment.

A. Workers' Compensation and Employer's Liability:

(i) State: Provide coverage compliant with all workers' compensation laws of the state or states in which the Work is performed.

(ii) Federal - if applicable: Provide coverage compliant with Federal Longshore and Harbor Workers' Compensation Act and Jones Act including Maintenance, Wages and Cure. Maritime Coverage Endorsements WC 00 02 01 and WC 00 01 06 are acceptable. Limits shall not be less than \$1,000,000 per accident, \$1,000,000 per employee and \$5,000,000 aggregate policy limit with excess coverage of \$100,000,000.

(iii) Employer's Liability:

\$1,000,000 Each Accident, Disease and Employee

B. Commercial General Liability (written on an Insurance Services Office (ISO) Form CG 00 01 on an occurrence basis with at least the following limits:

(i) Combined Bodily Injury and Property Damage: \$5,000,000 Each Occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(ii) There shall be no additional endorsements limiting or restricting coverage without Owner's review and written approval. There shall be no Contractor Special Conditions endorsement that conditions coverage.

(iii) Contractor's Pollution Liability and Hazardous Materials Liability must be included or, if purchased separately, must have limits of not less than \$2,000,000 per incident. Pollution coverage shall include coverage for mold and microbial matter. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

(iv) The Products and Completed Operations coverage must be maintained and renewed for the duration of the applicable statute of repose.

(vi) The coverage provided to the additional insureds shall be as broad as the coverage provided to the Named Insured and the policy shall be endorsed to be primary and non-contributory with any other insurance maintained by the additional insureds and must provide insured status for the entire period for which on-going and completed operations coverage is required to be maintained herein.

C. Business Auto:

(i) Combined Bodily Injury and Property Damage

\$1,000,000 Each Accident

(ii) The following coverages must be included:

(1) Owned Automobiles

(2) Non-Owned and Hired Automobiles

(iii) ISO form CA 99 48 03 06 must be used if hauling waste and MCS 90 is required if hauling hazardous waste. The same entities required to be named additional insureds on the general liability policies will be named as additional insureds on all Auto policies.

D. Professional Liability Insurance (must be carried for six years following substantial completion) covering all professionals, including subconsultants with limits not less than:

(i) \$5,000,000 per claim

(ii) \$5,000,000 aggregate

E. Excess/Umbrella Liability Coverage (on a following form basis to the CGL and Business Auto):

(i) \$10,000,000 Each Occurrence with a per project endorsement.

(ii) \$10,000,000 Aggregate

(iii) Coverage will follow form on the general liability and auto policies described above.

(iv) Coverage shall be carried for the duration of the applicable statute of repose or for six (6) years after final payment, whichever is longer.

(v) The policy must provide that coverage will be triggered by exhaustion of the applicable primary policies required above and shall not require payment or exhaustion of any other policies.

F. Warranty of compliance, Certificates and Certified Copies of Policies. Copies of all policy endorsements that might reduce coverage from that provided by the standard ISO form must be provided to Owner and approved in writing and Owner's approval must be submitted to Owner with each Insurance Certificate warranting that there is no other reduction in coverage. Evidence of Design-Builder's compliance with this Exhibit, including the insurance required of Subcontractors, shall be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after final payment, additional certificates (or certified copies of the policies) evidencing continuation of such coverage shall be submitted at the time of the application for final payment and upon each annual renewal for the duration of coverage required. Liquidated Damages of \$500 per day shall be paid to Owner for each day after termination of a policy until sufficient proof of coverage is provided. Without limiting

its remedies, Design-Builder agrees that it will reimburse Owner for the costs of Owner's insurance provided for the Project in the event that Design-Builder fails to provide evidence of coverage as required herein. Upon Owner's request at any time, Design-Builder will immediately provide an actual certified copy of its or its Subcontractor's insurance policies. Provision of the certificates, endorsements and certified copies of policies as required herein shall be a condition precedent to payment.

- G. **Notice of Cancellation, Reduction or Expiration.** Insurance policies required by this Agreement shall contain a provision that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to Owner or Design-Builder shall, in writing, inform Owner that Design-Builder shall provide 30 days written notice to Owner before any policy expires or is cancelled. Information concerning reduction of limits on account of claims paid or to be paid shall be furnished by the Design-Builder to Owner within three (3) business days of when Design-Builder learns that revised or reduced limits are likely. When Design-Builder becomes aware of imminent cancellation, expiration or reduction in coverage or available limits, Design-Builder within three (3) business days shall procure other policies of insurance that meet all requirements of this Agreement without any lapse in coverage and notify Owner in writing of the potential reduction in coverage or cancellation and describe the manner in which it has provided or will provide replacement coverage of this insurance along with a written explanation of any differences in coverage. No work will be performed without this insurance being in full force and effect.
- H. **Owner's Right To Terminate or Cure.** Failure of Design-Builder or a Subcontractor to secure and maintain insurance with the coverages and limits required by this Agreement shall be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Design-Builder for work on the Project, (ii) terminate the Design-Builder for cause, and (iii) purchase replacement insurance at the expense of the Design-Builder. Design-Builder consents to Owner procuring replacement insurance in Design-Builder's name and Design-Builder will cooperate in all respects with Owner's efforts in this regard. Alternatively, at Owner's discretion, Owner may purchase an Owner's protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Design-Builder and Subcontractors maintained the insurance required by this Agreement. Owner's costs incurred in finding replacement insurance or an Owner's protective policy shall either be reimbursed directly by Design-Builder or may be offset against amounts owed by Owner to Design-Builder on this Project or other projects.
- I. **Insurance In Excess of Requirements.** In the event Design-Builder or any Subcontractor(s) purchase insurance applicable to the Project in excess of the coverages or limits required under this Agreement, such excess coverages or limits shall apply be deemed to have been required herein and be complaint with all requirements of this Exhibit.
- J. **No Waiver by Owner.** The insurance requirements under this Agreement can only be waived or modified by Owner by an express written instrument signed by Owner. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, shall amount to Owner's waiver of the insurance requirements of this Agreement.
- K. **Subcontractor Insurance.** All Subcontractors' insurance shall meet all insurance requirements of Design-Builder as provided in this Agreement, including, but not limited to, the types of insurance, extent and

durations of coverages, and notice requirements, except that the limits of insurance for Subcontractors shall be no less than the following:

(i) Workers' Compensation and Employer's Liability: same as above.

(ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:

\$1,000,000 Each Occurrence

\$1,000,000 Personal and Advertising Injury

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire Damage Legal Liability

\$ 5,000 Medical Expenses Per Person

(iii) Business Auto: same as above.

(iv) Excess/Umbrella Liability Coverage: none required.

- L. Additional Insureds. All Design-Builder's and its Subcontractors' liability insurance policies shall contain an endorsement expressly naming Owner, its affiliates, subsidiaries, directors, officers, employees and agents as additional insureds for both on-going and completed operations. Design-Builder shall take care to ensure that all entities (other than Owner) whom Design-Builder and Subcontractors are required to make an additional insured but with whom Design-Builder lacks contractual privity are made an additional insured using form ISO CG 20 38 or equivalent. The coverage under the additional insured endorsement shall (i) be primary and noncontributory with respect to any insurance maintained by the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the Named Insured, (iii) shall provide coverage to the additional insureds for the products-completed operations hazard, (iv) all of these requirements are to be complied with for the duration of the statute of repose related to the Project. In the event that Design-Builder cannot comply with all of these requirements, Design-Builder shall obtain a Project Specific Endorsement naming Owner and its affiliates as Named Insureds on all primary and excess/umbrella policies required herein. The following additional persons or entities affiliated with Owner shall be named as additional insureds on the ISO CG 20 38 endorsement:

END OF EXHIBIT A

END OF ATTACHMENT B

ATTACHMENT C – PRICE PROPOSAL FORM

OFFEROR'S PRICE ESTIMATE

The undersigned submits the following Proposal. Please fill out all tables in this Attachment.

Pursuant to an in compliance with the Request for Proposals, Attachment, Contract Forms Attachments, General Conditions Attachment, and the Supplemental to the General Conditions Attachment, the undersigned certifies to have carefully examined the Request for Proposal and all attachments, conditions affecting the Work and is familiar with the site. The undersigned further proposed to furnish all labor, materials, equipment, and services necessary to complete the Work for the following costs:

DESIGN BUILDERS FEE PROPOSAL (5 points)

The offeror shall provide a fixed estimated cost proposal to conduct all Pre Construction Services bringing the Basis of Design Documents to completion, constructability review, and the development of a GMP proposal, including reimbursable expenses, for a maximum not to exceed amount:

Table C-1 – Pre-Construction Fee

Description of Proposal Item: Pre Construction Fee			Proposal Amount Total
Total Pre Construction Services Fee:		Maximum "NTE"	\$ _____

Complete Table C-4 for an itemize summary of the above NTE fee.

GMP Contingency Percentage (0 points)

The offeror shall propose a percentage for a GMP Contingency.

Table C-2 – Pre-Construction Fee

GMP Contingency			%
GMP Percentage			_____ %

DEMOLITION CONSTRUCTION PHASE SERVICES (25 points)

For the purposes of calculating the costs below, proposer shall utilize the Basis of Design Documents and the Available information to provide an estimated cost conduct all construction activities required to remove the Grand Staircase in accordance with local and state agency permit requirements and stabilize the site for new infrastructure.

The Offeror shall provide fill out table C-2 on the next page, utilizing any necessary bid descriptions the Offeror believes is necessary to demonstrate adequacy of coverage of those construction activities to the RFP evaluators.

[illegible]

(Amount written in text format)

Eastern Oregon University Facilities & Planning Department

Table C-4 – Pre Construction Fee Proposal Description and Summary

Complete the table below in its entirety.

Description of Pre-Construction Services				Proposal Amount
Staff Member Classification	Hourly Rate	Estimated Hours	Total Per Staff Member Classification	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
_____	\$ _____	X _____	\$ _____	
Reimbursables			\$ _____	
TOTAL Pre-Construction Services Proposal (Not to Exceed) =				\$ _____

Firm Name and Address of Offeror

This proposal is submitted in the name of:

Firm Name:

Business Address:

Contractors CCB #

EIN No.

Oregon Registry #

By:

Signed:

Title:

Signed and sealed this

_____ **Day of** _____, 20_____

END OF ATTACHMENT C

ATTACHMENT D – AVAILABLE INFORMATION

Certain available information relating to the surface, subsurface, and structures is available to offerors, but may not be directly part of the Basis of Design Documents, are as follows:

1. PMA Historic Concrete Analysis: Entitled *Petrographic Service Report*
 - a. A copy of this full sixteen (16) page report is provided as Attachment D-1 in the Procurement posting.
2. Arborist Report: Entitled *Arborist Report and Synopsis*
 - a. A copy of this full three (3) page report is provided as Attachment D-2 in the Procurement posting.
3. State of Oregon General Fund Grant Contract: Grant #21-208
 - a. A copy of this twenty-three (23) page report is provided as Attachment D-3 in the Procurement posting.

This available information is provided as separate attachments based on their corresponding number above in PDF format at ORPU.org.

Any recommendations described in these documents shall not be construed as requirements of this Contract. These reports are provided for the Contractor's context and reference only. Should the Contractor require additional information beyond the Contract Documents, the Contractor shall arrange and pay for such testing to the extent necessary to complete their Work and is considered incidental to other bids items.

END OF ATTACHMENT D

ATTACHMENT E – BASIS OF DESIGN DOCUMENTS

Basis of Design Documents are provided to the Offerors as a critical part of the RFP and Design Build Contract. They include:

1. Basis of Design Documents includes, but is not limited, to the following items:

- a. Geotechnical Report from NV5. Entitled *Report of Geotechnical Engineering Services*, dated August 17, 2021
 - A copy of this full forty-six (46) page report is provided as Attachment 1 in the Procurement posting and includes all relevant data from which Package A and Package B was developed, signed and sealed by professionals and a slope stability analysis for the interaction between the Grand Staircase and Inlow Hall.
- b. Hazardous Containing Materials Report: Entitled *Hazardous Building Materials Inspection Report*, dated June 16, 2021.
 - A copy of this full three-hundred-thirty-three (313) page report is provided as Attachment D-1 in the Procurement posting.
 - **Information specific to the Grand Staircase** is located on in following sections: 5.3.8, Table 1 in 5.5.1, 5.7.6, 5.7.7, Table 7 in 9.2, 10.1.6, 10.1.7, Figure 16, Appendix B-3 (page 74 of 313), Appendix B-10 (page 81 of 313), and Appendix C-37 (page 121 of 313),
- c. Topographic Survey by BGB Surveyors, including the Basemap: Data, TIN, and all electronic files for final design purposes.
- d. Package A Bid Documents (Demo). PDF, Revit, and Word Document Plans and Specifications
- e. Package B Bid Documents (Construction). PDF, Revit, and Word Document Plans and Specifications
- f. 2023.09.20 GSC Review Comments. XLS of 97 Review Comments of Packages A & B.
- g. SHPO Permit.
- h. Archaeological Permit.

These and other documents are provided to proposed Offeror's only via a Google drive. For access please contact Sarah Hollenbeck, Capital Project Manager, (541) 962-3181, shollenbeck@eou.edu.

END OF ATTACHMENT E