

# Request for Proposals

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## DISASTER RELIEF LOGISTICS CENTER

Proposal Response Due:  
April 4, 2022



**McKenzie Fire & Rescue**  
42870 McKenzie Highway  
Leaburg, Oregon 97489

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# REQUEST FOR PROPOSALS

## Section 1: Background

### 1.1 Introduction

The existing McKenzie Fire & Rescue lacks a physical location for a Disaster Relief Logistics Center (DRLC). This need became strikingly apparent during the 2019 snow event and the historic fire season of 2020, specifically the Holiday Farm Fire. Staging of firefighting staff, utility repair coordination, road clearing efforts and inter-agency communications became critical during this severe event. Flooding can also reach critical disaster levels periodically along the McKenzie River, with school closures being caused by high water as recently as early January 2022. While a focus on wildfire and flood protection is desired, other unforeseen disasters such as earthquake relief are reasonable for staging, management, and relief from this proposed logistics center.

Grants and local funding sources are currently available for design and construction to begin immediately. The open and generally flat site to the immediate east of the McKenzie Fire & Rescue's Leaburg Station is the desired location for the DRLC. It consists of several separate tax lots. This property has been set aside for this project; the new development will cover approximately .5 acres.

This Request for Proposals (the RFP) for the McKenzie Fire & Rescue Disaster Relief Logistics Center (the Project) invites responses according to the requirements set forth in this RFP, including the format and content guidelines in Section 5 Proposal Submission Requirements (the Proposal). McKenzie Fire & Rescue (the District or Owner) will review and evaluate Proposals using a two-step, qualifications-based selection process described in Section 6 Proposal Evaluation and Selection. At the completion of the evaluation process, the District will identify a top-ranked design-builder and will enter into negotiations for the award of the Design-Build Agreement to that entity (see the attached sample Design-Build Agreement, Attachment C with associated Exhibits).

The Project will be designed and constructed in two phases using the progressive design-build delivery method:

Phase One: Design-Builder to perform preconstruction services and develop with Owner's input pricing-level design documents and information such that the design-builder can prepare and provide a Design-Builder Proposal to be reviewed and approved by the Owner.

Phase Two: If the Design-Builder's Proposal prepared in Phase One is approved by the Owner, the Design-Builder will complete design, permitting, construction, move-in and post-construction tasks, including operation and maintenance manuals for the building systems and relevant performance testing.

This RFP is subject to revision via written addenda. Any addenda will be posted on the Owner's website (these will not be distributed directly to potential Respondents). It is each Respondent's responsibility to obtain and acknowledge receipt of all RFP addenda prior to submitting its Proposal.

Owner may reject any or all Proposals or cancel the RFP in its sole discretion. In no circumstances will Owner be liable for any costs incurred by any Respondent or any other party in developing or submitting a Proposal.

This project is for a public work. No Proposal will be received or considered by the District unless the Proposal contains a statement by the Proposer as part of its Proposal that "Proposer agrees to be bound by and will comply with the provisions of ORS 279C.840 or 40 U.S.C. 3141 *et seq.*"

## 1.2 RFP Organization

This RFP consists of eight Sections including the Attachments:

- Section 1:  
Background
- Section 2: Project Overview
- Section 3: Progressive Design-Build Services
- Section 4: Procurement Process
- Section 5: Proposal Submission Requirements
- Section 6: Proposal Evaluation and Selection.
- Section 7: Conditions for Respondents
- Section 8: Attachments

## 1.3 Owner's Objectives

The Owner's objectives for delivery of the Project are described below:

**Supply:** Provide new buildings with related facilities and equipment that will meet current and future operational needs at the best possible value to Owner.

**Quality:** Provide design and construction services to deliver a new building with related facilities and equipment of the highest quality relative to Owner's progressive design-build budget not to exceed \$1.1 million.

**Project Phasing and Informed Decision-making:** Owner desires a sequential, phased approach from conception to completion with appropriate Owner approvals at key milestones. Care should be taken to not duplicate any services and to assure that all information is made available to allow the District to provide informed decisions.

**Building Maintenance Cost:** Minimize total project life-cycle cost. Owner desires low maintenance costs consistent with the Project budget including Life Cycle Cost evaluation for each phase.

**Schedule:** The District is pursuing Progressive Design-Build procurement with the understanding that project design, permitting and construction can be achieved in a shorter time period than other delivery methods. It is the District's intent that the Project be completed as soon as possible without any cost premiums associated with an accelerated schedule.

**Risk:** Achieve an optimal balance of risk allocation between the Owner and the design-builder.

**Safety:** Implement an effective safety program incorporating best industry practices.

**Infrastructure:** Costs are to include all necessary infra-structure to support the Project.

By selecting the progressive design-build delivery method for the Project, the Owner is committed to working in close collaboration with the design-builder during Phase One of the Project to develop the Project's design, to achieve the Project objectives and to obtain a mutually-agreeable GMP for delivery of the Project.

## Section 2: Project Overview

### 2.1 Project Scope

The McKenzie Fire & Rescue Disaster Relief Logistics Center will be located at the designated site to the east and adjacent to the current Leaburg Station.

The Project will involve preparation of the site and the construction of a new building and associated sitework and infrastructure. When it is complete, McKenzie Fire & Rescue will be home to the Disaster Relief Logistics Center. The District has identified a preliminary program, included in the Conceptual Project Narrative, that will be finalized in initial programming discussions with the selected Design-Builder.

Building components necessary for support of the DRLC are proposed to include:

- 1) A fully conditioned space for offices, toilets and showers.
- 2) A semi-conditioned storage area served by two large overhead doors (12' x 14' assumed size).
- 3) An unconditioned sandbag storage and staging area.
- 4) It is practical to consider the sandbag area as future expansion area for the DRLC and to further consider this function as a separate, simpler construction during schematic design work.
- 5) A 70' x 35' foot building footprint of approximately 2,200 square feet has been identified as adequate to fulfill the needed program and allow for future expansion.
- 6) Expansion for the building component of the site is deemed appropriate; a doubling of the facility size is considered reasonable.

Site area components necessary for support of the DRLC are proposed to include:

- 1) AC parking and staging areas for apparatus and equipment. Some components of this may require striping for site organization and for meeting code parking and ADA requirements.
- 2) A sandbag storage area; AC surfaced.
- 3) AC looped site roads that can facilitate equipment and supply storage, delivery and distribution.
- 4) Perimeter fencing of the primary yard with remotely operated sliding gates for access control.

### 2.2 Project Budget and Funding

The Progressive Design-build contract is not to exceed \$1.1 million dependent upon the outcomes of this solicitation. The District has secured the capital needed to fund the Project. The Project funding method will include State of Oregon grant sources and other local funding sources.

### 2.3 Summary Project Schedule

The District anticipates that the Progressive Design-Build Contract will be executed in April 2022. The District is pursuing the Progressive Design-build delivery approach with the understanding that the overall schedule for the Project for design through completion/move-in will be less than other delivery options.

Design-Build Contract Execution	April 2022
Phase One Completion	May 2022
Phase Two	June 2022
Construction Completion	End of December 2022

## **Section 3: Progressive Design-Build Services**

### **3.1 General**

The design-builder will provide services in two distinct phases. Phase One services generally consist of preconstruction services including project layout, preliminary engineering, and the design development required for preparation of a Project GMP proposal and schedule. Phase Two services, if authorized by Owner in its sole discretion, generally encompass completing the Project's final design, construction, commissioning and transfer to District. Required permitting activities are included in each Phase.

#### **Phase One Service's - Design Builder's Proposal:**

The Standard Form of Agreement Between Owner and Design-Builder, Work Prior to Execution of the Design-Build Amendment describes the scope of work to be included in Phase One resulting in a Design-Builder's Proposal shall include but not be limited to the following:

Develop a Preliminary Design and Project execution plan to be approved by the Owner. Conduct a detailed programming review and facilitate Owner's identification of desired program with particular focus on considerations unique to public works buildings that would affect project scope and budget. Develop the preliminary engineering information, land use and building code analysis, geotechnical and similar due diligence investigations required for preparation of a matrix of program, concept and budget options for a new McKenzie Fire & Rescue Disaster Relief Logistics Center (DRLC). Previous studies may be used if feasible. Prepare a draft Phase Two Project Schedule including interim design and cost estimate milestones and review with District.

Provide a presentation to Owner of the matrix of site and building concept options and conceptual cost estimates for a new McKenzie Fire & Rescue DRLC and facilitate Owner's selection of a Preliminary Design. Identify infrastructure improvements that can reasonably be incorporated into the plan. Perform additional due diligence inquiries as appropriate to refine the Preliminary Design and associated cost estimate. Identify project permitting requirements. Develop Preliminary Design, schedule and cost estimating documents and include the supporting design documentation and open- book cost information utilized for the Design-Builder's Proposal from conception to completion, commissioning and move- in. Participate in regular meetings with District and District's consultants. Participate in up to three public meetings (District to be responsible for coordination and facilitation)

#### **Phase Two Services – Described as “Work Following Execution of the Design-Build Amendment” including but not limited to:**

Coordinate regular Phase Two meetings with District and District's consultants. Prepare permit construction drawings and 90% specifications for District review and approval prior to submittal. Complete all construction documents. Procure equipment and subcontractors to construct the building per approved plans. Secure all necessary permits. Construct the Project.

Conduct startup, staff training, commissioning, and performance testing. Provide warranty coverage. Prepare O&M Manuals. Coordinate with Owner's move-in activities. Accommodate Owner access and site visits during the course of construction as requested.



### 3.2 Roles and Responsibilities

Owner: McKenzie Fire & Rescue 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.

Review submissions and provide timely comments to Design-Builder: Provide information and provide (or engage design-builder to perform) additional studies that may be necessary to complete the Project. Provide funding consistent with approved Guaranteed Maximum Price. Provide access to the Project site and any necessary easements. Provide District personnel and necessary data and inputs for Project startup and performance testing.

Design-builder: The design-builder will cooperate with the Owner and will provide in a timely manner the Phase One and Phase Two services necessary to complete the Project scope specified in this RFP. Design builder responsibilities include:

Obtain all required land use and building permits required for construction and occupancy. Prepare design and construction documents. Procure Project subcontractors and vendors. Supervise subcontractors and design-builder personnel. Maintain site security. Conduct performance testing. Implement quality-management procedures. Implement Project health and safety practices. Complete startup, commissioning, and move-in coordination.

## Section 4: Procurement Process

### 4.1 Acknowledgement of RFP

Each potential Respondent should provide the Owner, within ten days of receipt of this RFP, an acknowledgement that it has received the RFP and is a potential Respondent. Such acknowledgement shall identify and provide full contact information for the Respondent Contact, who shall be the Respondent's single point of contact for the receipt of any future documents, notices and addenda associated with this RFP. Such acknowledgement must be electronically transmitted to the Owner Contact.

### 4.2 Communications and Owner Contact

On behalf of the Owner, Dulcy Pierce, Administrative Assistant, MF&R (Owner Contact) will act as the sole point of contact for this RFP and shall administer the RFP process. All communications shall be submitted in writing, by fax, or by email, and shall specifically reference this RFP. All questions or comments should be electronically directed to the Owner Contact as follows: [dpierce@mckenziefire.com](mailto:dpierce@mckenziefire.com)

No oral communications from the Owner Contact or other individual is binding, as is no writing that is not contained in an addendum to the RFP. With the exception of the Owner Contact or designee, a Respondent or a potential Respondent may not contact Owner's staff, elected officials or any other public official concerning the Project during the procurement process. A violation of this provision may result in disqualification of Respondent.

### 4.3 Procurement Schedule

The current procurement schedule is as follows:

- Issue RFP: March 4, 2022.
- Mandatory pre-proposal meeting: March 16, 2022.
- Deadline for questions: March 21, 2022.
- Last addendum: March 23, 2022.
- Submit Proposal: April 4, 2022.
- Interviews (if required): April 6-7, 2022
- Respondent notifications April 8, 2022.
- Complete Phase One Fee Negotiation April 13, 2022
- Board Approval of Contract: April 18, 2022.

### 4.4 Mandatory Pre-Proposal Meeting and Site Tour

Owner will conduct a pre-proposal meeting for those interested in responding to the RFP. Attendance at this meeting is mandatory. The meeting will be held at the MF&R Leaburg Station Training Center, Leaburg, Oregon, March 16, 2022 starting at 10:00 PST. At this meeting, Owner will offer information about the Project and the procurement process. Those who attend the pre-proposal meeting will have the opportunity to tour the Project site to familiarize themselves with site conditions and constraints.

## Section 5: Proposals Submission Requirements

### 5.1 Submittal Place and Deadline

One sealed fully executed hardcopy and one electronic version of the Proposal on USB/thumb drive in PDF format, must be received by the Proposal deadline of April 4, 2022, at 4 pm PST addressed to:

McKenzie Fire & Rescue Attention: Fire Chief Darren Bucich

42870 McKenzie Hwy, Leaburg, OR 97489

Each Respondent assumes full responsibility for timely delivery of its Proposal at the required location. Any Proposal received after the submittal deadline will be deemed non-responsive and returned. The packaging containing the Proposal must state "Proposal for McKenzie Fire & Rescue Disaster Relief Logistics Center Enclosed" on its face.

### 5.2 Submission Format

The Proposal must not exceed 20 total pages, excluding the transmittal letter / Certification Statement, index or table of contents, front and back covers, title pages/separation tabs, and appendices.

### 5.3 Submission Content

The Proposal must include the following information in the order listed:

- Transmittal Letter / Certification Statement
- Part 1 Executive Summary
- Part 2 Design-BUILDER Profile
- Part 3 Project Team
- Part 4 Experience
- Part 5 Project Approach and Preliminary Budget Proposal
- Part 6 Design Build Agreement Markup

#### 5.3.1 Transmittal Letter / Certification Statement

Respondents must submit a transmittal letter (maximum one page) on the Respondent's letterhead. It must be signed by a representative of the Respondent who is authorized to sign and to commit the Respondent to the obligations contained in the Proposal. The transmittal letter must include the name, address, phone number and e-mail address for the Respondent Contact and must specify who would be the design-builder's signatory to any contract documents executed with the Owner.

Immediately following the Transmittal Letter, respondents must provide a fully executed copy of the Certification Statement contained as Attachment A in the Appendix to this RFP.

#### 5.3.2 Part 1 – Executive Summary

The executive summary (maximum one page) must include a concise overview of the key elements of the Proposal and must summarize and refer to information in the Proposal concerning satisfaction of the Minimum Qualifications Requirements. The executive summary shall not be used to convey additional information not provided elsewhere in the Proposal.

### 5.3.3 Part 2 – Design-Builder Profile

Part 2 of the Proposal must contain a detailed and complete description of the design-builder's organizational structure. Information concerning Key Personnel and other firms that may be included on the Project Team, such as subconsultants and subcontractors, should be provided in Part 3 of the Proposal. The design-builder Profile must include at least the following information:

- **General:** Provide general information about the design-builder, such as lines of business and service offerings, locations of home and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.
- **Legal structure:** 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 ten percent or more.
- **Project office location:** Identify where the design-builder intends to maintain its project office(s) and where the majority of the design work will be performed.

The Proposal must provide the following additional information pertaining to factors or events that have the potential to adversely impact the design-builder's ability to perform its contractual commitments.

- **Material adverse changes in financial position:** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode of conducting business.
- **Legal proceedings and judgments:** List and briefly describe any pending or past legal proceedings and judgments, or any contingent liability that could adversely affect the financial position of design-builder or affect design-builder's ability to perform contractual commitments to Owner. If no such proceedings or judgments are listed, provide a sworn statement to that effect.
- **Completion of contracts:** Has the design-builder failed to complete any contract, or has any contract been terminated due to alleged poor performance or default within the past 10 years? If so, describe the circumstances.
- **Violation of laws:** Has the design-builder been convicted of any criminal conduct or been found in violation of any federal, state, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past 10 years? If so, describe the circumstances.
- **Debarred from bidding:** With respect to public contracts in any state or federal jurisdiction, has the design-builder been disqualified or debarred within the past 10 years, or investigated for same, or is it currently under investigation or the subject of a complaint for disqualification or debarment concerning any public contract? If so, describe the relevant facts, the outcome of complaint or investigation and the design-builder's response.
- **Bankruptcy:** Within the last 10 years, has the design-builder filed a bankruptcy action, filed for reorganization, made a general assignment of assets for the benefit of creditors, or had an action for insolvency instituted against it? If so, design-builder must detail the filing dates, jurisdictions, type of action, ultimate resolution, and dates of judgment or dismissal, if applicable.
- **Liens and Surety Claims:** In the last 10 years, have there been any liens or surety claims against design-builder on any contracts that have been performed or are in the course of being performed? If so, please identify the project and explain the nature of the claims and their resolution or status.
- **Termination of Bonding/Insurance Coverage:** In the last 10 years, has a surety or insurance company terminated design-builder's surety and/or insurance coverage due to excessive claims history and/or nonpayment of premiums? If so, please indicate the surety/insurance company involved and describe the type of bond/insurance that was terminated.
- **Bonding Capacity:** What is the design-builder's bonding capacity, both in the aggregate and on a per-project basis?

**If any of the above questions are answered in a manner that indicates that any of these**

**unfavorable factors or events are present, it is the Respondent's responsibility to:**

(1) describe in detail the unfavorable factor or event.

(2) provide sufficient information to demonstrate that the unfavorable factor or event will not adversely impact the design-builder's ability to perform its contractual commitments.

- **Payment and performance bonds:** A letter from the design-builder's surety must be provided to verify the availability of a design-build bond of at least \$1.1 million for this Project. The surety must be authorized by law to do business in Oregon.

(1) Bonds are to be obtained through a company that is authorized and licensed by the Oregon Insurance Commissioner. The bonding company shall be listed on the most current US Government Treasury list, Department Circular 570 or approved prior to Contract execution by the District. The cost of the Bond shall be included in the Contract Sum. The amount of each Bond shall be equal to 100 percent of the Contract Sum. Failure to adhere to these requirements may be grounds for rejection of an intended Awardee.

(2) Public Works Bond.

- Contractors who work on public works projects, subject to the PWR law, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by BOLI. Proof of this bond in effect shall be provided to the District prior to Contract signing, after the award of this RFP.
- General Contractors are required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.
- Certain exemptions from the bond requirements exist for certified disadvantaged, minority, women or emerging small business enterprises. It is the Contractor's responsibility to notify the District if an exemption applies to the Contractor.
- The Public Works Bond shall be furnished by a surety company authorized to do business in Oregon

(3) Time for Submission. The apparent successful Bidder shall promptly furnish the required performance security upon the District's request. If the Bidder fails to furnish the security as requested, the District may reject the Bid and award the Contract to the Responsible Bidder with the next lowest Responsive Bid. Terms and requirements of this subsection III.19 are subject to the provisions of Attachment D, as set forth therein, or as subsequently negotiated by the District and the selected Proposer.

- **Insurance:** Upon notification as the highest-rank respondent, a letter or Certificate of Insurance from the Design Builder's insurance company must be provided stating its ability to acquire and provide the minimum limits for the required insurance as identified in Attachments.

The District, their officials, and employees, must be named as additional insured and/or Owner Protective Liability and show proof of coverage on the Certificate of Liability via endorsement or policy language. The insurer(s) waive their rights of subrogation in favor of the District, their officials, employees, agent and consultants for Workers' Compensation and General Liability.

### 5.3.4 Part 3 – Project Team

The composition, organization and management of the Project Team must be described in two separate subsections as follows:

Design-builder / Other firms

Identify other firms (such as key subcontractors and subconsultants) included on the Project Team along with the design-builder and describe the scope of the design-builder's and each firm's services

and responsibilities during Phase One and Phase Two of the Project. The firm(s) serving as the Designer and the Builder must be clearly identified as well as the contractual relationships among entities.

Provide Phase One and Phase Two organizational charts showing the reporting relationships and responsibilities of the design-builder and any other firms and describe the design-builder's approach to the management of such firms.

#### Key Personnel

Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities during Phase One and Phase Two of the Project. Identify individual(s) serving as the primary contact for contract negotiations and day-to-day communications with the District. The following Key individuals must be named and with individuals preferred that meet the criteria set out below:

- Design Builder Team Lead: 10 total years of experience on projects of similar size and complexity. Must have designed at least two facilities of a similar size, type and complexity
- Design Manager: 10 total years of experience on projects of similar size and complexity. Must have designed at least two facilities of a similar size, type, and complexity
- Construction Manager: 10 years of experience on projects of similar size and complexity. Must have overseen at least two facilities of a similar size, type, and complexity
- Other Key Staff: Other key staff as determined by Design Builder

Provide Phase One and Phase Two organizational charts showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations).

Describe the design-builder's Key Personnel, their roles and management responsibilities.

Indicate the commitment and level of effort of all Key Personnel in terms of estimated hours per month during each Major Task (Agreement negotiations, design, permit, construction, move-in) of the Project.

Provide resumes for all Key Personnel in Proposal Appendix. Resumes must be limited to one page per individual and include:

- Proposed role in the project academic and professional qualifications, Professional registration (as applicable) Experience as it relates to the Project and to the individual's specified role on the Project
- Acknowledge that any subsequent change in the firms or Key Personnel included in the Proposal would require Owner approval.

### 5.3.5 Part 4 – Experience

The Proposal must describe the performance history and experience of the Project Team on similar projects and provide information concerning safety.

#### Reference Projects

The Respondent shall submit descriptions of a minimum of three reference projects (maximum 2 pages, each project) to demonstrate direct and relevant experience in the following areas:

##### **Design-Build delivery of public buildings.**

- Submit a minimum of three projects, maximum of five projects, as completed within the last ten years.
- A minimum of two projects submitted shall be for projects involving a similar scope to the proposed project.
- Projects must have been conducted in the State of Oregon using progressive design-build project delivery methodology.

- The required construction value for each individual project shall be \$750,000 or larger.

Each project description shall contain at least the following:

- Name of owner.
- Project delivery method (Progressive Design-Build, Design-Build, CMGC, other).
- Role of respondent.
- Contract value.
- Year started and year completed.
- Description of the project showing relevance to this Project:
- Name of firms and Key Personnel that participated in project:

#### Project References

From the projects listed above, provide a total of three client references, with name, title, phone and email. Design-build projects where the Respondent was in a prime role or joint venture role with at least a 50% equity stake are required.

#### Safety

Provide a summary description of the design-builder's corporate construction safety program.

### 5.3.6 Part 5 – Project Approach and Conceptual Design-Build Budget

Provide a conceptual description (maximum four pages) of the design-builder's approach for managing and performing its services during Phase One and Phase Two of the Project. The following items should be addressed:

- Discuss how a collaborative relationship with the Owner will be established for Phase One.
- Describe the process and schedule for design phases, developing the Design-Builder's Proposal, permitting, procurement, construction, move-in and closeout processes including District involvement in design decisions and community engagement.
- Describe all anticipated District and/or third-party responsibilities for design comments and approvals, permitting, inspections, furniture/fixtures/equipment design, procurement and installation, telecommunications and data design and installation, and any other procurement associated with preparing the facility for full operations not otherwise provided by the Design-Builder.
- Describe the Design-Builder's process and milestones for evaluating the Design-Build Budget, design alternatives, risk assessment and mitigation, value engineering, life cycle costs, constructability, prequalifying subcontractors in preparation of the Design-Builder's Proposal and subsequent final design and construction of the Project.
- Describe the Project specific quality plan.
- Provide a Concept Design Plan including the items discussed in 2.1 Project Scope. This plan will be evaluated to get an understanding of the team's approach towards laying out a Disaster Relief Logistics Center.
- The District's stated Design-Build Budget is not to exceed \$1.1 million. Identify whether the Respondent considers this to be an achievable budget given the scope of Design-Build services identified in this RFP and schedule proposed by Respondent.
- Describe what, if any, program or schedule changes the Respondent would propose the District consider in order to achieve the desired services within the Design-Build Budget.

### 5.3.7 Part 6 - Design-Build Agreement Markup

The Proposal must include a detailed markup of the draft Design-Build Agreement (including draft exhibits), setting forth any and all revisions requested by the Respondent. Although it is likely that the Owner will undertake negotiations regarding the Progressive Design-Build Contract, the Progressive Design-Build Contract Markup will be treated as a de facto offer that the Owner may accept as is, resulting in a binding contract between the design-builder and Owner without further negotiations or revision.

Respondents Proposal must describe the significant revisions included in the Respondents Progressive Design-Build Contract markup and explain the rationale and the associated benefits. Respondents are encouraged to suggest revisions that would more efficiently allocate risk, improve the parties' understanding of risk allocation, and improve clarity of any terms of the draft Progressive Design-Build Contract where ambiguities or uncertainties may arise in their application or interpretation.

The Owner is not obligated to accept any of the requested exceptions, modifications, additions, etc. submitted by the Respondent in the Progressive Design-Build Contract Markup when negotiating and finalizing the Progressive Design-Build Contract. Furthermore, the Owner may request additional revisions during negotiations and before finalizing the Progressive Design-Build Contract.

Respondents are encouraged to carefully review RFP Attachment B (Draft Design-Build Contract) and to submit written questions and comments by the deadline specified in Section 4. Based on its assessment of the comments submitted, the Owner (at its sole discretion) may modify the draft Design-Build Agreement via addenda. The Owner expects that this review and comment process will substantially reduce the need for extensive post-selection negotiation.



## Section 6: Proposal Evaluation and Selection

### 6.1 General

The Proposals will be reviewed and evaluated by the Owner's selection committee according to the requirements and criteria outlined in this Section 6. During the Proposal evaluation process, written questions or requests for clarifications may be submitted to one or more Respondents regarding its Proposal or related matters. Failure to respond in a timely manner to any such questions or requests may be grounds for elimination of the Respondent from further consideration. In addition, the Owner in its sole discretion may require that all or a limited number of Respondents participate in interviews.

### 6.2 Responsiveness

Each Proposal will be reviewed to determine whether it is responsive to the RFP. Failure to comply with the requirements of this RFP may result in rejection of the Proposal as non-responsive. At its sole discretion, however, the Owner may waive any such failure to meet a requirement of this RFP and may request clarification or additional information to remedy a failure.

### 6.3 Qualification Requirements

Each responsive Proposal will be reviewed to determine whether it meets the Minimum Qualification Requirements outlined in this subsection. At its sole discretion, the Owner may waive any failure to satisfy such requirements and may request clarification or additional information to address any questions that may arise in this regard. Any Proposal that does not satisfy all of the following Minimum Qualification Requirements may be rejected.

Performance bond: Ability of the design-builder to provide a design-build performance bond in the amount of \$1 million. Offeror must provide a letter from their bonding company verifying bonding limit and certifying required bonds, once the final cost is established, can be obtained.

Material adverse condition: The design-builder must not be subject to a material adverse condition, such as insufficient liquidity, weak operating net income or cash flow, or excessive leverage, that gives rise to reasonable doubt concerning its ability to continue to operate as an ongoing concern, to provide performance bonds or insurance, or to maintain sufficient financial strength to undertake and successfully complete the Project and to mitigate/absorb Project risks.

Licensing and registration: The design-builder and each of its subcontractors must be licensed in Oregon for the type of work to be performed. The Design Builder must include an architect/engineer registered in Oregon.

**Each responsive Proposal will be reviewed to determine whether it meets the Desired Qualifications outlined in this subsection.**

Design experience: Within the past seven years, the Designer must have successfully completed the design of at least three public facilities of similar size for clients in the United States (Work in Oregon is strongly preferred.)

Design-build experience: Within the past seven years, the design-builder must have successfully completed at least three design-build projects of similar size, scope and complexity for clients in the United States.

Prior Experience: Design and construction firms and individuals that have a successful history of working together on prior public/institutional building projects.

Safety record: The Builder must have achieved an experience modification rate (EMR) of not greater than 0.8 for the current and each of the past two years.

#### 6.4 Comparative Evaluation Criteria

**The selection committee will evaluate and rank the responsive written Proposals that satisfy the Minimum Qualifications and identify a short-list of Respondents to be interviewed. Rankings will be established by applying the weighted comparative evaluation criteria set forth below.**

- Experience and capabilities, Design-builder firm/other firms, Key Personnel - 50%
- Team Organization, Risk Management and Safety - 10%
- Project Approach - 40%

**Score for interviews will be 100% (i.e. non-weighted) and will be independent of the initial ranking of the written Proposals. The selection committee will evaluate and rank the interviewees and recommend award to the District Board.**

#### 6.5 Selection

**After the written evaluation process is complete, the Owner will notify each Respondent. The Owner will establish a short list of highly-ranked Respondents for further discussions, requests for information, and interviews in a form and manner determined by Owner. The Owner reserves the right to select the top ranked Respondent for contract award on the basis of that Respondent's Progressive Design-Build Contract Markup or offer the top-ranked Respondent the opportunity to negotiate the final terms of the Progressive Design-Build Contract. If the Owner determines in its sole discretion that it will not reach an agreement with the top-ranked Respondent, the Owner may choose to either select or negotiate with the next-ranked Respondent, may choose to establish or reestablish a short list of remaining highly ranked Respondents or may choose to cancel the RFP.**

## Section 7: Conditions for Respondents

### 7.1 Owner Authority

McKenzie Fire & Rescue (Owner) is a Special District in the State of Oregon. The Owner has an exemption in place pursuant to ORS 279C.335 (2) permitting Owner to solicit proposals for a progressive design-build delivery for the McKenzie Fire & Rescue.

### 7.2 Conflict of Interest

Laws mandate the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner's public officials. Public contracts are awarded in accordance with certain processes and procedures, all of which are defined by rules designed to prevent fraud, collusion, or unjust favoritism in the award of public contracts. Respondents must identify in their Proposal any potential or actual conflicts of interest relative to Owner or its public officials. Examples include a business or financial relationship with Owner or its public officials.

### 7.3 Proprietary Information

All materials submitted to the Owner become public property and are subject to the State of Oregon Public Records Act. If the Proposal contains proprietary information that the Respondent does not want disclosed, each page containing such information must be identified and marked "PROPRIETARY" at the time of submittal. Owner will, to the extent provided by law, endeavor to protect such information from disclosure. In all instances, Owner will make the final decision as to what information must be disclosed, however, lies with the McKenzie Fire & Rescue. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and subject to public disclosure in accordance with Oregon law. Respondents may not mark entire Proposal as proprietary.

### 7.4 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of Proposals and development of a short list, Owner reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time, without incurring any obligations or liabilities.

Modify the procurement schedule.

Waive minor deficiencies, informalities and irregularities in a Proposal and accept and review a nonconforming Proposal.

Suspend and terminate the procurement process or terminate evaluations of Proposals received.

Permit corrections to any Proposal.

Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Respondents to seek an improved understanding of any information contained in a Proposal.

Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.

Seek clarification from any Respondent to fully understand information provided in the Proposal and to help evaluate and rank the Respondents.

Reject a Proposal containing exceptions, additions, qualifications or conditions not called for in the RFP or

otherwise not acceptable to the Owner.

Conduct an independent investigation of any information, including prior experience, whether or not identified in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.

Request for; additional information from a Respondent, during the evaluation of their proposal.

Consider unsolicited supplemental information ("Supplemental Technical Information") and/or information supplied in response to a separate request for information ("RFI") concerning technical and other options that may reduce the cost of and/or improve the performance of the project.

Require Respondents selected for a Short list to evaluate and comment on any Supplemental Technical Information.

Consider the competency and responsibility of Proposers in making any awards.

- In the event that two or more Proposals are identical in price, qualifications and availability, award shall be made in accordance with District Rule 137-046-0300.
- In the event any Proposer or Proposers to whom a contract is awarded shall default in executing said formal contract or in furnishing a satisfactory performance bond within the time and manner herein after specified, to re-award the contract to another Proposer or Proposers.
- To hold the three most responsive Proposals under consideration until the final award is made, provided that the District shall award the contract within 30 days after the Proposal opening date.
- 

## 7.5 Obligation to keep Project Team Intact

Respondents are advised that all firms and Key Personnel identified in the Proposal shall remain on the Project Team for the duration of the procurement process and execution of the Project. (The anticipated dates for award of the Progressive Design-Build Contract and for completion of the Project are set forth in Subsection 2.3 of this RFP.) If extraordinary circumstances require a change, it must be submitted in writing to the Owner Contact, who, at his or her sole discretion, will determine whether to authorize a change, recognizing that certain circumstances (such as termination or change of employment) may occur that are beyond the design-builder's control. Unauthorized changes to the Project Team at any time during the procurement process may result in elimination of the Respondent from further consideration.

## 7.6 Addenda

If any revisions to the RFP or procurement process become necessary or desirable (at the Owner's sole discretion), the Owner may issue written addenda. The Owner will post notice of all addenda on the District website at the following address: <http://www.mckenziefire.com> It is Respondent's responsibility to obtain all addenda prior to submitting its Proposal.

Failure of any Proposer to receive any such addenda shall not relieve such Consider adding - Proposer from any obligation under this RFP. All addenda so issued shall become as much a part of the RFP, as if bound herein.

Any protest to an Owner's action in connection with this procurement must be filed in writing no later than seven days following such action and must be in strict accordance with the Owner's applicable procedures and with applicable law. For any solicitation protest, Respondents must follow District Rule 137-049-0260. For any protest of contract award, Respondents must follow District Rule 137-049-0450.

If a timely protest is filed, the award is a final decision of the District only upon issuance of a written decision resolving the protest and affirming or modifying the award. Any modification shall be accompanied by a notice providing for additional protests. The award and any written decision denying a protest shall be sent to every Proposer who provided an address. The District will not entertain a protest submitted after the time period established in this RFP.

## 7.7 Withdrawal of Proposals

Any Proposals may be withdrawn prior to opening, pursuant to District Rule 137-049-0320(2).

Submitted Proposals shall be valid for at least thirty (30) days from RFP Closing.

## 7.8 Modification

Any Proposer may modify its Proposal by registered communication at any time prior to the scheduled Closing time for receipt of Proposals, provided such communication is received prior to the Closing time and subject to District Rule 137-049-0320(1).

## 7.9 Collusion

Any evidence of collusion between Proposers may constitute a cause for rejection of any Proposals so affected. District reserves the right to accept or reject any or all Proposals. Only one Proposal will be accepted from any one firm or association.

## 7.10 RECYCLABLE PRODUCTS

Proposers shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document, provided said recycled materials meet all applicable standards. Preference for such recycled materials shall be given pursuant to District Rule 137-046-0320.

## 7.11 ASBESTOS ABATEMENT LICENSE

No asbestos abatement license is required of Proposers for this work under ORS 468A.710.

## **Section 8: Attachments**

### Attachments:

A - Certification Statement

B – Draft Design-Build Agreement (inclusive of the following)

Exhibit A – Scope of Work

Exhibit B – Compensation

Exhibit C – Schedule

Exhibit D – General Conditions

Exhibit E – Bonds

Exhibit F – Public Contracting Code  
Requirements

## CERTIFICATION STATEMENT

Submitted by:

Address:

Date:

Phone number:

Fax:

E-Mail:

The undersigned, through the formal submittal of this Proposal response, declares that he/she has examined all related Proposal documents and read the instruction and conditions, and hereby proposes to furnish design and construction services in accordance with the Proposal documents herein, for the price set forth in the Proposal submittal attached hereto, and forming a part of this Proposal.

The Proposer, by signature below, hereby represents as follows:

- (a) That no Board Member, officer, agent or employee of District is personally interested directly or indirectly in this contract or the compensation to be paid hereunder, and that no representation, statement or statements, oral or in writing, of the District, its Board Members, officers, agents, or employees has induced Proposer to enter into this contract and the papers made a part hereof by its terms;
1. The Proposer represents that Proposer is properly licensed and adequately experienced, equipped, organized and financed to furnish and deliver the equipment specified and perform the services required.
  2. The Proposer has carefully checked the figures entered in the Forms and the Design Build Agreement and attached Exhibits, has carefully reviewed for accuracy all statements in this Proposal and attachments, and agrees that the District will not be responsible for any errors or omissions of the Proposer in preparing this Proposal. The Proposer agrees that this Proposal may not be revoked or withdrawn for sixty (60) calendars days after the date on which Proposals are received.
  3. Contract Execution; Performance Bond. The Proposer agrees that if this Proposal is accepted it will, within ten (10) calendar days after having received the Notice of Award, execute and return to the District the Contract in the form included in the Contract Documents and will, at or before that time, deliver the Performance Bond and insurance documentation as required.
  4. The Proposer acknowledges that it has received the following:

Addenda No(s) \_\_\_\_\_ through \_\_\_\_\_ inclusive, and agrees that all addenda issued are a part of the Contract Documents and have been considered in preparing this Proposal. (Proposer: insert the number of each addendum received; if no addenda were received, write "NONE" in the space.)

- (b) The Proposer and each person signing on behalf of any Proposer certifies, in the case of a joint Proposal, each party thereto, certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
1. The prices in the Proposal have been arrived at independently, without collusion, consultation, communication, or agreement for the purpose of restraining competition as to any matter relating to such prices with any other Proposer or with any competitor;
  2. Unless otherwise required by law, the prices which have been quoted in the Proposal have not been knowingly disclosed by the Proposer prior to the Proposal deadline, either directly or indirectly, to any other Proposer or competitor;
  3. No attempt has been made nor will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a Proposal for the purpose of restraining trade;
- (c) The Proposer agrees to accept as full payment for the services specified herein, the amount as shown in its Proposal.
- (d) Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because a subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.
- (e) The names of the principal officers of the corporation submitting this Proposal, or of the partnership, or of all persons interested in this Proposal as principals are as follows:
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- (f) Proposer is a resident Proposer, as defined in ORS 279A.120.
- (g) Proposer agrees to be bound by and will comply with provisions of ORS 279C.840 or 40 U.S.C. 3141 et seq.
- (h) Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.
- (i) Proposer certifies that he or she has read and understands all terms and conditions of this solicitation.
- (j) Proposer acknowledges that the person that signs this Certification is fully authorized to sign on behalf of the Proposer listed and to fully bind the Proposer to all conditions and provisions thereof.

**END OF CERTIFICATION**



**MCKENZIE FIRE & RESCUE**  
**DRAFT DESIGN-BUILD AGREEMENT**  
**FOR THE**  
**DISASTER RELIEF LOGISTICS CENTER PROJECT**

This **AGREEMENT** is made effective as of \_\_\_\_\_, 2022, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

McKenzie Fire & Rescue  
42870 McKenzie Highway  
Leaburg, OR 97489

**DESIGN-BUILDER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROJECT: Disaster Relief Logistics Center Design-Build**

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder now agree as follows:

**Article 1.0 Scope of Work**

**1.1 Phased Delivery.** Owner and Design-Builder will implement the Project on a phased basis.

**1.2 Phase 1: Study and Technical Exhibit Phase Services.** Owner has selected Design-Builder on the basis of Design-Builder's proposal for the performance of design, pricing, and other services for the Project. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Final Design for Phase 2, as set forth in Section 1.3 below. Design-Builder has proposed a Guaranteed Maximum Price for design and construction of the project, as set forth in Design-Builder's Proposal (Exhibit F). Owner recognizes that a refined design may alter the Project price offered by Design Builder in Exhibit F. Any modification to the Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Any modification of the Maximum Price offered and accepted shall be consistent with the price list in Exhibit F, and shall be accepted by Owner only upon a showing by Design-Builder that the proposed price changes are a reduction of the guaranteed maximum price or is consistent with the original price structure. Any price change must maintain the functional capacity and integrity of the design, and must be the minimum necessary price to fulfil the Project purpose. All Agreement terms concerning modifications to the Contract Price shall be interpreted consistent with this paragraph 1.2. Design-Builder's Compensation for Phase 1 Services is set forth in Section 1, *Phase 1*, of Exhibit B, *Compensation*. The level of completion required for Phase 1 Services is defined in Exhibit A, *Scope of Work* (either as a percentage of design completion or by defined deliverables).

**1.3 Phase 2: Design-Build Services.** Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, and additional materials as agreed by Owner and Design-Builder (hereafter Facility), and the provision of warranty services, all as further described in Exhibit A, *Scope of Work*. Upon receipt of Design-Builder's proposed

Contract Price changes for Phase 2, Owner may (a) accept the Contract Price and issue a Notice to Proceed with Phase 2 services, or (b) enter into a negotiation with Design-Builder on the scope and Contract Price, and, if required, on the schedule, for Phase 2 services to achieve a mutually acceptable basis on which to proceed, or (c) reject Design-Builder's proposal for Phase 2 and either (i) cancel the Project, (ii) proceed with another Design-Builder, or (iii) exercise the "off-ramp" final design provisions of Section 1.4, *Off-Ramp*. The Contract Price for Phase 2 Services is set forth in Section 2, *Phase 2*, of Exhibit B, *Compensation*, based on Design-Builder's accepted proposal and may be modified only as mutually agreed between the parties. Once the parties have agreed upon the Contract Price modifications, if any, and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 services, all as further described in Exhibit A, *Scope of Work*, as it may be revised.

## **1.4 Off-Ramp**

- 1.4.1** The parties acknowledge that Owner's ability to successfully complete the Project may be significantly impacted if Owner elects to terminate Design-Builder's services at the end of Phase 1, rather than proceeding to Phase 2 under Section 1.3 ("Phase 2 Services"). Consequently, Design-Builder hereby agrees that if Owner terminates Design-Builder for any reason, Owner shall have the right to obtain the Plans, Design Drawings, Cost Estimates and all notes and correspondence related to the Design-Builder's work up until the time of cancellation, upon payment of Design-Builder's costs and expenses up until that time. Compensation for Design-Builder's work will not include any anticipated costs or profits anticipated by Design-Builder during or as a result of Phase 2 of this Project.
- 1.4.2** If the parties are unable to reach an agreement on Design-Builder's modified Contract Price, if such is proposed, for Phase 2 under Section 1.3 within the time limit for acceptance specified in the Schedule, as may be extended by the mutual agreement of the parties, then the proposed Contract Price shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:
- 1.** Owner may declare Phase 1 Services completed and authorize Design-Builder to continue to advance the final design of the Project as an extension of Phase 1 or as an Additional Service, as applicable; or
  - 2.** Owner may terminate the relationship with Design-Builder and proceed to exercise its available options to perform the final design and construction with parties other than Design-Builder.
- 1.4.3** If Owner fails to exercise either of its options under Section 1.4.2 in a reasonable period of time, Design-Builder may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise either of the options under Section 1.4.2 within ten (10) business days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed.
- 1.4.4** If Owner terminates the relationship with Design-Builder under Section 1.4.2.2, or if this Agreement is deemed completed under Section 1.4.3, Design-Builder shall have no further claim for any work done without the written authorization of Owner prior to termination, and shall have no claim for any lost profits or other benefits that might have been derived from the construction project.
- 1.5 Completion.** Once Design-Builder has received a Notice to Proceed with Phase 2, Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, labor, manuals, start-up, commissioning and testing services for the Project necessary to

complete the Work described in and reasonably inferable from the Contract Documents, including Section 2 of Exhibit A (Scope of Work).

## **Article 2.0 Contract Documents**

- 2.1 Contract Documents.** The Contract Documents are comprised of the following:
1. All written modifications, amendments and change orders to this Agreement issued in accordance with Exhibit D, *General Conditions*
  2. This Agreement, including Exhibits A-F;
  3. The General Conditions (GC) set forth as Exhibit D to this Agreement
  4. Performance and Payment Bonds, Exhibit E;
  5. Written Supplementary Conditions to the General Conditions, Exhibit F;
  6. Owner's Request for Proposal, Exhibit G;
  7. Construction Documents prepared and reviewed in accordance with GC 2.4;
  8. The Design Builder's Proposal, including all Attachments.

## **Article 3.0 Interpretation and Intent**

- 3.1 Contract Documents.** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Phase 1 Compensation and the agreed Contract Price for Phase 2 Services. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.
- 3.2 Meanings.** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in GC 1.2.
- 3.3 Entire Agreement.** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein in their entirety. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4.0 Ownership of Work Product**

- 4.1 Work Product.** All drawings, specifications and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be work for hire and Owner shall retain the ownership and property interests therein, including the copyrights thereto.
- 4.2 Owner's Rights upon Payment in Full.** Upon Owner's payment in full for the Work performed in each Phase under the Contract Documents, Design-Builder shall provide a finished set of Plans representing the entirety of the work done during that Phase. Owner shall have complete control and ownership of all Work Product. Design-Builder may not use or display any element of the Work Product, without prior approval of Owner, and such approval shall not allow Design-Builder to reveal the location of any element of the Project.
- 4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates the Project for its convenience as set forth in GC

9.2 (“Termination for Convenience”), or if Design-Builder elects to terminate this Agreement in accordance with GC 9.5 (“Design-Builder’s Right to Terminate for Cause”), Design-Builder shall, upon Owner’s payment in full of the amounts due Design-Builder under the Contract Documents provide Owner with all Work Products conditioned on the following:

1. Use of the Work Product is at Owner’s sole risk without liability or legal exposure to Design-Builder or anyone working for or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”).
2. If Owner elects the “off ramp” option provided in Section 1.4 of this Agreement and retains any of the Design-Builder’s design subconsultants, then the risk, liability and legal exposure with respect to Work Product shall be as set forth in the agreement or agreements between Owner and such design subconsultant or subconsultants.

**4.4 Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to GC 9.3 (“Owner’s Right to Perform and Terminate for Cause”) and (i) it is determined that Design-Builder was in default, and (ii) Owner has fully satisfied all of its obligations under the Contract Documents, then Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner’s completion, use and occupancy of the Project. This limited license is conditioned on Owner’s express understanding that its use of the Work Product is at Owner’s sole risk and without liability or legal exposure to any Indemnified Party.

**4.5 Owner’s Indemnification for Use of Work Product.** Owner recognizes that, in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product under Sections 4.3 or 4.4 in whole or in part, Owner agrees to defend, indemnify and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys’ fees, arising out of or resulting from Owner’s use of the Work Product, to the fullest extent permitted by applicable law, subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act.

## **Article 5.0 Contract Time**

### **5.1 Dates of Commencement.**

**5.1.1** Design-Builder’s Phase 1 Services shall commence within ten (10) days of Design-Builder’s receipt of Owner’s Phase 1 Notice to Proceed unless the parties mutually agree otherwise in writing.

**5.1.2** The Phase 2 Services shall commence on the date within ten (10) days of Design-Builder’s receipt of Owner’s Phase 2 Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing.

### **5.2 Substantial Completion and Final Completion**

**5.2.1** Substantial Completion of the entire Work shall be achieved in accordance with the Schedule negotiated by the Parties at the time of the completion of Phase 1.

**5.2.2** Final Completion of the Work or identified portions of the Work shall be achieved within *thirty (30) days* after Substantial Completion.

- 5.2.3** All of the dates set forth in this Article 5.0 shall be subject to adjustment in accordance with the General Conditions.
- 5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents. Owner agrees to provide all site access, materials, information, data, and approvals required under the Contract Documents in a timely manner, as required for Design-Builder to achieve the interim milestones of the Schedule and the Scheduled Substantial Completion Date.
- 5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion is not achieved by the Scheduled Substantial Completion Date (as it may be extended hereunder), Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not achieved by *ninety (90) days after the issuance of the notice to proceed for construction* (the “LD Date”), Design-Builder shall pay Owner One Hundred Dollars (\$100) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion. No Liquidated Damages shall be assessed in the event that Owner takes early beneficial occupancy of the Facility or makes partial use thereof for operating or commercial purposes before Substantial Completion is achieved.

## **Article 6.0 Compensation and Contract Price**

- 6.1 Phase 1 Compensation.** For the Phase 1 Services, Owner shall pay Design-Builder compensation in accordance with Section 1, Phase 1, of Exhibit B, Compensation.
- 6.2 Phase 2 Contract Price.** For the Phase 2 Services, Owner shall pay Design-Builder in accordance with Section 2, Phase 2, of Exhibit B, Compensation, an agreed Contract Price, subject to adjustments made in accordance with Section 1.2 of this Agreement and with the General Conditions.

## **Article 7.0 Procedure for Payment**

### **7.1 Payment for Phase 1 Services**

- 7.1.1** Owner shall compensate Design-Builder monthly for Phase 1 Services performed under the Agreement for the work performed during the monthly period up to and not exceeding the compensation limit set forth in Section 1, Phase 1, of Exhibit B, Compensation.
- 7.1.2** Owner shall pay Design-Builder for Phase 1 Services within thirty (30) days after Owner’s receipt of each properly submitted and accurate Application for Payment in accordance with the provisions of GC 5.1 (“Payment for Phase 1 Services”) and 5.4 (“Withholding of Payments”).

### **7.2 Progress Payments for Phase 2 Services**

- 7.2.1** Design-Builder shall submit to Owner on or before the tenth (10th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder’s Application for Payment in accordance with GC 5.3 (“Monthly Progress Payments for Phase 2 Services”).

- 7.2.2** Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with GC 5.3, but in each case less the total of payments previously made, and less any amounts properly withheld under GC 5.4 ("Withholding of Payments") and Section 7.3 below ("Retainage on Progress Payments").
- 7.2.3** If Design-Builder's Fee is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.
- 7.3 Retainage on Progress Payments**
- 7.3.1** Owner will retain five percent (5%) of each Application and may reduce or eliminate that amount, in Owner's sole discretion, as outlined in District Public Contracting Rule 137-049-0820.
- 7.3.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to GC 5.7 ("Substantial Completion"), Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion or other withholdings pursuant to GC 5.4.
- 7.4 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with GC 5.8 ("Final Payment"). Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within ten (10) business days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in GC 5.8.2.
- 7.5 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear daily interest commencing five (5) days after payment is due at the rate equivalent to two percent (2%) per annum, or the maximum rate permitted by applicable law, whichever is less, which Owner shall pay upon presentation of an invoice therefor.
- 7.6 Record Keeping and Financial Controls.** Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work, including the development and agreement upon the Contract Price for Phase 2 Services; provided that if Owner and Design-Builder convert to or agree to a lump sum form of compensation for the Phase 2 Contract Price ("Fixed Contract Price"), then the provisions of this Section 7.6 shall not apply to such Fixed Contract Price and any adjustments made on a lump sum basis. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles, and in such accounts as may be necessary for Owner's utility accounting purposes. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access from time to time, upon reasonable notice, to Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment, *provided, however,* that such access, review, and audit rights shall not extend to any compensation amounts established on the basis of fixed rates for overhead or fee, or an agreed fixed sum, or unit rates for any element of cost.

**Article 8.0 Representatives of the Parties**

**8.1 Owner’s Representatives**

**8.1.1** Owner designates the individual listed below as its Senior Representative (“Owner’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3: Darren Bucich, Fire Chief, McKenzie Fire & Rescue, 42870 McKenzie Highway, Leaburg, Oregon 97489; Telephone number: (541) 896-3311.

**8.2 Design-Builder’s Representatives**

**8.2.1** Design-Builder designates the individual listed below as its Senior Representative (“Design-Builder’s Senior Representative”), which individual has the authority and responsibility for avoiding and resolving disputes under GC 8.2.3: [Name], [Title], [Business Name], [Address], [City], [State] [Zip]; Telephone number: \_\_\_\_\_.

**8.2.2** Design-Builder designates the individual listed below as its Design-Builder’s Representative, which individual has the authority and responsibility set forth in GC 2.1.1: [Name], [Title]; Telephone number: \_\_\_\_\_.

**Article 9.0 Indemnity, Insurance, and Bonds**

**9.1 Indemnity.** To the fullest extent permitted by law, Design-Builder shall defend, indemnify and hold Owner harmless from all claims by third parties for bodily injury and property damage (other than to the Work itself and other property insured hereunder) that may arise from the performance of the Work. Design-Builder shall not be required to defend, indemnify or hold harmless Owner for any acts, omissions or negligence of Owner, Owner’s employees, agents or separate contractors.

**9.2 Design Builder’s Insurance.**

**9.2.1** Design-Builder shall obtain and maintain insurance coverage for the following claims which may arise out of the performance of this Agreement, whether resulting from Design-Builder’s operations or by the operations of any Subcontractor, anyone in the employ of any of them, or by an individual or entity for whose acts they may be liable:

- 1. Commercial General Liability Insurance**
    - a.** Each Occurrence Limit \$ 2,000,000
    - b.** General Aggregate \$ 4,000,000
    - c.** Products/Completed Operations Aggregate \$ 2,000,000
    - d.** Personal and Advertising Injury Limit \$ 2,000,000
    - e.** Contractual Liability \$ 2,000,000
  
  - 2. Commercial Automobile Liability Insurance**
    - a.** Combined Single Limit  
Bodily Injury and  
Property Damage \$ 2,000,000  
Each Occurrence
- or*

- |    |   |  |
|----|---|--|
| b. | Bodily Injury   | \$ 2,000,000<br>Each Person<br>\$ 2,000,000<br>Each Occurrence |
| 3. | Property Damage   | \$ 2,000,000<br>Each Occurrence                                |
| 4. | Workers' Compensation and employer's liability insurance per ORS Chapter 656. The employer's liability limit shall not be less than \$2,000,000 per occurrence. |  |
| 5. | Builder's All-Risk Insurance  | \$2,000,000  |

Owner shall be an Additional Insured on Commercial General Liability insurance and the Commercial Automobile Liability insurance obtained by Design-Builder pursuant to this clause.

Excess Liability Insurance above the required Commercial General, Commercial Automobile, and Employer's Liability insurance in the additional amount of \$10,000,000 annual aggregate limit.

- 9.2.2** The policies shall contain a provision that coverage will not be canceled or not renewed until at least thirty (30) days' prior written notice has been given to Owner. Certificates of insurance showing required coverage to be in force shall be filed with Owner prior to commencement of the Work.
- 9.2.3** Products and Completed Operations insurance shall be maintained for a minimum period of at least two year(s) after either ninety (90) days following the date of Substantial Completion or final payment, whichever is earlier.
- 9.2.4** The insurance limits stated in this Section 9.2.1 may be satisfied through a combination of underlying and excess or umbrella coverage.
- 9.2.5** Subcontractors. Design-Builder shall require that all Subcontractors working on the Project secure and maintain the same insurance coverages required for Design-Builder for workers' compensation insurance, employer's liability insurance, commercial automotive liability insurance and commercial general liability insurance and other financial sureties required by applicable law in connection with their presence and the performance of their duties pursuant to this Agreement; provided that Owner may approve lower limits for specific subcontractors pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by the subcontractor. Design-Builder shall require that all subcontractors performing engineering services and all subcontractors performing work with potential pollution liability risk secure and maintain Professional Liability or Pollution Liability insurance coverage, respectively, with such coverage limits commensurate with the scope of the subcontract work performed. Owner, Design-Builder and all other parties required of Design-Builder shall be named as additional insured on subcontractor's required commercial general liability insurance policy. Alternatively, Design-Builder may obtain and maintain said policies and sureties on the subcontractor's behalf.



### **9.3 Professional Liability Insurance**

Professional liability insurance for claims arising from the negligent performance of professional services under this Agreement shall be written for \$5,000,000 per claim and in the annual aggregate with a deductible not to exceed \$1,000,000. These requirements shall be continued in effect for two year(s) after the date of Substantial Completion. If the Design-Builder retains consultants for a portion of the design, Owner may approve lower limits for specific Design Consultants pursuant to a request submitted by Design-Builder to Owner prior to any work being performed by such Design Consultants.

### **9.4 Owner's Liability Insurance**

**9.4.1** Owner shall be responsible for obtaining and maintaining its own liability insurance. Insurance for claims arising out of the performance of this Agreement may be purchased and maintained at Owner's discretion.

**9.4.2** If Owner hires separate contractors with respect to the Project or for any portion of the Work, then Owner shall require that such separate contractors waive any insurers' rights of subrogation against the Design-Builder and its Subcontractors, Design Consultants, and their officers, directors, and employees.

### **9.5 Waiver of Subrogation**

**9.5.1** Owner and Design-Builder waive all rights against each other, and any of their respective employees, agents, consultants, subcontractors and subsubcontractors for damages caused by risks covered by insurance provided pursuant to this Section 9.5 to the extent they are covered by that insurance. Design-Builder shall require similar waivers from all Subcontractors, and shall require each of them to include similar waivers in their subsubcontracts and consulting agreements.

**9.5.2** If the policies of insurance referred to in this Section require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

### **9.6 Bonding.**

**9.6.1** Design-Builder will provide Performance and Payment Bonds for the Phase 2 Services. The costs of such bonds shall part of the Contract Price.

**9.6.2** Design-Builder shall furnish Performance and Payment Bonds, each in an amount equal to the Contract Price, as security for the faithful performance of all Design-Builder's contractual obligations hereunder with respect to both design and construction of the Project, and as security for payment of all Design-Builder's obligations to furnish, provide and pay for Construction and related materials under the Contract Documents.

**9.6.3** These Bonds shall remain in effect after the date of Substantial Completion at least until expiration of the warranty period, except as provided otherwise by Laws or Regulations or by the Contract Documents.

**9.6.4** All Bonds shall be in the form attached as Exhibit E, except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are 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 Government Financial Operations, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of such agent’s authority to act.

**9.6.5 Licensed Sureties.** All Bonds required by the Contract Documents to be purchased and maintained by Design-Builder shall be obtained from surety companies that are duly licensed or authorized to issue bonds in the jurisdiction in which the Project is located to issue Bonds for the limits and coverages so required.

**Article 10.0 Other Provisions**

**10.1** Other provisions, if any, may be added by the parties upon mutual agreement as amendments.

**Article 11.0 Limitations of Liability**

**11.1 Time Limitation.** Any cause of action, suit, proceeding, demand or other claim, shall be deemed waived unless made by Owner in writing and received by Design-Builder within time limitations set forth in applicable law.

**11.2 Full Effect.** All waivers of and limitations of liability contained in this Agreement shall apply whether such liability is claimed to arise in contract, tort (including but not limited to negligence), breach of warranty, breach of contract, strict liability, or otherwise. This Condition takes precedence over any conflicting article or provision of this Agreement or any document incorporated into it or referred to by it.

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

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*McKenzie Fire & Rescue*

\_\_\_\_\_  
*[Company Name]*

*(Signature)*  
Darren Bucich, Fire Chief

*(Signature)*  
[Name], [Title]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## EXHIBIT A SCOPE OF WORK

### SECTION 1 PHASE 1

- 1.0** Design-Builder shall exercise reasonable skill and judgment in the furnishing of design services. Architectural and engineering services shall be furnished by licensed employees of Design-Builder, or by consultants or subcontractors as permitted by the law of the state where the Project is located. Design-Builder is responsible for the following Preliminary Design-Build Services:
- 1.1 Preliminary Evaluation.** Design-Builder shall meet with Owner's Representative, after which Design-Builder shall provide a preliminary evaluation of the Project's feasibility based on the Owner's Program and other relevant information.
- 1.2 Preliminary Schedule.** Design-Builder shall provide a preliminary schedule for Owner's written approval. The schedule shall show the activities of Owner and Design-Builder necessary to meet Owner's completion requirements.
- 1.3 Preliminary Estimate.** Design-Builder shall prepare for Owner's written approval a preliminary estimate utilizing area, volume, or similar conceptual estimating techniques. The level of detail for the estimate shall reflect the Owner's Program and any additional available information. If the preliminary estimate exceeds Owner's budget, Design-Builder shall make written recommendations to Owner.
- 1.4 Preliminary Design Documents.** Design-Builder shall submit for Owner's written approval Preliminary Design Documents, based on the Owner's Program and other relevant information. Preliminary Design Documents shall include drawings, outline specifications and other conceptual documents as further defined herein illustrating the Project's basic elements, scale and their relationship to the proposed route. One set of these Documents shall be furnished to Owner. Design-Builder shall update the preliminary schedule and preliminary estimate based on the Preliminary Design Documents.
- 1.5 Division of Responsibility.** Design-Builder shall prepare for Owner's review a proposed Division of Responsibility with respect to the Project, showing (a) equipment, materials, labor, and services to be provided by Design-Builder, (b) access, equipment, materials, data, information, and approvals to be provided by Owner, and (c) any items necessary for the Project to be provided by third parties.
- 1.6 Contract Price Proposal.** Based on the Preliminary Design-Build Services, Design-Builder shall prepare for Owner's consideration a proposed Contract Price for the Phase 2 Services.
- 1.7 Additional Services.** Design-Builder shall provide the following additional services, if any:

*None at this time.*

## SECTION 2 PHASE 2

### 2.1 Completion of Design

#### 2.1.1 Drawings and Specifications

Design-Builder shall submit for Owner's review and written comment Drawings and Specifications based on the Contract Documents and the Preliminary Design Documents prepared under Phase 1 and any further development of Contract Documents that have been approved in writing by Owner. The Drawings and Specifications shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws or regulations enacted at the time of their preparation, *provided, however*, that if such codes, law, or regulations have changed between the date on which Design-Builder submitted its proposed Contract Price and the date of preparation, then Design-Builder shall be entitled to an equitable adjustment in the compensation and/or the Schedule. When submitted, the Drawings must contain the stamp or other certification that the Drawings have been prepared and/or reviewed and approved by a professional engineer, licensed in the state of Oregon. Construction shall be in accordance with these approved Drawings and Specifications. One set of these documents shall be furnished to Owner prior to commencement of construction. Design-Builder shall submit a final request for payment for the design work no earlier than the submission of the final design to Owner.

### 2.2 Construction Services

**2.2.1 Notice to Proceed.** Following Owner's written acceptance of Drawings and Specifications under Paragraph 2.1.1 above, Design-Builder will commence the performance of Construction Services.

**2.2.2 Completion.** In order to complete the Work, Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

**2.2.3 Compliance.** Design-Builder shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

**2.2.4 Schedule.** Design-Builder shall prepare and submit a Schedule of Work in the form of a revised *Schedule*, for Owner's written approval. This Schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from Owner. It shall be revised as required by the conditions of the Work. The Schedule of Work shall be the basis for Design-Builder's management and control of the project and its reporting of progress to Owner.

**2.2.5 Permits.** Design-Builder shall obtain permits and governmental approvals as provided in GC 2.6.

**2.2.6 Safety and Hazardous Conditions.** Design-Builder shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Site. Design-Builder, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. However, Design-Builder shall not be responsible for the elimination or abatement of any pre-existing Hazardous Materials at the site or any safety hazards created or otherwise resulting from work at the Site carried on by Owner or its employees, agents, separate contractors or tenants. Owner agrees to cause its employees, agents, separate

contractors, and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

**2.2.7 Reports.** As provided in GC 2.1.2, Design-Builder shall provide monthly written reports to Owner on the progress of the Work. Unless changed, under the Guaranteed Maximum Price, such monthly reports shall include a system of cost reporting for the Work, and also including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. If the form of compensation is a stipulated sum, the progress reporting will address progress and payment against an agreed upon schedule of values established prior to the commencement of Phase 2 of the work by the Design-Builder.

**2.2.8 Site Maintenance.** At all times Design-Builder shall maintain the Site of the Work free from debris and waste materials resulting from the Work. At the completion of the Work, Design-Builder shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

### **2.3 Hazardous Material**

**2.3.1** A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. Design-Builder shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Site has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

**2.3.2** If after the commencement of the Work, known or suspected Hazardous Material or Hazardous Conditions are discovered at the Site, Owner and Design-Builder shall proceed in accordance with the requirements of GC 4.1 (“Hazardous Conditions & Differing Site Conditions”).

### **2.4 Patents & Copyright**

**2.4.1** Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Design-Builder and incorporated in the Work. Design-Builder agrees to defend, indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

**2.4.2** Owner shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by Owner or otherwise directed by Owner to be incorporated in the Work. Owner agrees to defend, indemnify and hold Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any such patented or copyrighted materials, methods or systems specified by Owner.

### **2.5 Warranties and Completion**

**2.5.1** Design-Builder’s warranty to Owner with respect to construction, including all materials and equipment furnished as part of the construction, shall be as specified in GC 2.9 (“Construction Warranty”).

- 2.5.2 Design-Builder's warranty to Owner with respect to the performance of the Facility upon completion shall be as specified in GC 2.11 ("Performance Warranty").
- 2.5.3 Design-Builder shall secure required certificates of inspection, testing or approval and deliver them to Owner.
- 2.5.4 Design-Builder shall collect all written warranties and equipment manuals and deliver them to Owner.
- 2.5.5 Design-Builder shall direct the final inspection and testing of Facility installed. Substantial Completion shall not be achieved until Facility repairs meet Owner's desired standards, as specified in the RFP.
- 2.6 **Additional Services.** Design-Builder shall provide or procure the following Additional Services upon the request of Owner unless such services are specifically included in the Owner's Program or in an Exhibit to this Agreement. A written agreement between Owner and Design-Builder shall define the extent of such Additional Services and compensation therefor.
- 2.7 **Subcontractors.** Work not performed by Design-Builder with its own forces shall be performed by Subcontractors. The provisions of this Agreement and the associated Contract Documents shall be incorporated into all major subcontracts for construction.
- 2.7.1 **Retaining Subcontractors.** Design-Builder shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, *provided* that Owner agrees to compensate Design-Builder for any additional costs incurred by Design-Builder as provided in GC 2.7.3. Design-Builder shall not be required to retain any Subcontractor to whom Design-Builder has a reasonable objection.
- 2.7.2 **Management of Subcontractors.** Design-Builder shall be responsible for the management of Subcontractors in the performance of their work.
- 2.7.3 **Assignment of Subcontract Agreements.** Design-Builder shall provide for assignment of subcontract agreements in the event that Owner terminates this Agreement for cause as provided in GC 9.3 ("Owner's Right to Perform and Terminate for Cause"). Following such termination, Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

## SECTION 3 OWNER'S RESPONSIBILITIES

### 3.1 Information and Services Provided by Owner

- 3.1.1 Owner shall provide full information regarding requirements for the Project in accordance with GC 3.2 and this Section 3.1, including the Owner's Program, Facility Performance Criteria and other relevant information, within the times specified in the Schedule to be developed by Design-Builder and Owner at the outset of the Project and revise thereafter.
- 3.1.2 Unless otherwise provided in the Contract Documents, Owner shall provide any necessary approvals for work done, including any land use review, easements and assessments, necessary permits, fees and charges required for the major repairs to the Facility.

3.1.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and services required by this Section 3.1.

### 3.2 **Owner's Responsibilities during Phase 1**

3.2.1 If not developed by Owner and Design-Builder under a prior agreement, Owner shall provide the Owner's Program at the inception of the Design Phase. Owner shall review and timely approve schedules, estimates, and design documents furnished during the Design Phase as set forth in Section 3.1.

3.2.2 Owner shall arrange for access to and make all provisions for Design-Builder to enter upon public and private property as required for Design-Builder to perform Phase 1 services hereunder.

3.2.3 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.2.

### 3.3 **Owner's Responsibilities during Phase 2 Design and Construction**

3.3.1 Owner shall review and approve the Schedule as set forth in the Exhibit C, *Schedule*, as revised.

3.3.2 If Owner becomes aware of any error, omission or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, Owner shall give written notice to Design-Builder within five (5) days of so becoming aware.

3.3.3 Unless otherwise agreed by Design-Builder, Owner shall communicate with Design-Builder's Subcontractors, Suppliers, and Design Consultants only through Design-Builder. Owner shall have no contractual obligations to Subcontractors or Suppliers or Design Consultants.

3.3.4 Owner may provide insurance for the Project as provided in Agreement Section 9.2.

3.3.5 Owner shall provide timely, clear and adequate access to District property.

3.3.6 Owner shall provide all equipment, materials, information, data, and approvals required for Design-Builder's performance of the Work in a timely and complete manner.

3.3.7 Design-Builder shall be entitled to rely on the completeness and accuracy of the information and documents to be provided by Owner under this Section 3.3.

### 3.4 **Owner's Representative**

Owner's representative, designated in writing and agreed to by Design-Builder:

1. Shall be fully acquainted with the Project;
2. Agrees to furnish the information and services required of Owner when required so as not to delay the performance of the Work; and
3. Shall have authority to bind Owner in all matters requiring Owner's approval, authorization or written notice.

If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in advance in writing. Design-Builder shall have the right to approve any successor representative.

## **EXHIBIT B COMPENSATION**

### **SECTION 1 PHASE 1 SERVICES**

Guaranteed maximum price of \$\_\_\_\_\_.

### **SECTION 2 CONTRACT PRICE FOR PHASE 2 SERVICES**

#### **1.0 Choice of Compensation Method for Phase 2 Services**

**1.1** The parties have elected to use the Guaranteed Maximum Price (“GMP”) form of compensation, not a stipulated sum (lump sum) form of compensation.

#### **2.0 Guaranteed Maximum Price (“GMP”)**

##### **2.1 Use of a GMP for Phase 2 Work**

**2.1.1** Design-Builder has offered a Guaranteed Maximum Price for construction of \$\_\_\_\_\_ for the Phase 2 Services. This GMP does not include the cost of any permits that must be obtained, and which will be reimbursed by the Owner. Design-Builder does not guarantee any specific line item provided as part of the GMP (unless otherwise provided), but agrees that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents. Documents used as a basis for the GMP shall be found in Exhibit F.

##### **2.1.2 Omitted**

**2.1.3** If the parties so agree, the Phase 2 Services may be divided into separate work packages or task orders, and Design-Builder shall propose and Owner shall consider for acceptance a separate GMP for each such work package or task order.

##### **2.2 GMP Established at the Commencement Date of Phase 2**

**2.2.1 GMP Proposal.** Design-Builder has submitted, and by its selection of Design-Builder instead of other Proposers, Owner has accepted the proposed GMP. In the event that, as outlined in Section 1.2 of the Agreement, Design-Builder feels that the elements that formed the basis of the Proposed GMP are no longer valid due to a substantial modification in the preliminary design found in Owner’s Request for Proposals, Design-Builder shall submit to Owner a revised GMP Proposal for the Contract Price as part of the Phase 1 Services which shall include the following, unless the parties mutually agree otherwise:

- 1.** A proposed GMP, which shall be the sum of:
  - i.** Design-Builder’s Fee as defined in Section 2, *Phase 2*, of Exhibit B, *Compensation*; and
  - ii.** The estimated Cost of the Work as defined in Section 2, *Phase 2*, of Exhibit B, *Compensation*, inclusive of any Design-Builder’s Contingency as defined in Section 1.1.2 above and any allowances and unit prices.
- 2.** A list of the drawings and specifications, including all addenda, used as the basis for the GMP proposal;



3. A list of the assumptions, exceptions, and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications;
4. The Scheduled Substantial Completion Date upon which the proposed GMP is based, to the extent said date has not already been established under Paragraph 5.2.1 of the Agreement, and a schedule upon which the Scheduled Substantial Completion Date is based;
5. If applicable, a list of allowances and a statement of their basis;
6. If applicable, a schedule of alternate prices;
7. If applicable, a schedule of unit prices;
8. If applicable, a statement of Additional Services; and
9. The time limit for acceptance of the GMP Proposal.

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

**2.2.3 Acceptance of GMP Proposal.** If Owner accepts the revised GMP Proposal, as may it be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

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

1. Owner may suggest modifications to the revised GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 2.2.3 above;
2. Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 2, *Phase 2*, of Exhibit B, *Compensation*; or
3. Owner may terminate this Agreement for convenience in accordance with GC 9.2 ("Termination for Convenience").

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (i) continue with the Work as if Owner had elected to proceed in accordance with Item .2 above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work, or (ii) suspend performance of Work in accordance with GC 9.4 ("Design-Builder's Right to Stop Work").

**2.2.5 Conversion.** The parties may agree at any time to convert the agreed GMP to a Fixed Contract Price utilizing a stipulated sum for the completion of the Phase 2 Services.

**2.3 Savings.** In the event that the parties continue with, or revise the GMP, any resultant savings shall accrue to Owner.

**2.4 Basis.** Documents used as a basis for the revised GMP shall be identified in a mutually agreed revision to this Exhibit.

**EXHIBIT C  
SCHEDULE**

*(Owner and Design-Builder will agree upon final dates during contract negotiations. Dates provided below are Owner's intent for the project.)*

Issue Notice-to-Proceed with Design	_____, 2022
Complete Design Services	April ___, 2022
District Board Authorize Construction Phase	_____, 2022
Issue Notice-to-Proceed for Construction	_____, 2022
Substantial Completion of the Project	_____, 20__
Final Completion of the Project	September __, 2022

**EXHIBIT D  
GENERAL CONDITIONS**

**GC 1.0 General**

**1.1 Mutual Obligations**

- 1.1.1** Owner and Design-Builder agree to cooperate fully with each other at all time, to permit each party to realize the benefits afforded under the Contract Documents.
- 1.1.2** These General Conditions (“GC”) may be supplemented, varied, or revised through Supplementary Conditions (“SC”), as attached.

**1.2 Basic Definitions**

- 1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder with respect to the Project.
- 1.2.2** *Omitted.*
- 1.2.3** *Change in Law* has the meaning given in GC 8.1.2.
- 1.2.4** *Changed Condition* has the meaning given in GC 8.1.
- 1.2.5** *Change Order* has the meaning given in GC 7.1.
- 1.2.6** *Construction Warranty* has the meaning given in GC 2.9.
- 1.2.7** *Construction Warranty Period* is that period specified in GC 2.10.1.
- 1.2.8** *Contract Documents* has the meaning given in Section 2.1 of the Agreement.
- 1.2.9** *Contract Price* has the meaning given in Section 6.2 of the Agreement and Section 2 of Exhibit B, Compensation.
- 1.2.10** *Contract Time(s)* shall mean the times for performance of the Work by Design-Builder and the delivery of items and approvals by Owner set forth in Article 5 (“Contract Time”) of the Agreement and the agreed upon Schedule.
- 1.2.11** *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.
- 1.2.12** *Design Consultant*, if any, is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.
- 1.2.13** *Design Criteria* means those documents which define the Owner’s criteria for the scope, quality, and function of the proposed facility, and which may be expanded to outline Owner’s project cost limitations and schedule requirements.
- 1.2.14** *Differing Site Conditions* has the meaning given in GC 4.2.1.

- 1.2.15 *Omitted.*
- 1.2.16 *Electronic Data* has the meaning given in GC 11.1.1.
- 1.2.17 *Omitted.*
- 1.2.18 *Facility* is the physical facility to be designed and constructed for Owner as part of the Project.
- 1.2.19 *Facility Performance Criteria* means the Owner's criteria for the performance of the Facility once constructed, and may be divided into two parts, (i) program requirements such as the physical, functional, and quantitative needs of the project, and (ii) performance requirements for the Facility and its component parts, including considerations of the specified quantitative and qualitative limits for inputs, the desired condition of Facility outputs, and the efficiency of the Facility in producing such outputs. The Performance criteria shall be as set forth in the Owner's RFP.
- 1.2.20 *Final Acceptance* of the Project shall be deemed to have occurred upon final payment pursuant to GC 5.8.
- 1.2.21 *General Conditions* refer to this Exhibit D, *General Conditions*.
- 1.2.22 *Guaranteed Maximum Price or GMP* means the maximum amount for the Design-Builder's Fee and the Cost of the Work that Owner shall be obligated to pay Design-Builder for performance of the Phase 2 Services.
- 1.2.23 *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or which handling, storage, remediation, or disposal are regulated by applicable Legal Requirements.
- 1.2.24 *Hazardous Materials* has the meaning given in Section 2.3 of Exhibit A, Scope of Work.
- 1.2.25 *Indemnified Parties*, with respect to Work Product, has the meaning given in Section 4.3.1 of the Agreement.
- 1.2.26 *Legal Requirements* are all federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work which are applicable as of the date of Design-Builder's proposal to Owner, and, subject to the Change in Law provisions of GC 8.1.2, which become applicable during the Contract Time.
- 1.2.27 *Liquidated Damages* means such damages as may be assessed under Section 5.4 of the Agreement.
- 1.2.28 *Liquidated Damages Date* has the meaning given in Section 5.4 of the Agreement.
- 1.2.29 *Omitted.*
- 1.2.30 *Owner's Program* means the overall definition of Owner's requirements for the Project, including Owner's Project Criteria, all materials, equipment and other items to be provided by Owner, and all items to be provided by third parties.

- 1.2.31** *Owner's Project Criteria* are developed by or for Owner to describe Owner's Program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, Design Criteria, Facility Performance Criteria, performance tests, wage rate requirements, MBE/WBE requirements, and other Project-specific technical materials and requirements. Owner's requirements are as set forth in the Owner's RFP, including compliance with all applicable state laws.
- 1.2.32** *Owner's Representative* means the individual selected and authorized by Owner to act upon Owner's behalf with respect to Design-Builder and the performance of this Agreement, in accordance with GC 3.4, and identified by Owner in writing within ten (10) business days of execution of this Agreement.
- 1.2.33** *Performance Warranty* has the meaning given in GC 2.11.
- 1.2.34** *Performance Warranty Period* means the period ending 12 months following successful completion of the performance tests.
- 1.2.35** *Project* is the design and construction of the Owner's Facility, including start-up and the provision of manuals, warranties, as-built drawings and specifications, spare parts, and all other items required to be provided under this Agreement.
- 1.2.36** *Schedule* means that Schedule for the performance of the Work in accordance with the Contract Time(s) set forth in Exhibit C, *Schedule*, as revised from time to time.
- 1.2.37** *Site* is the land or premises on which the Project is located.
- 1.2.38** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.
- 1.2.39** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.
- 1.2.40** *Substantial Completion* is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete (including performance testing) so that Owner can occupy and use the Project or a portion thereof for its intended purposes.
- 1.2.41** *Certificate of Substantial Completion* is that Certificate issued by Owner to Design-Builder pursuant to GC 5.7.1.
- 1.2.42** *Uncontrollable Circumstances* are those acts, omissions, conditions, events, or circumstances beyond the control of Design-Builder and due to no fault of its own or those for whom Design-Builder is responsible. By way of example (and not limitation), Uncontrollable Circumstances include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, wars, floods, labor disputes, unusual delay in transportation, epidemics, earthquakes, adverse weather conditions not reasonably anticipated, and other circumstances beyond the reasonable control of the party affected.

**1.2.43** *Work* is comprised of all Design-Builder's design, construction, start-up, warranty, and other services required to by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents, plus manuals and documentation required by the Contract Documents.

## **GC 2.0 Design-Builder's Services and Responsibilities**

### **2.1 General Services**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Design-Builder shall provide Owner on a monthly basis a status report detailing the progress of the Work, including whether (i) the Work is proceeding according to schedule, (ii) discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) health and safety issues exist in connection with the Work, (iv) other items require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s), and (v) such other items as Owner may reasonably require.

**2.1.3** Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by GC 2.1.4, a preliminary schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). When agreed between the parties, such schedule shall be attached hereto as Exhibit C, Schedule. The Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of and response to the Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet, within ten (10) business days after execution of the Agreement, to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals, review and approval turn-around times contained in the Schedule, and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

**2.1.5** At the completion of Phase 1 Services, the parties may agree upon a revised Schedule to reflect the intended scope of Phase 2 Services and as the basis for the Contract Price to be agreed for the Phase 2 services.

### **2.2 Design Professional Services**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from a qualified, independent licensed Design Consultant, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work

consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any independent Design Consultant.

## **2.3 Standard of Care for Design Professional Services**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project. Design-Builder, its Design Consultants, and its Subcontractors may reasonably rely on the accuracy and completeness of Owner's Project Criteria.

## **2.4 Design Development Services**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Such agreement may specify the percentage completion of the design documents to be submitted for such review and comment. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and comment on the interim design submissions in a time frame that is consistent with the turnaround times set forth in the Schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions; as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to discuss, and Owner shall review and may comment on the Construction Documents in accordance with the procedures set forth GC 2.4.1. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements**

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

## **2.6 Government Approvals and Permits**

- 2.6.1** Except as identified in the Owner's RFP, Design-Builder shall obtain all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project. Owner will reimburse Design-Builder for reasonable costs associated with such permitting.
- 2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining any such permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Phase 2 Construction Services**

- 2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.
- 2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- 2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.
- 2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts, errors or omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.
- 2.7.5** Design-Builder shall coordinate the activities of all Subcontractors.
- 2.7.6** If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and



coordinated manner without unreasonable disruption. Unreasonable disruption or interference by Owner's separate contractors may result in a request for a Contract Adjustment under GC 8.1.3.

- 2.7.7** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas.
- 2.7.8** Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents.

## **2.8 Design-Builder's Responsibility for Project Safety**

- 2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work, and shall develop a Project Safety Program which shall be implemented at the Project Site during the performance of the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project other than safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.
- 2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents and incorporated into the Project Safety Program, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasigovernment authorities having jurisdiction over safety-related matters involving the Project or the Work.
- 2.8.3** Design-Builder's responsibility for safety under this GC 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

**2.8.4** Owner shall require that its officers, employees, guests, visitors, and other contractors entering the Project Site comply with the Project Safety Program then in effect.

## **2.9 Construction Warranty**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Design-Builder or anyone for whose acts Design-Builder may be liable.

**2.9.2** Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this GC 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work**

**2.10.1 Construction Warranty Period.** Design-Builder agrees to correct any Work that is found not to be in conformance with the Contract Documents, including that part of the Work subject to GC 2.9, within a period of one (1) year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents.

**2.10.2 Correction of Non-Conforming Work.** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. Corrected non-conforming Work is subject to a new construction warranty period of one (1) year, commencing on the date of final completion of the corrective Work.

If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner may, in addition to any other remedies provided under the Contract Documents, provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be deemed inapplicable.

**2.10.3** The one (1) year period referenced in GC 2.10.1 applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **2.11 Performance Warranty**

**2.11.1** Design-Builder warrants to Owner that the Facility will meet the Facility Performance Criteria set forth in the Owner's RFP and Proposer's response. Such Performance Warranty shall be satisfied upon successful completion of Performance Tests.

- 2.11.2** Design-Builder also warrants, subject to GC 2.11.3 and 2.11.4, that the completed Facility shall be capable of meeting Owner’s Intended Purpose, as stated in the RFP throughout the Performance Warranty Period (“Performance Warranty”).
- 2.11.3** Design-Builder shall have no responsibility under the Performance Warranty to the extent that any failure of the Work is due to: (1) Owner action or non-action, such as (i) provision of inadequate staffing, (ii) failure to operate or maintain the Project in accordance with methods, standards and procedures generally recognized and accepted as good industry practices and with the Operation and Maintenance Information Systems prepared by Design-Builder, (iii) abuse, negligence or willful misconduct, or (iv) alteration of the Work; (2) Uncontrollable Circumstances; (3) Change in Law; (4) noncompliant operating conditions; (5) unavailability of supplies, spare parts, chemicals, power or other consumables or items necessary for operation and maintenance; or (6) impossibility or frustration of purpose.
- 2.11.4** If the Work fails to satisfy the Performance Warranty, Design-Builder shall, upon written notice from Owner delivered not later than five (5) days after any such failure, promptly begin and continue to take necessary actions (including training or support of Owner’s operation and maintenance staff; revision of operating or maintenance procedures; or modification or correction of equipment or facilities) to satisfy the Performance Warranty. The costs of any such training or support of Owner’s operations staff or revision of operating procedures that are effective in achieving satisfaction of the Performance Warranty shall be paid by Owner. The costs of any such modification or correction of equipment or facilities required to achieve satisfaction of the Performance Warranty shall be paid by the Design-Builder without reimbursement from Owner, subject to any applicable limitation of liability set forth in this Agreement. Before any necessary correction or modification of equipment or facilities is initiated by the Design-Builder, all reasonable efforts to satisfy the Performance Warranty through operational training, support and revision shall be completed and a plan indicating the scope and schedule for such work shall be prepared by the Design-Builder and approved by Owner.

### **GC 3.0            Owner’s Services and Responsibilities**

#### **3.1            Duty to Cooperate**

- 3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder’s timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder’s performance of its obligations under the Contract Documents.
- 3.1.2** Owner shall provide reviews and approvals of interim design submissions and Construction Documents consistent with the turn-around times set forth in the Schedule. Owner’s review does not constitute acceptance of design errors or omissions, or transfer of any design liability to Owner.

#### **3.2            Furnishing of Services and Information**

- 3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project within Lane County, and to enable Design-Builder to perform the Work, at Owner’s own cost and expense, for Design-Builder’s information and use, which Design-Builder is entitled to rely upon in performing the Work.

### **3.3 Financial Information**

- 3.3.1 Design-Builder shall cooperate with the reasonable requirements of Owner's grant agencies or other financial sources, if any.
- 3.3.2 Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner, Owner's grant agencies, or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.
- 3.3.3 Design-Builder shall not be required as a condition of award or contract to waive or subordinate its mechanic's lien rights, if any, to Owner's construction lender(s).

### **3.4 Owner's Representative**

- 3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.
- 3.4.2 If Owner retains a third party as Owner's Engineer or Owner's Program Manager, separately from Owner's Representative, then Owner shall designate such third party in writing to Design-Builder, together with a statement of the respective roles, responsibility, and authority of each such party with respect to the administration of the contract, the approval of drawings and specifications, the issuance of instructions and change orders, the resolution of disputes, and the relative priority of the authority of such parties.

### **3.5 Government Approvals and Permits**

- 3.5.1 Owner shall pay for all necessary permits, approvals, licenses, government charges and inspection fees that Design-Builder is required to or finds necessary for the completion of the Work.
- 3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors**

- 3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under separate agreements with Owner. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.
- 3.6.2 Owner recognizes the importance that all work performed on the Project or at the Site by separate contractors under separate agreements with Owner is performed in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Owner shall require such separate

contractors to assume responsibility for implementing and monitoring all safety precautions and programs related to the performance of their work.

#### **GC 4.0 Hazardous Conditions and Differing Site Conditions**

##### **4.1 Hazardous Conditions**

- 4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.
- 4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.
- 4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.
- 4.1.4** Design-Builder will be entitled, in accordance with these General Conditions, to an equitable adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.
- 4.1.5** To the fullest extent permitted by law, Owner shall defend, indemnify and hold harmless Design-Builder, Design Consultants, Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in connection with litigation or arbitration, arising out of or relating to the performance of the Work in any area affected by Hazardous Material, except to the extent caused by indemnitee's fault, negligence, breach of warranty or contract, or strict liability.
- 4.1.6** Notwithstanding the preceding provisions of this GC 4.1, Owner is not responsible for Hazardous Conditions introduced to or the release or migration of existing Hazardous Materials caused on the Site by Design-Builder, Design Consultants, Subcontractors or anyone for whose acts they may be liable. Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by the parties identified in the first sentence of this GC 4.1.6.
- 4.1.7** The terms of this GC 4.1 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

## **4.2 Differing Site Conditions**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as “Differing Site Conditions.” If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an equitable adjustment in the Contract Price and/or Contract Time(s), as negotiated, to the extent Design-Builder’s cost and/or time of performance are adversely impacted by the Differing Site Condition.

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

## **GC 5.0 Payment**

### **5.1 Payment for Phase 1 Services**

**5.1.1** Design-Builder will submit an Application for Payment to Owner each month covering time and material fees for Phase 1 services performed to date. Each Application for Payment will be prepared in the standard form agreed to by the parties and supported by required documentation.

### **5.2 Schedule of Values for Phase 2 Services**

**5.2.1** Within ten (10) business days of the Commencement Date, Design-Builder shall submit for Owner’s review and approval a schedule of values for Phase 2 of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

### **5.3 Monthly Progress Payments**

**5.3.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner’s review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by GC 2.1.4.

**5.3.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**5.3.3** The Application for Payment shall constitute Design-Builder’s representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder’s receipt of payment, whichever occurs earlier.

#### **5.4 Withholding of Payments; Payment of Undisputed Amounts**

- 5.4.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due, including the release of retention under Section 7.3.2 of the Agreement. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under GC 8.0.
- 5.4.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **5.5 Right to Stop Work and Interest**

- 5.5.1** If Owner fails to pay Design-Builder any amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to GC 9.4. All payments due and unpaid shall bear interest at the rate set forth in Section 7.5 of the Agreement.

#### **5.6 Design-Builder's Payment Obligations**

- 5.6.1** Design-Builder will pay any Subcontractors and Design Consultants, in accordance with applicable law and its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Subcontractors and Design Consultants to pay those parties with whom they have contracted.
- 5.6.2** Design-Builder shall indemnify, defend and hold Owner harmless from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within ten (10) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and charge Design-Builder with any costs and expenses incurred, including attorneys' fees.

#### **5.7 Substantial Completion**

- 5.7.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete (including the completion of performance testing). Within ten (10) business days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents. If such Work is substantially complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending

final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

- 5.7.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.
- 5.7.3** Owner, at its option, may use a portion to the Work which has been determined to be substantially complete, provided that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in GC 5.7.1, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and (iii) Owner and Design-Builder, agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **5.8 Final Payment**

- 5.8.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, *provided* that Design-Builder has completed all of the Work in conformance with the Contract Documents.
- 5.8.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:
- 1) An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
  - 2) A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;
  - 3) Consent of Design-Builder's surety, if any, to final payment;
  - 4) All operating manuals, warranties and other deliverables required by the Contract Documents; and
  - 5 ) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.
- 5.8.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion, (iii) the terms of any special warranties required by the Contract Documents, and (iv) claims which are identified as unsettled at the time of making final payment.
- 5.8.4** Final payment by Owner shall constitute Final Acceptance of the Project for all purposes hereunder, subject to Design-Builder's remaining warranty obligations and any remaining indemnity obligations hereunder.
- 5.8.5** Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.



## **GC 6.0 Time**

### **6.1 Obligation to Achieve the Contract Times**

**6.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5.0 of the Agreement.

### **6.2 Delays to the Work**

**6.2.1** If Design-Builder is delayed in the performance of the Work due to Uncontrollable Circumstances, the Contract Time(s) for performance shall be reasonably extended by Change Order, and the Schedule adjusted accordingly.

**6.2.2** In addition to Design-Builder's right to a time extension for delays in the Work under GC 6.2.1, Design-Builder shall also be entitled to an equitable adjustment of the Contract Price and equitable commutation of any Liquidated Damages under Section 5.4 of the Agreement.

## **GC 7.0 Changes to the Contract Price and Time**

### **7.1 Change Orders**

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

- 1.** The scope of the change in the Work;
- 2.** The amount of the adjustment to the Contract Price; and
- 3.** The extent of the adjustment to the Contract Time(s) and Schedule.

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

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

### **7.2 Work Change Directives**

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

**7.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

**7.2.3** If Owner has requested a proposal for a change in the Work from Design-Builder, Owner shall notify Design-Builder as expeditiously as possible whether such proposal is accepted. Design-Builder shall not commence changed work until a written Work Change Directive or Change Order has been delivered by Owner. The parties recognize that delay in response to such proposals may increase the impact or cost of the Change.

### **7.3 Minor Changes in the Work**

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

### **7.4 Contract Price Adjustments**

**7.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

1. Unit prices set forth in the Agreement or as subsequently agreed between the parties (which may include daily or monthly overhead rates for the extension of services);
2. A mutually-accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;
3. Costs, fees and any other markups set forth in the Agreement; and
4. If an increase or decrease cannot be agreed to as set forth in items 1 through 3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase or a decrease in the Contract Price, overhead and profit shall be calculated on the basis of the net increase or decrease to the Contract Price. Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

**7.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**7.4.3** If Owner and Design Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to GC 8.0. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation of the services that are to be performed. Additional compensation, if any, shall be resolved pursuant to GC 8.0.

### **7.5 Emergencies**

**7.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this GC 7.0.

## **GC 8.0 Contract Adjustments and Disputes**

## **8.1 Requests for Contract Adjustments and Relief**

- 8.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any Changed Condition arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief.
- 8.1.2** A Changed Condition may include a Change in Law following the date of Design-Builder's proposal to Owner which has a material impact on the cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.
- 8.1.3** Changed Conditions may include Uncontrollable Circumstances having an impact on Design-Builder's cost of the Work, the Schedule, the Performance Criteria, or other aspects of Design-Builder's performance hereunder.
- 8.1.4** Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 8.1.5** Such notice shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, and, if then available, the specific contractual adjustment or relief requested and the basis of such request.

## **8.2 Dispute Avoidance and Resolution**

- 8.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each agree to resolve such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.
- 8.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the Project level through discussions between Design-Builder's Representative and Owner's Representative.
- 8.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, upon the request of either party, then the matter shall be referred to the Senior Representatives of each party for resolution. Design-Builder's Senior Representative and Owner's Senior Representative shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

## **8.3 Arbitration**

- 8.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in GC 8.2, except for claims which may have been waived by the making or acceptance of final payment or for acquisition of property subject to eminent domain, may be

decided by arbitration. Owner shall have the sole discretion as to whether or not a dispute will be decided by arbitration rather than through the court process.

No demand for arbitration of any claimed dispute or other matter shall be effective until after a claim or demand regarding the underlying dispute is made to the District Board and the Board at its next regularly scheduled meeting, has rendered a written decision with respect thereto denying the claim or demand. No demand for arbitration of the denial of any such claim, dispute, or other matter shall be made later than thirty (30) days after the date on which the District Board has rendered a written decision denying the claim. The failure to demand arbitration within thirty (30) days of the date of the District Board's decision denying the claim shall result in the District Board's decision being binding upon Owner and Design-Builder.

Notice of demand for arbitration shall be filed in writing with the other party to the agreement. The demand for arbitration shall be made within the 30 day period specified above. Owner, if not the party demanding arbitration, has the option of allowing the matter to proceed with arbitration or by Written Notice within five (5) days after receipt of a demand for arbitration, or rejecting arbitration and requiring Design-Builder to proceed through the courts for relief. Arbitration shall be conducted under the Uniform Arbitration Act, ORS 36.600 *et seq.* If the parties are unable to mutually select an arbitrator within twenty (20) days following Owner's decision to pursue arbitration, then each party shall select an arbitrator, and the two arbitrators shall select a single arbitrator. The arbitrator(s) shall have substantial experience in construction disputes.

**8.3.2** The award of the arbitrator(s) shall be final and binding upon the parties, and will not be subject to modification or appeal except to the extent permitted by Oregon law. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**8.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this GC 8.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy, or (ii) involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**8.3.4** **Attorney Fees.** If any suit, action or arbitration is brought either directly or indirectly to rescind, reform, interpret or enforce the terms of this Contract, the prevailing party shall recover and the losing party hereby agrees to pay reasonable attorney's fees incurred in such proceeding, in both the trial and appellate courts, as well as the applicable costs and disbursements. Further, if it becomes necessary for Owner to retain the services of an attorney to enforce any provision of this contract without initiating litigation, Design-Builder agrees to pay Owner's attorney's fees so incurred. Such costs and fees shall bear interest at the maximum legal rate from the date incurred until the date paid by the losing party.

**8.3.5** The arbitration shall be held at the location of the Project, unless the parties mutually agree to another acceptable site for the arbitration. The law applicable to the arbitration shall be the law of the jurisdiction in which the Project is located.

#### **8.4 Duty to Continue Performance**

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

## **GC 9.0 Suspension and Termination**

### **9.1 Owner's Right to Stop Work**

- 9.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.
- 9.1.2** Design-Builder is entitled to an equitable adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of work by Owner.

### **9.2 Termination for Convenience**

- 9.2.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:
- 1.** All Work executed and for proven loss, cost or expense in connection with such Work;
  - 2.** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
  - 3.** The fair and reasonable sums for overhead and profit on the sum of items **1.** and **2.** above.
- 9.2.2** If Owner terminates this Agreement pursuant to GC 9.2.1 and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work product shall be as set forth in Agreement Section 4.3 ("Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate").

### **9.3 Owner's Right to Perform and Terminate for Cause**

- 9.3.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, *then* Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in GC 9.3.2, 9.3.3, and 9.3.4.
- 9.3.2** Upon the occurrence of an event set forth in GC 9.3.1, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, cures, or reasonably commences to cure, such problem, then Owner, in Owner's sole discretion, may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration or may choose to not terminate the contract and allow Design-Builder to continue performance.

**9.3.3** Upon declaring the Agreement terminated pursuant to GC 9.3.2, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items.

**9.3.4** In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the re-procurement and defense of claims arising from Design-Builder's default.

**9.3.5** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of GC 9.2.

#### **9.4 Design-Builder's Right to Stop Work**

**9.4.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop work for Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**9.4.2** Should the event set forth in GC 9.4.1 occur, Design-Builder may provide Owner with written notice that Design-Builder will stop work unless such event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop work. In such case, Design-Builder may make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

#### **9.5 Design-Builder's Right to Terminate for Cause**

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

- 1.** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of a court order, any government authority having jurisdiction over the Work, or orders by Owner under GC 9.1.1, *provided* that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible; or
- 2.** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to GC 9.1.1; or
- 3.** Owner's failure to cure the problem set forth in GC 9.4.1 after Design-Builder has stopped the Work.

**9.5.2** Upon the occurrence of an event set forth in GC 9.5.1, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under GC 9.2.

## **9.6 Bankruptcy of Owner or Design-Builder**

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

- 1.** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and
- 2.** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this GC 9.0.

**9.6.2** The rights and remedies under GC 9.6.1 shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions.

## **GC 10.0 Miscellaneous**

### **10.1 Assignment**

**10.1.1** Neither Design-Builder nor Owner shall without the written consent of the other, assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

### **10.2 Successorship**

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

### **10.3 Governing Law**

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

## **10.4 Severability**

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

## **10.5 No Waiver**

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

## **10.6 Headings**

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

## **10.7 Notice**

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

## **10.8 Amendments**

**10.8.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of both parties.

## **10.9 Third Parties**

**10.9.1** The services to be performed by Design-Builder are intended solely for the benefit of the Owner. No person or entity not a signatory to this Agreement shall be entitled to rely on the Design-Builder's performance of its services hereunder, and no right to assert a claim against the Design-Builder by assignment of indemnity rights or otherwise shall accrue to a third part.

## **GC 11.0 Electronic Data**

### **11.1 Electronic Data.**

**11.1.1** The parties recognize that Contract Documents and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").



## **11.2 Transmission of Electronic Data**

- 11.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.
- 11.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.
- 11.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4.0 of the Agreement (“Ownership of Work Product”). Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

## **11.3 Electronic Data Protocol**

- 11.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this GC 11.3.
- 11.3.2** Electronic Data will be transmitted in the format agreed upon in GC 11.2.1, including file conventions and document properties, unless prior arrangements are made in advance in writing.
- 11.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.
- 11.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data by electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

**EXHIBIT E**  
**BONDS**  
**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS that

\_\_\_\_\_

(Name of Contractor)

\_\_\_\_\_

(Address of Contractor)

\_\_\_\_\_ hereinafter called "PRINCIPAL", and  
(Corporation, Partnership, or Individual)

\_\_\_\_\_

(Name of Surety)

\_\_\_\_\_

(Address of Surety)

\_\_\_\_\_

(Oregon representative for service of process for Surety)

hereinafter called "SURETY", are held and firmly bound unto

McKenzie Fire & Rescue  
42870 McKenzie Highway  
Leaburg, Oregon 97489

hereinafter called "OWNER", in the total amount of \_\_\_\_\_  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for the  
equal to the contract price) (insert here a sum

payment whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, the PRINCIPAL has by written agreement entered into a certain contract with the OWNER, dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, a copy of which is hereto attached and made a part hereof and is hereinafter referred to as the Contract. Said Contract is for:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

NOW, THEREFORE:

1. The condition of this obligation is such that, if PRINCIPAL shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

2. The SURETY hereby waives notice of any alteration or extension of time made by the OWNER.

3. It is expressly agreed that the Bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment of the Contract not increasing the Contract price more than twenty percent (20%), so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this Bond, and whether referring to this Bond, the Contract, or the Loan Documents shall include any alteration, addition, extension or modification of any character whatsoever.

4. Whenever PRINCIPAL shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER's obligations thereunder, the SURETY may promptly remedy the default, or shall promptly:

- a) Arrange for the PRINCIPAL, with consent of the OWNER, to perform and complete the contract;
- b) Complete the Contract in accordance with its terms and conditions, or
- c) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by OWNER and the SURETY jointly of the lowest responsible bidder, arrange for a contract between such bidder and OWNER, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the SURETY may be liable hereunder, the amount set forth above. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by OWNER to PRINCIPAL under the Contract and any amendments thereto, less the amount properly paid by OWNER to PRINCIPAL.

5. Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

6. If any provision of this Bond conflicts with state law, such portion will be deemed deleted therefrom and provisions conforming to such state law shall be deemed incorporated herein. The intent is that the bond shall be construed as a statutory bond and not as a common law bond.

7. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of the OWNER.

IN WITNESS WHEREOF, this instrument is executed in \_\_\_\_\_ counterparts, each one of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST:

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
(PRINCIPAL) Secretary

(SEAL)

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

\_\_\_\_\_  
(Witness to PRINCIPAL) \_\_\_\_\_ (Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(SURETY)

ATTEST:

\_\_\_\_\_  
(Witness to SURETY) By \_\_\_\_\_ (Attorney-in-Fact)

\_\_\_\_\_  
(Address) \_\_\_\_\_ (Address)

NOTE: Date of Bond must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners must execute Bond.

IMPORTANT: SURETY companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Oregon. SURETY companies must also have an Oregon representative for service of process.

**PAYMENT BOND**

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):  
of Business):

SURETY (Name and Address of Principal Place

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRACT**

Effective Date of Agreement:

\_\_\_\_\_

Amount:

\_\_\_\_\_

Description (Name and Location):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BOND**

Bond Number:

\_\_\_\_\_

Date (Not earlier than Effective Date of Agreement):

\_\_\_\_\_

Amount:

\_\_\_\_\_

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

CONTRACTOR AS PRINCIPAL

SURETY

\_\_\_\_\_(Seal)  
Contractor's Name and Corporate Seal  
Corporate Seal

\_\_\_\_\_(Seal)  
Surety's Name and

By: \_\_\_\_\_  
Signature  
Attorney)

By: \_\_\_\_\_  
Signature (Attach Power of

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.

6. Reserved.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.
9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.
14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. Definitions
  - 15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY:

Name, Address and Telephone:

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Surety Agency or Broker;

Owner's Representative (Engineer or other):

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## **Exhibit F**

### **Public Contracting Code** Requirements for Public Improvement Contracts Over \$50,000

1. Contractor shall pay promptly, as due, all persons supplying labor or materials for the prosecution of the work provided for in the contract, and shall be responsible for such payment of all persons supplying such labor or material to any Subcontractor.
  - (a) ORS 279C.580(3)(a) requires the prime contractor to include a clause in each subcontract requiring contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the prime contractor by the public contracting agency; and
  - (b) ORS 279C.580(3)(b) requires the prime contractor to include a clause in each subcontract requiring contractor to pay an interest penalty to the first-tier subcontractor if payment is not made within 30 days after receipt of payment from the public contracting agency.
  - (c) ORS 279C.580(4) requires the prime contractor to include in every subcontract a requirement that the payment and interest penalty clauses required by ORS 279C.580(3)(a) and (b) be included in every contract between a subcontractor and a lower-tier subcontractor or supplier.
2. Contractor shall promptly pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the contract, and shall be responsible that all sums due the State Unemployment Compensation Fund from Contractor or any Subcontractor in connection with the performance of the contract shall promptly be paid.
3. Contractor shall not permit any lien or claim to be filed or prosecuted against the Contracting Agency on account of any labor or material furnished and agrees to assume responsibility for satisfaction of any such lien so filed or prosecuted.
4. A notice of claim on contractor's payment bond shall be submitted only in accordance with ORS 279C.600 and 279C.605.
5. Contractor and any Subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
6. Contractor shall demonstrate to the Contracting Agency that an employee drug-testing program is in place within 10 days of receiving a Notice of Award.
7. Pursuant to ORS 279C.515, if Contractor fails, neglects or refuses to make prompt payment of any claim for labor or materials furnished to the Contractor or a Subcontractor by any person in connection with the contract as such claim becomes due, the Contracting Agency may pay such claim to the persons furnishing the labor or material and charge the amount of payment against funds due or to become due Contractor by reason of the contract. The payment of a claim in the manner authorized hereby shall not relieve the Contractor or his surety from his or its obligation with respect to any unpaid claim. If the Contracting Agency is unable to determine the validity of any claim for labor or material furnished, the Contracting Agency may withhold from any current payment due Contractor an amount equal to said claim until its validity is determined and the claim, if valid, is paid.

8. Pursuant to ORS 279C.515, if the Contractor or a first-tier Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the Contracting Agency or contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10 day period that payment is due under ORS 279C.580(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 Contractor or first-tier Subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment was received from the public contracting agency or from the Contractor, but the rate of interest shall not exceed 30%. The amount of interest may not be waived.
9. As provided in ORS 279C.515, if the Contractor or a Subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractor's Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
10. Pursuant to ORS 279C.530, Contractor shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all monies and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
11. Contractor shall employ no person for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, Contractor shall pay the employee at least time and one-half pay for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work is five (5) consecutive days, Monday through Friday; or for all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is 4 consecutive days, Monday through Friday; and for all work performed on Saturday and on any legal holidays as specified in ORS 279C.540.
12. Pursuant to ORS 279C.540(2), the Contractor must give notice to employees who work on this contract in writing, 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 the days per week that the employees may be required to work.
13. The provisions of ORS 279C.800 to ORS 279C.870 relating to the prevailing wage rates will be complied with. The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Contract shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.
  - (a) The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The January 1, 2022 Prevailing Wage Rates for Public Works Projects in Oregon, including any amendments. Such publications can be reviewed electronically at:

<https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>

and are hereby incorporated as part of the contract documents

- (b) Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
  - (c) The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner as required by the administrative rules adopted by the Commissioner.
  - (d) If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
14. Unless exempt under ORS 279C.836(4), (7), (8) or (9), before starting work on this contract, or any subcontract hereunder, contractor and all subcontractors must have on file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in the state of Oregon in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum of the bond. The bond must remain in effect continuously until depleted by claims paid under ORS 279C.836(2), unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation. Contractor further certifies that contractor will include in every subcontract or provision requiring a subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8), or (9).
- (a) Unless exempt under ORS 279C.836(4), (7), (8), or (9), before permitting a subcontractor to start work on this public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section or has elected not to file a public works bond under ORS 279C.836(7).
  - (b) Unless public contracting agency has been notified of any applicable exemptions under ORS 279C.836(4), (7), (8), or (9), the public works bond requirement above is in addition to any other bond contractors or subcontractors may be required to obtain under this contract.
15. As may be required by ORS 279C.845, Contractor or contractor's surety and every subcontractor or subcontractor's surety shall file certified payroll statements with the Contracting Agency in writing.
- (a) If a contractor is required to file certified statements under ORS 279C.845, the Contracting Agency shall retain 25% of any amount earned by the contractor on the public works project until the contractor has filed with the Contracting Agency statement as required by ORS 279C.845. The Contracting Agency shall pay the contractor the amount retained within 14 days

after the contractor files the required certified statements, regardless of whether a subcontractor has failed to file certified statements required by statute. The Contracting Agency is not required to verify the truth of the contents of certified statements filed by the contractor under this section and ORS 279C.845.

(b) The contractor shall retain 25% of any amount earned by a first-tier subcontractor on this public works contract until the subcontractor has filed with the Contracting Agency certified statements as required by ORS 279C.845. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained. The contractor shall pay the first-tier subcontractor the amount retained within 14 days after the subcontractor files the certified statements as required by ORS 279C.845. Neither the Contracting Agency nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor.

16. All employers, including Contractor, that employ subject workers who work under this contract shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements.
17. All sums due the State Unemployment Compensation Fund from the Contractor or any Subcontractor in connection with the performance of the contract shall be promptly so paid.
18. The contract may be canceled at the election of Contracting Agency for any willful failure on the part of Contractor to faithfully perform the contract according to its terms.
19. Contractor certifies that it has not discriminated against minorities, women or emerging small business enterprises or a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225 in obtaining any required subcontractors. ORS 279A.110.
20. Contractor certifies its compliance with the Oregon tax laws, in accordance with ORS 305.385.
21. In the performance of this contract, the Contractor shall use, to the maximum extent economically feasible, recycled paper, materials, and supplies, and shall compost or mulch yard waste material at an approved site, if feasible and cost effective.
22. As may be applicable, Contractor certifies that all subcontractors performing construction work under this contract will be registered with the Construction Contractors Board or licensed by the state Landscaping Contractors Board in accordance with ORS 701.035 to ORS 701.055 before the subcontractors commence work under this contract.
23. Pursuant to Contracting Agency Public Contracting Rule 137-049-0880, the Contracting Agency may, at reasonable times and places, have access to and an opportunity to inspect, examine, copy, and audit the records relating to the Contract.
24. Contractor shall ensure Owner's compliance with all applicable provisions of ORS 279C.527 and OAR Chapter 330 Division 135 regarding green energy technology requirements for new or major renovations of public buildings costing over \$5,000,000.
25. In compliance with the provisions of ORS 279C.525, the following is a list of federal, state and local agencies, of which the Contracting Agency has knowledge, that have enacted ordinances or

regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the contract:

FEDERAL AGENCIES:

- Homeland Security, Department of
  - Coast Guard
  
- Agriculture, Department of
  - Forest Service
  - Soil Conservation Service
- Defense, Department of
  - Army Corps of Engineers
- Environmental Protection Agency
- Interior, Department of
  - Bureau of Sport Fisheries and Wildlife
  - Bureau of Outdoor Recreation
  - Bureau of Land Management
  - Bureau of Indian Affairs
  - Bureau of Reclamation
- Labor, Department of
  - Occupational Safety and Health Administration
- Transportation, Department of
  - Federal Highway Administration

STATE AGENCIES:

- Agriculture, Department of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Land Conservation and Development Commission
- Soil and Water Conservation Commission
- State Engineer
- State Land Board
- Water Resources Board

LOCAL AGENCIES:

- City Council
- County Court
- County Commissioners, Board of
- Port Districts
- Metropolitan Service Districts
- County Service Districts
- Sanitary Districts
- Water Districts
- Fire Protection Districts