



CITY OF BEND

**Request for Proposal  
Proposal and Contract Documents  
*Progressive Design-Build Services***

**Southeast Area Plan (SEAP) Pump Station Project  
City Project No. 1SEMP  
Solicitation No. 23-3221**

710 NW Wall Street, Bend, Oregon 97703

---

**Proposals Due: March 7, 2023, by 3:00 PM**

## Table of Contents

### Progressive Design Build Services

### SEAP Pump Station Project

### Solicitation No. 23-3221

Request for Proposal .....	3
Exhibit A – Scope of Work .....	16
Exhibit B – Attachment 1 Safety and Health Statement.....	20
Exhibit B – Attachment 2 Price Proposal .....	22
Exhibit B – Attachment 3 Statement of Assurances/Certifications.....	24
Exhibit C – Progressive Design-Build Agreement.....	26
Exhibit C.1 – Design-Build General Conditions .....	69
Exhibit C.2 – GMP Amendment.....	118

**City of Bend, Oregon**  
**Request for Proposals**  
**SEAP Pump Station Project – Project No. 1SEMP**  
**Solicitation No. 23-3221**  
**Proposals Due by 3:00PM on March 7, 2023**

## **REQUEST FOR PROPOSALS**

The City of Bend (City) requests competitive proposals from qualified and experienced Design-Builders for the design and construction of the Southeast Area (SEAP) Pump Station Project (the Project).

This project will be completed using a Progressive Design-Build (PDB) alternative procurement process and is exempt from competitive bidding under Oregon Revised Statutes 279C.335, as authorized by the Local Contract Review Board on October 19, 2022. This Request for Proposals (RFP) is issued in accordance with Oregon Revised Statutes Chapters 279A, 279B, and 279C and the Bend Municipal Code section 1.55.

Improvements are proposed within the Southeast Expansion Area, which is located in Deschutes County, within the City's Urban Growth Boundary (UGB), generally to the west and north of Knott Road and SE 27<sup>th</sup> Street, southeast of current City limits. The major components of the proposed improvements include the following:

1. Public sewer pump station;
2. Force main connection to the existing City collection system; and
3. Collection gravity mains.

The purpose of this Project is to increase sanitary sewer system capacity, efficiency, and serviceability within the City and the Southeast Area of the City's UGB. The Project will provide for future sewer service to properties within the SEAP and adjacent developments. This Project will also work with partner agencies and property owners to locate the new structures and infrastructure within existing dedicated rights-of-way (ROW) and / or newly dedicated easements, primarily in the planned locations for future right-of-way.

\$15,000,000 has been allocated to the Project through the City's Capital Improvement Program (CIP) to fund all associated project aspects. \$14,000,000 is estimated for design and construction of the proposed pump station, force main and associated gravity conveyance infrastructure under this contract.

The Project is to be designed and constructed in two phases using the PDB delivery method:

### **1. Preconstruction Phase**

The preconstruction phase consists of the following subphases:

- Preliminary engineering,
- Alternatives analysis,
- Project services,
- Design development and identification of subprojects for construction packages,
- Drafting of the construction documents.

See Exhibit A (Scope of Work) for additional information. The City intends to negotiate a scope and fee with the selected Design-Builder for a 100% design for any or all subprojects. The City, at its discretion, may at any point request from the Design-Builder

a guaranteed maximum price (GMP) proposal for the construction of any subproject or portion thereof. The contract will be amended if a GMP is agreed upon and the remaining design scope and fee for that subproject will be moved from the preconstruction phase to the construction phase.

## 2. Construction Phase

Complete design, construction, and post-construction tasks (if GMP is approved by the City in the preconstruction phase).

## ISSUING OFFICER

The City's Senior Procurement Analyst is the issuing officer for this RFP and the point of contact for the City for all process and contract questions as well as protests. Communication with the City regarding any aspect of this Project shall be through the staff designated below. Other communication with City representatives regarding this Project may be cause for proposal rejection.

Issuing Officer:	Technical Questions:
<p>City of Bend</p> <p>Daniel Galanaugh, Senior Procurement Analyst 710 NW Wall Street, 2nd Floor Bend, OR 97703 Phone: 541-323-8570 Email: <a href="mailto:dgalanaugh@bendoregon.gov">dgalanaugh@bendoregon.gov</a></p>	<p>City of Bend Alex Doza, PE, DBIA Project Engineer 709 NW Wall Street Bend, OR 97703 Phone: 541-323-8595 Email: <a href="mailto:adoza@bendoregon.gov">adoza@bendoregon.gov</a></p>

## ANTICIPATED PROCUREMENT SCHEDULE

The City anticipates the following general timeline for this RFP. The City reserves the right to change the schedule for dates prior to Notice of Intent to Award through a written addendum. The anticipated dates for the Notice of Intent to Award and subsequent dates are approximate and subject to change at the discretion of the City.

Proposal Phase	Date
RFP Issued	January 30, 2023
Mandatory Pre-Proposal Meeting	9:00 am
Deadline for submitting Proposers' questions	4:00 pm
Deadline for Proposal Submission	3:00
Interviews (if needed, Proposers should plan to be available)	March 21, 2023
Notice of Intent to Award	March 22, 2023
Council Approval of Contract Award	May 3, 2023
Commencement of Contract	May 17, 2023

## MANDATORY PRE-PROPOSAL MEETING

A mandatory, virtual pre-submittal meeting will be held on February 15, 2023, at 9:00 AM. Proposals will only be accepted from attendees of this meeting. Interested proposers should contact the Issuing Officer prior to the meeting date and time to be sent the virtual meeting invitation.

## **SUBMISSION DATE AND LOCATION**

The Proposer shall provide one (1) original unbound, and five (5) copies of the Proposal. Copies should be held together in any way that is easily recyclable. Easy to recycle documents using recycled content are preferred.

The Proposer shall also provide one (1) copy of the Proposal in PDF format. If the Proposer is declaring any information included in the Proposal as Proprietary (see Public Record section of this RFP for details), an additional copy with all identified Proprietary information redacted shall also be included in PDF format.

The Original will have original signatures and be marked "Original". The outside sealed envelope or box should be marked "**SEAP Pump Station Project – Solicitation No. 23-3221**" and delivered to the address listed below. Proposals are due and must be physically received by the City on or before **3:00 PM on March 7, 2023**.

### Submission Location:

City of Bend  
Attn: Daniel Galanaugh, Senior Procurement Analyst  
710 NW Wall Street, 2<sup>nd</sup> Floor  
Bend, Oregon 97703

City Hall is currently open 8:00 AM to 5:00 PM. The second floor Administration Department door is closed, but Proposers can ring the doorbell for in-person delivery. The City has provided a secure drop-box at the Wall Street entrance to City Hall to collect hand-delivered packages which may be used for contactless delivery. This drop box will be checked at the due date/time to ensure any package delivered via the drop box is properly recorded. Proposers can call Dan Galanaugh at 541-323-8570 to arrange a time for in-person delivery.

Telephone, facsimile, or electronically transmitted proposals will not be accepted. Proposals received after submittal date and time will not be given further consideration. Proposer assumes full responsibility for timely delivery of its Proposal at the required location.

## **SOLICITATION DOCUMENTS AND CHANGES (ADDENDA)**

All solicitation documents may be viewed or printed online from Premier Builders Exchange at [www.plansonfile.com](http://www.plansonfile.com) (click on Public Works Projects). Please contact Premier Builders Exchange at (541) 389-0123 or [admin@plansonfile.com](mailto:admin@plansonfile.com) with any technical problems viewing the solicitation documents. The Issuing Officer can also be contacted with questions regarding document access or to view a hard copy of the solicitation documents.

Any clarifications or revisions will be addressed and issued in addenda; the City must receive requests for changes in writing a minimum of eight days prior to the deadline for submitting proposals. Responses to questions received after this date will be at the discretion of the City.

Proposers should register with Premier Builders Exchange as a document holder to receive addenda and results. Proposers are responsible for checking the Premier Builders Exchange website for the issuance of any addenda prior to submitting a proposal. If the Proposer does not register with the plan center, the Proposer will still be held responsible for all addenda/changes to the documents and may be considered non-responsive if their proposal does not reflect those addenda/changes.

## **INFORMATION AVAILABLE TO PROPOSERS**

The following documents are available for review at [www.bendoregon.gov/city-projects/what-s-sbeing-built/southeast-area-pump-station](http://www.bendoregon.gov/city-projects/what-s-sbeing-built/southeast-area-pump-station)

1. Southeast Area Plan
2. 2014 Collection System Master Plan

3. Joint Management Agreement Regarding the Area within the Bend Urban Growth Boundary
4. Southeast Area Plan, Sewer Concept Plan Technical Memorandum, 2019, Murraysmith/Jacobs

## REQUESTS FOR CHANGE OF CONTACT TERMS OR SPECIFICATIONS

Proposers shall promptly notify the City of any ambiguity, inconsistency, or error, which they may discover upon examination of the Request for Proposal documents. Any request for an explanation regarding the meaning or interpretation of requirements, specifications or other documents must be in writing, with sufficient time for the City to reply before proposal due date. The City may choose not to provide an explanation. Explanations shall be made in the form of addenda and shall be furnished to persons who have registered as document holders. Oral explanations and comments shall not be binding.

Any Proposer that believes a requirement or Contract term is unnecessarily restrictive or limits competition may submit a protest setting out the language for which change is sought and indicating the document title, page, and Section or Subsection where the language is located. To be considered, the protest must include a detailed statement of the legal and factual grounds for the protest, a description of the resulting prejudice to the Proposer if the protest is not granted, and the proposed change. A Proposer who fails to submit a protest relating to contract terms at least eight days before due date may not request different contract terms or specifications if awarded the contract.

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished under this RFP or the interpretation of the provisions of this solicitation, the decision of the City of Bend shall be final and binding upon all parties.

## PROTESTS

Protests regarding this solicitation must be submitted not less than seven calendar days prior to closing, except that protests of an addendum are due five calendar days after the issuance of the Addendum. A request for a change in Specifications or any portion of this Request for Proposals or the Contract Documents is considered a protest.

Protests of Notice of Intent to Award or the final Award must be in writing and made within seven calendar days of the issuance of each respective notification. If a Proposer does not protest the Notice of Intent to Award, they will not be able to protest the Award. Protests shall be delivered to Interim Procurement Manager, City of Bend, 710 N.W. Wall Street, Bend, Oregon 97703. Protests shall be handled in accordance with applicable laws and rules.

## MODIFICATION/WITHDRAWAL

Modification of the Proposal will not be permitted; however, a proposer may withdraw the Proposal at any time prior to the scheduled closing date and time for receipt of Proposals (Proposal due date). Proposals may be withdrawn personally or by written request to the Issuing Officer. Withdrawal of Proposal shall not disqualify the proposer from submitting a Proposal prior to the Proposal due date and time defined in this RFP.

A Proposer may withdraw its Proposal prior to the Proposal due date by submitting **written notice** on Proposer's letterhead signed by an authorized representative. The notice must include the name and telephone number of the Proposer's representative that will be contacted to arrange for the Proposer to retrieve the withdrawn Proposal.

A Proposer may withdraw its Proposal **in person** prior to the Proposal due date upon presentation of identification and evidence of authorization to act for Proposer. If possible, the City will return all Proposal materials at the time an in-person withdrawal request is presented.

## **RESPONSIVENESS, REJECTION/CANCELLATION**

The City may, at its discretion, reject any Proposal that does not substantially comply with the requirements set forth in the RFP. The City may reject any proposal not in compliance with all prescribed public proposal procedures and requirements, and may reject for good cause any or all proposals or cancel the RFP at any time before execution of the contract by both parties if rejection or cancelation is deemed to be in the public interest as determined by the City.

If a Proposal is entirely or predominately labeled as "Proprietary", the Proposal may in the sole discretion of the City, be deemed non-responsive. Unless the City, in its discretion, determines that a submitted Proposal is not in substantial compliance with RFP requirements, unintentionally incomplete, qualified, or omitted responses to Proposal Sections will be dealt with as a matter of Proposal scoring as opposed to responsiveness.

In determining whether a Proposer meets the applicable standards of responsibility to perform the work, the City may consider all of the items in ORS 279C.375. The City may postpone issuance of the Notice of Intent to Award in order to complete the determination of responsibility.

The City may waive minor informalities and irregularities.

## **CITY EVALUATION AND REQUESTS FOR CLARIFICATION**

The Proposals will be reviewed and evaluated using the process described in the Proposal Evaluation Criteria and Contents section of the RFP. During the evaluation process, written questions or requests for clarification may be submitted to one or more Proposers. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Proposer from further consideration. The City reserves the right to select the Proposers on the basis of the Proposals or to conduct interviews with any or all Proposers following evaluation and scoring of the written Proposals, whichever is determined by the City to best serve the needs of the City.

The City may request additional information or make such independent investigations that, in the City's sole discretion, it deems necessary or advisable to determine the responsiveness and responsibility of any Proposer. The City may obtain information from any legal source for clarification of any Proposal or for information regarding any Proposer. The City need not inform the Proposer of any intent to perform additional research. The City reserves the right to research and investigate references including customers other than those listed in the Proposer's submission.

## **PRICE AGREEMENT NEGOTIATIONS AND CONTRACT AWARD**

At completion of the evaluation process, the City of Bend will notify Proposers of its intent to award a contract. The City will attempt to reach a final agreement, including a detailed scope of work, project schedule and fee schedule with the highest scoring Proposer. The selected Proposer shall be expected to sign a contract substantially the form provided in the RFP. The City reserves the right to negotiate a final contract that is in the best interest of the City. If it appears agreement cannot be reached, the City, in its sole discretion, may terminate negotiations and reject the Proposal. The City may then attempt to reach a final agreement with the second highest scoring Proposer. The negotiation process may continue in this manner through successive Proposers until an agreement is reached or the City terminated the contracting process.

## **PUBLIC RECORD AND PROPERTY OF THE CITY**

With the exception of Proposals that are withdrawn prior to the Proposal Due Date or Proposals submitted past the due date and time, all information submitted by a Proposer in response to the RFP shall become the property of the City and will not be returned to the Proposer. All copies of properly withdrawn or late Proposals will be returned to the Proposer unopened.

All documents received by the City are subject to public disclosure after the City selects a contractor. Information deemed by the proposer as exempt under Oregon's public records law should be clearly

marked by the proposer as "Proprietary". Marked pages should be placed in a group separate from the remainder of the proposal. The City will make an independent determination regarding exemptions applicable to information that has been properly marked and segregated. The City will attempt to maintain the confidentiality of materials clearly marked "Proprietary" to the extent allowable under Oregon public records law. Only trade secrets and similar confidential material qualifying under the law should be marked "Proprietary."

## **INCURRING COSTS**

The City is not liable for any cost incurred by Proposers prior to issuance of a contract. Proposers responding to this RFP do so at their own expense and the City will not reimburse any expenses incurred by Proposers or any other party in the preparation or submission of a response to this RFP.

## **DURATION OF THE PROPOSALS**

Proposals must remain valid for at least 90 days from the date proposals are received by the City.

## **BUSINESSES INCLUSION AND DIVERSITY**

Minority, Women Owned, Emerging Small and Service-Disabled Veteran-Owned businesses are encouraged to submit a proposal. Proposers are encouraged to involve participation of small, minority, women and service-disabled veteran-owned business enterprises. A Directory is available from the Certification Office for Business Inclusion and Diversity (COBID) web site at: <https://www.oregon.gov/biz/programs/COBID/Pages/default.aspx>, or by telephone, 503-986-0078.

## **ADDITIONAL INFORMATION/BIDDING AND CONTRACT REQUIREMENTS**

Prevailing Wage – This work requires compliance with Bureau of Labor and Industries Prevailing Wages for Public Works Projects. Design-Builder shall ensure compliance with all the provisions required by ORS 279C.800 through 279C.870 relating to the payment of prevailing wage rates for work performed under this agreement.

Design-Builder must be properly licensed with the Construction Contractors Board (CCB). Unless exempt under ORS 279C.836 (7), (8) or (9), the Design-Builder must have a current Public Works Bond of at least \$30,000 on file with the CCB. Design-Builder is required to verify that subcontractors are licensed and, unless exempt, have a current Public Works Bond prior to starting work on the project.

Each Proposal must identify whether the Proposer is a Resident Proposer as defined in ORS 279A.120 (see Attachment 4). Resident Proposer information is used to apply Oregon reciprocal preference law (ORS 279A.120 and 279A.125).

Licensing under ORS 468A.720 relating to asbestos-containing materials is not a requirement.

If feasible and cost-effective, Design-Builder is responsible for: 1. salvaging or recycling construction and demolition debris and 2. composting or mulching yard waste material at an approved site.

# Proposal Evaluation Criteria and Contents

## Scoring

Proposals received by the deadline shall be scored by a selection committee consisting of personnel invited by the City's Project Manager and Senior Procurement Analyst. Each evaluation criterion has been assigned points based on its relative value to the Project as a whole. Proposals that do not include all required pass/fail (P/F) items will not be scored further.

Evaluation Criteria	Points
1. Letter of Transmittal	P/F
2. Bonding Capacity Letter (Appendix G)	P/F
3. Statement of Assurances (Appendix E)	P/F
4. Design-Builder Profile	150
a. History of Performance, Claims, and Disputes	
b. Legal Structure	
c. Organizational Chart	
5. Experience and Performance	300
a. Specialized Expertise (including design and construction of high volume, sewage pump stations with variable flow for near-term and build-out conditions, sewer force mains, & gravity sewer collection lines)	
b. Design-Build background	
c. Team Collaboration	
d. Permitting, Right-of-way, and easement acquisition	
e. Ability to meet time and budget requirements	
f. References	
6. Project Personnel	200
a. Relevant experience and work on reference projects	
7. Project Approach	250
a. Project Management, Team Structure, and Execution	
b. Design Services including Alternatives Analysis	
a. Governing design elements	
b. Familiarity of project location and determination of route and profile factors	
c. Permit, easement acquisition and property owner outreach and negotiation	

c. Constructing the project	
d. Accident prevention program	
8. Community Benefits	100
	<b>Qualitative Subtotal 1000</b>
9. Price Proposal	300
	<b>Total Points 1300</b>

## Selection

The City's selection committee will develop a score for each proposer submitting a responsive proposal. The City reserves the right to select the Design-Builder on the basis of the Proposals or to conduct interviews with any or all Proposers following evaluation and scoring of the written Proposals, whichever is determined by the City to best serve the needs of the City. If Interviews are conducted, Proposals will be rescored based upon all the information available including that provided in the interview and an additional 600 points will be available for the interview score.

## Proposal Requirements

The Proposal shall comply with the following requirements:

1. Proposals shall not exceed 20 pages (not including appendices). If the Proposal exceeds 20 pages, only the first 20 pages will be reviewed by the selection committee members. Appendices not requested shall not be considered.
2. The Proposer shall number the pages in consecutive order.
3. Each 8 1/2" x 11" side of a Page shall be counted as one page. Each side of an 11"x17" page shall be counted as two pages.
4. Dividers and tabs shall not count in the page count unless they are used to provide Proposal content.
5. Proposal text shall be legible. Arial typeface is preferred, but not required. Minimum font size of 11 point.
6. The RFP name, Solicitation Number, and full legal name of the Proposer shall be shown on the cover of Proposals and on the exterior of the envelope or box containing the submitted proposals.
7. Proposals must be signed by an official of the Company, Organization or Joint Venture authorized to bind the Proposer.

## Required Proposal Submission Contents

Proposers must respond to each of the evaluation criterion in a clear and concise manner. Proposers should pay attention to specific requests for information. Each Proposer is solely responsible for accuracy and completeness of its Proposal. Appendices are required but do not count toward page limitation. Appendices beyond those requested shall not be scored. Proposals are to be limited to the number of pages indicated in the "Proposal Requirements" section but must include the content listed below. Concise proposals without needless duplication are encouraged. The Proposal shall include:

1. **Letter of Transmittal:** Include an introductory letter expressing interest in the project. Include full name of firm, RFP contact person, email address, mailing address, and telephone number. Letter must be signed by person authorized to bind the firm.
2. **Bonding Capacity Letter (as Exhibit G – see 14 below)**
3. **Statement of Assurances (as Exhibit E – see 13 below)**
4. **Design-Builder Profile:**

- a. **History of Performance, Claims, and Disputes** is scored as part of the Design-Builder Profile but should be included as Appendix A.2.
- b. **Legal Structure.** State whether the proposed team is employed under a single entity or whether the team consists of multiple firms collaborating to form the team. Identify whether the Design-Builder is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the owners of the Design-Builder (e.g., shareholders, members, partners, and the like) who hold an interest of 10 percent or more.
- c. **Organizational Chart:** Provide an organization chart showing the staffing Proposal for the key individuals assigned to the Project Team. Describe the Project headquarters including location and anticipated key team members based at said location.

## 5. Experience and Performance:

- a. **Specialized Experience.** Describe the team's experience completing similar projects. Include both design experience and construction experience. For each project include a description of the project, delivery method, a description of specific project challenges and how they were managed, and list critical path construction tasks and how project planning facilitated completion of the project. List any firms or individuals named in your project team that participated in the delivery of each listed project. Identify whether the project was completed within the budget and schedule or an explanation for why the project schedule or budget was exceeded.

Where possible, include experience with the following:

- Gravity and force main pipeline projects, with excavation depths greater than 20 feet for gravity projects.
- Design and construction of sanitary sewer pump station projects, particularly of at least 1 MGD and/or a wide range of near-term and build-out operating conditions, including start up and commissioning of new pump stations.
- Experience with private development and long range land use planning as this project occurs outside City limits, with the UGB.

- b. **Design-build Background.** Describe the Design-Builder's experience working on Progressive Design-Build or Design-Build projects or projects with a similar delivery structure. Note any advantages or disadvantages experienced by utilizing alternative contracting/project delivery methods. Experience with alternative delivery method(s) is not required but is preferred.
- c. **Team Collaboration.** Document projects where members of the proposed Project Team have previously worked together and what their responsibilities in those projects included. Differentiate between and describe the work that was performed by the Design-Builder and the work performed by subcontractors or subconsultants. Describe how the Design-Builder plans to collaborate to maximize the benefits of the PDB process.
- d. **Permitting and easement acquisition.** Identify permitting and easement experience applicable to the Project(s), as well as experience working productively with private property owners on easement acquisition.
- e. **References.** Provide owner contact information related to the Projects detailed in section 5a. These projects should be similar to the City's project. Minimum information for at least three projects shall include:
  - Name of the contact from Project that has direct knowledge of the performance of your team.
  - Company name, address, email, and phone number of the contact

- Names of the key people on your team that were assigned to this Project and performed Work for the referenced contact.
- Owner's original estimate;
- Original total contract cost;
- Final contract cost;
- Original contract completion date; and
- Actual date of Substantial Completion.
- Summary of similarities to the City's Project.

In addition, provide subcontractor/subconsultant references for two projects listed in Team's Experience and Performance section (5a).

## 6. Project Personnel (Include resumes in Appendix B):

Describe your team's employees and those of your subcontractors and subconsultants that are key members of the proposed Project Team for this Project. Include their experience and responsibilities including any experience on other City projects. List their title and the extent of their involvement during the Project expressed as a percentage (100% = full time). At a minimum, the Proposal shall identify the Project principal dedicated to the Project, the Design Lead(s), Construction Lead, Construction Superintendent, Scheduler, and Estimator. If these position titles do not fit your organizational chart, use best judgement to identify the similar key personnel on your team. Specify if there are multiple leads/supervisors for different aspects of the project.

In submitting a Proposal, Proposer represents that the specific members of the Project Team identified in its Proposal shall be available to Work on this Project and to perform the services described for the complete duration of the Project or as specifically indicated if not the complete duration. Indicate the current and anticipated Project assignments for each person and completion dates for those Projects. Include the availability of key team members and the level of flexibility in their schedule if more time was needed for this project.

## 7. Project Approach:

### a. Project Management and Execution:

- Provide a description of project management, process, cost management and control, and communication tools to be utilized in successfully delivering the project. Include planned on-site staff vs. remote staff during different phases of the project, any proposed co-location, and how communication and coordination will be accomplished.
- Discuss organizational structure and key external stakeholders (i.e., Bend Parks and Recreation District, Bend La Pine School District, Deschutes County, emergency services, traveling public, franchise utilities, property owners, etc.) and describe how your team will engage and document interactions and decisions made. Include perceived internal and external coordination challenges and how they will be overcome. Include discussion of internal team expectations, including expected interactions, communication and responsiveness of City and Owner's Representative. How are presented ideas and responses evaluated, decided, and documented? Describe any expectations you have of the City, including but not limited to, the involvement in permit acquisition, right-of-way and/or easement acquisition, stakeholder coordination/communication, and decision making.

### b. Design and Build:

- Discuss your team's approach to design and build the Project. Specifically discuss how you would propose to sequence the project through preconstruction and construction, successfully achieve critical milestones (i.e. permitting, GMP, property owner coordination, easement

negotiation, and other), and manage critical path tasks to optimize the benefits of the project delivery method. Discuss what you see as the major challenges to this Project and how your team proposes to approach them. Please be specific in your responses. The information provided by the Proposer will be considered as commitments by the Proposer in the execution of the Contract.

- Provide your team's proposed project schedule in Appendix C. Describe how your team will ensure schedule is met and your approach to reporting progress. Show and discuss the proposed sequencing and duration of the major project tasks, and major/interim milestone completion dates required to successfully complete this Project. Identify any conflicts/limitations that have an effect upon the scheduling or sequencing of the project. The milestone completion dates provided by the Proposer will be considered as commitments by the Proposer in the execution of the Contract.
- Describe your team's familiarity of the project location and determination of the route and profile factors. How does the topography, subsurface conditions, property ownership, adopted land use plans, and future urban development impact the alignment selection? Identify the governing factors that control the profile.
- Identify all permits, licenses, and approvals required. Identify probable easements required in accordance with the concepts of collector roads shown in the SEAP that will ultimately become City right-of-way upon annexation. Provide an outline that shows duration and sequencing of permits and easement acquisition as related to design and construction phase tasks.

## 8. Community Benefits

- a. Describe your firm's employee compensation structure, (e.g. living wages, healthcare coverage, employee leaves, pension, etc.)
- b. Describe your firm's workforce demographics and any measurable steps taken to ensure a diverse internal workforce (e.g. women and people of color).
- c. How do you approach internal on the job training, mentoring, technical training, and/or professional development opportunities for women and people of color? Describe your approach to facilitate the entry of historically disadvantaged or underrepresented people, including racial and ethnic minorities, women, and low-income people, who are interested in careers in the construction industry. Include details on participation in State Apprenticeship Program, if applicable.
- d. Describe your firm's practices for including State of Oregon COBID certified subconsultants and subcontractors. Describe any plans to increase participation of COBID firms for this job specifically. Include examples of mentoring in addition to efforts to include and utilization.
- e. Describe the top 2 or 3 actions or ongoing practices your firm has implemented to reduce the environmental impacts of your operations. Include implementation dates and any performance metrics. (i.e. energy efficiency, use of recycled content or non-toxic products, use of alternative fuel vehicles or other emission lowering practices, waste prevention and recycling, water conservation, etc.) Include any awards or certifications related to sustainable business operations.

9. **Appendix A.1 – Project List:** Provide a list of all projects over \$5 million undertaken by the prime contractor and the prime designer (if applicable) within the last 5 years, including projects that were completed and those that are currently ongoing. Upon request from the City, contact information for the project owner and the years the projects were started and completed must be provided for any project selected for further review.

## **Appendix A.2 – History of Performance, Claims and Disputes:**

Identify for the past 10 years any construction contracts in which the Proposer (the legal entity the City will contract with if awarded the Work or, if a joint venture, both legal entities of the joint venture) became involved in a bond forfeiture, litigation, or a major claim between Proposer and a project owner. Include a brief, concise, and accurate explanation of the reasons or basis for such forfeiture, litigation, or major claim. For purposes of this RFP, "major claim" shall mean any dispute or claim greater than \$200,000 or 3% of contract, whichever is more, and/or which led to or resulted in (1) the issuance of unilateral change orders; (2) entering into some form of Alternate Dispute Resolution, such as mediation, or arbitration; (3) filing a complaint; (4) threatened litigation; or (5) litigation.

Each Proposer shall state whether within the past ten (10) years it has:

- Had a contract terminated for cause or default;
- Had liquidated damages assessed;
- Been in bankruptcy, reorganization and/or receivership;
- Been disqualified or debarred by any federal, state or local City from being awarded and/or participating in public contracts; or
- Received an unsatisfactory performance rating from any owner.

Identify all criminal convictions, including pleas of nolo contendere, of the Proposer and any of its officers.

**10. Appendix B – Resumes:** Provide resumes with the history of employment, education, registrations, work experience, length of time with the team, and any other information demonstrating the qualifications and abilities of key project staff including experience on comparable projects. Resumes shall be limited to one page per person.

**11. Appendix C – Project Schedule:** Provide your proposed project schedule showing proposed sequencing and milestones.

**12. Appendix D – Accident Prevention Program (including Exhibit B, Attachment 1):**

Construction activities pose many health and safety risks to the contractor's crews, the public, and operations staff. Discuss your history working around operating facilities, your accident prevention program, and how you manage the safety of your subcontractors.

Complete and include the attached Safety and Health Statement, Attachment 1. **Provide a copy of your corporate accident prevention program as part of the electronic copy of the proposal.**

**13. Appendix E – Statement of Assurances / Certifications (Exhibit B – Attachment 3)**

**14. Appendix F - Price Proposal – (Exhibit B, Attachment 2):** Proposers shall submit a Price Proposal on the Price Proposal Form provided as Attachment 2.

**15. Appendix G - Bonding Capacity Letter** - Provide a letter from the Proposer's surety that verifies the ability to bond at least \$14,000,000 for this Project. The surety must be authorized by law to do business in Oregon and must have an A.M. Best Company Rating of "A" or better. Project will require separate Payment and Performance Bonds from the selected firm.

ORS 279C.380(1)(a) provides that for Design-Build Contracts, the surety obligations on performance bonds include the preparation and completion of design and related professional services specified in the Contract. This additional obligation beyond performance of construction services extends only to the provision of professional services and related design revisions, corrective work, and associated costs prior to final completion of the Contract or for such longer time as may be defined in the

Contract. Bonds must be in a form acceptable to the City. The City has preferred forms that will be provided.

## **Exhibit A – Scope of Work**

### **General Scope**

Provide design-build services to design and construct the SEAP Pump Station Project. The components of the proposed design-build improvements include the following;

1. Public sewer pump station;
2. Force main connection to the existing City system; and
3. Conveyance gravity mains that accommodate service to the entire southeast UGB area.

### **The Design-Builder will provide services in two distinct phases.**

1. Preconstruction-phase services generally consist of preliminary engineering, survey, mapping, alternatives analysis (general requirements listed below), geotechnical/foundation investigations, design development with supporting documents, construction documents, and construction sequence planning, as well as the preparation, in close collaboration with the City, of a proposed Guaranteed Maximum Price (GMP).
2. Construction-phase services generally encompass completing the Project's final design, construction, start-ups and performance testing. Permitting and public involvement activities are included in each phase.

### **Preconstruction-phase services include but are not limited to:**

- Preliminary engineering tasks may be performed and include concept development, life cycle cost and alternatives analysis, and initiation of several site reconnaissance and other project outreach efforts.
- Initiation of several tasks including, but not limited to: site investigation, deviations to project design criteria, geotechnical/foundation report, survey and mapping, ROW and easement research, franchise utility coordination, City's utility coordination, permitting, public and stakeholder outreach, and others as identified by the PDB team and City.
- Preliminary engineering tasks will conclude with the submittal of a preliminary engineering report summarizing findings and recommendations.
- Develop the engineering design (including preparing and submitting intermediate design review packages) and value-engineering activities in conjunction with City.
- Prepare a project cost model and provide detailed cost estimates as the design is advanced.
- Lead public outreach efforts with support from City staff and the Owner's Representative.
- Lead easement acquisition efforts with support from City staff and the Owner's Representative. Note that the City intends to locate the sewer pipeline within public utility easements in the most likely location of future right-of-way that will be dedicated upon future urban development of the area following annexation of the areas into City limits. Design-Builder will review existing City planning documents and lead discussions and negotiations with property owners to acquire easements.
- Develop the Project schedule and create a construction sequence plan.
- Submit and negotiate one or more GMPs to complete the construction-phase services.

- Should negotiations in the development of a GMP fail, the design will be completed in this phase.
- Identify project permitting/licensing requirements. Coordinate with the City to secure necessary approvals, permits, and licenses prior to construction

Determine whether an Environmental Impact Report or Assessment is required for the Project and the necessary steps to obtaining or conducting one.

**If one or more GMP are approved by the City following the preconstruction phase, the construction-phase services include, but are not limited to:**

- Complete the final design.
- Procure materials, equipment, and subcontractors.
- Construct Project.
- Secure necessary permits as required for construction.
- Provide warranty coverage.

### **General Alternatives Analysis Report Requirements**

The Alternatives Analysis Report shall include two sections, preliminary engineering and alternatives analysis.

Preliminary Engineering:

1. Preliminary engineering to verify:
  - a. Flow considerations and infrastructure sizing
  - b. Preliminary profile considerations
  - c. Optimal pump station siting
  - d. Delineation of gravity sewer service area

Alternative Analysis:

1. Alignment optimization based on informal negotiations with property owners.
2. Alternatives for accommodating flow range conditions from near-term to future build-out

The analysis of each alternative above shall include the following:

- Performance analysis and service area
- Construction cost
- Constructability/construction risks
- Sequence of construction and overall construction duration
- Market availability considerations

### **Roles and Responsibilities**

**City:** The City will cooperate with the Design-Builder and will fulfill its responsibilities in a timely manner to facilitate the Design-Builder's timely and efficient performance of services. City responsibilities include:

- Review submissions and provide comments to Design-Builder.

- Furnish existing studies and provide complete, accurate, and reliable data and information regarding the Project, including record drawings, preliminary studies, topographic survey, and others as deemed applicable.
- Provide flow data and land use projections
- Provide information and (or engage Design-Builder to perform) additional studies that may be necessary to complete the Project
- Provide adequate funding.
- Provide access to the Project site and support easement acquisition.
- Obtain the governmental approvals and permits City is responsible for and assist Design-Builder in obtaining governmental approvals and permits it is responsible for.
- Perform quality assurance as needed.
- Provide funding for easement acquisition.
- Provide coordination support with external stakeholders.

**Design-Builder:** The Design-Builder will cooperate with the City and will provide in a timely manner the preconstruction- and construction-phase services necessary to complete the Project scope. Design-Builder responsibilities include:

- Prepare design and construction documents.
- Supervise subcontractors and Design-Builder personnel.
- Obtain certain governmental approvals and permits.
- Implement quality-management procedures.
- Implement Project health and safety practices.

## Schedule and Budget

\$15,000,000 has been allocated to the project through the City's Capital Improvement Program (CIP) to fund all associated project aspects. \$14,000,000 is estimated for design and construction of the proposed pump station, force main and associated gravity conveyance infrastructure.

Project completion no later than March 31, 2025.

## **Exhibit B – Attachment 1** **Safety & Health Statement**

Please do not leave blanks on any item except lists; use 'n/a' if a field does not apply.

Legal Name of Company: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Is this address the (circle one):      Main Office      Regional Office      Branch Office

Other (describe) \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

1. Please list the trade(s) in which your company performs Work:

CSI Division No.	Description

2. For Work in Oregon, please list your Company's Workers' Compensation Experience Modification Rate (Experience Factor) for the most recent three years, using the applicable Bureau of Labor and Industries ratings

Year	Rate	Year	Rate	Year	Rate

3. For Work in other states (Interstate), please list your Company's Workers' Compensation Experience Modification Rate (Experience Factor) for the most recent three years.

State Name	Year	Rate	Year	Rate	Year	Rate

4. Does your Company employ more than ten (10) persons? Yes  No

- If 'yes' you must complete the answers to the following in question 4.
- If 'no' proceed to question 5 below.

Using the three most recent year's OSHA No. 300 Logs, please fill in the number of cases for each of the following categories:

	Yr 1	Yr 2	Yr 3
A. Number of deaths (Total column G)			
B. Number of days away from Work and job transfer or restricted Workday cases (Total Column H & I)			
C. Number of other recordable cases (Total Columns J)			
D. Number of days away from Work cases (Total Column H)			
E. Employee Hours Worked			
F. OSHA Recordable Incidence Rate (See formula below)			
G. OSHA Lost Workday Incidence Rate (See formula below)			

Notes:

- Items in parenthesis above come from your OSHA No. 300 Log
- Employee Hours Worked = total number of hours Worked during the year by all employees
- OSHA Recordable Incidence Rate=  $[(A+B+C) \times 200,000 / \text{Employee Hours Worked}]$
- OSHA Lost Workday Incidence Rate=  $[(D) \times 200,000 / \text{Employee Hours Worked}]$

Please provide a brief description of the circumstances surrounding any employee death(s) from 4.A above (include on separate page as needed):

5. How many OSHA violation(s) has your Company received in the last three years?

Year	# of Violations	Year	# of Violations	Year	# of Violations

Were any of the OSHA violations considered willful violations: Yes  No

Please give a brief description of all willful violation(s) (include on separate page as needed):

The undersigned warrants and represents the data provided is accurate in all respects.

Name of Company: \_\_\_\_\_

Prepared by: \_\_\_\_\_ Title: \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

**Exhibit B - Attachment 2**  
**Price Proposal**  
**SEAP Pump Station Project**

**Proposer:** \_\_\_\_\_

**Signature of authorized representative:** \_\_\_\_\_

**Title of authorized representative:** \_\_\_\_\_

**Part I: Alternatives Analysis Report**

Not-to-Exceed for Alternatives Analysis Report **Proposed Amount \$** \_\_\_\_\_

Include a separate detailed project fee schedule including proposed staffing, hours and hourly rates for tasks to complete Alternatives Analysis Report in support of this proposed cost.

**Part II: Design-Build Percent Fee**

Design-Builder (DBR) Fee

Percent Fee	Estimated Cost*	Proposal Amount
_____ %	\$14,000,000	\$

Bonds & Insurance

Proposal Item	Percent Fee	Estimated Cost*	Proposal Amount
Insurance	_____ %	\$14,000,000	\$
Payment & Performance Bonds	_____ %	\$14,000,000	\$
Total Bonds and Insurance			\$

<b>Total Part II (DBR Fee plus Bonds &amp; Insurance)</b>	\$
<b>Total Part I and II</b>	\$

\* Estimated amounts are for proposal comparison purposes only and will change as the project becomes better defined. Proposed fees shall be used in development of the Design-Builder's Construction Proposal as defined in the Progressive Design-Build Agreement.

### **Part III: Staff Rates for Pre-Construction Design Phase**

Provide a complete listing of Staff Members, Classifications and Hourly Rates to be used during Pre-Construction Design Phase.

#### Price Proposal Instructions

The terms of the DBR Fee percentage are used as defined in the Contract Document that is included in this RFP.

The DBR Fee percentage should be stated on the Price Proposal as a percentage (to a maximum of two decimal places) and multiplied by the assumed Cost of Work to determine a single extended number. The amount from Part I and the amount from Part II shall be combined to determine the Total Price Proposal.

In completing the Price Proposal, the Proposer must enter a number for each component of the Price Proposal. No other entries, modifications, or qualifications shall be made to the Price Proposal Form. Failure to comply in full with these requirements may be grounds for a Proposal being declared non-responsive. The City reserves the right to reject any or all proposals, and to waive as an informality any non-material irregularity in the proposals received.

Price proposals must be (1) submitted on the forms furnished by City or on copies of those forms, and (2) manually signed in blue ink.

Proposers shall submit amounts in the format provided in the Price Proposal. Only the amounts and information asked for in the Price Proposal Form furnished will be considered as the price proposal.

## **Exhibit B - Attachment 3**

### **Statement of Assurances/Certifications**

Proposer certifies that it has carefully read and understands the Proposal and Design-Build Documents for the activity required by the scope and proposes to provide the services requested.

Proposer certifies that the Proposal submitted is genuine and not a sham or collusive Proposal, or made in the interest or on behalf of any person not therein named; and we further certify that we have not directly or indirectly induced or solicited any Proposer or suppliers to put in a sham Proposer, or any other person or corporation to refrain from proposing; and that we have not in any manner sought by collusion to secure an advantage over any other Proposers or Proposals.

Proposer certifies that it:

1. Has quality experience providing the required services.
2. Has become familiar with the local conditions and shall do the Work as specified and at the price as proposed in conformance to all applicable City, State and Federal Regulations including, but not limited to, those referenced in the RFP
3. Shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.
4. Shall comply with the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act (ADAAA) of 2008 and any subsequent amendments (42 U.S.C. § 12101, et seq.) (Pub No. 101-336), ORS 659A, and all regulations and administrative rules established pursuant to those laws.
5. Has not and shall not discriminate against a subcontractor in awarding a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055 or a business enterprise that is owned by a service-disabled veteran, as defined in ORS 408.225.
6. Is a subject employer under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires contractors to provide all workers with compensation coverage.
7. Is a:  
 Resident Bidder as defined in ORS 279A.120  
 Not a resident bidder as defined in ORS 279A.120: Resident of State \_\_\_\_\_
8. Shall comply with the City of Bend's policy of non-discrimination, which prohibits discrimination on the basis of race, color, religion, sex, disability, family status, national origin, gender preference or gender identity in the performance of any Contract awarded by the City of Bend.
9. Shall include requirements in its subcontracts requiring its Subcontractors to comply with all statutes, laws, regulations and policies referred to this Statement.
10. Shall accept the Contract terms and conditions included in this RFP if its Proposal is accepted.
11. Understands no verbal agreement or conversation with any officer, agent, or employee of the City, either before or after the submission of proposal, shall affect or modify any of the terms or obligations of the Design-Build Documents.
12. Is not a City official/employee or a business with which a City official/employee is associated, and that to the best of its knowledge, Contractor, its employee(s), its officer(s)

or its director(s) is not a City official/employee or a relative of any City official/employee who: i) has responsibility in making decisions or ability to influence decision-making on the Bid or project to which this Price Agreement pertains; ii) has or will participate in evaluation or management of the Bid; or iii) has or will have financial benefits in the Bid. Contractor understands that should it elect to employ any former City official/employee during the term of the Bid then that the former City official/Contractor employee must comply with applicable government ethics and conflicts of interest provisions in ORS Chapter 244, including but not limited to ORS 244.040(5) and ORS 244.047.

13. Shall comply with the provisions of ORS 279C.800 to 279C.870 (BOLI Wage Requirements). Contractor has reviewed the prevailing wage provisions of the Design-Build Documents.

14. Acknowledges receipt of and agrees to be bound by the following addenda:

# \_\_\_\_\_ Dated: \_\_\_\_\_ # \_\_\_\_\_ Dated: \_\_\_\_\_  
# \_\_\_\_\_ Dated: \_\_\_\_\_ # \_\_\_\_\_ Dated: \_\_\_\_\_

Name of Proposer: \_\_\_\_\_

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Authorized Official and Title)

By \_\_\_\_\_ Phone \_\_\_\_\_  
(Type or Print Name)

CCB# \_\_\_\_\_ DUNS No. (see below) \_\_\_\_\_

[Data Universal Numbering System \(DUNS\) number information see <http://fedgov.dnb.com/webform/>](http://fedgov.dnb.com/webform/)

**Exceptions** to the above Certifications. The Contractor will cross out those items they cannot certify to and then list the reasons for the exception (use additional pages if necessary):

PROGRESSIVE DESIGN-BUILD CONTRACT DOCUMENTS  
For the Design and Construction of  
SOUTHEAST AREA PLAN (SEAP) PUMP STATION PROJECT

Contract No. \_\_\_\_\_

Progressive Design-Build Agreement SEAP Pump Station Project

Section #	Section	Page
1.	TERM; SCOPE OF WORK; INCORPORATION OF DOCUMENTS .....	
2.	COMPENSATION.....	
3.	DESIGN-BUILDER'S DUTIES AND STATUS.....	
4.	PRE-CONSTRUCTION DESIGN PHASE.....	
5.	CONSTRUCTION PHASE .....	
6.	COST OF THE WORK.....	
7.	OTHER METHODS OF COMPENSATION.....	
8.	COSTS NOT REIMBURSABLE.....	
9.	ACCESS TO RECORDS – FILES; CONFIDENTIAL INFORMATION.....	
10.	INTELLECTUAL PROPERTY RIGHTS .....	
11.	SUBROGATION .....	
12.	SUBCONTRACTING .....	
13.	PREVAILING WAGE RATES .....	
14.	NONDISCRIMINATION.....	
15.	COMPLIANCE WITH LAW .....	
16.	PROVISIONS REQUIRED BY STATE LAW .....	
17.	NON-PARTNERSHIP .....	
18.	WAIVER .....	
19.	LIMITATION ON AUTHORITY .....	
20.	ATTORNEY FEES AND GOVERNING LAW.....	
21.	SUCCESSORS AND ASSIGNS .....	
22.	MERGER.....	
23.	NOTICES.....	

**PROGRESSIVE DESIGN-BUILD AGREEMENT**  
**SOUTHEAST AREA (SEAP) PUMP STATION PROJECT**

**PARTIES:** City of Bend, Oregon (the "City") 710 NW Wall Street  
Bend, Oregon 97703

[("Design-Builder")]

**RECITALS:**

- A. City selected Design-Builder to perform work for the City by a competitive proposal process, pursuant to ORS 279C.335, as authorized by the Bend City Council acting as the Local Contract Review Board on October 19, 2022. Design-Builder's Proposal earned the highest total score from all proposals received.
- B. This Agreement contemplates a limited initial scope of work by the Design-Builder for the Southeast Area Plan (SEAP) Pump Station Project (the "Project"). The work includes a Pre-Construction Phase, including an Alternatives Analysis, Preliminary Engineering, analysis of phasing or Subproject(s), and initial design for one or more Subprojects or phase, at the direction of the City. If the construction documents are approved by the City, and a scope and fee can be agreed to, the Parties intend to enter into one or more Guaranteed Maximum Price ("GMP") amendments for design completion and construction of the Project or one or more Subproject(s) or phases. Contingent on allocation of funding and the City's needs, in the City's sole discretion, the Design-Builder may also perform design work and submit proposals for construction of one or more additional Subproject(s) or phase.

**AGREEMENT:**

1. **TERM; SCOPE OF WORK; INCORPORATION OF DOCUMENTS**
  - A. **Term.** This contract shall be effective on the date last signed by both parties and Design-Builder has submitted the required certificates of insurance and performance and payment bonds ("Effective Date"). It shall remain in effect, unless sooner terminated, until the work on the Project has been completed and the warranty period has expired. The earlier termination of this Agreement or expiration of the term does not affect any right that arose prior to expiration or termination, and terms that by their nature survive expiration or termination shall remain in effect after expiration or termination.
    1. Work shall commence as stated in the Notice to Proceed from City to Contractor. The City reserves the right to issue multiple, limited notices to proceed for portions of the Work, in the City's sole discretion.
  - B. The Work may include, at the direction and sole discretion of the City, design and construction of the Project or any portion thereof, prepared by Design-Builder and

accepted by the City in writing, which may include the following elements in these or other configurations as identified by the Design-Builder and approved by the City during the Design Phase of the Work (each, individually, a “Subproject” and collectively, the “Subprojects”):

1. SEAP Pump Station
2. Force Main Connection to existing City collection system
3. Conveyance Gravity Mains

C. All provisions of this Contract apply to each Subproject, or portion thereof, as it proceeds at the sole direction of the City, whether any Subproject is proceeding in whole or in part, individually or in connection with any other Subproject, unless any Subproject has been removed from the Scope of Work by a Change Order or Change Directive.

D. Collaboration. The Parties intend through this Agreement to establish a collaborative environment where all parties have the opportunity to contribute their best efforts for the benefit of the Project as a whole rather than the benefit of individual parties. The Parties agree to work together to create a culture of open and honest communication. The Parties agree to resolve disputes at the lowest level possible, including following the dispute resolution provisions in this Contract. The Parties agree to integrate the design and construction teams as early as possible.

E. The Design-Builder must provide all things necessary for the complete performance of the Work, which includes, but is not limited to, Preliminary Engineering, Construction Document development, and, at the direction of the City, Design Development and / or preparation of the Construction Proposal. Phasing is generally described in this Agreement and Work to be performed by the Design-Builder will be more specifically set forth in the Scope of Work to this Agreement and any amendments. Design-Builder shall perform work as described in the relevant Scope of Work, consistent with the provisions of this Agreement.

F. Upon execution of a GMP Amendment, if any, the Work may include, but not be limited to, Design Development, Construction Document development, and performance of construction Work for identified Subproject(s). Further GMP Amendments may be executed by the Parties for Design Development, Construction Documents, and performance of the Construction Work for subsequent Subprojects, as requested by the City.

G. The Work must be performed in accordance with the terms of the Contract.

H. This Contract consists of the main text of this Progressive Design-Build Agreement and the following exhibits:

1. Exhibit 1, Design-Build General Conditions
2. Exhibit 2, Scope of Work

3. Exhibit 3, Compensation

- I. In addition, the following documents are part of the Design-Build Documents and are binding on the parties:
  1. Written amendments to this Agreement signed by both parties, including any GMP Amendments
  2. Change Orders and Change Directives
  3. Notice to Proceed
  4. City of Bend Volume I Bidding and Contract Documents:
  5. 2021 Oregon Standard Specifications for Construction - General Conditions
  6. Project Special Provisions to the General Conditions (as created and approved by the City of Bend)
  7. City of Bend Volume II Special Provisions to the OSS Technical Specifications.
  8. 2021 Oregon Standard Specifications for Construction - Technical Specifications
  9. Supplemental Specifications, if any, as created and approved by the City of Bend
  10. Standard Drawings (City of Bend and/or OSS)
  11. Construction Documents, as they are developed by Design-Builder and approved by the City
- J. The City's Engineering Director, or designee, will resolve any discrepancies between these documents. The following order of precedence (highest to lowest) shall apply to any review by the Engineering Director or reviewing court. The terms of this Contract and all exhibits, as set forth in Section 2.H., control over any inconsistent provision of any document other than a Change Order. Figure dimensions, and dimensions that can be computed, on plans shall take precedence over scale dimensions.
  1. Authorized Change Orders, Change Directives, and Addenda to the Contract
  2. This Agreement, including exhibits
  3. City of Bend Special Provisions to the 2021 Oregon Standard Specifications for Construction-Volume 1 (General Conditions – Part 00100s)
  4. 2021 Oregon Standard Specifications for Construction Volume 1 (General Conditions – Part 00100s)

5. Project Special Provisions to the Technical Specifications including any supplemental specifications (City of Bend and/or Design, as created for the Project and approved by the City of Bend)
6. 2021 Oregon Standard Specifications for Construction Volume 2 (Technical Specifications – Part 00200s through Part 03000s).
7. Project Drawings, as created for the Project and approved by the City of Bend
8. City of Bend Standard Drawings
9. OSS Standard Drawings

K. The Design-Builder's Proposal was used to select Design-Builder for this Project, and the Parties agree that the Design-Builder's Proposal and concepts identified therein have been used in developing the Scope of Work, which demonstrates Design-Builder's general approach and intent with the Project; however, nothing in this Agreement shall be considered as an acceptance of the terms of the Proposal if the terms of the Proposal conflict or are otherwise incompatible with the express terms contained in this Agreement and Attachments or in the City's request for proposals.

L. Design-Builder acknowledges that it has or has access to all the contract documents referred to in this Section and agrees to comply with all the contract documents.

M. The total estimated price for the Design Phase and all subsequent phases of Work is \$14,000,000. This number is set forth for compliance with Bend Code 1.55.050.E., and is not a guarantee of any amount of compensation for Design-Builder under this Agreement.

N. Unless defined in this Agreement, capitalized terms have the meanings assigned to them in the General Conditions.

## 2. COMPENSATION

- A. Design Services Compensation. City shall pay Design-Builder for Pre- Construction Design Phase work, described below in Article 4 and as further set out in Exhibit 3, based on time and materials as set forth in the attached Exhibits, but the total payment under this Agreement, which includes allowable expenses or reimbursement as per the attached exhibits, shall not exceed \$\_\_\_\_\_ (the "Not to Exceed Amount" or "NTE"). This Not to Exceed Amount may be exceeded only upon prior written increase in the Scope of Work, accompanied by written authorization for an increase in fee from the City Manager. If there is no change in Scope of Work, the Design-Builder shall complete all identified Work within the Not to Exceed amount as indicated above. Any known additional or optional tasks are listed in Exhibit 2 Scope of Work.

1. Design-Builder shall send City an invoice each month setting forth the fee due for that month and include a detailed summary of the work performed during the pay period. City shall review all submitted invoices promptly and shall pay all undisputed amounts within 30 days of City's receipt of the invoice. Invoices for work performed or reimbursement for expenses incurred more than 90 days prior to invoice submission will not be considered.
2. Invoices will be directed to the City of Bend, Attention: Accounts Payable, P.O. Box 1458, Bend, Oregon 97709. Invoices may be emailed to [ap@bendoregon.gov](mailto:ap@bendoregon.gov) and copied to the Project Manager. If an invoice is delivered on a nonbusiness day, the invoice shall be considered received on the next day the City's Finance Department is open for business.
3. Design-Builder shall reference the Contract Number and the Project Number on all invoices.

B. Guaranteed Maximum Price. If the parties execute a GMP Amendment, the City shall pay Design-Builder the amount as set forth in this Article and the GMP Amendment. The Guaranteed Maximum Price shall include (1) the Cost of the Work as defined in Article 8, (2) Other Methods of Compensation as defined in Article 9, (3) the Design-Builder's Percentage Fee, and (4) costs of bonds and insurance. Design-Builder must pay costs that would cause the Guaranteed Maximum Price, as it may be adjusted pursuant to the GMP Amendment, to be exceeded, without reimbursement by the City. The following costs shall be excluded from the Cost of Work when calculating the Percentage Fee:

1. Owner Directed Allowances, as defined in Article 7
2. The Design-Builder's Contingency, as defined in Article 7

C. The cost of bonds and insurance, as addressed in Article 6.B of this Agreement.

D. Design-Builder's Percentage Fee

1. The Design-Builder's Percentage Fee must be set forth in the GMP Amendment and shall not exceed a fixed amount equal to \_\_\_\_\_ percent of the estimated Cost of the Work, excluding the items listed in Article 2, subsection C. of this Agreement. The Design-Builder may invoice the City for payments toward the Design-Builder's Percentage Fee in accordance with Article 2, subsection D.3. of this Agreement. The Design-Builder's Percentage Fee is conclusively presumed to include all costs not reimbursable under this Contract, including, without limitation, overhead, profit, taxes, and any other item not included as Cost of the Work.
2. If the Guaranteed Maximum Price is adjusted after execution of the GMP

Amendment, if any, an adjustment to the Design-Builder's Percentage Fee will be determined by fixing an amount equal to \_\_\_\_\_ percent of the estimated Cost of the Work related to the change that is the basis for the adjustment to the Guaranteed Maximum Price. The City will not pay for any costs that exceed the Guaranteed Maximum Price, including any additional fee based on such costs, and the Design-Builder's Percentage Fee is subject to no other adjustments.

3. Each of the Design-Builder's requests for progress payment may include a request for payment of Design-Builder's Percentage Fee equal to \_\_\_\_\_ percent of the reimbursable costs for that period.
4. The Design-Builder's Percentage Fee shall not be applied to the items listed in Article 2, subsections 2.A, 2.B.1. and 2.B.2. of this Agreement.

E. Savings. If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Article 7 hereof or any other reimbursement to which Design-Builder is entitled under this Contract) is less than the GMP amount, as such GMP may have been adjusted over the course of the Project, Design-Builder is not entitled to the difference.

F. The City does not anticipate early construction work occurring during the Pre-Construction Design phase of this Contract. However, in the event that Early Construction Work is determined to be necessary, consistent with Article 5, subsection B.2., the City will issue a Change Order or Change Directive amending this Contract to incorporate the early work and adjusting Design Services Compensation accordingly. The parties acknowledge that early work in excess of \$50,000 may require Prevailing Wage.

G. As used in this Contract, the phrase "performance of the Work" includes Design Services, any Work that is authorized under a Change Order or Change Directive issued before the execution of the GMP Amendment, Work authorized under the GMP Amendment and Article 5, if any, and all of the Design-Builder's other obligations under this Contract.

### 3. DESIGN-BUILDER'S DUTIES AND STATUS

A. General Duties

1. The Design-Builder recognizes the relationship of trust and confidence established between the Design-Builder and the City by the Agreement. With respect to all construction activities, the Design-Builder shall furnish its best skill, judgment, and cooperation in furthering the interests of the City. With respect to all design and professional service activities, the Design-Builder shall apply the technical knowledge and skill applied by similar designers and professionals in good standing where the Project is located.

2. The Design-Builder must comply with any applicable licensing requirements in the jurisdiction where the Project is located, including but not limited to ORS 701.026(1).
3. The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the City.
4. The Design-Builder agrees to furnish efficient business administration and superintendence, to use every effort to keep an adequate supply of design professionals, workers and materials on hand at all times, and to perform construction activities for the Work in the best and most sound way and in the most expeditious and economical manner consistent with the interests of the City.
5. The Design-Builder's Designer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Design-Builder will cooperate with the Engineering Director or designee and Owner's Representative and utilize the Design-Builder's professional skill, efforts and judgement in furthering the interests of City; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in conformance with the terms and conditions of the Design-Build Documents in an expeditious and economical manner consistent with the interests of City.
6. When the Design-Build Documents require that a Subcontractor provide design professional services or certifications related to materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Subcontractor, the Design-Builder shall cause such design professional services or certifications to be provided by a properly licensed design professional in the jurisdiction where the Project is located, whose stamp and signature shall appear on all drawings, calculations, specifications, and certifications.

B. Project Staffing

1. The following person(s) will serve in the following roles for the Design-Builder:
  - a. [To be completed following Design-Builder selection]
2. The following person(s) or entity will serve as the Designer for the Design-Builder:
  - a. [To be completed following Design-Builder selection]
3. Unless they leave the employ of the Design-Builder, the above-named persons must serve in these positions throughout the duration of the Design-Builder's performance of the Contract except as approved otherwise in writing in advance

by the City. Persons named to replace those set out above shall shadow the person they are replacing at no cost to the City for at least two-weeks prior to stepping into the role. The City's approvals as required by this subsection will not be unreasonably withheld.

4. The Design-Builder may not employ personnel, or contract with Designers, Subcontractors or suppliers, to whom the City has made reasonable and timely objection. The Design-Builder will not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.
5. If the City has reasonable objection to a person or entity proposed by the Design-Builder, either before or after their assignment to this Project, the Design-Builder must propose another to whom the City has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Guaranteed Maximum Price and Contract Time will be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Guaranteed Maximum Price or Contract Time will be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.
6. If the Design-Builder changes any of the Designer(s) and/or Subconsultants identified above, or Subcontractors identified above or in subsequent subcontracts in the GMP Amendment, the Design-Builder must notify the City and provide the name and qualifications of the new Designer(s), Subconsultants or Subcontractors. The City may reply within 14 days to the Design-Builder in writing, stating (1) whether the City has reasonable objection to the proposed Designer or Subcontractors or (2) that the City requires additional time to review. Failure of the City to reply within the 14-day period constitutes notice of no reasonable objection.
7. Except for those persons or entities already identified or required in the GMP Amendment, the Design-Builder, as soon as practicable after execution of the GMP Amendment, must furnish in writing to the City the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The City may reply within 14 days to the Design-Builder in writing stating (1) whether the City has reasonable objection to any such proposed person or entity or (2) that the City requires additional time for review. Failure of the City to reply within the 14-day period constitutes notice of no reasonable objection.

### C. Submittals

1. Construction Documents, Shop Drawings, and other submittals must be prepared by a licensed professional. Construction Documents, Shop Drawings, and other submittals related to the Work designed or certified by such professionals must

bear such design professional's stamp and signature in the jurisdiction where the Project is located. The City is entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

2. The Design-Builder must direct specific attention, in writing or on resubmitted design and Construction Documents or other submittals such as Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the City on previous submittals. In the absence of such written notice, the City's approval of a resubmission will not apply to such revisions.
- D. By executing this Agreement, the Design-Builder represents that its representatives have reviewed the City's Scope of Work and visited the Project site, become familiar with the local conditions under which the Work is to be completed, correlated their personal observations with the requirements of the Contract, and confirmed that the information contained in the City's Scope of Work complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

#### 4. PRE-CONSTRUCTION DESIGN PHASE

- A. Any information submitted by the Design-Builder, and any interim decisions made by the City, will be for the purpose of facilitating the design process and will not modify the Scope of Work or Design-Builder's proposal unless the City and Design-Builder execute a Change Order, or the City issues a Change Directive specifically identifying the change to the City's Scope of Work.
- B. The Pre-Construction Design Phase consists of the following subphases, as directed by the City in writing, for any or all or a combination of Subprojects, at the sole discretion of the City. The City may authorize Design-Builder to proceed on one or more subphases for one or more Subprojects, sequentially or simultaneously, in consultation with Design-Builder (together, "Pre- Construction Design Phase"):
  1. Alternative Analysis Report
  2. Preliminary Engineering
  3. Construction Document Development
  4. Construction Proposal.

Each of these subphases is further defined below.

Throughout this Pre-Construction Phase, the Design-Builder will advise the City on proposed site use and improvements, designs, and selection of materials. The Design-Builder must also provide the City with recommendations, consistent with the City's Scope of Work, on constructability; availability of materials and labor; time requirements

for procurement, design options, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

C. Alternative Analysis Report

1. Alternatives Analysis shall consist of preliminary engineering and an analysis of options as approved by the City. Design-Builder's development of options, including method assessment, performance considerations, cost-benefit evaluation, and alignment and profile analysis ("Subproject Options"), as detailed in the Scope of Work, in consultation with the City, as well as preparation of a proposed price and schedule, and shall be consistent with the Design-Builder's Proposal except as specifically modified by the Scope of Work. The alternatives analysis must address approaches to design and construction of the Subproject and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, design options, or phased construction. The preliminary evaluation must consider cost information, constructability, and procurement and construction scheduling issues for any Subproject Option presented.
2. The Design-Builder shall schedule and conduct meetings with the City and any other necessary individuals or entities to discuss and review the Scope of Work to establish Subproject Options and to provide any and all preliminary engineering or other technical assessments that are required to support or otherwise assist in the determination of the feasibility, performance, cost, or other attribute of the considered alternatives. The Design-Builder shall not complete any technical analysis or evaluation without written approval from the City unless such analysis or evaluation is specifically authorized in the Scope of Work.
3. The Design-Builder must meet with the City to discuss its Alternatives Analysis. Designer-Builder shall provide a written Alternatives Analysis Report to the City, summarizing the Design-Builder's evaluation of the Subproject Options. The report shall include, but is not limited to, the following, as directed in writing by the City:
  - a. Each Subproject Option included in the Alternatives Analysis shall include:
    - i. Performance analysis
    - ii. Operational risks, costs, and benefits
    - iii. Construction costs
    - iv. Construction risks
    - v. Sequence of construction and overall construction duration and schedule
    - vi. Preliminary engineering elements that supported the alternative analysis
4. The City will review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed for any or all Subproject Option(s) and/or Subproject(s) or portion(s) thereof. The City may, in its sole

discretion, provide written consent to proceed for any, all, or a combination of Subproject(s), and direct Design-Builder to proceed under Article 4, subsections D., E., or F. For any Subproject for which the City has not provided written consent to proceed, Design-Builder shall continue Alternatives Analysis unless otherwise directed by the City. The consent to proceed may include the City's direction on what documents the Design-Builder will prepare in the Preliminary Engineering subphase. The consent to proceed will not be understood to modify the Scope of Work unless the City and Design-Builder execute a Change Order or the City issues a Change Directive specifically identifying the change to the Scope of Work.

#### D. Preliminary Engineering

1. The Preliminary Engineering phase may include review and validation of previous engineering, documents, concept development, alternatives analysis if not previously completed, and site reconnaissance to support preliminary engineering efforts, as further specified in the Scope of Work. Preliminary Engineering may also include initiation of research, studies, and alternatives analysis deemed necessary to support concept design as detailed in the Scope of Work prepared by the City in consultation with the Design-Builder, as well as preparation of a proposed price and schedule, and shall be consistent with the Design-Builder's Proposal except as specifically modified by the Scope of Work.
2. Through collaboration between the Design-Builder and the City, and with written consent to proceed from the City, the Design-Builder may perform supplemental engineering services to support the Project. These services may include but are not limited to: route and profile determination, right-of-way and/or easement acquisition, permitting, geotechnical investigations, and other analysis to support the project.
3. The Design-Builder shall schedule and conduct meetings with the City and any other necessary individuals or entities to discuss and review the Scope of Work to establish Design-Builder's preliminary evaluation of the Project or Subproject(s) and to provide any and all preliminary engineering required to design the Project, as detailed in the Scope of Work or determined by the Design-Builder, in consultation with the City, to be necessary to complete preliminary engineering for the Project. The Design-Builder shall not complete any technical analysis or evaluation without written approval from the City unless such analysis or evaluation is specifically authorized in the Scope of Work.
4. Preliminary Engineering shall result in a written report from the Design-Builder to the City for review.
5. The City will review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed for any or all Subproject(s) or portions thereof. The City may, in its sole discretion, provide written consent to

proceed for any, all, or a combination of Subproject(s), and direct Design-Builder to proceed under any Pre-Construction Design Phase of this Article 4 for any Subproject(s) or portion thereof, or to continue with Preliminary Engineering under this section. For any Subproject for which the City has not provided written consent to proceed, Design-Builder shall continue Preliminary Engineering unless otherwise directed by the City. The consent to proceed may include the City's direction on what documents the Design-Builder will prepare in the Construction Document Development subphase. The consent to proceed will not be understood to modify the Scope of Work unless the City and Design-Builder execute a Change Order or the City issues a Change Directive specifically identifying the change to the Scope of Work.

## E. Construction Document Development

1. Upon the City's issuance of a written consent to proceed for any Subproject(s) or portion(s) thereof, the Design-Builder shall prepare and submit to the City for the City's written approval Construction Documents as specified in the written consent to proceed, sufficient to construct the Project or Subproject(s), including but not limited to Drawings and Specifications. Deviations, if any, from the Pre-Construction Phase or any other materials previously provided must be disclosed in writing and are subject to the approval of City.
2. Development and review of the Construction Documents including drawings, specifications, and any required supplementals may include, pursuant to the written direction of the City:
  - a. Plan alignment and profile;
  - b. 30%, 60%, 90%, and/or 100% design of the Project or Subproject(s);
  - c. An updated schedule, including proposed design milestones; dates for receiving additional information from, or for work to be completed by, the City;
  - d. Anticipated date for the Design-Builder's Construction Proposal;
  - e. Dates of periodic design review sessions with the City;
  - f. Outline specifications or sufficient drawing notes describing construction materials; and
  - g. Comprehensive written estimate of the cost to design and construct the Project or Subproject(s) based upon the current Design Development documents. Such written estimates must be submitted with the respective Design Development documents.
3. The Construction Documents must establish the quality levels of materials required. The Construction Documents must be consistent with the Design-Build Documents, including but not limited to the Scope of Work, Alternatives Analysis Report, as it applies to the Subproject(s), Subproject Option, or portion thereof being designed, and the findings and/or results of any Preliminary Engineering, unless otherwise disclosed in writing, and must include all items necessary for the proper execution and completion of the Work and reasonably inferable from the

Design-Build Documents, including but not limited to the Scope of Work, as being necessary to produce the indicated results.

4. The Design-Builder shall submit completed Construction Documents to the City for approval. If the City discovers any deviations between the Construction Documents and the Design-Build Documents not previously disclosed by Design-Builder, the City will promptly notify the Design-Builder of such deviations in writing, via e-mail followed by mail delivery of the original Notice. Unless the City and Design-Builder execute a Change Order or the City issues a Change Directive specifically identifying the particular deviation and City's agreement with such deviation, the Design-Builder must correct the deviation and resubmit the Construction Documents. The Construction Documents shall not modify the Design-Build Documents, including but not limited to the Scope of Work, Alternatives Analysis Report, as it applies to the Subproject(s), Subproject Option, or portion thereof being designed, or the findings and/or results of any Preliminary Engineering. Acceptance of the Design Documents will not constitute the City's acceptance of a deviation unless the deviation is specifically identified by the Design-Builder or included in a Change Order or Change Directive.
5. The City, Design-Builder, and its Designer will meet a minimum of twice a month until the completion of the milestone construction document submittal, as described in the City's written consent to proceed for this subphase, for the Work to review scope, quality, budget, and other issues.
6. Before completion of the Construction Documents for the Work, the City, Design-Builder, and its Designer will perform an internal review of the Construction Documents, the Design-Builder's schedule and any critical issues relating to scope, quality, or budget. In addition to delivering to City copies of the Construction Documents for the Work, including but not limited to Drawings and Specifications, Design-Builder and Designer will make reasonable efforts to demonstrate to the City the scope and quality aspects of the design.
7. At the completion of the City's, Design-Builder's, and its Designer's Construction Documents review, the City will provide its written approval of the Construction Documents, including any revisions thereto made during the internal review; however, review or approval by City or its agents of design and Construction Documents shall not relieve Design-Builder to the extent of its liability for any damages resulting from or arising out of professional errors or omissions in the design and Construction Documents, except where City expressly directs such defective or deficient design and Design-Builder delivers to City its written objection thereto. Upon the City's written approval of Construction Documents, the Design-Builder, with the assistance of the City, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

8. If required by City, the Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the City certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Scope of Work set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project in effect at the time of the applicable permit; and (b) that the City and its consultants are entitled to rely upon the accuracy of the representations and statements contained in such certifications.
9. In the sole discretion of the City, the City may elect to accept the Construction Documents as the Design-Builder's final submittal for any Subproject, or the City may issue a written notice to proceed under any Pre-Construction Phase of this Article 4 for any Subproject(s) or portion thereof, or to continue with Construction Document Development for any or all Subproject(s).

#### F. Design-Builder's Construction Proposal

1. Upon the City's issuance of a written consent to proceed for the Project or any Subproject(s) directing the Design-Builder to proceed to this subphase, the Design-Builder must prepare and submit to the City a proposal for completion of design and construction of the Project or Subproject(s) for which the City has given consent to proceed and requested a Construction Proposal. The Design-Builder's Construction Proposal must include the following as set forth in the written consent to proceed or otherwise determined in writing by the City:
  - a. Either:
    - i. A list of preliminary Construction Documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Scope of Work, upon which the Design-Builder's Construction Proposal is based; or
    - ii. A list of Construction Documents prepared by the Design-Builder under the Construction Document Design subphase the Design-Builder will use for construction of the Subproject(s).
  - b. The proposed Guaranteed Maximum Price for construction of the Subproject(s), including a written statement of the estimated Cost of the Work organized by trade categories, Allowances, Contingencies, General Conditions, Design-Builder's Percentage Fee as proposed in Design-Builder's Proposal, and other items that comprise the Guaranteed Maximum Price in such detail and with such substantiation as City may reasonably require;
  - c. An enumeration of any assumptions and exclusions, if applicable;

- d. A list of Design-Builder's key personnel, Subcontractors and suppliers;
- e. The date on which the Design-Builder's Construction Proposal expires, which date must be at least 90 days after submission of the Design-Builder's Construction Proposal to the City; and
- f. The Design-Builder's proposal, if any, for self-performed work and work to be performed by subcontractors without a competitive process, pursuant to Section 6A.1 of the General Conditions ("Procurement Plan").
- g. A list of applicable wage and equipment rates for work to be self-performed by the Design-Builder and/or key Subcontractor member(s), as included in the proposal.
- h. Permitting Strategy Plan detailing the process, schedule, and team member responsibilities for obtaining applicable permits for various phases of construction. Design-Builder must coordinate with all authorities with jurisdiction over the Project for the approval of environmental mitigation measures.
- i. Right-of-Way and easement acquisition plan detailing the process, schedule, and team member responsibilities for obtaining applicable rights for various phases of construction.

2. Upon the City's receipt of Design-Builder's Construction Proposal, the City and the Design-Builder agree to negotiate in good faith regarding the terms and conditions of the GMP Amendment, including but not limited to the amount of the adjustment to the Guaranteed Maximum Price. Without limiting the City's right to terminate this Contract, if the City and the Design-Builder are unable to agree on the terms and conditions of the GMP Amendment, the City will have the right to one or more of the following actions:

- a. Terminate this Contract pursuant to the General Conditions;
- b. Terminate negotiations for the GMP Amendment;
- c. Terminate Design-Builder's work for the subproject for which a GMP Amendment was under negotiation;
- d. Direct Design-Builder to prepare Construction Documents for 100% design under Article 4.E. for the Project or Subproject for which a GMP Amendment was under negotiation; and/or
- e. Continue this Contract for the remaining Design Work, or other continuation of the Work under this Contract, in the City's sole discretion.

3. If the City terminates the Contract or any portion thereof, then (1) the City will continue to have the rights and obligations set forth in subsection 10.B regarding the ownership and use of the Work Product and (2) the City may obtain an assignment of some or all of the subcontracts and purchase orders (including but not limited to agreements with Designers). The amount of time allotted for negotiations and the timing of any termination will be determined in the City's sole discretion.

4. If the City and the Design-Builder agree on the terms and conditions of the GMP Amendment, the City and Design-Builder shall execute the GMP Amendment in the form set forth in the City's Request for Proposals with the blanks and other information completed in the normal course.

## 5. CONSTRUCTION PHASE

### A. Design Development.

1. Unless Construction Documents for 100% design were prepared under the Pre-Construction Phase, upon execution of the GMP Amendment, the Design-Builder shall prepare and submit to the City for the City's written approval Construction Documents sufficient to construct the Subproject(s), or portions thereof, as directed by the City, including but not limited to Drawings and Specifications. Deviations, if any, from the Pre-Construction Phase work, previously prepared Construction Documents, and/or Scope of Work must be disclosed in writing and are subject to the approval of City.
2. The Construction Documents must establish the quality levels of materials required. The Construction Documents must be consistent with the Design-Build Documents, including but not limited to the Scope of Work, previously prepared Construction Documents, and Pre-Construction Phase work, unless otherwise disclosed in writing, and must include all items necessary for the proper execution and completion of the Work and reasonably inferable from the Design-Build Documents, including but not limited to the Scope of Work, as being necessary to produce the indicated results.
3. The Design-Builder shall submit completed Construction Documents to the City for the City's approval. If the City discovers any deviations between the Construction Documents and the Design-Build Documents not previously disclosed by Design-Builder, the City will promptly notify the Design-Builder of such deviations in writing. Unless the City and Design-Builder execute a Change Order or the City issues a Change Directive specifically identifying the deviation and City's agreement with such deviation, the Design-Builder must correct the deviation and resubmit the Construction Documents. The Construction Documents shall not modify the Design-Build Documents, including but not limited to the Scope of Work, previously prepared Construction Documents, or Pre-Construction Phase work. Execution of the GMP Amendment will not constitute the City's acceptance of a deviation unless the deviation is specifically identified and described as such in the GMP Amendment. The failure of the City to discover any such deviations will not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.
4. The City, Design-Builder, and its Designer will meet a minimum of twice a month until the completion of the Construction Documents for the Work to review scope, quality, budget and other issues.

5. Before completion of the Construction Documents for the Work, the City, Design-Builder, and its Designer will perform an internal review of the Construction Documents, the Design-Builder's schedule and any critical issues relating to scope, quality or budget. In addition to delivering to City copies of the Construction Documents for the Work, including but not limited to Drawings and Specifications, Design-Builder and Designer will make reasonable efforts to demonstrate to the City the scope and quality aspects of the design.
6. At the completion of the City's, Design-Builder's, and its Designer's Construction Documents review, the City will provide its written approval of the Construction Documents, including any revisions thereto made during the internal review; however, review or approval by City or its agents of design and Construction Documents shall not relieve Design-Builder to the extent of its liability for any damages resulting from or arising out of professional errors or omissions in the design and Construction Documents, except where City expressly directs such defective or deficient design and Design-Builder delivers to City its written objection thereto. If required by City, the Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the City certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Scope of Work set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project in effect at the time of the applicable permit; and (b) that the City and its consultants are entitled to rely upon the accuracy of the representations and statements contained in such certifications.

## B. Construction

1. Except as permitted in Article 7, subsection B.2., construction shall not commence prior to (1) execution of the GMP Amendment and (2) City's approval of the Construction Documents required for the Work Package. The Design-Builder shall perform no construction Work prior to the City's review and approval of the Construction Documents required for the Work Package. In addition, the Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the City's review of submittals, such as Shop Drawings, Product Data and Samples, until the City has approved each submittal.
2. If the City and Design-Builder agree in a Change Order or the City issues a Change Directive and contract amendment, Early Construction Work may proceed prior to the execution of the GMP Amendment; however, such Change Order or Change Directive shall not waive the City's right to reject the Design-Builder's Construction Proposal or otherwise limit City's rights and remedies under this Contract.

3. The construction Work must be in accordance with approved submittals, including but not limited to the Construction Documents, except that the Design-Builder will not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the City's review and approval of design and Construction Documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals, unless the Design-Builder has specifically informed the City in writing of such deviation at the time of submittal and (1) the City has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Change Directive has been issued authorizing the deviation. The City's review and approval of design and Construction Documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals does not relieve the Design-Builder of responsibility for errors or omissions in those approved documents and submittals.
4. The Design-Builder shall keep the City informed of the progress and quality of the Work.
5. The Design-Builder is responsible for the design, supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder must evaluate the jobsite safety of such means, methods, techniques, sequences or procedures and, except as stated below, will be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder must give timely written notice to the City and may not proceed with that portion of the Work without further written instructions from the City.
6. The Design-Builder is responsible for inspection of any portions of Work already performed to determine that such portions are in proper condition to receive subsequent work.

C. Unless otherwise provided in the Design-Build Documents, the Design-Builder must provide and pay for supervision, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

D. The Design-Builder shall include in the Guaranteed Maximum Price, as set forth in the GMP Amendment, Allowances and Contingencies, if any, stated in the Design-Build Documents.

E. The City reserves the right to perform construction or operations, or services related to the Project, and to furnish materials and equipment for the Project, with the City's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. If the Design-Builder claims that delay or additional cost is involved because of such action by the City, the Design-Builder must make a claim as provided in the General Conditions.

## 6. COST OF THE WORK

A. The term "Cost of the Work" means costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs must be at rates not higher than the standard paid at the place of the Project except with the prior written consent of the City. The Cost of the Work shall only include the items set forth in this Article 6, which may include accounting for costs as described in Article 9. Where any cost is subject to the City's prior written approval, the Design-Builder must obtain this written approval prior to incurring the cost, which prior written approval is a condition precedent of Design-Builder's right to payment for such cost. Following are costs included in the Cost of the Work.

1. Reasonable payments to Subcontractors (including but not limited to Designers), provided that: (1) the City receives the benefit of trade and quantity discounts; (2) the Design-Builder may retain the benefits of discounts for early payment; (3) each subcontract, including those for supplies for which the Design-Builder seeks reimbursement, has been awarded in accordance with the terms of the Contract; (4) reimbursement will be reduced to the extent the cost for which reimbursement is sought fails to satisfy the requirements set forth in Article 10 of the General Conditions; and (5) reimbursement will be further reduced to the extent the cumulative total of all markups on a cost by Subcontractors at all tiers exceeds the percentage specified in Article 10 of the General Conditions.
2. Salaries or wages, plus fringe benefits routinely provided by the Design-Builder (including, as applicable, retirement, life insurance, medical insurance, sick leave, holiday pay, vacation, workers' compensation premiums, and other benefits required by law or by a current labor agreement), for all of the following Design-Builder employees for the time they are engaged in the Work:
  - a. Field labor, including field superintendents;
  - b. Employees directly involved in performing the Work stationed at the Design-Builder's field office and scheduling personnel and others stationed at the Design-Builder's corporate office or any other location who are pre-approved by the City; and
  - c. Employees engaged at the shops or on the road in expediting the production or transportation of materials or equipment required under the Contract.

"Casual overtime" costs (overtime that is sustained for less than 7 consecutive days) may be incurred at the Design-Builder's sole discretion. The Design-Builder must obtain City approval prior to incurring all other overtime costs, including those

incurred while performing additional work directed by the City or as incurred by the Design-Builder working crews on an “extended overtime” schedule (overtime that is sustained for more than seven consecutive days). Notwithstanding the foregoing, delay by the Design-Builder will not be excused merely because the City declines to approve reimbursement of overtime costs.

3. Subsistence and travel for the Design-Builder’s salaried employees normally stationed in the field office when those employees are required to travel and remain out of the Bend metropolitan area overnight in direct performance of the Work under the Contract, but only with the City’s prior written approval and subject to any limitations or restrictions the City may impose in giving its approval. Subsistence, travel, per diem costs, and meals are not allowed for Design-Builder employees or Subcontractors stationed in the field office for the Project more than 50% of the time, or normally stationed within 50 miles of Bend, Oregon, except as specifically authorized by the City. Travel expense reimbursement is limited to the General Services Administration (GSA) per diem rates in effect as of the Effective Date of this Agreement for Bend, Oregon, including meals and incidentals and lodging, privately owned vehicle reimbursement (for vehicles owned by Design-Builder or its employees and used to travel for the Work), and other rates of reimbursement established by the GSA applicable to travel expenses under this Agreement. Other reimbursement requests without applicable GSA established rates are subject to the approval of the City, which may be given or withheld in the City’s sole discretion. The City reserves the right to reject any invoice for costs which, in the City’s sole judgment, are determined to be unreasonable. Examples of expenses that shall not be paid for by the City: liquor (including beer or wine), meals or lodging accommodations for family, trip or rental car insurance, traffic citations or parking tickets, and any other personal expenditures, including those for entertainment.
4. Field office supplies and services, including office supplies, telephone, postage, reproduction, photographs, and field office data processing equipment.
5. Equipment, materials, supplies, consumables and services procured, purchased and utilized in the performance of the Work as required to protect the safety and health of all persons who may be exposed to the hazards of construction. This includes the cost of first aid supplies, temporary fire protection and the cost of administering the Design-Builder’s safety program, but excludes the cost of material rewards such as shirts, jackets, hats, etc.
6. Temporary facilities and services at the Work site, including the job shack and other structures, sanitation, debris removal, roads, heat, light, water, air, and weather protection.
7. For that portion of the Work described as Craft Services, the Design-Builder may use Design-Builder-furnished craft labor approved by the City and brought on early

in the Project. The City will reimburse the Design-Builder for this labor for the direct cost of wages, payroll taxes, and fringe benefits.

8. Costs of removal and proper disposal of debris from the Work site.
9. Fees for laboratories for testing required by the Design-Build Documents, except those related to Defective Work.
10. Licenses, royalties, bond premiums, and sales or similar taxes that the Design-Builder is required by law to pay and are in effect as of the effective date of the Contract. If the entire amount is allocable to the Work, then the Design-Builder shall be entitled to reimbursement of the entire amount. If only part of the amount is allocable to the Work, then the Design-Builder shall be entitled to a prorated reimbursement based on the proportion of the amount allocable to the Work.
11. Reimbursement for use of Design-Builder-owned equipment and rental of equipment owned by third party equipment vendors while the equipment is engaged in the Work, plus fuel and routine maintenance costs. Equipment rental rates will be the lowest of: The Design-Builder's established company rates, actual rental rates, or the rates in effect in each section of the Rental Rate Blue Book on the Effective Date of the contract or amendment under which the work is performed. Rental rates shall be calculated monthly, or as determined by the City, at its sole discretion. The rate which results in the lowest charge for equipment use will be applied. Rates will be adjusted annually after the anniversary date of the Notice to Proceed to reflect published revisions of the Rental Rate Blue Book. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Owner prior to performing the Work. Design-Builder shall deliver to Owner a list of published rates from time to time at Owner's request. "Equipment" as used in this paragraph does not include Design-Builder's office equipment, including computers, printers, etc. Design-Builder's home office equipment and supplies are considered part of Design-Builder's overhead and are excluded from the Cost of the Work.
  - a. The Rental Rate Blue Book denotes discontinued models by showing a star next to the model number. Many manufacturers continue the same model number through successive years. In the event the City and the Design-Builder are unable to distinguish discontinued models from current models having different rates in the Rental Rate Blue Book, the lower rate shall apply. In the event a rate is not given for either a new model or an older model, a rate for the most similar model in the Rental Rate Blue Book will be used. Such characteristics as manufacturer, capacity, horsepower, and fuel will be used as the basis for selecting a similar model.
  - b. In the event a rate has not been established for a particular equipment category in the Rental Rate Blue Book, the Design-Builder shall call the Equipment

Watch company for written documentation of a rental rate on the equipment and present it to the City for approval before use of the equipment.

12. The City generally does not make progress payments for materials stored offsite or pay financing costs pending their reimbursement but may make exceptions in some circumstances. Subject to the City's approval in advance and in writing of the circumstances and conditions, such as location, insurance, clear title, and risk of loss, progress payments may be made for materials stored offsite.
13. All permits for the Work normally obtained by and paid for by the Design-Builder, including those required for bidder-designed work, excluding building permits.
14. Preparing and obtaining reports, schedules, manuals, Drawings, Specifications, related data processing services, and other documents that are not furnished by the City but are necessary for the performance of the Work as specified in the Contract Documents.
15. The cost of repairing damaged Work or damage to City property as requested by the City, except:
  - a. To the extent the cost of repair is covered by insurance;
  - b. To the extent covered by warranty obligations of the Design-Builder or those for whom Design-Builder is responsible;
  - c. To the extent caused by faulty, deficient, or defective workmanship of Design-Builder or those for whom Design-Builder is responsible;
  - d. To the extent the cost of repair is covered by warranty provisions to include rework and faulty workmanship;
  - e. To the extent the Design-Builder recovers the cost of repairs from Subcontractors; or
  - f. To the extent the damage is the result of one or more breaches of the Contract.
16. Costs of Design-Builder's field office computer services (hardware and software) and other outside computer processing services expended in direct performance of the Work, but only to the extent such costs are approved in writing in advance by the City.
17. Other costs incurred in the performance of the Work if, and to the extent, approved in writing in advance by the City.

B. Costs pertaining to Design-Builder-furnished insurance (excluding subcontractor default insurance) or self-insurance and bonds, including premiums and the cost of any deductibles, self-insured retentions, loss above coverage limits, co-pay percentages, claim handling, administration, enrollment, or management costs or expenses, and broker fees under the Design-Builder's insurance program are also reimbursable expenses and shall be included in the Guaranteed Maximum Price. Costs of Subcontractor bonds; provided that the furnishing of such bonds is subject to the prior

written approval of the City. Costs of subcontractor default insurance (e.g., Subguard) are subject to the prior written approval of the City. The Design-Builder Percentage Fee shall not be applied to costs of bonds and insurance.

## 7. OTHER METHODS OF COMPENSATION

Within any NTE or GMP, the parties may agree to the following methods of pricing.

### A. Allowance items and Allowance values.

1. Allowances are sums to cover the cost of prescribed items not specified in detail that may or may not be constructed during construction activities. Any and all Allowance items and Allowance values, must be set forth in each GMP amendment and included within any established NTE or GMP, as applicable.
2. For any Allowance item and Allowance value, Design-Builder and City will 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 the City 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.
3. No work shall be performed on any Allowance item without Design-Builder first obtaining in writing advanced authorization to proceed from the City. The City agrees that if Design-Builder has not obtained 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 submit a Change Order Request for an adjustment of the Contract Time(s) and NTE or GMP, as applicable.
4. The Allowance value for an Allowance item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance directly associated with the applicable Allowance item. Except for Owner Directed Allowances, as defined below, all other costs, including design fees, Design-Builder's overall project management and fixed general conditions costs, overhead and fee, are deemed to be included in the original NTE or GMP, as applicable, and are not subject to adjustment, regardless of the actual amount of the Allowance item.
5. The Project Manager has authority to approve reallocation between Allowances to account for actual costs of an Allowance item or Allowance value.
6. The City and the Design-Builder may designate certain Allowances as 'Owner Directed Allowances.' Design-Builder shall be compensated for Owner Directed Allowances for the Cost of the Work associated with such allowances plus the Fee

Percentage. Items designated as 'Owner Directed Allowances' shall not be included in the calculation to determine the Percentage Fee.

B. Not to Exceed Sums

1. The City and Design-Builder may establish Not to Exceed Sums (NTE Sum) for specific portions of the Work. Any such NTE Sum will be negotiated between the City and Design-Builder. The NTE Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
  - a. A specific description of the Work that is subject to the NTE Sum;
  - b. An updated Schedule of Values that incorporates the NTE Sum; and
  - c. Any milestone dates associated with the Scope of the Work associated with the NTE Sum.
2. For each scope of work for which an NTE Sum has been established, the Design-Builder shall be reimbursed for the Scope of the Work as a Cost of the Work; however, Design-Builder's compensation shall not exceed the NTE Sum without a written Change Order.
3. Design-Builder shall not request reimbursement for costs that are within the scope of the NTE Sum unless those costs are identified in the Design-Builder's Request for Payment Form as subject to the NTE Sum. Except as allowed in Article 7, subsection D.1.b., costs that are within the scope of the NTE Sum that are in excess of the NTE Sum shall be the sole responsibility of the Design-Builder.
4. NTE Sums may only be modified by Change Order pursuant to the General Conditions.

C. Lump Sums

1. The City and Design-Builder may establish Lump Sums for specific portions of the Work. Any such Lump Sum will be negotiated between the City and Design-Builder. The Lump Sum agreed upon by the Parties shall be incorporated into the GMP Amendment or a Change Order, and the parties shall include the following information:
  - a. A specific description of the Scope of Work that is subject to the Lump Sum;
  - b. An updated Schedule of Values that incorporates the Lump Sum; and
  - c. Any milestone dates associated with the Scope of the Work associated with the Lump Sum.
2. For each scope of work for which a Lump Sum has been established, the Design-Builder shall be compensated pursuant to the Schedule of Values set forth above

based on the percentage of the Scope of the Work subject to the Lump Sum that has been completed.

3. Design-Builder shall not request reimbursement for costs that are within the scope of the Lump Sum unless those costs are identified in the Design-Builder's Request for Payment Form as subject to the Lump Sum. Except as allowed in Article 7, subsection D.1.b.ii, costs that are within the scope of the Lump Sum that are in excess of the Lump Sum shall be the sole responsibility of the Design-Builder.
4. Lump Sums may only be modified by Change Order pursuant to the General Conditions.

#### D. Contingencies

1. The Parties shall establish, as part of any NTE and the GMP, the following Contingencies which are available for the Design-Builder's exclusive use for the below described unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents (collectively 'Contingency Items'). Contingency Items include the costs described below, which are subject to City notification prior to executing any work that is considered a Contingency item. The City may, in its discretion, approve other costs that may be reimbursed under a Contingency; however, in no case shall the Design-Builder be entitled to use the Contingency for payment of Liquidated Damages that it may be assessed pursuant to this Agreement.
  - a. Cost of the Work Contingency. The Cost of the Work Contingency is reimbursed as a Cost of the Work. The Cost of the Work Contingency is available to the Design-Builder for the following items:
    - i. Trade buy-out differentials;
    - ii. Escalation of materials; and
    - iii. Other direct Costs of the Work that are not included in the Design-Builder's Contingency, and were not anticipated in the GMP, but only with the prior written consent of the City.
  - b. Design-Builder's Contingency. The Design-Builder's Contingency is available to the Design-Builder for items that are not excluded by Article 8 below, including but not limited to the following items:
    - i. Overtime and acceleration;
    - ii. Costs incurred by Design-Builder in repairing or correcting defective, damaged (as described in Article 6, subsection A.15.), or nonconforming Work (excluding any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working

by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to the City if recovery is obtained;

- iii. Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between the City and Design-Builder;
- iv. Subcontractor or other tier defaults to the extent not compensated by any surety or bond; or
- v. Costs that are in excess of an NTE Sum, Lump Sum, or an identified Allowance.

2. The Design-Builder shall be reimbursed for Contingency Items in the same manner as set forth in Article 6 above; however, Design-Builder's compensation for Contingency Items shall not cumulatively exceed the amount set forth as the Design-Builder's Contingency in the applicable NTE or GMP without a written Change Order. Design-Builder shall not be entitled to any Fee Percentage for items reimbursed under Article 7, subsection D.1.b., the Design-Builder's Contingency. Further, the amounts included in the Design-Builder's Contingency set forth in Article 7, subsection D.1.b. shall be excluded from the calculation set forth in Article 2, subsection D. to determine the Percentage Fee.

3. Prior to final accounting, the Contingencies are not available to the City for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase an NTE or GMP under the Contract Documents.

4. Design-Builder shall provide the City notice of all anticipated charges against the Contingencies and shall provide the City as part of the monthly status report required by the General Conditions of the Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from a Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

## E. Unit Prices and Hourly Rates

1. Any Unit Prices and Hourly Rates shall be agreed upon in writing and set forth in the GMP Amendment. Design-Builder shall not charge more than a specified Unit Price or Hourly Rate than the amount set forth in the GMP Amendment, as modified through the Contract Documents.

2. Once established, Unit Prices and Hourly Rates may only be changed by Change Order.
3. Design-Builder must maintain a record of the number of Unit Prices and Hours billed using Hourly Rates for review by Owner.

## 8. COSTS NOT REIMBURSABLE

- A. The following is a non-exclusive list of categories of costs for which the Design-Builder is not entitled to reimbursement as the Cost of the Work, and which are deemed to be accounted for in the Design-Builder's Percentage Fee:

1. The salary of individuals who are officers of the Design-Builder, or of individuals employed in the Design-Builder's office(s) other than the field office, except as provided in Article 6.
2. Corporate overhead and general and administrative costs, including costs for the Design-Builder's offices other than the field office, personal property taxes on the Design-Builder's construction equipment the Design-Builder's income taxes, and other taxes not included in the Cost of Work.
3. Interest on capital.
4. Profit.
5. Preparation of the Design-Builder's response to the City's request for proposals for the Project.
6. Design-Builder's legal costs, if not included in any Contingency.
7. Prorated cost of the public works bond that design-builders generally must file with the Construction Contractors Board (CCB), as provided in ORS 279C.836.
8. Subcontractor costs arising out of or related to Defective Work.
9. Costs related to corrective Work and warranty Work. The Design-Builder shall diligently pursue and, whenever possible, enforce the performance of corrective Work obligations and warranty repairs under the terms of its subcontracts and purchase agreements. If the Design-Builder is unable to enforce the terms of a corrective obligation or warranty directly with a Subcontractor or vendor or with its bonding company, costs related to corrective Work or warranty Work will not be reimbursed by the City.
10. Any cost due to the negligence or failure of the Design-Builder and Subcontractors (including but not limited to Designer), or anyone directly or indirectly employed by any of them or for whose acts or omissions any of them may be liable, to fulfill a specific responsibility of the Contract.

11. Costs incurred prior to the City's approval of Design-Build Documents, when the Design-Build Documents require such approval.
12. Costs incurred in excess of the City's limitations or contrary to the City's limitations or instructions, when such instructions or limitations are imposed pursuant to the Design-Build Documents.
13. Costs of subcontractor default insurance (e.g., Subguard) and Subcontractor bonds, except when such costs are approved in advance by the City.
14. Costs related to home computers, software subscriptions or renewals, and other outside computer processing services not physically located at the Project site office.
15. Costs expressly excluded from the Cost of the Work by the Design-Build Documents.
16. Otherwise reimbursable costs in excess of the Guaranteed Maximum Price.
17. Costs related to the relocation of project personnel.

- B. Any conflict between Article 6 ("Cost of the Work"), Article 7 ("Other Methods of Compensation"), and Article 8 ("Costs Not Reimbursable") shall be resolved in favor of Article 8.

## 9. ACCESS TO RECORDS – FILES; CONFIDENTIAL INFORMATION.

- A. Design-Builder shall maintain all books, documents, papers and records relating to the Agreement, including job cost estimates, job cost detail reports, and job cost summary reports, for at least ten years following Substantial Completion of the Project. Design-Builder shall maintain any other records pertinent to this Agreement in such a manner as to clearly document Design-Builder's performance. City, state and federal government, and their duly authorized representatives shall have access to the books, documents, papers and records of the Contractor which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts and transcript. Design-Builder agrees that all files or other documents generated or in the possession of Design-Builder related to Design-Builder's delivery of service are the property of the City and shall be available to the City upon request. Design-Builder understands the nature of project/projects means that Contractor may be privy to information that is confidential, proprietary or sensitive in nature, which information shall not be disclosed to any third person or entity without the consent of the City of Bend or at the City's direction, either during the term of this Agreement or after its termination. Likewise, any analysis or commentary provided by Design-Builder of a confidential or sensitive nature shall not be released or disclosed to any person without the consent or direction of the City.

- B. The Design-Builder shall require all insurers, material suppliers, and Subcontractors (including but not limited to Designers) at any tier to comply with these requirements.
- C. The Design-Builder shall be entitled to no extra compensation for complying with these requirements.

## 10. INTELLECTUAL PROPERTY RIGHTS

- A. Royalties, Patents and Copyrights
  - 1. The Design-Builder shall pay all royalties and license fees.
  - 2. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the City and its separate subcontractors and consultants harmless from loss on account thereof. If the Design-Builder has reason to believe that the design, process or product required in the Scope of Work is an infringement of copyright or patent, the Design-Builder shall promptly notify the City.
- B. Ownership of Work Product
  - 1. All Design-Build Documents created by Design-Builder pursuant to this Agreement, including derivative works and compilations, and whether or not such work product is considered a "work made for hire" or an employment to invent ("Work Product"), shall be the exclusive property of City. City and Design-Builder agree that such original works of authorship are "works made for hire" of which City is the author within the meaning of the United States Copyright Act. To the extent City is not the owner of the intellectual property rights in Design-Builder's Work Product, Design-Builder irrevocably assigns to City any and all of its rights, title, and interest in all original Work Product created pursuant to this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon City's request, Design-Builder shall execute such further documents and instruments necessary to fully vest such rights in City. Design-Builder forever waives any and all rights relating to original work product created pursuant to this Agreement, including, without limitation, any and all rights under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
  - 2. Design-Builder grants to City, for purposes of accomplishing the Project, an irrevocable, nonexclusive, nontransferable, perpetual, royalty-free license to use any intellectual property owned by Design-Builder developed independently from this Agreement and applicable to services provided by Design-Builder or included in the work product. This grant includes the right of City to authorize contractors, consultants and others to use such intellectual property for the purposes of accomplishing the Project.

3. Design-Builder may refer to the Work Product in its brochures or other literature that Design-Builder utilizes for advertising, or other promotional purposes, including proposals for future, unrelated work, and, unless otherwise specified, Design-Builder may use standard line drawings, specifications and calculations on other, unrelated projects.

## 11. SUBROGATION

Design-Builder grants Waiver of Subrogation to the City, its officers, agents, employees and volunteers for any claims arising out of Design-Builder's work or service. Further, Design-Builder agrees that in the event of loss due to any of the risks for which it has agreed to provide insurance, recovery by the Design-Builder shall be solely with their insurance carrier. Design-Builder also grants to City on behalf of any insurer providing coverage to either Design-Builder or City with respect to the work or services of Design-Builder a waiver of any right to subrogation which any insurer or Design-Builder may acquire against City by virtue of the payment of any loss under such insurance coverage.

## 12. SUBCONTRACTING

It is the intent of the Parties that Work authorized under the Contract will be competitively bid and executed under subcontracts, except that the Design-Builder may self-perform or exempt portions of the Work from competitive bidding requirements as allowed in the General Conditions, Section 6A. The Design-Builder will provide the City with the opportunity to attend all introductory meetings and post-bid evaluation meetings with such prospective Subcontractors. See the General Conditions for additional subcontracting requirements.

## 13. PREVAILING WAGE RATES

The Design-Builder agrees to comply with the requirements of ORS 279C.800 to 279C.870 governing the prevailing wage rates. Current wage rates and amendments determined by the Oregon Bureau of Labor and Industries (BOLI) may be obtained at [www.boli.state.or.us](http://www.boli.state.or.us). However, the rates in effect at the time this Contract first constitutes a binding and enforceable obligation on the part of the Design-Builder to perform or arrange for the performance of construction, reconstruction, major renovation, or painting, or when the GMP Amendment is executed, whichever occurs first, are the rates that shall apply for the duration of the Work.

## 14. NONDISCRIMINATION

The Design-Builder agrees to comply with all federal and state laws and regulations regarding nondiscrimination in employment, employee benefits and facilities.

## 15. COMPLIANCE WITH LAW

- A. Design-Builder shall comply with all applicable federal, state and local laws, ordinances, and regulations. When multiple standards apply, Design-Builder shall comply with the more stringent standard. Design-Builder shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal, state and City civil rights and rehabilitation statutes, ordinances, rules and regulations. Design-Builder also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101- 336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Design-Builder agrees to comply with ADA in its employment practices, and that it shall perform its contractual obligations consistently with ADA requirements and regulations, state law, and applicable regulations.
- B. The Design-Builder shall comply with applicable federal, state and local laws and regulations, including those adopted by the Oregon Department of Environmental Quality, Division of State Lands, Environmental Protection Agency, and/or the US Army Corps of Engineers, relating to the prevention of environmental pollution and preservation of natural resources.

## 16. PROVISIONS REQUIRED BY STATE LAW

- A. Design-Builder shall:
  1. Make payment promptly, as due, to all persons supplying to the Design-Builder labor or material for the performance of the work provided for in the contract.
  2. Pay all contributions or amounts due the Industrial Accident Fund from the Design-Builder or subcontractor incurred in the performance of the Contract.
  3. Not permit any lien or claim to be filed or prosecuted against City.
  4. Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
  5. Demonstrate that an employee drug testing program is in place. City has the right to audit and/or monitor the program. On request by the City, Design-Builder shall furnish a copy of the employee drug-testing program.
  6. Salvage or recycle construction and demolition debris, if feasible and cost-effective.
- B. 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 in connection with the public improvement contract as the claim becomes due, the City may pay the 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 the contract.

- C. If Design-Builder or a First-Tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this contract within 30 days after receipt of payment from the City (or in the case of a subcontractor, from Design-Builder), Design-Builder or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to Design-Builder or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the Design-Builder, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.
- D. If Design-Builder or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with this Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
- E. The payment of a claim in the manner authorized in this section does not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.
- F. For work under this Contract, a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in those cases, the employee shall be paid at least time and a half pay:
  - 1. For all overtime in excess of 8 hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
  - 2. For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - 3. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
  - 4. Design-Builder is not required to pay overtime if the request for overtime pay is not filed within 30 days of completion of the Contract if Design-Builder has posted and maintained in place a circular with the information contained in ORS 279C.545 as required by ORS 279C.545(1).

- G. Design-Builders and Subcontractors must give notice in writing to employees who perform 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.
- H. Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Design-Builder, of all sums that Design-Builder agrees to pay for the services and all moneys and sums that the Design-Builder collected or deducted from the wages of employees under any law, Contract or Agreement for the purpose of providing or paying for the services.
- I. All employers, including Design-Builder, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless exempt under ORS 656.126. Design-Builder shall ensure that each of its subcontractors comply with these requirements.
- J. Design-Builder shall utilize where applicable, recycled materials if (a) The recycled product is available; (b) The recycled product meets applicable standards; (c) The recycled product can be substituted for a comparable non-recycled product; and (d) The recycled product's costs do not exceed the costs of non-recycled products by more than 5 percent.
- K. Design-Builder shall include in each first-tier subcontract, including contracts with material suppliers, a clause that obligates Design-Builder to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of the amounts paid to Design-Builder by City under this contract, and if payment is not made within 30 days after receipt of payment from City, to pay an interest penalty as specified in ORS 279C.515(2) to the first-tier Subcontractor. The interest penalty does not apply if the only reason the delay in payment is due to a delay in payment by City to Design-Builder. Design-Builder shall include in each of Design-Builder's subcontracts, a provision requiring the first-tier subcontractor to include a similar payment and interest penalty clause and shall require subcontractors to include similar clauses with each lower-tier subcontractor or supplier. Design-Builder shall also include in each first-tier subcontract a clause that requires Design-Builder to provide a standard form that the first-tier subcontractor may use as an application for payment and that requires Design-Builder to use the same form throughout the period of the contract, unless the Design-Builder provides written notice of a change in the form, including a copy of the new form, at least 45 days before change.
- L. By signing this Contract, Design-Builder certifies that all Subcontractors performing construction work shall be registered by the Construction Contractors Board or licensed

by the State Landscape Contractors Board before the subcontractor starts work on the Project.

- M. By signing this Contract, Design-Builder certifies that it shall comply with Oregon tax laws.
- N. Pay Equity
  - 1. As required by ORS 279C.520, Contractor shall comply with ORS 652.220 and shall not discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a protected class.
  - 2. Contractor must comply with ORS 652.220 as amended and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Contract and a failure to comply constitutes a breach that entitles Agency to terminate this Contract for cause.
  - 3. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

## 17. NON-PARTNERSHIP

Neither the City nor Design-Builder is a partner or joint venture with the other party in connection in connection with the activities carried out under this contract. Design-Builder is engaged as an Independent Contractor.

- A. Design-Builder shall be solely responsible for payment of any Federal or State taxes required as a result of this Contract.
- B. Design-Builder is not a City employee and is not entitled to any benefits granted to City employees.

## 18. WAIVER

The failure of the City to enforce any provision of this contract shall not constitute a waiver by the City of that or any other provision.

## 19. LIMITATION ON AUTHORITY

City retains its authority to execute all applications, contracts and other documents relating to the Work. Design-Builder has no right or authority, express or implied, to commit or otherwise obligate City or any of its partners, except as permitted by the express terms of this Contract, or as authorized in writing.

## 20. ATTORNEY FEES AND GOVERNING LAW

In the event an action, suit of proceeding, including appeal, is brought for failure to observe any of the terms of this Contract, each party shall be responsible for that party's own attorney fees, expenses, costs and disbursements for the action, suit, proceeding or appeal. The provisions of this contract shall be construed in accordance with the provisions of the laws of the State of Oregon. Alternative dispute resolution shall be used prior to filing suit, in accordance with the provision of the General Conditions.

## 21. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the City and the Design-Builder, respectively, and their respective partners, successors, assigns, and legal representatives. Neither the City nor the Design-Builder shall assign, transfer, or sublet any interests or obligations hereunder without the prior written consent of the other party.

## 22. MERGER

No waiver, consent, modification or change of terms of this Contract shall bind either party unless in writing and signed by both parties. A waiver, consent, modification or change, if made shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. Design-Builder by signature of its authorized representative hereby acknowledges that Design-Builder understands the Contract and agrees to be bound by its terms and conditions.

## 23. NOTICES

All notices shall be in writing and shall be served upon the other party by personal service, facsimile transmission, or e-mail followed by mail delivery of the original Notice, by overnight courier with proof of receipt, or by certified mail, return receipt requested, postage prepaid, addressed as follows:

If to City:

City of Bend  
710 NW Wall Street Bend, Oregon 97703  
Attn: Eric King, City Manager  
Email: [eking@bendoregon.gov](mailto:eking@bendoregon.gov)

With a copy to:  
City of Bend, Attn: City Attorney  
710 NW Wall St  
Bend, OR 97703  
Email: [legalnotice@bendoregon.gov](mailto:legalnotice@bendoregon.gov)

If to Design-Builder:

[Name, Address, Contact]

Service by mail shall be deemed complete on the date of actual delivery or three (3) business days after being sent via certified mail. Service by facsimile transmission or E-Mail shall be deemed served on receipt of the facsimile or E-mail, followed by mail delivery.

Approved and authorized for signature by City Council, acting as the Local Contract Review Board on [DATE].

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed:

**CITY OF BEND**

\_\_\_\_\_  
Eric King, City Manager

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney's Office

\_\_\_\_\_  
Date

**FIRM NAME**

\_\_\_\_\_  
By:

\_\_\_\_\_  
Date

Its:

State of Oregon Construction Contractors Board Registration No.\_\_\_\_\_

---

City Contracting & Funding Authorizations:

By:

Ryan Oster, EIPD Director  
City of Bend, Oregon

\_\_\_\_\_

Date

By:

Jason Suhr, Principal Engineer  
City of Bend, Oregon

\_\_\_\_\_

Date

By:

Alex Doza, Project Manager  
City of Bend, Oregon

\_\_\_\_\_

Date

By:

Heather Herauf, Interim Procurement Manager  
City of Bend, Oregon

\_\_\_\_\_

Date

**CONTRACT EXHIBIT 1**  
**DESIGN-BUILD-GENERAL CONDITIONS**

**DEFINITIONS**

For the purposes of this Contract, terms are defined in the Agreement and in this section and may be defined in the Specifications or Drawings. Terms used in a defined sense normally are capitalized; terms used in a general or undefined sense normally are not capitalized. Unless the context clearly requires otherwise, or the term is expressly defined otherwise for a particular purpose, the following definitions apply throughout this Contract.

Agreement or Contract - The Progressive Design-Build Agreement for the Project signed by the parties and incorporating other documents.

Ambiguities - Conflicts, errors, discrepancies, or inconsistencies.

Allowance – An allowance is an amount established in the contract documents for inclusion in the contract sum to cover the cost of prescribed items not specified in detail that may or may not be constructed during construction activities. Allowances are additionally defined in Article 7 of the Agreement.

Business Day – Every official workday of the week that the City is open for business. These are the days between and including Monday through Friday and does not include public holidays and weekends.

Change Directive - A written order prepared and signed by the City, directing a change before agreement on adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both. A Change Directive may state a proposed basis for adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both.

City – City of Bend, Oregon

Change Order - A written amendment to this Contract which authorizes an addition, deletion, or revision to the Work described in this Contract, and which may authorize an adjustment in the Guaranteed Maximum Price, the Contract Time, or both.

Construction Documents – Documents necessary to complete construction, including but not limited to, the Drawings and Specifications prepared by the Design-Builder.

Construction Proposal – Proposal prepared by Design-Builder for completion of design and construction of the Subproject(s) following the Pre-Construction Design Phase of the Work.

Contingencies – A contingency is an amount added to an estimate to allow for items, conditions, or events for which the state, occurrence, and/or effect are uncertain and that, in the Design-Builder's experience, will likely result in additional costs. Contingencies are additionally defined

in Article 7 of the Agreement.

Contract or Agreement - The entire written agreement between the City and the Design-Builder establishing their respective rights and obligations concerning the Work.

Contract Time - The number of days between the Work Start Date established by the Notice to Proceed and the date by which Substantial Completion of all Work must be achieved under this Contract.

Cost of the Work - Costs necessarily incurred by the Design-Builder in the performance of the Work in accordance with Article 8 of the Agreement.

Craft Services – Work performed to further the physical construction of the Project that requires specialized training, for which the parties elect not to enter into an early work agreement under Section 7.B.2 of the Agreement. These services may include site preparation and cleanup, setting up and moving access equipment, working on concrete and masonry, steel, wood, and pre-cast erecting projects, handling materials and equipment, or performing limited demolition, excavation or compaction activities.

Day or Calendar Day - Any 24-hour period beginning at midnight.

Defective - (1) Unsatisfactory, faulty, or deficient, (2) not conforming to this Contract, or (3) not meeting the requirements of any inspection, test, or approval required by this Contract or federal, state, or local Law.

Design Development - The preconstruction or design phase described in Article 4 of the Agreement.

Design Services – The services provided by the Design-Builder or Lead Designer in the Pre-Construction Design Phase of the Project, described in Article 4 of the Agreement.

Design-Build Documents – All documents, including exhibits and attachments, that make up this Contract, and required submittals from the Design-Builder, including but not limited to the Agreement; the Scope of Work; Preliminary Engineering; Construction Documents; bonds; these General Conditions; wage rates; written consents to proceed to a subsequent subphase, and the Notice to Proceed.

Design-Builder or Contractor - The person or entity identified as such in the Agreement.

Design-Builder's Percentage Fee – A fixed fee described in the Agreement which is adjustable only under very limited circumstances.

Design-Builder's Construction Proposal - The Design-Builder's proposal for completion of design and performance of construction work on the Project or one or more Subprojects following Pre-Construction Design to be completed under a GMP Amendment. Design-Builder may submit one or more Construction Proposals for one or more Subprojects, as directed by the City. Unless specifically incorporated into the GMP Amendment (and then only to the extent such proposal

relates to the scope of the Work), the Design-Builder's Construction Proposal is not part of the Design-Build Documents.

Design-Builder's Proposal - The proposal Design-Builder submitted in response to the City's Request for Proposals for this Project.

Design-Builder's Representative - An individual authorized in writing by the Design-Builder to represent the Design-Builder with respect to this Contract.

Designer - A person or entity providing design services for the Design-Builder for all or a portion of the Work that is licensed to practice architecture or engineering in the State of Oregon. The Designer is referred to throughout the Contract Documents as if singular in number, although there may be more than one Designer providing design services for the Design-Builder.

Drawings - The graphic representations which show the character and scope of the Work to be performed, which have been prepared by Design-Builder and approved by the City in accordance with the Agreement.

Final Acceptance - The City's written acknowledgment that the Work has been fully completed and all Contract-required documentation has been received and accepted.

Early Construction Work – Construction Phase Services authorized by amendment that the parties agree should be performed in advance of establishment of the GMP. Permissible Early Construction Work shall be limited to early procurement of materials and supplies; early release of bid or proposal packages for site development and related activities; and any other advance work related to critical components of the Project for which performance prior to establishment of the GMP will materially affect the critical path schedule of the Project (e.g. demolition).

Early Construction Work Amendment – Early Construction Work Amendment shall mean an Amendment to this Contract executed by and between the parties to authorize Early Work, and which may establish the Prevailing Wage Rates for the Work.

Force Majeure Event - A natural phenomenon of such catastrophic proportions or intensity as would reasonably prevent performance, and which could not have been prevented or escaped by any amount of foresight, reasonable degree of care, or by the aid of any equipment reasonably required under the circumstances.

Guaranteed Maximum Price - The limit established in the Agreement on the City's obligation to pay the Design-Builder for (1) the Cost of the Work plus (2) the Design-Builder's Percentage Fee.

Guaranteed Maximum Price Amendment - An amendment to the Agreement setting forth the City's and Design-Builder's agreement, if any, to the terms and conditions applicable to the Work following completion of the Preliminary Engineering, including but not limited to the adjustment to the Guaranteed Maximum Price.

Law - Any statute, rule, regulation, ordinance, or order of any federal, state, or local government including, but not limited to, ordinances and resolutions adopted by the City Council of the City of Bend, and rules and regulations adopted in accordance with those ordinances and resolutions.

Maintenance Data - Manufacturer's catalog information, shop drawings, installation, operation, and maintenance manuals, and other information needed for operating, troubleshooting, preventive maintenance, repair, restoration, or overhaul of materials, products, systems, and equipment furnished or provided by the Design-Builder.

Notice to Proceed - A written notice given by the City to the Design-Builder fixing the Contract Time and designating a date on which the Design-Builder is authorized to begin the Work under the Guaranteed Maximum Price Amendment.

Preliminary Engineering - The documents created in the first phase of Design Services and prior to preparation of the Design-Builder's Construction Proposal as described in the Agreement.

Product Data - Pictures, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate a material, product, or system for some portion of the Work. Product Data are not Design-Build Documents.

Project – The preconstruction work authorized in writing by the City, and any construction work authorized in writing by the City pursuant to a GMP Amendment or an early work agreement, to complete design and construction work, if any, of the Southeast Area Pump Station Improvements, in the Southeast Expansion Area for Bend, Oregon, in Deschutes County, Oregon.

Project Manager - An individual authorized in writing by the City to represent the City with respect to this Contract within the scope of the authority conferred by the written authorization from the Engineering Director.

Rental Rate Blue Book - The Cost Recovery (Blue Book) publication by EquipmentWatch available from EquipmentWatch (phone 888-307-1713 or web: [www.equipmentwatch.com](http://www.equipmentwatch.com)).

Request for Proposals – The information published by the City, soliciting proposals from third parties for completion of the Project.

Samples - Physical examples of material, equipment, or workmanship which demonstrate and establish standards by which the Work will be judged. Samples are not Design-Build Documents.

Scope of Work - The program for the Project set forth in Exhibit 3, which includes initial information about the Project. These documents shall be evaluated and refined by the Design-Builder to develop the Preliminary Engineering.

Shop Drawings - Diagrams, drawings, illustrations, instructions, and other data submitted by the Design-Builder to illustrate some portion of the Work. Shop Drawings are not Design-Build Documents.

Specifications - Those written technical descriptions of materials, equipment, systems, standards, and workmanship prepared by the Design-Builder and approved by the City in accordance with the Agreement.

Subcontractor - An individual or firm having a direct or indirect contract with the Design-Builder or with any other Subcontractor at any tier for the performance of a part of the Work, including but not limited to the Designer.

Substantial Completion - Completion of the Work, or a part of the Work designated by the City in writing, in accordance with this Contract, to the point where it may be utilized and occupied for the purpose for which it was intended.

Work - The design services, supervision, labor, material, equipment, and services required by this Contract.

Work Package – Construction documents included in the construction proposal included as a portion or whole of one or several Subprojects.

Work Start Date - The day stated in the Notice to Proceed when the Contract Time will begin to run in accordance with this Contract.

## **ARTICLE 1 – TERMINOLOGY**

1.1 Unless stated otherwise in this Contract, words or phrases which have a well-known technical, construction industry, or trade meaning are used in accordance with such recognized meaning.

1.2 Unless stated otherwise in this Contract, all requirements are directed to the Design-Builder. This includes statements which have no grammatical subject, as in “Install equipment plumb and level.”

1.3 In the interest of brevity, this Contract frequently omits modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

1.4 The following terms are used in this Contract: as allowed, as directed, as ordered, as required, acceptable, proper, reasonable, satisfactory, suitable. These items and any others of like effect or import describe direction, judgment, requirement, or review of the City. Such use is solely to evaluate the Work for compliance with this Contract unless there is a specific statement otherwise. The use of such terms never indicates the City has authority to supervise or direct performance of the Work.

1.5 The words, “design,” “furnish,” “install,” “perform,” and “provide” have the following meanings for the purposes of this Contract. When such verbs are not used in connection with services, materials, or equipment in a context clearly requiring an obligation on the part of the Design-Builder, “provide” is implied.

- A. Design means to perform architectural or engineering, or both, design professional services, including but not limited to planning, designing, observing, consulting, evaluating and other related services, for the construction of the Work.
- B. Furnish means to supply and deliver services, materials, or equipment to the Work site (or other specified location) ready for use or installation and in usable or operable condition.
- C. Install means to put into use or place in final position services, materials, or equipment complete and ready for intended use.
- D. Perform or provide means to perform design services and furnish and install services, materials, or equipment complete and ready for intended use.

## **ARTICLE 2 – PRELIMINARY MATTERS**

### **City Representative**

2.1 The City's Engineering and Infrastructure Planning Department Director ("Engineering Director") is authorized to represent the City with respect to this Contract, provided that his authority to amend this Contract is limited to the amount set by City policy. The Engineering Director will appoint a Project Manager in writing to exercise all or part of his authority. Although a person may have the title Engineering Director, such person shall have no responsibility for any engineering or architectural, or both, design aspects of the Work.

### **Design-Builder's Representative**

2.2 The Design-Builder shall authorize the Design-Builder's Representative to receive communications from the City and to sign the Design-Builder's communications to the City. The Design-Builder's Representative must be approved in writing in advance by the City. The City's approvals as required by this subsection will not be unreasonably withheld.

### **Communications**

2.3 In addition to the communication between the City's representative and the Design-Builder's Representative noted above, frequent informal communication will take place between City and

Design-Builder employees to facilitate the Work. These communications may include Contract enforcement and interpretation. If the Design-Builder concludes that any communication from the City appears that it will result in a change in Contract Time or the Design-Builder's cost to complete the Work, the Design-Builder shall request that the issue be presented in writing.

### **Copies of Project Manual and Drawings**

2.4 The City will provide the Design-Builder with digital copies of any documents referenced in Exhibit 3.

## Commencement of Contract Time

2.5 The Contract Time will commence to run on the Work Start Date stated in the Notice to Proceed.

## Starting the Work

2.6 The Design-Builder may start to perform the Work on the Work Start Date stated in the Notice to Proceed.

## Before Starting Work

2.7 Before the Design-Builder begins performance of the Work, one or more meetings as requested by the City will be held to establish a working understanding among the parties. Procedures will be established for operations coordination and administrative communication for matters such as design reviews, submittals, clarifications and interpretations, and Change Orders; and for processing applications for payment. At the first meeting, the Design-Builder must submit to the City for review a Design Services progress schedule. After execution of the GMP Amendment, if any, Design-Builder must submit an updated design schedule and preliminary construction schedule, submittal schedule, a preliminary cash flow schedule, and a written site-specific safety and health plan.

- A. The Design Services progress schedule must be finalized and submitted to the City one week after the first meeting. The revised design schedule and preliminary construction schedule must be submitted to the City one week after the first meeting following execution of the GMP Amendment, if any. Unless specified otherwise, the progress schedules must indicate the Design-Builder's planned progress in increments of not more than seven-day periods. The schedule will not exceed the time limits current under the Design-Build Documents and will be subject to review and comment by the City. The Design-Builder must prepare and submit revisions to match actual and projected progress as requested by the City, before and during design and construction, at no added cost to the City. The Design-Builder must adhere to the most recent version of the schedule.
- B. The preliminary submittal schedule must be finalized and submitted to the City one week after the first meeting following execution of the GMP Amendment, if any. The submittal schedule must demonstrate that submittals will be submitted in time to allow the City's review and comment and the Design-Builder's submission of revised submittals before the Work covered by the submittals is scheduled to start under the work progress schedule. The City's review of a submittal, shop drawings, product data, or samples is not conducted to determine the accuracy of details such as dimensions or quantities, or for substantiating instructions for installation or performance of equipment or systems. The submitting party remains responsible for accurate content in submitted documents, coordination with other trades, and confirming and correlating dimensions. Review is not approval of safety precautions, construction means, methods, techniques, sequences, or procedures.

C. Prior to commencement of any physical construction Work, the Design-Builder must submit the contractor safety information form for safety planning purposes. The Design-Builder must also include applicable company policies, procedures, or plans. The City expects that the Design-Builder will abide by all Oregon OSHA requirements and the Design-Build Documents to provide for the safety of the Design-Builder's employees, City employees, tenants, and the general public. Work performed by Subcontractors must be on the form. Safety data sheets (SDS) for chemical products introduced to City premises will not be submitted with this information but shall accompany the Design-Builder on site and be available to the City upon request.

2.8 Before undertaking each part of the Work, the Design-Builder must carefully study and compare this Contract and check and verify pertinent figures shown therein and all applicable field measurements. The Design-Builder must promptly report in writing to the City any Ambiguities that the Design-Builder may discover.

## **ARTICLE 3 – DESIGN-BUILD DOCUMENTS**

### **Intent**

3.1 This Contract is complementary; what is called for by one element is as binding as if called for by all.

3.2 It is the intent of this Contract to describe the Work. Any design services, supervision, labor, material, equipment, or service that may be reasonably inferred from this Contract as being required to produce the intended result shall be supplied whether or not it is expressly specified.

3.3 The Design-Builder is expected to read the entirety of the Design-Build Documents and to seek clarification from the City of any Ambiguities found between, among or within the Design-Build Documents. Absent written clarification from the City to the contrary, the Design-Builder shall, in resolving Ambiguities discovered either before or after original procurement and/or installation, provide the better quality of, and the greater quantity of, the Work. The Design-Builder shall specifically notify all Subcontractors and suppliers of this requirement.

3.4 Clarifications and interpretations of this Contract will be issued by the City. They will be consistent with or reasonably inferable from the overall scope of this Contract.

3.5 This Contract is unique. Design services, labor, material, equipment, or services approved for other City work may not necessarily be approved for this Contract.

3.6 Pursuant to ORS 15.320, Oregon law applies to this Contract. In the event ORS 15.320 is deemed invalid or inapplicable, the parties agree that Oregon law applies to this Contract.

3.7 If the Design-Builder's Construction Proposal is incorporated into this Contract, any Ambiguities between the proposal and this Contract will be resolved in favor of this Contract. Any limitations of liability, waivers of damages, or disclaimers of warranty as to construction work or materials supplied or otherwise or liability contained in the Design-Builder's Construction Proposal will not apply to the Work or this Contract.

3.8 If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future Laws effective during the terms of this Contract or in subsequent dispute resolution proceedings, the legality, validity, and enforceability of the remaining provisions of this Contract will not be affected thereby. As to the illegal, invalid or unenforceable clauses, they shall be rendered void only to the extent of such illegal, invalid and unenforceable portions, with the remainder of such clauses given full force and effect.

#### Reference Standards

3.9 Unless expressly provided otherwise, references to standard specifications, manuals, or codes of any technical society, organization, or association, or to the codes of any governmental authorities, shall mean the latest version or edition in effect on the effective date of this Contract, except that all references to the Oregon Standard Specifications for Construction shall mean the 2021 edition. Such reference may be specific or implied. No provision of any referenced standard specification, manual, or code shall change the duties and responsibilities of the City, the Design-Builder, or any of their employees, contractors, subcontractors, or agents from those set forth in this Contract.

#### Reporting Ambiguities

3.10 If, during the performance of the Work, the Design-Builder discovers any Ambiguities within this Contract, the Design-Builder must report it to the City, in writing, at once. The Design-Builder will proceed with the affected Work after receiving clarification or interpretation from the City. The Design-Builder will be liable to the City for failure to report any Ambiguities in this Contract if the Design-Builder factually knew or reasonably should have known of the Ambiguities.

#### Reuse

3.11 Neither the Design-Builder nor any Designer, Subcontractor, manufacturer, fabricator, supplier, or distributor will have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents, or copies thereof, prepared by Design-Builder. They may not reuse any of them for any purpose unrelated to this Contract without the prior written consent of the City.

#### Electronic Documents

3.12 Those using electronic documents provided by the City do so at their own risk. Electronic documents are subject to data erosion, erasure, and alteration. Because computer software may become obsolete with time, the City makes no warranties or representations regarding the ability to permanently access electronic documents it provides. The City makes no warranties or representations regarding the presence or absence of computer viruses in electronic documents it provides; any person using an electronic document provided by the City should check the document for computer viruses before using it in a manner that might allow the spread of a computer virus. All or parts of electronic documents provided by the City may be copyrighted, and those using them are responsible for determining the existence of copyrights and for obtaining permission to copy copyrighted material.

## **ARTICLE 4 – AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; SURVEY CONTROL**

### **Availability of Lands**

4.1 As described in the Scope of Work, the Design-Builder is responsible for identifying and leading the acquisition process for any additional easements for the Subproject(s) when some or all of any Subproject(s) cannot be located in existing right-of-way. Any easements for construction, permanent structures, or permanent changes in existing facilities will be paid for by the City, unless otherwise provided in this Contract. If Design-Builder is unable to secure easements, City will be ultimately responsible for pursuing eminent domain and condemnation. The Design-Builder will provide, at no additional cost to the City, additional lands, easements, and access that the Design-Builder may require for temporary construction facilities or storage or use of material and equipment, including but not limited to swing-way easements for cranes and other equipment.

### **Physical Conditions – Investigations, Reports, and Tests**

4.2 Investigations, reports, or tests which the City may make available to the Design-Builder are the City's best-known information at the time of execution of the Agreement. However, the City makes no warranty or representation regarding accuracy or completeness unless the investigations, reports, or tests have been made a part of this Contract.

### **Differing Site Conditions**

4.3 As described in the Scope of Work, the Design-Builder is responsible for evaluating subsurface conditions in the locations identified for the work during the Design Services Phase. The Design-Builder must promptly notify the City in writing of: (1) subsurface or latent physical conditions at the site differing materially from those identified by Design-Builder in its geotechnical studies, if any, that Design-Builder obtains during the Design Services Phase of this Contract, or (2) unknown conditions of an unusual nature, differing materially from conditions ordinarily encountered in the region and generally recognized as inherent in the Work. The Design-Builder must, to the extent reasonably possible, provide prompt written notice of such conditions before they are substantially disturbed or altered. Design-Builder shall promptly review those conditions and advise the City in writing if further investigation or tests are necessary. The Design-Builder may not continue Work in the affected area until the City has inspected such condition to determine whether an adjustment to the Contract is required. If the conditions differ materially from what reasonably could have been anticipated by the Design-Builder, this Contract may be amended to allow additional compensation or time, or both, as reasonably necessary to accommodate the differing conditions.

### **Survey Control**

4.4 Unless otherwise provided in the Contract, the Design-Builder will provide engineering surveys and establish those survey control points necessary to lay out the Work. The Design-Builder must: (1) lay out the Work, unless otherwise specified in this Contract, (2) protect and preserve the established survey control points, and (3) make no change or relocation of the

survey control points without the prior written approval of the City. The Design-Builder must communicate to the Deschutes County Surveyor which monuments, if any, will be impacted as a result of the Project. The Design-Builder must also report to the City whenever any survey control point is lost, destroyed, or requires relocation. At no additional cost to the City, the Design-Builder shall be responsible for the accurate replacement or relocation of survey control points lost or destroyed. Such replacement must be by a professional land surveyor licensed by the State of Oregon.

## **ARTICLE 5 – BONDS AND INSURANCE**

### **Bonds**

5.1 Upon execution of the Agreement, the Design-Builder shall furnish bonds in accordance with the Agreement and this Article, as security for the faithful performance of, and payment of, all the Design-Builder's obligations, including without limitation preparation and completion of design and related personal services and self-performed work, under this Contract. The performance bond, and labor and material payment bond shall be on the forms prescribed by the bidding and contract requirements and executed by sureties: (1) licensed to conduct business in the State of Oregon, and (2) named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All bonds signed by an agent shall be accompanied by a power of attorney or other evidence of the agent's authority to act on behalf of the surety.

- a. Design-Builder shall provide a separate Performance Bond and a separate Payment Bond in a form acceptable to the City Attorney; form have been provided for Design-Builder's use with the City's Request for Proposals. Each bond shall be equal to 100 percent of the contract amount for the Subproject(s). The Performance Bond and the Payment Bond must be signed by the Surety's Attorney-in-Fact, and the Surety's seal must be affixed to each bond. Bonds shall not be canceled without the City of Bend's consent, nor shall the City release them prior to Contract completion, including completion of all enduring obligations and liabilities under the Contract. Bonds must be originals. Faxed or photocopied Bond Forms shall not be accepted.
- b. Design-Builder shall file with the Construction Contractor's Board a Public Works Bond with a corporate surety authorized to do business in the State of Oregon in the amount of \$30,000 prior to starting construction work under this contract unless otherwise exempt. Design-Builder is aware of the provisions of ORS 279C.600 and 279C.605 relating to notices of claim and payment of claims on Public Works Bonds.
- c. Design-Builder shall include in every Subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractor's Board before starting construction work on the project, unless otherwise exempt.
- d. Refer to GMP Amendment for Warranty Bond requirements.

5.2 The Design-Builder shall substitute another bond and surety meeting the requirements of Item 5.1 within five days after the surety on any bond furnished by the Design-Builder: (1) is

declared bankrupt, (2) becomes insolvent, (3) has its right to do business terminated in any state where any part of the Work is located, or (4) ceases to meet the requirements of Item 5.1.

5.3 In lieu of requiring Subcontractors to provide performance and payment bonds for their respective Work, the Design-Builder may utilize a Subcontractor default program to address defaults by Subcontractors on their contractual responsibilities.

#### Workers' Compensation

5.4 The Design-Builder shall maintain workers' compensation and employer's liability insurance as required by ORS Chapter 656 and meeting the minimum requirements therein, for all employees subject to the workers' compensation Laws of the State of Oregon, unless exempt, and any other appropriate jurisdiction. In lieu of such insurance, the Design-Builder may maintain a self-insurance program approved by the State of Oregon and a policy of excess workers' compensation insurance in the amount required by the State, which policy includes coverage for employer's liability. The Design-Builder shall provide evidence of such insurance and self-insurance to the City before commencing Work and throughout the term of this Contract.

#### Commercial General Liability Insurance

5.5 The Design-Builder shall maintain Commercial General Liability Insurance in an amount not less than \$5,000,000 per incident, claim or occurrence and \$10,000,000 in aggregate throughout the duration of the Contract, subject to any increases in limits that may be required in subsequent GMP Amendments or other amendments to this Contract. Such insurance shall include coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products completed operations, employer's practices liability and contractual damages. Contractor shall remain fully responsible and liable for any claims resulting from the negligence or intentional misconduct or contractor, its subcontractors, and their officials, agents and employees in performance of this contract, even if not covered by, or in excess of insurance limits.

#### Automobile Liability Insurance

5.6 The Design-Builder shall maintain business automobile liability insurance in an amount not less than \$2,000,000 per occurrence to protect against liability arising from the use, loading, and unloading of all of the Design-Builder's owned, hired, and non-owned automobiles in connection with this Contract. Such insurance shall cover the City as an additional insured, provided that the Design-Builder's insurer shall not be required to indemnify the City for damages arising out of the death or bodily injury to persons or damage to property to the extent caused by the negligence of the City. The limits set forth herein may be met through the stacking of primary and excess policies.

#### Professional Liability Insurance

5.7 The Design-Builder shall maintain professional liability insurance or "errors and omissions" coverage in amounts not less than \$2,000,000 per claim and \$2,000,000 aggregate. The Design-Builder shall cause its lead designer to maintain professional liability insurance in amounts not less than \$2,000,000 per claim and \$2,000,000 aggregate. Such insurance shall

be written to cover all costs of correcting defects and deficiencies arising from error, omission, or negligent acts of the Design-Builder and lead designer and any other Subcontractor providing design, engineering, or other professional services. The policy shall not contain any provision or exclusion (including any so-called "insured versus insured" exclusions or "cross-liability" exclusion) the effect of which would be to prevent, bar, or otherwise preclude the City or the Design-Builder from making a claim which would otherwise be covered by such policy on the grounds that the claim is brought by an insured or additional insured against an insured or additional insured under the policy. Insurance shall be maintained through completion of construction and for at least 5 years past project completion. The retroactive date for coverage will be no later than the commencement date of design. If coverage is canceled and not replaced with similar coverage with a consistent retroactive date, the Design-Builder or lead designer shall purchase an extended reporting period of at least 5 years or otherwise as by agreement with the City.

### Subcontractor Insurance

5.8 All Subcontractors (including designers) shall maintain the same insurance as required of Design-Builder as set forth herein, 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:

- a. Workers' Compensation: same as Design-Builder above.
- b. Commercial General Liability: \$2,000,000 per occurrence/\$2,000,000 aggregate.
- c. Professional Liability: The Design-Builder shall require Subcontractors who perform Design Work to provide coverage at limits determined by the Design-Builder not to exceed \$2,000,000 per claim/\$2,000,000 aggregate.
- d. Automobile Liability: \$2,000,000 per occurrence.

### General Insurance Requirements

5.9 The limits set forth herein may be met through the stacking of primary and excess policies.

5.10 The limits set forth herein may be increased or modified in subsequent GMP Amendments.

5.11 Design-Builder and lead designer shall provide proof of coverage required by acceptable Certificate of Insurance and signed Endorsement from the carrier(s). The Certificate and Endorsement shall provide that there will be no cancellation, termination, material change or reduction in limits of the insurance coverage without a minimum 30-day written notice to the City. The Certificate and Endorsement shall also state the deductible or self-insured retention level.

5.12 Commercial General Liability coverage shall name, by certificate and endorsement the City, its officers, agents, employees and volunteers as additional insureds with respect to Contractor's work or services provided under this contract.

## **ARTICLE 6 – DESIGN-BUILDER’S RESPONSIBILITIES**

### **Administration and Supervision**

6.1 The Design-Builder must supervise and direct the Work competently and efficiently, applying the skills and expertise as may be necessary to perform the Work in accordance with this Contract. The Design-Builder is solely responsible for the means, methods, techniques, sequences, and procedures of construction. The Design-Builder is responsible for seeing that the finished Work complies accurately with this Contract.

6.2 The Design-Builder must provide a competent project superintendent at the site at all times during work progress. The superintendent is responsible for oversight of the work being performed by the Design-Builder and Subcontractors. The project superintendent may only be replaced as provided in the Agreement.

6.3 If the Design-Builder’s Representative is not available for project administration, the superintendent will have the authority to receive direction from the City on behalf of the Design-Builder. All communications given to the superintendent will be as binding as if given to the Design-Builder. This authority includes, but is not limited to, receipt of City-issued documentation, taking action on City direction not involving changes to this Contract, taking direct action in emergency situations, and implementing stop work orders issued by the City.

### **Labor and Material**

6.4 The Design-Builder must provide competent, suitably qualified personnel to survey and lay out the Work, and to perform construction as required by this Contract. The Design-Builder must at all times maintain good discipline and order at the site.

6.5 The Design-Builder must give notice to the City as required in the City Standards and Specifications if work is to be performed outside normal day-shift hours or on Saturday, Sunday or any legal holiday. Emergency conditions relating to safety or protection of persons or property are valid exceptions to such notice. Specific work hour restrictions may be described in Exhibit 3.

6.6 Unless otherwise specified, the Design-Builder must furnish for the execution, required testing, initial operation, and completion of the Work all necessary material, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, and all other facilities and incidentals.

6.7 All material incorporated into the Work must be new, except as otherwise provided in this Contract. Products containing asbestos or other hazardous material, as defined by ORS 466.605, may be used only with the City’s prior written approval. If required by the City, the Design-Builder will furnish satisfactory evidence that the kind and quality of material and equipment provided meet Contract requirements. Satisfactory evidence may include test reports.

6.8 The Design-Builder must obtain documentation from distributors, fabricators, manufacturers, and suppliers that provides instructions for the application, cleaning, connection, erection, installation, and use of their products. The Design-Builder must follow these instructions unless more stringent requirements are provided in this Contract.

6.9 All material provided and normally tested and labeled by an approved testing laboratory, such as Underwriters Laboratories (UL), Canadian Standards Association (CSA), or by a similarly recognized third-party approval authority, must be so labeled.

#### “Pre-Bid Approved Equals,” “Equals,” and Substitutes

6.10 Whenever an item of material or equipment is specified or described in the Construction Documents by using the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description indicates that no substitution is permitted, other items of material or equipment, or material or equipment of other suppliers, may be submitted to the City for evaluation under the circumstances described below:

- A. “Pre-Bid Approved Equal” Items: The Design-Builder shall submit requests to the City for “pre-bid approved equal” material, products, or services on behalf of Subcontractors prior to submittal of bids. The Design-Builder must submit such requests no less than five Business Days prior to the bid opening. The Design-Builder must then forward approval of materials, products, or services the City deems equivalent by addendum to the Subcontractors at least 72 hours prior to the bid opening date and time.
- B. “Equal” Items: If in the City’s sole discretion an item of material or equipment proposed by the Design-Builder is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by the City as an “equal” item, in which case evaluation and approval of the proposed item may, in the City’s sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. Proprietary materials, products, or services that are specified but not followed by the words “or pre-bid approved equal,” “or equal,” or “no substitution” will be evaluated as if they were followed by the words “or equal.” For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
  1. It is at least equal in quality, durability, maintainability, appearance, strength, and design characteristics;
  2. It will reliably perform at least equally well the function imposed by the design concept of the completed Work as a functioning whole; and
  3. The Design-Builder certifies that there is no increase in cost to the City; and that it will conform substantially, even with deviations, to the detailed requirements of the item named in this Contract.

C. Substitute Items:

1. The Design-Builder may treat Subcontractor substitution requests in accordance with this section but must obtain the City's approval of the substitution before allowing the Subcontractors to bid based upon the substitution.
2. If an item of material or equipment proposed by the Design-Builder does not qualify as an "equal" item as defined above, it will be considered a proposed substitute item. This determination will be at the City's sole discretion.
3. The Design-Builder must submit sufficient information, as provided below, to allow the City to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. The City will not accept requests for evaluation of proposed substitute items of material or equipment from anyone other than the Design-Builder. The Design-Builder must make the request as a submittal.
4. The application must certify that the proposed substitute item will adequately perform the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified.
5. The application must state the extent, if any, to which the use of the proposed substitute item will prejudice the Design-Builder's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in this Contract (or in the provisions of any other affected contract with the City for work) to adapt the design to the proposed substitute item, and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
6. The application must identify any variations of the proposed substitute item from that specified, and shall identify available engineering, sales, maintenance, repair, and replacement services.
7. The application must contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by the City in evaluating the proposed substitute item.
8. The City may require the Design-Builder to furnish additional data beyond that listed above about the proposed substitute item.
9. The City may require the Design-Builder to furnish, at the Design-Builder's expense, a special performance guarantee or other surety with respect to any substitute.
10. No increase in the Guaranteed Maximum Price or extension of the Contract Time will be considered when a substitution is not accepted.

D. No Substitution:

Materials, products, or services marked "no substitution" have been determined to be 1) manufactured from a single source only or 2) required for the efficient utilization of existing equipment or systems. Requests for substitution will not be considered for these items. Justifications for classifying these products as "no substitution" are on file as brand name exemption items in the City's Procurement Office.

6.11 Design-Builder Application for Evaluation: The application for evaluation of "equal" or substitute items must be made using the forms provided by the City. These forms may be copied.

6.12 City's Evaluation: Within 10 days, the City will evaluate each application for "equal" and substitute items. The City will be the sole judge of acceptability. No "equal" or substitute item shall be ordered, installed, or utilized until the City's evaluation is complete, which will be evidenced by either a Change Order for a substitute or an approved submittal for an "equal." The City will advise the Design-Builder in writing of any negative determination.

#### [SUBCONTRACTING SECTION MOVED]

#### Patent Fees and Royalties

6.13 If any design, device, material, or process covered by letters patent or copyright is used by the Design-Builder or is provided for the City's use, the Design-Builder shall: (1) provide for such use by agreement with the owner of the patent or copyright or a duly authorized licensee of such owner, and (2) defend, indemnify, reimburse and hold the City harmless from all damages, losses and expenses, including, without limitation, attorneys' and expert witness' fees arising from the use of the patented or copyrighted design, device, material, or process.

#### Computer Software and Code Use Rights

6.14 If the Design-Build Documents require the Design-Builder to provide the City with computer software programs or code as part of the Work, the Design-Builder shall provide the City with all documentation and instruments necessary to evidence the City's right to use such software or code, including but not limited to ownership transfer documentation, software license agreements generally in accordance with the forms of agreements included in the Design-Build Documents as exhibits, subscription agreements, or assignments of intellectual property interests, as applicable.

#### Permits

6.15 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for any and all permits, fees, licenses, inspections, and agreements by governmental agencies or other entities, necessary for proper execution of the Work and Substantial Completion of the Project, including but not limited to mechanical, plumbing, electrical and similar special permits, plan check fees, system development charges, road approach and right-of-way permits, including permits and all other agreements, qualifications, and insurance necessary for work over the railroad right of way, air discharge permits and all other necessary permits, approvals, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

- A. The Design-Builder shall submit to the City, for review, all calculations and other documentation required for purposes of obtaining permits.
- B. After City review, the Design-Builder shall submit to federal, state, and local units of government all calculations and other documentation required for obtaining permits. During review by units of government or other entities, the Design-Builder shall notify the City of proposed deviations from the original permit documentation.

- C. The Design-Builder shall submit to the City all calculations and other documentation approved by units of government.
- D. The Design-Builder shall pay costs and charges imposed by local units of government or other entities for permits issued to the Design-Builder.
- E. The Design-Builder shall give all notices necessary for permit-related inspections by third parties.
- F. The Design-Builder shall submit to the City a legible copy of agreements, permits, certificates of approval, and certificates of occupancy issued by the responsible unit of government.

## Laws and Regulations

6.16 The Design-Builder shall comply, and shall ensure that its employees and those of its Subcontractors and suppliers at every tier comply, with the most current versions of applicable Laws, rules, regulations, and practices.

6.17 If the Design-Builder performs any Work knowing or having reason to know that it is contrary to any Law, the Design-Builder shall be responsible for all claims, costs, losses, and damages arising out of or relating to the Design-Builder's performance or the resulting Work. The Design-Builder shall immediately report to the City if performance under this Contract would violate any Law in any respect.

The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the City's Contracting Rules and (c) other applicable Law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed. The provisions listed in this section are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the City's Contracting Rules or other applicable Law, and the fact that this section does not list a provision that is required by the Public Contracting Code, the City's Contracting Rules or other applicable Law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Design-Builder's obligation to comply with applicable Laws.

## Environmental Responsibilities

6.18 The following federal, state, and local agencies have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of this Contract:

- A. City and county where the Work is to be performed
- B. Oregon Environmental Quality Commission
- C. Oregon Fish and Wildlife Commission

D. U.S. Environmental Protection Agency

E. U.S. Fish and Wildlife Service

F. National Marine Fisheries Service

6.19 Known conditions at the construction site may require the Design-Builder to comply with statutes or with ordinances or regulations enacted by the agencies listed above.

6.20 The Design-Builder is solely responsible for (1) considering applicable statutes and the ordinances and regulations enacted by the agencies listed above, (2) considering the known conditions specifically referred to in this Contract, and (3) ensuring that the activities of the Design-Builder and the Design-Builder's employees, Subcontractors (including suppliers), agents, and invitees with respect to those conditions do not violate any of those statutes, ordinances, or regulations. Without limiting the foregoing, the Design-Builder is solely responsible for the following environmental and natural resource risks associated with the performance of this Contract:

A. Air pollution;

B. Water pollution;

C. Contamination of soil, groundwater, or sediment;

D. Filling or destruction of wetlands;

E. Taking of a federally listed threatened or endangered species through habitat destruction, habitat degradation, or otherwise; and

F. Introduction of an invasive species.

6.21 In addition to the foregoing requirements, the Design-Builder shall manage and conduct all activities related to the performance of this Contract in accordance with all environmental Laws and regulations, and with the requirements of all permits issued under those Laws and regulations of which the Design-Builder has been given notice or has actual knowledge. "Environmental Laws and regulations" means all federal and state statutes, all local ordinances, and all regulations adopted pursuant to those statutes and ordinances, as any of them may be amended from time to time, dealing with the prevention of environmental pollution or the preservation of natural resources, including but not limited to: the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, and Oregon Revised Statutes Chapters 465, 466, 467, 468, 468A, 468B, and 496. If the Design-Builder believes compliance with a requirement under this Contract or a direction given by the City will result in violation of any environmental Laws or regulations, the Design-Builder shall so notify the City in writing immediately and shall not proceed pursuant to that requirement or direction until the City directs the Design-Builder to proceed.

6.22 In the event of a sudden spill or discharge of hazardous material as a result of the negligence or other fault of the Design-Builder, its Subcontractor(s), agents, employees or anyone else for whom Design-Builder is responsible, the City may take action, including contracting for control or cleanup of the spill or discharge, unless the Design-Builder takes immediate appropriate action. If the City takes action pursuant to this paragraph, the City may recover from the Design-Builder all reasonable cost necessarily incurred in effecting the control and cleanup of the spill or discharge. Regardless of who undertakes the cleanup or control of the spill or discharge, the methods used shall be subject to the approval of the City.

- A. Unless disposition of environmental pollution is specifically a part of this Contract or was caused by Design-Builder, Design-Builder shall immediately notify City of any hazardous substance(s) which Design-Builder discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying City of any hazardous substance(s) discovered or encountered, Design-Builder shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well-being of Design-Builder's or any Subcontractor's work force.
- B. Upon notification from Design-Builder of the presence of hazardous substance(s) on the project site, City shall arrange for the proper disposition of such hazardous substance(s). City may agree to a Change Order or Change Directive to extend the Contract Time, depending on the nature and extent of necessary disposition or remediation for hazardous substances under this section.

## Taxes

6.23 The Design-Builder shall pay or ensure payment of sales, consumer, use, and other similar taxes required of the Design-Builder or any Subcontractor under any Law with respect to performance under this Contract. Design-Builder shall comply with all Oregon tax Laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

## Use of Premises

6.24 The Design-Builder shall confine equipment, the storage of material, and the operations of workers to areas permitted by this Contract. The Design-Builder shall not unreasonably encumber the premises with equipment or material.

6.25 During the progress of the Work, the Design-Builder shall keep the premises free from accumulations of waste material, rubbish and other debris resulting from the Work. At the completion of the Work, the Design-Builder shall leave the site clean and ready for occupancy. The Design-Builder shall restore to their original condition those portions of the site not designated for alteration by this Contract.

6.26 The Design-Builder shall not permit any part of any structure to be subjected to loads that may endanger its structural stability. The Design-Builder shall not subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

#### Safety and Protection

6.27 The Design-Builder shall comply with all Laws applicable to the safety of persons or property. Damage, injury, or loss to property caused by the Design-Builder, Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable shall be remedied by the Design-Builder.

6.28 The Design-Builder shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.

6.29 Prevention through Design: In order to minimize or eliminate risk and hazards, during the design phase the Design-Builder shall assign a design safety coordinator to anticipate hazards during the construction phase(s) and during occupancy.

- A. The design safety coordinator shall develop a safety and health plan anticipating hazards applicable to the construction site, taking into account the construction activities that will take place on the site. The plan shall be provided to the construction team safety representative(s) for inclusion into their site-specific safety plan. This plan shall also include specific measures addressing hazards which may fall within one or more of these categories:
  - 1. Work involving engulfment hazards.
  - 2. Work involving falls from height hazards.
  - 3. Work which puts workers at risk from chemical or biological substances.
  - 4. Work with ionizing radiation.
  - 5. Work near high voltage lines.
  - 6. Work involving Hazardous Energy Control Procedures.
  - 7. Work exposing workers to the risk of drowning (work over water).
  - 8. Work carried out by divers.
  - 9. Work involving the use of explosives.
  - 10. Work involving the assembly or dismantling of heavy prefabricated components.

11. Work involving an OSHA or other regulatory requirement for worker health exposure monitoring.
12. Work taking place on, near, or over railroad right of way.
13. Work that impacts the use of the right of way by the travelling public.
14. Work near high-pressure gas lines or other potentially life-threatening utilities.

B. The design safety coordinator shall also develop a safety and health plan anticipating hazards applicable to the use and maintenance of the permanent facility, ensuring the protection of employees and the public. This plan shall be submitted to the City prior to beneficial occupancy.

6.30 The Design-Builder shall designate a qualified and experienced safety representative whose duties and responsibilities shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs. This person shall be the Design-Builder's project superintendent unless otherwise designated in writing by the Design-Builder to the City.

6.31 The Design-Builder shall report promptly in writing to the City all recordable accidents and injuries occurring at the site. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall submit a copy of the report to the City.

6.32 The Design-Builder shall inform the City of the specific requirements of the Design-Builder's safety program with which the City's employees and representatives must comply while at the site.

6.33 If the City deems any part of the Work unsafe, the City, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the City, or both. If the Design-Builder does not adopt corrective measures, the City may perform them and deduct their cost from the Contract Sum. The Design-Builder agrees to make no claim for damages, for an increase in the Contract Sum, or for a change in the Contract Time based on the Design-Builder's compliance with the City's reasonable request.

6.34 The Design-Builder shall erect and maintain necessary safeguards for the safety and protection of:

- A. Employees on the Work and other persons whose safety may be adversely affected by performance of the Work.
- B. The Work and material to be incorporated into the Work, whether in storage on or off the site. If the Design-Builder fails to protect the Work, the City may, after giving notice to the Design-Builder, protect the Work and deduct the resulting cost from payment due the Design-Builder. The City's determination of when and to what degree such protection is necessary shall be final.

- C. Other property at the site including trees, shrubs, lawn, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement.
- D. Adjacent property and utilities when prosecution of the Work may affect them.

6.35 The Design-Builder's duties and responsibilities for the safety and protection of the Work shall continue until the Design-Builder has completed all obligations under this Contract.

#### Emergencies

6.36 In the event of an emergency affecting the safety or protection of persons or the Work or property at, adjacent to, or near the site, the Design-Builder shall act to prevent threatened damage, injury, or loss. The Design-Builder may act without special instruction or authorization from the City. The Design-Builder shall give the City written notice within 24 hours of any significant change in the Work or deviation from this Contract caused by the Design-Builder's acts or omissions.

#### Submittals (Construction Documents, Shop Drawings, Product Data, Maintenance Data, Other Information, and Samples)

6.37 The Design-Builder shall check and verify all field measurements associated with the fit and function of supplied equipment, products, and material. The Design-Builder shall then submit Construction Documents, Shop Drawings, Product Data, Maintenance Data, other information, and Samples to the City in accordance with the accepted submittal schedule, with such promptness as to cause no delay in the Work. All submittals shall be identified as the City requires and shall be accompanied by the City's standard submittal form. Submittals shall be reviewed and stamped with the approval of the Design-Builder prior to submittal to the City.

6.38 Construction Documents, Shop Drawings, Maintenance Data, Product Data, and other information including, but not limited to, substitution requests, certificates, reports, test data, mix designs, and warranties shall be submitted electronically unless otherwise specified. Data shown in submittal information shall be complete with respect to quantities, dimensions, material, and specified performance and design criteria, to allow the City to verify conformance with this Contract.

6.39 The Design-Builder shall submit to the City the specified number of Samples required by this Contract. Samples shall be identified clearly as to material, manufacturer, pertinent catalog numbers, and intended use.

6.40 The Design-Builder shall call the City's attention to any deviations from the requirements of the Construction Documents that the Shop Drawings, Product Data, Maintenance Data, other information, or Samples may have. This shall be in a written format approved by the City and submitted electronically through EADOC.

6.41 Within 7 Business Days of actual receipt, the City will stamp, date, and return proposed deviations to the Design-Builder indicating the action to be taken, or notify the Design-Builder of the reason for delay in return. The City's review will be only for conformance with the design

concept of the Work and for general compliance with this Contract. It will not extend to means, methods, sequences, techniques, or procedures of construction; nor will it extend to safety precautions or programs related thereto, or to the assembly in which an item functions.

6.42 The Design-Builder shall make any corrections required by the City and proceed according to the City's directions. The Design-Builder shall return the required number of corrected copies of submittal information and resubmit new Samples for review. The Design-Builder shall direct specific attention in writing to revisions other than the corrections called for by the City on previous submittals.

6.43 The Design-Builder's stamp of approval on any submittal shall constitute a representation to the City that the Design-Builder has: (1) determined and verified all quantities, dimensions, field construction criteria, material, catalog numbers, and similar data or assumes full responsibility for doing so, and (2) has reviewed and coordinated each submittal with the requirements of this Contract.

6.44 When a submittal is required by this Contract, no related Work shall be commenced until the submittal has successfully completed the Design-Builder's review process and any deviations have been submitted to and reviewed by the City, unless permission to commence has been granted in writing by the City. The Work shall be in accordance with approved submittals (including but not limited to the Construction Documents), except that Design-Builder shall not be relieved of its responsibility to perform Work in accordance with the requirements of the Design-Build Documents.

6.45 The City's review of a submittal (including but not limited to the Construction Documents) shall not relieve the Design-Builder from responsibility for any deviations from this Contract except those called to the City's attention at the time of submission and specifically accepted in writing by the City. Changes in the Work shall follow procedures outlined for a Change Order. Review by the City shall not relieve the Design-Builder from responsibility for errors or omissions in the submittal, including but not limited to errors or omissions in the Construction Documents.

6.46 Submittals that have successfully completed the review process shall become binding upon the Design-Builder, and Design-Builder shall be obligated to perform in accordance with the reviewed submittal.

### Schedule of Values

6.47 The Design-Builder shall submit a schedule of values prepared by distributing the Guaranteed Maximum Price to line items in a format approved by the City. The distribution of the Guaranteed Maximum Price shall accurately reflect the estimated cost of the individual line items.

6.48 The Design-Builder shall submit the initial schedule of values for review and approval at the first meeting between the City and Design-Builder. Once approved, the schedule of values shall be updated monthly. Each schedule of values submittal, including the initial submittal, shall include a hard copy and an electronic copy on disk.

## Work Progress Schedule

6.49 The Design-Builder shall submit a PC-based critical path method work progress schedule with activities coded to facilitate organizing the schedule.

6.50 The Design-Builder shall submit the initial work progress schedule for review at the first meeting between the City and Design-Builder. The work progress schedule shall be updated monthly. Each work progress schedule submittal, including the initial submittal, shall include a hard copy and an electronic copy through EADOC.

6.51 The Design-Builder shall additionally, twice monthly, provide an updated three-week look ahead schedule.

## Access to the Work

6.52 The Design-Builder shall provide reasonable and safe access to the City and inspection authorities for observation, testing, and inspection of the Work including, but not limited to, ladders, lifts, equipment, and tie-off apparatus.

## Prosecution of the Work

6.53 The Design-Builder shall continue performance of the Work in accordance with the work progress schedule during all claims or disputes with the City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the Design-Builder and the City may otherwise agree in writing.

## City's Right to Do the Work

6.54 If the Design-Builder fails to prosecute the Work properly or fails to perform any provision of this Contract, the City, after a three-day written notice to the Design-Builder, may, without prejudice to any other remedy it may have, make good such failures. The City may deduct the cost thereof from any payment due the Design-Builder. In cases of emergency, the City may prosecute such Work without notice or delay and may deduct the cost thereof from any payment due the Design-Builder.

## Indemnification

6.55 Design-Builder shall defend, indemnify, reimburse, and hold the City, its officers, agents, employees and volunteers harmless against all liability, claims, losses, damages, demands, suits, fees and judgments (collectively known as 'claims') to the extent that claims may be based on, or arise out of damage (including economic or noneconomic damages) or injury (including death) to persons or property caused by or resulting from any breach, negligence, act, omission, or other fault of Design-Builder or its agents, representatives, or subcontractors sustained in connection with Design-Builder's, its agents', representatives', or subcontractors' the performance of this contract or by conditions created thereby or based upon violation of any statute, ordinance or regulation, including professional errors and omissions, design warranties, construction operations, and faulty Work claims. This indemnification required shall not apply to claims caused by the sole negligence or willful misconduct of the City, its officers, agents, employees, and volunteers. The Contractor agrees that it is not an agent of the City and is not

entitled to indemnification and defense under ORS 30.285 and ORS 30.287.

Nothing in the foregoing shall be deemed to require any indemnity made void by ORS 30.140.

### Prevailing Wage Rates

6.56 The Design-Builder shall comply with the prevailing wage rate requirements of ORS 279C.800 to 279C.870 at the time this Contract first constitutes a binding and enforceable obligation on the part of the Design-Builder to perform or arrange for the performance of construction, reconstruction, major renovation, or painting, or when the GMP Amendment is executed, whichever occurs first, and maintained through the project duration.

- A. The existing prevailing rates of wage which may be paid to workers in each trade or occupation required for this Work and employed in the performance of this Work by the Design-Builder or a Subcontractor, or any other person doing or contracting to do all or any part of the Work, may be obtained from the Bureau of Labor and Industries' web site at <https://www.oregon.gov/boli/employers/Pages/prevailing-wage.aspx>.
- B. Workers in each trade or occupation required for this Work and employed in the performance of this Work by the Design-Builder, a Subcontractor, or any other person doing or contracting to do all or any part of the Work, shall be paid not less than the minimum hourly rate of wage specified in the foregoing paragraph. The Design-Builder shall ensure that each subcontract includes a provision that workers shall be paid not less than the minimum hourly rate of wage specified in the foregoing paragraph.
- C. The Design-Builder shall have a public works bond filed with the Construction Contractors Board as provided by ORS 279C.836. In every subcontract, the Design-Builder shall include a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board, unless exempt, as provided by ORS 279C.836.
- D. The fee that is required to be paid to the commissioner of the Bureau of Labor and Industries under ORS 279C.825(1) shall be paid under the administrative rule of the commissioner.

### Labor Relations

6.57 The Design-Builder shall be responsible for labor relations and shall seek to resolve disputes between itself and its employees. Any labor dispute arising from this Contract that causes a disruption of the City's operations shall be to the account of and the responsibility of the Design-Builder.

## **ARTICLE 6A - SUBCONTRACTING AND SELF-PERFORMANCE**

6A.1 Selection of sources of labor, material, equipment, and services necessary to accomplish the Work is governed by this section. For the purposes of this section, "Subcontractor" also includes suppliers. For each GMP Amendment, Design-Builder shall prepare a Procurement

Plan for City approval demonstrating how Work will be competitively procured in compliance with this section.

A. Competitive Selection Required. Unless exempted and approved by the City under subsection B or C below, each element of the Work shall be performed through a subcontract awarded in accordance with the selection process described as follows:

1. Subcontracted or self-performed Work valued at \$10,000 or less may be directly appointed.
2. Subcontracted Work valued at less than \$100,000 but more than \$10,000, may be awarded to a qualified Subcontractor after the Design-Builder obtains a minimum of three written quotations and awards the subcontract to at a fair and reasonable price. The City may waive the three-quotation minimum requirement after reviewing the Design-Builder's good faith efforts to obtain them.
3. Subcontracted Work valued at more than \$100,000 shall be awarded following a competitive selection process described in Subsection D below.
4. Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services shall be publicized, proposals opened, and subcontracts awarded as provided in Section D.9.a., below, except that these services may be awarded by competitive proposals on the basis of the consultant's qualifications for the type of professional service required, and may solicit or use pricing policies and proposals or other pricing information, including the number of hours proposed for the service required, expenses, hourly rates and overhead, to determine consultant compensation after the contracting agency has selected a consultant. Design-Builder's screening and selection procedures under this section, regardless of the estimated cost of the architectural, engineering, photogrammetric mapping, transportation planning or land surveying services for a project, may include consideration of each prospective consultant's:
  - a. Specialized experience, capabilities and technical competence, which the prospective consultant may demonstrate with the prospective consultant's proposed approach and methodology to meet the project requirements;
  - b. Resources committed to perform the services and the proportion of the time that the prospective consultant's staff would spend to perform services for the contracting agency, including time for specialized services, within the applicable time limits;
  - c. Record of past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
  - d. Ownership status and employment practices regarding disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own, emerging small businesses or historically underutilized businesses;
  - e. Availability to the project locale;
  - f. Familiarity with the project locale; and
  - g. Proposed project management techniques.
5. Best Value Procurement. Subcontracts in the trades or design disciplines listed below shall be publicized, proposals opened, and subcontracts awarded as provided in

Section 6.A.1.D.9.a., below, except that these services may be awarded by competitive proposals on the basis of qualifications and price, Criteria for award must be presented to the City for review and are subject to approval. The City may also add criteria for evaluation upon reasonable justification:

- a. [Complete during contract negotiations.]
- B. The following are exempt from the competitive selection process:
  1. Management services self-performed by the Design-Builder.
  2. Design professional services self-performed by Design-Builder or Design professional services performed by Designers identified in the Agreement.
  3. Self-performed work approved under Section 6.C., below, or identified in Design-Builder's Proposal and approved by the City to be excluded from additional competitive selection process, as follows:
    - a. [edit to include work proposed and approved for self-performance, if any and cost verification method to be used for self-performed work (third party review, etc.)].
    - b. The Design-Builder must provide an independent cost estimate, on an open-book basis, for the Work element that will be self-performed, if required by the City. The City may elect to verify costs are the best value through a third-party cost estimator.
  4. Supplied materials for Work self-performed by Design-Builder, with associated unit pricing verified by third-party cost estimator.
- C. Unless already exempted by subsection B, the Design-Builder must submit for City approval each element of the Work the Design-Builder proposes to self-perform, and each element of the Work the Design-Builder proposes to subcontract without the competitive selection process. The proposal must include an explanation as to why self-performance or exemption from the competitive selection process is in the City's best interest. The proposal must also describe the process the Design-Builder will use to qualify and select prospective Subcontractors for the portions of the Work that are not subject to the qualification and selection process.
  1. The Design-Builder must provide cost estimate, on an open-book basis, for the Work element that will be subject to the non-competitive process, if required by the City. The City will verify costs are the best value through a third-party cost estimator.
  2. The Design-Builder must fully respond to any questions or comments submitted to the Design-Builder by the City in regard to the non-competitive process.
  3. The Design-Builder must demonstrate and give assurances that the self-performed work is insured to the extent it causes property damage.
  4. To determine whether self-performance or exemption from the competitive selection process is in the City's best interest, the City will consider some or all of the following

factors including, but not limited to: emergency circumstances, the Design-Builder's need to utilize a key Subcontractor member of the Design-Builder's project team consistent with the Design-Builder's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, special requirements for the Work, special advantages or capabilities of the Design-Builder or Subcontractor to perform the Work, the significance of the Work as a critical path item, market availability of the requested services or products, and demonstration that the price is reasonable and fair.

D. Low Bid Procurement. Unless an alternate procedure is described in this Section 6A, subcontracted Work valued at more than \$100,000 shall be awarded in response to competitive bids using the following procedures:

1. In bundling elements of the Work for subcontracting or self- performance purposes, the Design-Builder is not constrained by the grouping or association of elements of the Work in the Specifications and Drawings.
2. Subcontract pricing may be lump sum or unit price with a stated not to exceed amount.
3. Advertisements of each solicitation for bids must be published in The Bulletin (Bend, Oregon) and the Portland Daily Journal of Commerce, and other trade journals if appropriate, in a manner reasonably calculated to give timely notice of the solicitation to all qualified prospective bidders likely to submit bids.
4. In addition to advertising as described above, The Design-Builder shall seek to develop Subcontractor interest in the Work and shall furnish to the City a list of potential qualified Subcontractors from whom bids may be requested. The City may identify additional potential qualified Subcontractors from whom the Design-Builder shall request bids.
5. Design-Builder must obtain a minimum of three Subcontractor bids for each element of the Work, unless the City waives the three-bid minimum requirement after reviewing the Design-Builder's good faith efforts to obtain bids.
6. If the Design-Builder or an affiliate or subsidiary of the Design-Builder will be included in the Subcontractor selection process to perform particular design services or construction Work on the project, the Design-Builder must disclose that fact in the selection process documents and announcements. The Design-Builder must utilize the conditions, processes, and procedures identified in this subsection D. to award work to an affiliate or subsidiary, unless self-performed work has otherwise been approved under this Agreement.
7. If requested by the City, bid solicitation documents must be provided to the City for review not less than five Business Days prior to issuance of bid solicitation, unless a different schedule is agreed to by the Design-Builder and the City. Each solicitation must state the time and place bids will be opened.
8. All bids must be in writing, sealed, and submitted to a specific location by a specific time. If Subcontractors are required by Law to have State of Oregon Construction Contractors Board license and Workers' Compensation Insurance, the bids must include the Subcontractor's Contractors Board license number and insurance identification number. If Subcontractors are required by Law to have State of Oregon architect, landscape architect or engineering registration, the bids must include the Subcontractor's registration number.

9. Bids must be opened in public with the City's Project Manager or designee present at the time and place stated in the solicitation. The Design-Builder must evaluate the Subcontractors according to the criteria approved in subsection D.2. above. After evaluation, the Design-Builder shall share the results of the evaluation with the City. Upon completion of the City's review and subject to the City's disapproval, the Design Builder shall then award the contract to the selected bidder and announce the results to all Subcontractors who submitted bids for that element of the Work. The announcement of award shall:
  - a. Be communicated to Subcontractors via email.
  - b. Specify that Subcontractors who were not selected for an element of the Work may, within 60 days from the Design-Builder's notice of award of a subcontract for that Work, submit a written request to the Design-Builder for a post-selection meeting with the Design-Builder to discuss the Subcontractor qualification and selection process. Indicate that a meeting with the Subcontractor will be set within 45 days of the Subcontractor's written request.
10. The City will not resolve or be involved in the resolution of protests of the Design Builder's selection of Subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of Subcontractor and supplier protests shall be as follows:
  - a. The Design-Builder's Managing Principal will review any protest. Upon completion of the review the Design-Builder will determine the path of resolution with three possible outcomes: (1) confirmation of the original findings; (2) re-solicitation of bid package; or (3) revised award.
11. The City retains the right to monitor the subcontracting process in order to protect the City's interests and to confirm the Design-Builder's compliance with the Contract and with applicable statutes, administrative rules, and other legal requirements.
12. The Design-Builder's subcontracting records are not considered to be public records except to the extent that they are prepared, owned, used, or retained by the City in the conduct of the City's business.

E. The Design-Builder shall submit monthly usage reports on Work contracted with disadvantaged, minority, women, and emerging small business.

F. All subcontracts, including but not limited to subcontracts with Designers, shall include a clause stating that the City is a third-party beneficiary of the subcontract, and the subcontract is assignable to the City upon the City's written request in the event the City takes over the Work.

G. Upon execution of any subcontract, the Design-Builder shall provide the City with a bid tabulation for the portion of the Work covered by the subcontract.

6A.2 The Design-Builder shall include a provision in all subcontracts that all Subcontractors (including but not limited to Designers) agree to be bound to the Design-Builder by terms of the Design-Build Documents, and to assume toward the Design-Builder all the obligations and

responsibilities, including but not limited to the responsibility for safety of the Subcontractor's Work, which the Design-Builder, by this Contract, assumes toward the City.

6A.3 Subcontractors shall be subject to disapproval of the City. If the City disapproves a Subcontractor, the Design-Builder shall submit an acceptable substitute.

6A.4 The Design-Builder is responsible for: (1) all acts and omissions of Subcontractors (including but not limited to Designers), (2) persons and organizations directly or indirectly employed by Subcontractors, (3) persons and organizations for whose acts any Subcontractors may be liable, and (4) scheduling and coordinating the work of Subcontractors, suppliers, and other individuals or entities designing, performing or furnishing any of the Work under a direct or indirect contract with the Design-Builder. Nothing in this Contract shall create any contractual relationship between the City and any Subcontractor or other person or organization having a direct contract with the Design-Builder. Nothing in this Contract shall create any obligation on the part of the City to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by Law. The City may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to the Design-Builder on account of specific Work completed.

## **ARTICLE 7 – WORK BY OTHERS**

7.1 The Design-Builder shall afford utility service companies, other contractors and City employees' reasonable access to the Work, allow storage of material and execution of work by others, and properly connect and coordinate the Work with work by others.

7.2 Notice will be given to the Design-Builder prior to the start of any additional work by others not noted in this Contract. If the Design-Builder believes that the performance of such additional work by the City or others involves additional expense to the Design-Builder or requires an extension of the Contract Time, the Design-Builder shall notify the City in writing.

7.3 If any part of the Design-Builder's Work depends upon the work of any other contractor, utility service company, or the City, the Design-Builder shall inspect and promptly report to the City in writing any reasons that render work by others unsuitable. The Design-Builder's failure to report unsuitability of work by others shall constitute the Design-Builder's acceptance of the work by others as fit and proper for integration with the Design-Builder's Work. Latent or non-apparent defects and deficiencies in the work by others shall be reported to the City in writing promptly upon discovery.

7.4 The Design-Builder shall do all cutting, fitting, and patching of the Work that may be required to make its parts come together properly and integrate with such other work. The Design-Builder shall not endanger any work by others. The Design-Builder shall cut or alter work by others only with the written consent of the City and those whose work will be affected.

7.5 Unless otherwise specified, the City shall be the final authority regarding coordination issues between the Design-Builder and work by others.

## ARTICLE 8 – CITY'S STATUS

### Project Manager

8.1 The City's Project Manager will be the City's representative during the pre-construction, design, construction, and closeout phases of the Work.

8.2 The Project Manager will resolve any and all questions which may arise as to Contract compliance. The Design-Builder shall at all times carry out and fulfill the City's instructions and directions insofar as they concern the Work to be performed under this Contract.

A. The Project Manager's authority includes, but is not limited to:

1. Determining the quantity, quality, and acceptability of material furnished and Work performed.
2. Reviewing and approving/disapproving the manner of performance and rate of progress of the Work.
3. Stopping the Work whenever such stoppage is deemed necessary.
4. Administering this Contract.
5. Determining acceptable fulfillment of this Contract by the Design-Builder.

B. Written approval by the Project Manager signifies favorable opinion and qualified consent. It does not carry with it: (1) certification, (2) assurance of completeness, (3) assurance of quality, or (4) assurance of accuracy concerning details, dimensions, and quantities.

C. Written approval by the Project Manager will not relieve the Design-Builder from responsibility for: (1) errors, (2) improper fabrication, (3) nonconformance with requirements, or (4) deficiencies within the Design-Builder's control.

### Clarifications and Interpretations

8.3 The Project Manager will issue with reasonable promptness such written clarifications or interpretations of this Contract as may be necessary. If the Design-Builder believes that a written clarification or interpretation justifies an increase in the Guaranteed Maximum Price or the Contract Time, the Design-Builder may notify the City as provided in Article 9.

### Rejection of Defective Work

8.4 The Project Manager is authorized to disapprove or reject Work which is Defective and to require additional inspection or testing of the Work whether or not the Work is fabricated, installed, or completed.

### City Inspectors

8.5 The City will assign inspectors who are authorized to:

- A. Inspect the Work as it is performed, and all material being furnished. Such inspections

may extend to all or any part of the Work and to the preparation, fabrication, or manufacture of the material to be used.

- B. Call the attention of the Design-Builder to any failure of the Work to meet this Contract.
- C. Reject material not meeting the requirements of this Contract.
- D. Suspend that part of the Work affected by Contract nonconformance until the issue can be referred to and a decision issued by the Project Manager.

**8.6 Inspectors assigned by the City are not authorized to:**

- A. Supervise or perform any other duties for the Design-Builder, or interfere with the Design-Builder's management of the Work.
- B. Give final approval or acceptance of any portion of the Work.
- C. Issue instructions or directions contrary to this Contract.

**8.7 No act or failure to act on the part of a City inspector will render the City liable in any way, nor shall it relieve the Design-Builder from fulfilling all of the terms and conditions of this Contract.**

**Limitations on the City's Responsibilities**

**8.8 The City is not responsible for the acts or omissions of the Design-Builder or the Design-Builder's employees, Subcontractors, manufacturers, fabricators, suppliers, distributors, or any other persons at the site or otherwise performing any of the Work, or their agents or employees.**

**8.9 The City is not responsible for the Design-Builder's means, methods, procedures, sequences, or techniques of construction, or related safety precautions and programs, except as specified in the Design-Build Documents.**

**8.10 The City is not responsible for the Design-Builder's failure to perform the Work in accordance with this Contract.**

**ARTICLE 9 – CHANGES**

**Changes in the Work**

**9.1 Without invalidating this Contract, the City may, at any time, order additions, deletions, or revisions to the Work by written Change Order or Change Directive. All such additions to or revisions of the Work shall be performed in accordance with the applicable provisions of this Contract. If the City and Design-Builder agree on the terms and conditions related to a change in the Work, a Change Order will be executed to adjust the Guaranteed Maximum Price, schedule, or both. If the City and Design-Builder cannot agree on the adjustment to the Guaranteed Maximum Price, schedule, or both, the City may issue a Change Directive. If the**

Design-Builder disagrees with any City-issued Change Directive, the Design-Builder may assert a claim in accordance with Article 14. The Design-Builder will not receive compensation for changes absent prior written approval from the City.

9.2 If the Design-Builder believes that a Change Directive or Contract interpretation or clarification by the City will require a change in the Guaranteed Maximum Price or the Contract Time, the Design-Builder shall so notify the City in writing within seven days after the Design-Builder receives the Change Directive or Contract interpretation or clarification.

9.3 If directed by the City, the Design-Builder shall immediately proceed with the changes to the Work involved upon receipt of a Change Directive. If (a) the Design-Builder fails to submit a cost estimate within 15 days of receipt of the Change Directive (or earlier if requested), or other request for a proposed change, or (b) the parties fail to agree as to the cost or schedule impact, or (c) the City for any reason deems it necessary, the City in its discretion may either (i) order the Design-Builder to account for cost using the force account method described in Items 9.13 through 9.15 or (ii) issue a unilateral change to the Guaranteed Maximum Price in accordance with the City's estimate of cost. If the City disputes whether the Design-Builder is entitled to additional compensation for the work at issue, the City may in its discretion proceed with either approach above (with a full reservation of rights regarding lack of entitlement) or the City may proceed under the disputed change order method described in Section 9.4 below.

9.4 If the City and the Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by the City, or if there are any other disagreements over the scope of Work or proposed changes to the Work, the City and Design-Builder shall resolve the disagreement pursuant to Article 14 herein. As part of the negotiation process, Design-Builder shall furnish the City with a good faith estimate of the costs to perform the disputed services in accordance with the City's interpretations. If the parties are unable to agree and the City expects Design-Builder to perform the services in accordance with the City's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon the City issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying the City's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to 50 percent of its reasonable estimated direct cost, and the City agrees to pay such amounts to the extent they are reasonable, with the express understanding that (x) such payment by the City does not prejudice the City's right to argue that it has no responsibility to pay for such services, (y) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if the City's order is deemed to be a change to the Work, and (z) the fact that 50 percent payment has been temporarily acknowledged or paid shall not be admissible by either party in any dispute resolution proceeding (including but not limited to arbitration or litigation) for the purpose of showing that either party conceded any aspect of the other party's position, it being understood that the 50 percent provisions of this paragraph are intended solely to facilitate completion of the Project while fully preserving both parties positions for dispute resolution.

9.5 The Design-Builder shall continue performance of the Work, including the change, during the negotiation of the Change Order, even if a dispute arises which delays or prevents agreement on the terms and conditions of the Change Order.

9.6 Any Change Order shall constitute an accord and satisfaction with respect to issues related to changes in the Guaranteed Maximum Price and the Contract Time. The Change Order shall be deemed to contain all the costs and credits relating to changes.

9.7 To assist in the preparation of a Change Order, the Design-Builder shall give the City a detailed cost estimate and a proposed schedule adjustment if a change in Contract Time is necessary. The cost estimate shall include a line item for each category of cost reimbursable under the Contract (see the Agreement), shall be submitted in writing to the City within 10 days after the City orders the additional work, and shall demonstrate satisfaction of the requirements set forth in Article 10. If a Change Order includes multiple, unrelated changes, the cost estimate and proposed schedule adjustment shall treat those changes independently.

9.8 The parties shall negotiate to resolve any disagreements over the cost estimate or proposed schedule adjustment. The negotiated cost estimate shall be the basis for increasing or decreasing the Guaranteed Maximum Price. Based upon the negotiated cost estimate and schedule adjustment, the City will prepare, and the parties shall sign a Change Order.

#### Change of Contract Time

9.9 All time limits stated in this Contract are of the essence. Contract Time will be changed only by a Change Order. Any extension in Contract Time will be based on written notice delivered to the City within 15 days of the occurrence of the event precipitating the request. The Design-Builder shall deliver a work progress schedule analysis or summary justifying the time extension within 30 days of such occurrence. Failure to deliver any documentation to the City within the time limits specified above will completely foreclose consideration of an extension of Contract Time and all rights and remedies arising therefrom.

9.10 Time extensions will be granted only when conditions described in Item 9.11 exist and when the City agrees that the work progress schedule substantiates the need.

- A. An adjustment of Contract Time will be the Design-Builder's sole remedy for any delay in performing the Contract, including without limitation any delay in achieving contractually required Substantial Completion, Final Acceptance, or milestone dates. To the extent the delay is unreasonable and is caused by the acts or omissions of the City or persons acting for the City, the Design-Builder is not precluded from the recovery of damages or from an equitable adjustment.

9.11 Extension of Contract Time will be determined by the City and will be an equitable adjustment if all or a part of the Work is hindered, delayed, or suspended by a Force Majeure Event, act of war, act of terrorism, or the acts or omissions of the City or the City's commissioners, employees, contractors, or agents.

9.12 Requests for extension of Contract Time will not be considered for: (1) contention that insufficient time was specified in this Contract; (2) delays which affect the Design-Builder's planned early completion but not the specified Contract Time; (3) suspensions made at the request of the Design-Builder; (4) delays caused by labor disputes involving the Design-Builder or Subcontractors; or (5) delays caused by issues known and addressed in this Contract.

## ARTICLE 10 – SUBCONTRACTS

10.1 For the purposes of this article, “subcontract” includes without limitation subcontracts at any tier for construction services or supplies.

10.2 An adjustment for the changes in the Work will be made in accordance with one or a combination of the following methods as the Design-Builder may elect:

- A. Fixed price Change Orders as supported by the breakdown of estimated costs.
- B. Force account Change Orders in accordance with the 2021 Oregon Standard Specifications for Construction, with the City's prior written authorization.

### Fixed Price Subcontractor Change Orders

10.3 Except as otherwise provided by this article or agreed to in writing by the City, subcontract change orders shall meet the following requirements.

#### A. Direct Costs

##### 1. Material (itemize)

- a. The cost to the Subcontractor for the material directly required for the performance of the changed Work. Such cost of material may include the cost of transportation. No delivery charges will be allowed unless the delivery is specifically for the changed Work.
- b. Trade discounts offered by the supplier to the Subcontractor shall be credited to the City. If the material is obtained from a source owned wholly or in part by the Subcontractor, payment thereof will not exceed the current wholesale price for the material. The term “trade discount” includes the concept of cash discounting.
- c. If, in the opinion of the City, the cost of the material is excessive or if the Subcontractor fails to furnish satisfactory evidence of a cost to the Subcontractor from the supplier, then, in either case, the cost of the material shall be deemed to be the lowest current wholesale price at which similar material is available in the quantities required.
- d. The City reserves the right to furnish such material as it deems advisable, and the Subcontractor shall have no claims for cost or profit on material furnished by the City.

##### 2. Labor (hours, rates by crafts)

- a. Payroll costs shall include, but not be limited to, salaries and wages, and fringe benefits including social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto. The costs for all supervision, including general superintendents and foremen, shall be included in the markups established by this Contract. The only exception to this shall be working foremen who perform manual labor. No labor charges will be accepted for engineering or proposal preparation. These costs shall be included in the markups established by this Contract.

- b. Overtime and premium time pricing will be allowed only for labor which is authorized by the City to be performed after normal working hours, or on Saturday, Sunday, or legal holidays.
- 3. Equipment (type, size, attachments, hours, rate)
  - a. The cost to the Subcontractor for the use of equipment directly required in the performance of the changed Work. No mobilization or demobilization cost will be allowed for equipment already on site.
  - b. For equipment owned, furnished, or rented by the Subcontractor, costs allowed shall be the actual usage costs incurred as supported by the Subcontractor's published standard equipment rates or rental invoices. Rates charged shall not exceed the rates established by the Rental Rate Blue Book.
  - c. The amount to be paid to the Subcontractor for the use of equipment as set forth above will constitute full compensation for the cost of fuel, power, oil, lubricants, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators) and any and all costs incidental to the use of the equipment.
- 4. Direct costs shall not include:
  - a. Payroll costs and other compensation of the Subcontractor's officers, executives, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, lawyers, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, superintendents and foremen, and similar administrative personnel. These costs shall be considered administrative costs covered by the Subcontractor's fee.
  - b. Expense of the Subcontractor's principal and branch offices other than the Subcontractor's office at the site.
  - c. Any part of the Subcontractor's capital expenses. Interest on the Subcontractor's capital employed for the Work. Charges against the Subcontractor for delinquent payments.
  - d. Costs due to the negligence of the Subcontractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Negligence costs include correction of Defective Work, disposal of material wrongly supplied, and making good any damage to property.
  - e. Other overhead or general expense costs of any kind.
  - f. Cost of small tools and supplies.
  - g. Cost of safety programs.
  - h. Costs of insurance.
  - i. Cost of warranty work.

## B. Subcontract Costs

- 1. Direct costs shall be as outlined in section 10.3, A.
- 2. Subcontractors' (at any tier) markups for overhead and profit shall not exceed 15 percent of the direct costs.

C. Subcontractor's Markup

1. The Subcontractor's markup for overhead and profit shall not exceed the following:
  - a. No more than 15 percent of material, labor and equipment costs incurred; and
  - b. No more than 8 percent on payments to Subcontractors at all tiers.
2. The amount of credit to the City for a change which results in a net decrease in cost shall be the amount of the actual net decrease plus a deduction in the Subcontractor's overhead and profit markup by an amount equal to that allowed above.
3. When both additions and credits are involved in any one change, the adjustment in the Subcontractor's overhead and profit markup shall be computed on the basis of the net change in cost.

D. Notwithstanding the foregoing, the cumulative total of all markups on a cost by Subcontractors at all tiers may not exceed 30 percent.

**ARTICLE 11 – WARRANTY; TESTS AND INSPECTIONS; CORRECTION, REMOVAL, OR ACCEPTANCE OF DEFECTIVE WORK**

Tests and Inspections

- 11.1 Testing shall be by the 2021 Oregon Standard Specifications for Construction and, as necessary, as described in the GMP Amendment.
- 11.2 This section intentionally left blank.
- 11.3 This section intentionally left blank.

Uncovering Work

11.4 The Design-Builder, at the City's request, shall uncover, expose, and reconstruct, or otherwise make available for observation, inspection, testing, or approval, any portion of the Work. The Design-Builder shall furnish all necessary labor, material, and equipment. The cost shall be allocated as follows:

- A. The Design-Builder shall bear the cost if the Work was covered contrary to the direction or without approval of the City.
- B. The Design-Builder shall bear the cost if the Work was covered without concurrence of the City unless the Design-Builder had given the City timely notice of intent to cover such Work, and the City did not act with reasonable promptness in response to such notice.
- C. The Design-Builder shall bear the cost if the previously installed Work is found to be Defective.

D. For situations not covered above, the Design-Builder may be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction if the Design-Builder makes a request therefor as provided in Articles 9 and 10.

## Warranty

[NOTE: warranty provisions for each subphase or subproject may be refined and further specified in each GMP Amendment. Final warranty work may be separately contracted for, based on the needs of the City and negotiations with the Project Team.]

11.5 Contractor unconditionally warrants all the construction activities constituting the Work and materials under this contract, including additional work authorized under change orders, against any defects whatsoever, for one year from the date of the letter from the City confirming substantial completion of each Subphase or Subproject, as described in Section 12.10 below, and as may be further described in the applicable Scope of Work, except that manufacturers' warranties and extended manufacturer warranties as specified in the contract documents or otherwise is a standard manufacturer product warranty shall not be abridged. Notwithstanding the foregoing sentence, the warranty period may be longer for a particular subphase or subproject if specified in a GMP Amendment. In addition to its right to proceed on the warranty, the City may recover for breach of contract, negligence, or any other theory other than the express warranty even if defects do not become evident during the warranty period. Notwithstanding the foregoing, the warranty period will not begin unless the Design-Builder provides as-built record drawings and all operations and maintenance ("O&M") documents for the Subphase or Subproject within thirty days of substantial completion. If as-built record drawings and O&M documents are not provided within thirty (30) days of substantial completion, the warranty period shall begin at final completion of each phase. Final completion will not be given unless and until as-built record drawings and O&M documents are provided to the City.

- A. Contractor shall perform all Work in accordance with all specifications, correcting any Work not in compliance with specifications, and for all repairs of damage to other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the warranty period and are the result of defects in construction or materials installed under this contract. Contractor shall be responsible for all costs associated with site cleanup and remediation caused by, or resulting in whole or in part from, defects in its work or materials.
- B. Within 10 calendar days of the City's written notice of defects, Contractor or Contractor's Surety shall start repair of the defects and all related damage. If Contractor or Contractor's Surety fails to correct and repair the defects in a timely manner, the City may have the correction and repair done by others. Contractor or Contractor's Surety shall promptly reimburse the City for all expenses incurred to correct and repair the defects.
- C. In case of an emergency where delay could result in serious loss or damage, the City may make emergency corrections and repairs, without written notice. Contractor or

Contractor's Surety shall promptly reimburse the City for all expenses incurred to correct and repair the defects.

D. All Work done to comply with the warranty shall itself be warranted for one year beginning on the date of the City's Third Notification of the corrections, repairs, replacements or changes.

11.6 The Design-Builder further warrants that the construction work will conform to the requirements of the Contract Documents and will not be Defective for any reason, and that all materials and equipment selected by the Design-Builder or Subcontractor will be suitable for the purposes indicated in the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered Defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the City, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

11.7 Without limitation of any remedy of the City, upon Substantial Completion or termination of the Contract, the City shall be entitled to enforce at its option any and all Subcontractor warranties relating to Work performed and materials and equipment furnished by such Subcontractors. The Design-Builder agrees to perform the Work in such manner so as to preserve any and all such Subcontractor warranties. The Design-Builder also shall collect, assemble in a binder, and submit to the City written Subcontractor warranties and related documents, including without limitation from Subcontractors at all tiers performing Work and furnishing materials, equipment, appliances and other components of the Project.

11.8 Effective upon final payment, the written demand of the City, or upon the insolvency, bankruptcy, dissolution or other incapacity of the Design-Builder, the Design-Builder assigns to the City all Subcontractors' warranties in materials and equipment and other portions or components of the Work.

11.9 The Design-Builder shall collect, assemble in a binder and submit to the City written warranties and related documents provided by Subcontractors, including but not limited to suppliers of equipment, appliances and other components of the Project, at all tiers. All such written warranties shall extend to the City. The Design-Builder hereby assigns to the City any warranty or maintenance obligation provided by a Subcontractor or supplier in excess of that required by this Contract.

#### Correction or Removal of Defective Work

11.10 In addition to the Design-Builder's warranty obligations and all other remedies of the City, if at any time during the period ending one year after Substantial Completion the Work is found to be Defective, the Design-Builder shall promptly correct all Defective Work without added cost to the City, whether or not fabricated, installed, or completed or, at the City's option, remove it from the site and replace it with Work that meets the Contract requirements. If the Design-Builder does not promptly comply with the terms of such instructions, or in an emergency where delay would cause risk of loss or damage, the City may have the Defective Work corrected or removed and replaced, and all direct and indirect costs of such correction or removal and

replacement, including compensation for additional professional services, shall be paid by the Design-Builder or the Design-Builder's surety.

11.11 Nothing contained in Section 11.10 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents or applicable Law. Establishment of the period for correction of Work as described in Item 11.10 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Design-Build Documents or applicable Law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

#### **City May Correct Defective Work**

11.12 If the Design-Builder fails, within three days after written notice from the City, to proceed to correct, or to remove and replace Defective Work as required by the City, or if the Design-Builder fails to perform the Work in accordance with this Contract (including any requirements of the work progress schedule), the City may correct and remedy any such deficiency. In exercising the rights under this paragraph, the City will proceed expeditiously. To the extent necessary to complete corrective and remedial action, the City may: (1) exclude the Design-Builder from all or part of the site; (2) take possession of all or part of the site; (3) suspend the Design-Builder's services related thereto; (4) take possession of the Design-Builder's tools, appliances, construction equipment and machinery at the site; and (5) incorporate in the Work material stored at the site or for which the City has paid the Design-Builder but which has been stored elsewhere. The Design-Builder shall allow the City's representatives, contractors, agents, and employees such access to the site as may be necessary to exercise the rights under this paragraph. All direct and indirect costs in exercising such rights will be charged against the Design-Builder. A Change Order will be executed incorporating the necessary revisions to this Contract and a reduction in the Guaranteed Maximum Price. Such direct and indirect costs will include, in particular but without limitation: (1) additional professional services required; and (2) repair and replacement of the Work of others destroyed or damaged by correction, removal, or replacement of the Design-Builder's Defective Work. The Design-Builder will not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise of the City's rights under this section.

## **ARTICLE 12 – PAYMENTS TO THE CONTRACTOR AND COMPLETION**

#### **Before Request for Progress Payment**

12.1 Prior to submitting the first request for progress payment, the Design-Builder shall submit the following to the City:

- A. Work progress schedule.
- B. Schedule of values.

- C. Cash flow schedule.
- D. Final submittal schedule.
- E. Wage certification.

If the Design-Builder is required to file a certified statement under ORS 279C.845, and the certified statement has not been filed as required, the City will retain 25 percent of any amount earned under this Contract until the certified statement has been filed. The City will pay the Design-Builder the amount retained within 14 days after the missing certified statement has been filed. Failure of a Subcontractor to file a certified statement required under ORS 279C.845 will not trigger retainage under this paragraph.

12.2 After the City's receipt and acceptance of the items listed under Section 12.1 above, the Design-Builder shall attend a pre-progress payment meeting, if requested by the City, to discuss payment requests, procedures, and requirements.

#### Request for Progress Payment

12.3 Thirty days or more following the Work Start Date, the Design-Builder may request the first monthly progress payment on Work completed by the date of the request. The request shall be made on the Design-Builder's Request for Payment form (form follows these General Conditions) and shall be accompanied by supporting documentation required by this Contract. Requests shall be signed by the Design-Builder and submitted to the City for review.

12.4 This section intentionally left blank.

12.5 Material delivered and stored on site but not yet incorporated in the Work may be included in the request for progress payment subject to approval by the City and the following:

- A. No payment will be made for material costing less than \$50,000 total.
- B. The City's title to and interest in the material must be clearly established and free of all liens or other encumbrances.
- C. Value shall be established by invoice, freight bill, or other document.
- D. Payment for stored material will be limited to 90 percent of the net cost invoiced to the Design-Builder.
- E. When there is a bid price on material in place, the City will estimate the cost of placing. The progress payment will be limited to 90 percent of the bid price less the estimated cost of placing.
- F. Risk of loss remains with the Design-Builder.
- G. Materials must be stored in a location that is acceptable to the City where the City has

access to said materials. Additionally, the materials must be stored in a fashion that does not compromise the materials in any way.

12.6 Progress payments shall not be construed as acceptance or approval of the Work or waiver of any defects in the Work.

#### Retainage

12.7 This section intentionally left blank. Refer to GMP Amendment.

#### Review of Request for Progress Payment

12.8 Within 15 days, the City will review each request for progress payment and recommend payment or respond in writing to the Design-Builder with the reasons the City is requiring resubmittal of the pay request before it can be approved.

12.9 The City may refuse to make payment and withhold payment, in whole or any part, to the extent:

- A. The Work is Defective, or completed Work has been damaged requiring correction or replacement;
- B. Written claims have been made against the City or liens have been filed in connection with the Work;
- C. The City has been required to correct Defective Work or to complete the Work;
- D. The Design-Builder's prosecution of the Work in accordance with this Contract is unsatisfactory;
- E. The Design-Builder has failed to make payments covered by past progress payments to Subcontractors, or for labor or material; or
- F. The Design-Builder is in breach of this Contract.
- G. Testing of work element failed or was not performed.
- H. Specified warranties for work products are not provided to the City.

#### Substantial Completion

12.10 When the Design-Builder considers the entire Work of each Subproject or Phase ready for its intended use, it shall certify in writing that the entire Work of the Subproject or Phase is Substantially Complete and request a letter confirming Substantial Completion. Within 15 days thereafter, the Design-Builder and the City shall make an inspection of the Work of the Subproject or Phase to determine the status of completion, to include representatives of the lead designer. If, upon written recommendation by the lead designer, the City considers the Work

Substantially Complete, the City will, within 15 days of date of inspection, execute and deliver to the Design-Builder a letter confirming Substantial Completion with a list of items begun by the lead designer and revised and issued by the City to be completed or corrected. The letter will state the date of Substantial Completion. If the City does not consider the Work Substantially Complete, the City will notify the Design-Builder in writing giving reasons therefor.

- A. Warranties and operation and maintenance manuals shall be submitted and approved by the City and training shall be completed for the Work to be considered Substantially Complete.

12.11 The City may exclude the Design-Builder from that part of the Work after the date of Substantial Completion. The City will allow the Design-Builder reasonable access to complete or correct items on the list.

12.12 The Design-Builder may request, in writing, that the City confirm Substantial Completion for a part of the Work using the inspection and correction procedure described above. The City will only consider confirming Substantial Completion for a part of the Work if the City desires that part to become operational.

12.13 The City may allow the Design-Builder use of equipment installed as part of the Work prior to Substantial Completion, subject to the Design-Builder:

- A. Obtaining the City's written approval.
- B. Maintaining the equipment and preparing and maintaining a log recording all maintenance activities.
- C. Returning equipment to "as-new" condition upon Substantial Completion.

#### Partial Utilization

12.14 The City may request, in writing, the use of any part of the Work which may be used without significant interference with construction of other parts of the Work. If the City requests use of any part of the Work prior to Substantial Completion of all the Work, the City will issue to the Design-Builder a letter granting Substantial Completion for that portion of the Work with a list of items to be completed or corrected. The City will assume responsibility for security, safety, operation, maintenance, and utilities for that part of the Work while it is being used by or under the control of the City.

#### Final Inspection and Final Acceptance

12.15 When the Design-Builder considers the entire Work, or an agreed-upon portion thereof, to be complete, the Design-Builder's representative shall certify, in writing, that the Work is complete and request a letter granting Final Acceptance. Within 30 days after receipt of the Design-Builder's certification, the City will inspect the Work, and the lead designer shall certify that it has reviewed the Work, and, upon recommendation by the lead designer, the City will notify the Design-Builder, in writing, of Final Acceptance or of all particulars in which this inspection reveals that the Work is incomplete or Defective. The Design-Builder shall

immediately take such measures as are necessary to remedy such deficiencies and allow an additional 30 days for the City to complete another inspection of the Work. Issuance of Final Acceptance by the City shall not constitute (1) a waiver of any right or remedy of the City under the Contract or Law or (2) approval of or acquiescence to any breach of this Contract. The Design-Builder's certification shall be preceded or accompanied by all documentation called for in this Contract, including but not limited to:

- A. Redline Drawings for creating record drawings.
- B. Bonds, if any.
- C. Software or code use rights documentation.
- D. Certificates of inspection from jurisdictional authorities.
- E. Releases, waivers, or exoneration of all liens arising out of or filed in connection with the Work.
- F. The Design-Builder's Waiver of Claims to Date form certifying that all payrolls and material bills and other indebtedness connected with the Work for which the City might in any way be responsible have been paid or otherwise satisfied. G. Consent of surety, if any, to final payment.

#### Final Payment

12.16 This section intentionally left blank. Refer to GMP Amendment.

12.17 This section intentionally left blank.

#### Design-Builder's Continuing Obligation

12.18 The Design-Builder's obligation to perform and complete the Work in accordance with this Contract shall be absolute and cannot be waived in whole or in part by the City except by express written instrument signed by an authorized City representative. Any such waiver will specifically identify the Work that the City is willing to accept and the manner in which that Work fails to meet the original requirements of the Contract. Accordingly, and by way of example only, none of the following will constitute acceptance of Work not in accordance with this Contract or release the Design-Builder from obligation to perform the Work in accordance with this Contract, regardless of whether any defect, deficiency, or damage is patent or latent:

- A. Any act of acceptance by the City, except in an express written instrument as described above.
- B. Any correction by the City of Defective Work.
- C. Use, operation, or occupancy of the Work or any part of the Work by the City.
- D. Recommendation by City staff for any progress or final payment.

- E. Payment by the City to the Design-Builder.
- F. Issuance of a letter of Substantial Completion.
- G. Issuance of a letter of Final Acceptance.

#### Design-Builder's Warranty of Title

12.19 The Design-Builder warrants that title to all Work and material covered by any request for payment, whether incorporated in the Work or not, will pass to the City at the time of payment. Title shall be free and clear of all liens, claims, security interests, and encumbrances.

#### Waiver of Claims

12.20 The acceptance of final payment will constitute a waiver of all claims by the Design-Builder against the City other than those previously made in writing and still unsettled.

#### Other Damages

12.21 The City will have the right to recover from the Design-Builder and, to the extent permitted by Law, to deduct from any payment due the Design-Builder, the amount of any loss suffered by the City on account of the failure of the Design-Builder, Subcontractor, anyone directly or indirectly employed by any of them, and anyone for whose acts any of them may be liable to comply with the rules and regulations referenced or contained in this Contract.

### **ARTICLE 13 – SUSPENSION OR TERMINATION OF THE WORK**

#### City May Suspend the Work

13.1 The City may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice, in writing, to the Design-Builder. This notice will fix the date on which Work shall stop and the date on which it shall resume. The Design-Builder shall resume the Work on the date so fixed. The Design-Builder will be allowed an increase in the Guaranteed Maximum Price or an extension of the Contract Time, or both, directly attributable to the suspension.

13.2 If the Work is Defective, or if the Design-Builder fails to supply sufficient skilled workers or suitable material or equipment, or if the Design-Builder fails to perform the Work in such a manner that the completed Work conforms to this Contract, the City may order the Design-Builder to suspend the Work, or any portion thereof, until the cause for such order has been eliminated. However, this right of the City to suspend the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Design-Builder or any other party.

13.3 In the event the Design-Builder, Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable fails to comply with the rules and regulations referenced in this Contract, the City may suspend the Work or any portion

thereof. The suspension shall continue until completion of any investigation or evaluation by the City and full compliance with any corrective measures which the City may reasonably require. The City will not be liable to the Design-Builder for any delay caused by such suspension, nor will there be any adjustment in the Guaranteed Maximum Price or Contract Time.

#### City May Terminate the Work

13.4 The occurrence of any one or more of the following events will justify termination for cause:

- A. The Design-Builder is adjudged bankrupt or insolvent.
- B. The Design-Builder makes a general assignment for the benefit of creditors.
- C. A trustee or receiver is appointed for the Design-Builder or for any of the Design-Builder's property.
- D. The Design-Builder files petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar Laws.
- E. The Design-Builder fails to supply sufficient skilled workers or suitable material or equipment.
- F. The Design-Builder fails to make prompt payments to Subcontractors or for labor and material.
- G. The Design-Builder disregards Laws, ordinances, rules, regulations, or orders of any public body having jurisdiction including, without limitation, ordinances adopted by the City and referenced in this Contract, and the rules and regulations adopted by the City's City Manager or designee.
- H. The Design-Builder disregards the authority of the City.
- I. The Design-Builder otherwise violates in any substantial way any provision of this Contract.

13.5 The City may, after giving the Design-Builder a seven-day written notice (1) terminate this Contract for default; (2) exclude the Design-Builder from the site; (3) take possession of the site and the Design-Builder's tools, appliances, construction equipment and machinery at the site, or take possession of tools, appliances, construction equipment and machinery not at the site that is to be incorporated into the Work and for which Design-Builder received payment, and use the same to the full extent they could be used by the Design-Builder without liability to the Design-Builder for trespass or conversion; (4) take possession of and incorporate in the Work material stored at the site or for which the City has paid the Design-Builder but which is stored elsewhere; (5) finish the Work as the City may deem expedient, and (6) obtain an assignment of some or all of the subcontracts and purchase orders (including but not limited to agreements with Designers) relating to the uncompleted Work. By executing this Contract, the Design-Builder agrees to execute documents necessary to affect the assignment of those subcontracts and purchase orders if requested by the City in the event of termination of this Contract pursuant to this article.

13.6 Where the Design-Builder's services have been so terminated by the City, the termination will not affect any rights of the City against the Design-Builder then existing or which may thereafter accrue. Any retention or payment of moneys due the Design-Builder by the City will not release the Design-Builder from liability.

#### City May Terminate the Work for Convenience

13.7 Upon giving the Design-Builder a seven-day written notice, the City may, without cause and without prejudice to any other right or remedy, elect to terminate this Contract in whole or in part for the convenience of the City. In such case, the Design-Builder will be paid for the costs of all Work acceptably performed and installed, together with reasonable profit and overhead on those costs, and any justifiable costs actually sustained in the process of termination, including without limitation the cost of demobilization and termination of subcontracts, purchase agreements, and purchase orders.

If this Contract is terminated for default and it is subsequently determined through mediation, arbitration, or litigation that the termination was improper, this Contract shall be treated as if it had been terminated for the convenience of the City, and the Design-Builder shall be entitled to payment under the provisions of this paragraph.

13.8 In the event of a termination for convenience, the Design-Builder remains liable for all elements of the Work actually performed by the Design-Builder or Subcontractors, or those for whom any of them are responsible, regardless of whether: (a) such performance occurred before or after the effective date of termination; or (b) the City provided an opportunity to cure. The Design-Builder's liability includes, but is not limited to, liability for having performed all Work according to the Design-Build Documents, industry standards, the Contract Time and schedule, and the other standards incorporated in this Contract. The Design-Builder also remains liable for all representations, warranties, and guarantees to the extent applicable to the Work performed.

### ARTICLE 14 – DISPUTE RESOLUTION

14.1 If the Design-Builder wishes to assert a claim, it shall submit to the City a written statement of the claim within 30 Calendar Days after the Design-Builder first has knowledge of or reason to know of the facts upon which the claim is based. The statement of claim shall recite the facts upon which the claim is based and shall include copies of all documentary evidence in support of the claim. Within 15 Calendar Days after receiving a claim, the City will respond in writing stating whether the claim is allowed, partially allowed, or denied. If the Design-Builder disputes the action taken by the City, the Design-Builder shall deliver a written notice of dispute to the City within 15 Calendar Days after the Design-Builder receives the City's written response to the claim. The written notice of dispute shall be entitled "Notice of Dispute." A claim shall be barred if the Design-Builder fails to comply with the foregoing notice of dispute requirement or fails to timely deliver the notice of dispute to the City.

- A. The City's Contract is with the Design-Builder. It is the Design-Builder's responsibility to fully evaluate any claim before presenting it to the City. In addition, when a claim includes Work done or costs incurred by any Subcontractors or any person or entity other than the

Design-Builder, the Design-Builder remains solely responsible for presenting the claim to the City. Claims that include Work done or costs incurred by any Subcontractors or any entity other than the Design-Builder will not be considered by the City unless the Design-Builder has (1) completed and provided to the City its own written evaluation of the claim, (2) verified by its own independent review and evaluation of the amount of compensation sought, and (3) certified in writing the claim as follows:

"Under penalty of law for perjury or falsification, the undersigned, (Name) (Title), (Company) certifies that this claim originating from the Subcontractor (Company) for additional compensation (1) is being asserted by the Design-Builder in good faith, (2) is an accurate and reasonable statement, independently verified by Design-Builder, of the costs incurred in the amount of \$\_\_\_\_\_, exclusive of interest; (3) was timely and properly submitted; and (4) is fully justified, documented and supported under the Contract between the parties and the amount requested accurately reflects the amount for which the Design-Builder believes the City is liable.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_."

14.2 The parties shall attempt to resolve all disputes by negotiation. Negotiation shall be initiated at the earliest opportunity. Each party shall freely share unprivileged information requested by the other and shall make a good faith effort to ensure that all relevant issues are fully developed and fairly presented to the other side.

14.3 If a dispute is not resolved through negotiation between the Design-Builder and the City, the parties shall submit the dispute to mediation. Either party may request mediation. The requesting party shall suggest an independent mediator with the request for mediation. If the parties cannot agree upon a mediator, either party may apply to the Presiding Judge, Deschutes County Circuit Court, for appointment of a mediator. The parties shall share equally in the fees and costs of the mediator. Mediation shall be at Bend, Oregon, unless the parties agree otherwise.

14.4 If a dispute is not resolved by mediation, the parties may, but are not required to, agree to submit the dispute to binding arbitration. The parties shall agree upon a single arbitrator, the applicable rules for arbitration, and the time and place of arbitration.

14.5 If a dispute cannot be resolved by mediation, and the parties do not agree to submit the dispute to arbitration, either party may file a lawsuit to resolve the dispute in a court with proper jurisdiction located in Deschutes County, Oregon.

14.6 Should any lawsuit, arbitration, or other action be commenced in connection with any dispute arising out of this Contract, each party shall bear all its costs and expenses.

14.7 Except to the extent performance may be legally excused under the particular circumstances, each party shall continue to perform its duties under this Contract while the

resolution of a dispute is pending. Failure to comply with this requirement shall be a material breach of this Contract.

## **ARTICLE 15 – MISCELLANEOUS**

### Computation of Time

15.1 Any period of time referred to in this Contract by days shall be computed to exclude the first and include the last day of such period. If the last day of any time period falls on a Saturday or Sunday or on a day made a legal holiday by the Law of the applicable jurisdiction, such day shall not be included in determining the time period.

### Liability Claims

15.2 Should the City or the Design-Builder suffer injury or damage to person or property because of any error, omission, or act of the other party or of any of the other party's employees, contractors, or agents or others for whose acts the other party is legally liable, claim shall be made: (1) in writing, and (2) to the other party within a reasonable time of the first observance of such injury or damage.

### Rights and Remedies

15.3 These General Conditions impose duties and obligations on the Contract parties and provide for rights and remedies. The rights and remedies available to each party are in addition to, and shall not limit, actions allowed by Law or other parts of this Contract. All representations, warranties, and guaranties made in this Contract shall survive final payment and/or termination (whether for cause or convenience) and/or completion of this Contract. The content of this paragraph shall apply as if repeated specifically in this Contract in connection with each duty, obligation, right, and remedy.

### Commencement of Limitations Period

15.4 As to acts, omissions, breaches of contract or warranty, negligence, misrepresentation, strict liability, fraud, or any other improper conduct of the Design-Builder or those persons or entities for whom the Design-Builder is responsible, whether occurring prior to or after completion of the Work, all applicable limitations periods shall not commence to run and any alleged cause of action shall not be deemed to have accrued unless and until the City has actual knowledge of all three of the following: (1) the identity of all party(ies) responsible; (2) the actual magnitude of the damage or injury; and (3) the cause(s) of the damage or injury. The discovery rule provided herein applies in lieu of any otherwise applicable statute or case authority.

## CONTRACT EXHIBIT 2

### GUARANTEED MAXIMUM PRICE AMENDMENT TO THE PROGRESSIVE DESIGN-BUILD CONTRACT FOR THE \_\_\_\_\_ SUBPROJECT(S) OF THE SEAP PUMP STATION PROJECT

Agreement No. \_\_\_\_\_ Project No. \_\_\_\_\_

This Amendment to the Progressive Design-Build Contract ("Amendment") is entered into effective \_\_\_\_\_ between the City of Bend, Oregon ("City") and \_\_\_\_\_ ("Design-Builder") and amends the Progressive Design-Build Agreement for the SEAP Pump Station Project between City and Design-Builder dated \_\_\_\_\_.

The Agreement is revised as follows:

1. Project Scope. Design-Builder shall construct \_\_\_\_\_ ("GMP Work"). The GMP Work is described in more detail in the attached Exhibit A – Scope of Work. Design-Builder is required to furnish all materials, labor, water, tools, power, equipment, transportation and other work needed to construct the GMP Work.
2. Contract Documents. This Amendment consists of the main text of this Amendment and the following exhibits:

- a. Exhibit A – Scope of Work
  - b. Exhibit B – GMP Supporting Documents

3. GMP. The parties agree that the Guaranteed Maximum Price ("GMP") for the Project is \$ \_\_\_\_\_, consisting of the Estimated Cost of the Work and Contingencies, summarized as follows:

Estimated Cost of Work	\$0.00
Contractor Fee (Design-Builder's Percentage Fee)	\$0.00
Contractor Bonds and Insurance	\$0.00
Owner Directed Allowances	\$0.00
Design-Builder Contingency	\$0.00
GMP Total (Total of Above)	\$0.00

4. Basis of GMP. The GMP is based on the GMP Supporting Documents included as Exhibit B, including the allowances, assumptions, exclusions, unit prices, and schedule designated in those documents. The GMP Supporting Documents are based on the Preliminary Engineering and any Construction Documents approved by the City. The Design-Build Documents remain in full force and effect; this Basis of GMP supplements design document requirements but does not replace them.

5. GMP Encompasses Further Design Development. Design-Builder represents that the Drawings and Specifications upon which the Guaranteed Maximum Price is based are approximately \_\_\_\_% complete and that the Drawings and Specifications will require further development from Design-Builder's design team. In deriving the Guaranteed Maximum Price stated herein, Design-Builder has already anticipated and provided for this further design development and has included in the Guaranteed Maximum Price all costs expected or which reasonably could be expected for further design development, engineering and consultant services and reports, the creation and finalization of construction documents and issued-for-construction drawings, all design-team contract administration services and site visits, and all construction labor, materials, equipment, general conditions, fee and all other costs necessary, incidental or inferable from the documents, physical access to the site, and information available to date in order to design and build the Project consistent with the Owner's Project Criteria, the scope description, the Drawings and Specifications, and all other design and Owner-supplied information to date. The Guaranteed Maximum Price does not include significant changes in Project scope, systems, kinds and quality of materials, finishes or equipment after the date hereof, all of which, if required, shall be incorporated by Change Order or Construction Change Directive. By executing the Contract and upon execution of each Amendment to the Contract, the Design-Builder is deemed to have included in the Guaranteed Maximum Price sufficient amounts to cover all of its obligations under or arising from the Contract, at law, and otherwise, and to have allowed the necessary resources to enable Design-Builder to achieve Substantial Completion by the Scheduled Substantial Completion Date.

6. Substantial Completion Date. Notwithstanding any provision in the GMP Supporting Documents to the contrary, the required date for Substantial Completion of the GMP Work is \_\_\_\_\_.

7. Compensation. Article 7, Compensation, is amended by adding the following:

- a. City shall pay Design-Builder for GMP Work according to the schedules and unit prices stated in Exhibit B, plus the Design-Builder's Percentage Fee as set forth in this Amendment and Article 7 of the Agreement.
- b. Design-Builder shall invoice the City monthly for work performed, based on an estimate of the amount of work completed and the value of the completed Work. Invoices shall be directed to the City of Bend, Attn: Accounts Payable, PO Box 1458, Bend OR 97709. Invoices may be emailed to: [ap@bendoregon.gov](mailto:ap@bendoregon.gov). If an invoice is delivered on a non-business day, the invoice shall be considered received on the next day the City Finance Department is open for business. City shall make a progress payment equal to the value of the completed Work, less amounts previously paid, less retainage of 5 percent within 30 days of receipt of the invoice.
- c. City shall inspect the Project within 15 days of receipt of written notice from Design-Builder that the Work is ready for final inspection and acceptance. The City shall either accept or reject the work in writing. A rejection must state the reasons for the rejection and list the Work that must be done before the Project can be accepted. If a rejection is issued, Design-Builder shall complete all Work needed to be done and request another inspection. The process shall be continued until the City determines that the

Project is complete and accepted. Within 30 days after written acceptance by the City and receipt of the Warranty Bond required by Section 8.c of this GMP Amendment and Section 5.1.b of the General Conditions, all remaining amounts, including the retainage, shall be paid to Contractor, provided that Design-Builder shall submit evidence satisfactory to the City that all payrolls, material bills, and other indebtedness connected with the Work have been paid; except that in case of disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment, a Surety Bond satisfactory to City guaranteeing payment of all such disputed amounts when adjudicated in cases where such payment has not already been guaranteed by Surety Bond. If City fails to pay within 30 days of acceptance and receipt of the Bond, City shall pay interest at the rate as specified in ORS 279C.515 on any unpaid amounts.

## 8. Prevailing Wage

- a. Design-Builder shall comply with all provisions required by ORS 279C.800 through ORS 279C.870 relating to the payment of prevailing wage rates for work performed.
- b. Design-Builder shall pay to workers in each trade or occupation the current, applicable State prevailing rate of wage as established by the Oregon State Bureau of Labor and Industries ("BOLI") <http://www.boli.state.or.us/BOLI>.

Design-Builder and any Subcontractors shall post the prevailing wage rates and fringe benefits as required by ORS 279C.840.

- c. Design-Builder shall prepare weekly certified payroll reports and statements and submit them to the City by the fifth business day of each month (ORS 279C.845). Reports shall be submitted to the City of Bend, Attention: Purchasing Manager, on a form prescribed by the Commissioner of the Bureau of Labor, certifying: (a) the hourly rate of wage paid each worker whom the contractor or the Subcontractor has employed upon the public works; and (b) that no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract. If the Design-Builder has not filed the certified statements as required under this contract, the City of Bend shall retain 25 percent of any amount earned by the Design-Builder until the Design-Builder has complied. The City of Bend shall pay the Design-Builder the amount retained under this subsection within 14 days after the Design-Builder has filed the certified statements with the City.
- d. Contractor shall allow BOLI to enter the office or business establishment of Contractor at any reasonable time to determine whether the prevailing rate of wage is actually being paid and shall make payment records available to BOLI on request. Contractor shall require subcontractors to provide the same right of entry and inspection.
- e. City shall not make final payment unless the prevailing wage rate certifications are received.

- f. Design-Builder must comply with all laws and regulations relating to prevailing wages, whether or not set out in this contract. Further information regarding prevailing wages is available by contacting BOLI at (971) 6730839 or on-line at the BOLI web site: <http://www.boli.state.or.us/BOLI/WHD/PWR/index.shtml>.
- g. Prevailing Wage publications applicable to this contract are the Prevailing Wage Rates for Public Works Contracts in Oregon effective \_\_\_, the Prevailing Wage Rate Amendments effective \_\_\_\_\_ and the \_\_\_ PWR Apprenticeship Rates.

9. Insurance and Bonds.

- a. Design-Builder shall provide a separate Performance Bond and a separate Payment Bond in the form provided by the City. Each bond shall be equal to 100 percent of the GMP, or if either bond is issued to replace the bond previously issued under the Contract, equal to the total amount of the Progressive Design-Build Contract including the GMP Amendment. The Performance Bond and the Payment Bond must be signed by the Surety's Attorney-in-Fact, and the Surety's seal must be affixed to each bond. Bonds shall not be canceled without the City of Bend's consent, nor shall the City release them prior to Contract completion. Bonds must be originals. Faxed or photocopied Bond Forms shall not be accepted.
- b. Builder's Risk or Installation Floater. The Design-Builder shall obtain and maintain for the benefit of the parties an all-risk builder's risk or installation floater policy insuring 100 percent of the Cost of the Work. Such insurance shall include testing and shall allow utilization of part of the equipment prior to Substantial Completion of all the GMP Work. Coverage shall continue until Substantial Completion of the GMP Work. The City and all Subcontractors shall be additional named insureds, as their interests may appear. The City shall be given not less than 30 days' written notice prior to cancellation, nonrenewal, or material change in the policy. One copy of the policy and a certificate of insurance shall be delivered to the City before commencing GMP Work and shall be subject to approval by the City. The City may defer delivery of the copy of the policy, but such deferral shall not be a waiver of the City's right to a copy of the policy. In the event the Design-Builder fails to maintain insurance required under this subsection 5.14, the City, at its sole option, may arrange for such coverage, and any administrative costs and premium incurred shall be reimbursed by the Design-Builder.
- c. Design-Builder shall provide a Warranty Bond in the amount of the GMP to cover the warranty period after acceptance. The City's acceptance of the work shall not take effect until receipt of the warranty bond.

10. Liquidated Damages. Design-Builder recognizes that the City shall incur significant internal and external costs (damages) as a result of any delay by the Contractor completing all GMP Work within the specified Contract time. However, given the nature of the GMP Work, it is unduly burdensome and difficult to demonstrate the exact dollar value of damages related to

delay. The City has made a good faith and reasonable estimate of damages it would suffer from loss of use due to delay in completion. Contractor agrees to pay to City, not as a penalty but as liquidated damages for loss of use, \$2,000.00 for each calendar day of delay in completion of the Work.

The City of Bend is authorized to deduct the amount of the liquidated damages from any amounts due and the Contractor and its Surety shall be liable for any excess.

See Section 00180.85 of the City of Bend Special Conditions to the General Conditions.

If the Contract is terminated according to the General Conditions and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages shall be assessed against the Contractor for the duration of time reasonably required to complete the work.

The parties further agree that the liquidated damages required by this Contract are compensation to the City only for the harm the City sustains from late completion for loss of use. They are not compensation for additional effort required by the City because the Work has been extended over a longer period, or for other harm the City may sustain from the Design-Builder's other breaches of this Contract. The City may withhold liquidated damages from progress payments or may withhold the full amount of accrued liquidated damages from final payment. Nothing in this Contract shall be interpreted to prevent the City from seeking other damages or recovery in addition to the liquidated damages specified in this section.

[NOTE: Liquidated damages may be adjusted based on the scope of each GMP Amendment.]

11. Other Damages. The City may recover from the Design-Builder, withhold from payments under this Contract, or both, actual costs incurred by the City due to the extra effort necessitated because the Work is extended over a longer period of time, such as the actual costs of additional engineering and inspections by the City or extended third party services. This right to actual damages shall apply to both late Substantial Completion and late Final Acceptance.

12. Termination for Convenience. In the event of a termination of this GMP Amendment for convenience, the Design-Builder will not be entitled to overhead or profit on the unperformed Work, and will not be entitled to payments in excess of (1) the Cost of the Work incurred by the Design-Builder to the date of termination, (2) the prorated portion of the Design-Builder's Percentage Fee based on the ratio of (a) the Cost of the Work incurred by the Design-Builder to the date of termination divided by (b) the Guaranteed Maximum Price less the Design-Builder's Percentage Fee, (3) fair compensation, either by purchase or rental at the election of the City, for any equipment owned by the Design-Builder which the City elects to retain and which is not otherwise included in the Cost of the Work under sub-item (1), and (4) fair compensation for the Design-Builder's demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the Cost of the Work under sub-item (1); provided, however, that the total amount of such payment shall be subject to the Guaranteed Maximum Price.

In all other respects the Contract shall remain in full force and effect.

Approved and authorized for signature by City Council acting as the Local Contract Review Board on [DATE].

This Amendment may be executed in two originals, with one original to be delivered to each party.

THE PARTIES SIGNING BELOW WARRANT, REPRESENT AND AGREE THAT THEY HAVE THE AUTHORITY TO SIGN THIS AGREEMENT AND AGREE TO ALL TERMS:

**CITY OF BEND**

---

Eric King, City Manager

---

Date

**APPROVED AS TO FORM:**

---

City Attorney's Office

---

Date

**FIRM NAME**

---

By:

---

Date

Its:

---

City Contracting & Funding Authorizations:

By: \_\_\_\_\_

Ryan Oster, EIPD Director  
City of Bend, Oregon

\_\_\_\_\_

Date

By: \_\_\_\_\_

Jason Suhr, Principal Engineer  
City of Bend, Oregon

\_\_\_\_\_

Date

By: \_\_\_\_\_

Alex Doza, Project Manager  
City of Bend, Oregon

\_\_\_\_\_

Date

By: \_\_\_\_\_

Heather Herauf, Interim Procurement Manager  
City of Bend, Oregon

\_\_\_\_\_

Date