

CITY OF CANBY

REQUEST FOR PROPOSALS
TO PROVIDE PROGRESSIVE DESIGN-BUILD SERVICES

UV Disinfection Project
for the Wastewater Treatment Plant



Public Works Department
1470 N.E. Territorial Rd.
Canby, OR 97013
PH. 503-266-4021

Advertised: March 21, 2025, Daily Journal of Commerce and City of Canby Website
by Canby Wastewater Treatment Plant

SUBMISSIONS DUE: April 10, 2025, 3:00 p.m.

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ANTICIPATED SCHEDULE

The City reserves the right to make adjustments to the above noted schedule as necessary or reasonable, in its sole discretion.

Item	Date
Advertise RFP	March 21, 2025
Pre-Proposal Meeting	March 31, 2025
Deadline for written request for clarification	April 4, 2025
Proposals due from Proposers, 3:00 PM	April 10, 2025
Issue Notice of Ranking of Proposers	April 15, 2025
Deadline for Submission of Objections/Protests of Solicitation	April 22, 2025
Negotiate contract, if necessary**	April 29, 2025
First Reading by Canby City Council	May 7, 2025
City Council Award of Contract (if awarded)	May 21, 2025
Notice to Proceed	June 2, 2025
Complete Design	Late Summer 2025
Lead Times	9 Months
Anticipated Start of Construction	Spring 2026
Anticipated End of Construction	Winter 2026

REQUEST FOR PROPOSALS

Notice is hereby given that the City of Canby, will receive Requests for Proposal until **3:00 p.m. April 10, 2025**, addressed to the attention of Monica Stone, WWTP Supervisor, City of Canby, 1470 NE Territorial Rd., Canby, OR 97013 for the following:

UV Disinfection Project CITY OF CANBY, OREGON

The proposed work consists generally of the following:

The City of Canby, Oregon (City) requests competitive proposals from experienced design-build teams to assist the City in planning, designing, procuring, and installing a new Ultraviolet (UV) Disinfection System to meet the City's NPDES permit requirements. The City plans to abandon the existing in-vessel UV system and to retrofit adjacent infrastructure that was once utilized as an open-channel, horizontal UV system.

The RFP can be downloaded from City's bids and RFPs site at <https://www.canbyoregon.gov/rfps>. A voluntary pre-proposal meeting and project site walk thru is scheduled to be held at the Wastewater Treatment Plant (project site) located at 1480 NE Territorial Rd., Canby, OR on Monday, March 31st, 2025 at 10:00 a.m. (Pacific). Direct all questions regarding the RFP to Monica Stone, WWTP Supervisor, at Stonem@canbyoregon.gov (email) or (503) 266-0648 (direct).

The City may reject any proposal not in compliance with all prescribed public bidding procedures and requirements and may reject for good cause any or all proposals upon determination by the City that it is in the public interest to do so. Proposers are required to certify non-discrimination in employment practices and identify resident status as defined in ORS 279A.120. All proposers are required to comply with the provisions of Oregon Revised Statutes and Local Contract Review Board Policy.

Requests for proposals shall be submitted in sealed envelopes and received at the **City of Canby, Public Works**, no later than **3:00 p.m. PST, April 10, 2025**, addressed to the attention of Monica Stone, WWTP Supervisor, 1470 NE Territorial Rd. Canby, OR 97013, at which they will be reviewed and evaluated over the next five business days. **The city does not receive postal mail at this address, please submit Proposal in person to Public Works building.** The outside of the envelope shall plainly identify the "RFP for Ultraviolet (UV) Disinfection Project" along with the name and address of the Proposer. Faxed or electronic (e-mail) responses will not be accepted. Responses received after the designated closing date and time will not be opened or reviewed.

INSTRUCTIONS AND CONDITIONS

2.1 **GENERAL:**

Firms must study carefully and conform to these "Instructions and Conditions" so that their proposals will be regular, complete and acceptable.

2.2 **PROPOSALS:**

All proposals shall be legibly written in ink or typed and comply in all regards with the requirements of this solicitation. Proposals shall be submitted in said manner as indicated in this request for proposals (RFP) documents. Use of recycled material is encouraged, and the City reserves the right to use recycled material provided the provisions of ORS 279A.125 are met.

The Canby Review Committee reserves the right to reject all RFPs not in compliance with all prescribed public contracting procedures and requirements, to reject for good cause any and all proposals upon the finding that it is in the public interest to do so, and to waive any and all informalities.

The City reserves the right to obtain additional information or clarification of any RFP proposal. The City reserves the right to investigate references and the past performance of any firm with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, its completion or delivery of a project on schedule, and its lawful payment of employees and workers.

2.3. **RECEIPT AND OPENING OF PROPOSALS:**

Proposals shall be submitted prior to the date and time fixed in the advertisement for RFPs. Proposals received after the date and time designated will be considered late and will be returned unopened. No responsibility will be attached to any official of the City for the failure to open a proposal that is not properly identified.

At any time period prior to the due date for submission of proposals, a proposer may request to modify or withdraw the proposal. After proposals have been opened, proposals may not be withdrawn by the proposer for a period of ninety (90) days and at no time after award of contract. Proposals may not be modified after they have been opened unless expressly permitted in the selection process section of this RFP.

RFPs shall be opened so as to avoid disclosure of contents to competing firms during the process of negotiation. RFPs will not be available for public inspection until after such time that a contract is executed in accordance with ORS 279C.107. All proposal material shall become the property of the City and is public record. Information in a proposal may or may not be considered to be exempt from public disclosure based on trade secrets as identified in ORS 192.345(2), or information submitted in confidence as identified in ORS 192.355(2).

To the extent of the law, the City will endeavor to keep information confidential if the proposer marks the subject information as confidential. If a proposal contains any information that the proposer believes is exempt from disclosure under the various grounds specified in the Oregon Public Records Law, the proposer must clearly designate each such portion of its proposal as exempt at the time of proposal submission, along with a justification and citation to the legal authority relied upon. Identifying the entire proposal as exempt from disclosure is not acceptable. Failure to identify specific portions of the proposal as exempt shall be deemed a waiver of any future claim of that information as exempt.

The City will make available to any person requesting information, through the City processes for disclosure of public records, all information submitted as a result of this competitive RFP not exempted from disclosure without obtaining permission from any proposer to do so. The City may also, in its sole discretion, elect to publish all such information at any time, regardless of whether or not a public records request has been received. However, if a public records request is made for material marked by a proposer as exempt, the City will attempt to notify the impacted proposer prior to any release of the material. Application of the Oregon Public Records Law by the City will determine whether any information is exempt from disclosure. The City accepts no liability for the release of any information submitted.

Following the public proposal opening, staff will review the proposals submitted for completeness and compliance with the proposal requirements. All proposals shall be evaluated based on the criteria identified in Section 5.2.

After evaluation and selection of the City's top ranked proposer, staff will post the information to <https://www.canbyoregon.gov/rfps>, and secondarily, send a letter or email to all proposers submitting a proposal stating the City's intent to award the project contract. Proposers will have seven (7) calendar days to protest; any protest filed after the protest period will be late and will not be considered. To file a protest, a proposer must submit the protest in writing to the project contact and state the reasons for the protest in accordance with OAR 137-049-0450. The City Manager will review any protest and decide as to the award of the proposal.

The successful proposer(s) will be expected to negotiate and execute a contract for the project immediately after being notified of the intended award. A sample contract form has been included at the end of this RFP. Negotiations shall be limited to the contract scope and price. All other objections to the proposed contract language must be submitted at least ten (10) days before the proposal closing date to ensure that all proposers are evaluated equally. By submitting a proposal, proposer agrees to accept the language included in the proposed contract documents not specifically designated for negotiation.

2.4 NONDISCRIMINATION:

The successful firm agrees that, in performing the work called for by this RFP and in securing and supplying materials, the firm will not discriminate against any person on the basis of race, color, religious creed, political ideas, sex, age, marital status, physical or mental handicap, national origin or ancestry unless the reasonable demands of employment are such that they cannot be met by a person with a particular physical or mental handicap.

2.5 EMPLOYEES NOT TO BENEFIT:

No employee or elected official of the City of Canby shall be admitted to any share or part of any potential contract or to any benefit that may arise there from. No firm shall provide or offer to provide any appreciable pecuniary or material benefit to any officer or employee of City in violation of ORS Chapter 244.

2.6. CITY FURNISHED PROPERTY:

No material, labor or facilities will be furnished by the City unless otherwise provided for in future contracts for services.

2.7. COSTS:

All costs incurred by the firm in preparation of RFPs for this solicitation, including presentations to the City and/or for participation in an interview, shall be borne solely by the submitting firm; the

City shall not be liable for any of these costs.

2.8. NON-COLLUSION:

By submitting an RFP, the proposer certifies that the RFP has been arrived independently and has been submitted without any collusion designed to limit competition.

2.6. BUSINESS LICENSE/FEDERAL TAX ID REQUIRED:

A City business license is required, and the successful firm shall also complete a W-9 form at the time of contract execution. The firm shall pay the City's Transit Tax for all wages earned within the transit district. For more information on Canby's Transit Tax, see: <https://www.canbyoregon.gov/transit-tax>.

2.7. PROTEST OF SCOPE OF WORK OR TERMS:

A proposer who believes any details in the scope of work or terms detailed in the proposal packet and sample contract are unnecessarily restrictive or limit competition may submit a protest in writing, to the contact listed in the notice. A protest may be submitted via email. Any such protest shall include the reasons for the protest and shall detail any proposed changes to the scope of work or terms. The City shall respond to any protest and, if necessary, shall issue any appropriate revisions, substitutions, or clarification via addenda to all interested proposers. To be considered, protests must be received at least ten (10) days before the proposal closing date. The City shall not consider any protest against the award due to the content of the proposal, scope of work or contract terms submitted after the established protest deadline. If a protest is received in accordance with the section above, the proposal opening date may be extended if necessary to allow consideration of the protest and issuance of any necessary addenda to the proposal documents.

SCOPE OF WORK AND CONDITIONS

3.1 **GENERAL:**

The successful Proposer will be responsible for delivering a turnkey UV disinfection system in an expedited timeframe, ensuring seamless integration, regulatory compliance, and long-term operational efficiency. The scope of work will include fulfilling all requirements identified in the Agreement, and shall include, but will not be limited to, the following tasks:

Phase 1 Preliminary Services:

Task 1 – Project Management

- Develop and maintain the project schedule and budget controls.
- Manage Design Consultants, Subcontractors and Sub-Subcontractors (collectively “Subcontractors”).
- Implement risk analysis and response protocols.
- Develop and enforce Quality Assurance and Quality Control (QA/QC) standards and procedures.
- Develop the baseline requirements for the Site-Specific Safety and Health Plan
- Prepare monthly invoices and project status reports.
- Lead coordination meetings to review milestone deliverables.

Task 2 – Project Initiation

- Conduct a project kickoff meeting to confirm scope, schedule, budget, and planning approach.
- Introduce the Design-Builder’s team to City staff and external stakeholders.
- Establish internal procedures for communication, budget management, invoicing, and reporting.
- Identify and compile necessary data sources, ensuring proper ownership and accessibility.

Task 3 – Planning & Preliminary Design Services

- Validate the Owner’s Project Criteria and Program Requirements
- Analyze data to establish design parameters.
- Consult Oregon DEQ to ensure compliant design requirements.
- Provide a value analysis to the Owner that includes cost-effective design options, life cycle cost analysis and maintenance intensity. Collaborate on equipment selection.
- Confirm site-specific seismic and foundation design criteria for the new UV system.
- Conduct utility conflict investigations along planned corridors and within the project footprint.

- Provide 30% Design Deliverables for review.
- Prepare a preliminary design report, i.e. the Basis of Design Documents, that forms the basis of the Proposal and guaranteed maximum price (GMP) within sixty (60) days of Notice to Proceed (unless otherwise negotiated prior to Award).

Task 4 – Prepare and Present a Proposal for Phase 2 Services with a Guaranteed Maximum Price

- Prepare a Proposal consistent with the Agreement, which will include the Basis of Design Documents
- Develop and submit a GMP to complete all Work required under the Agreement to complete the Project within sixty (60) days of Notice to Proceed, including all design, construction, procurement, permitting, project management, etc. The GMP Proposal shall conform to the requirements of the Agreement, and at a minimum, include the following:
 - A breakdown of the estimated of the Cost of the Work
 - Design-Builder Fee
 - Design-Builder Contingencies and Owner’s Allowances
 - Assumptions, Exclusions, and Clarifications document
- Meet with Owner to discuss the Contract Price (GMP) Proposal and to clarify any unexpected pricing issues.
- If the parties agree on the Proposal and GMP, execute the Contract Price (GMP) Amendment.

Phase 2 (Anticipated Services)

Task 1 – Project Management

- Maintain and update the agreed upon project schedule and budget controls.
- Manage Design Consultants, Subcontractors and Sub-Subcontractors.
- Implement updated risk analysis and response protocols.
- Finalize and implement Quality Assurance and Quality Control (QA/QC) standards and procedures.
- Finalize and implement the Site-Specific Safety and Health Plan
- Prepare monthly invoices and project status reports.
- Lead coordination meetings to review milestone deliverables.
- Provide construction project management and supervision.

Task 2 – Final Design Services (Phase 2 Services)

- Provide 60%, 90%, and bid-ready design deliverables, as appropriate.
- Conduct review meetings for each design phase.
- Prepare 100% construction documents, including site civil, structural, electrical, mechanical, and instrumentation drawings, along with associated specifications.
- Due to long equipment lead times, procure the UV disinfection system as soon as possible.

Task 3 – Construction Services

- To the extent practicable, bid the work to Subcontractors to achieve the lowest cost and best value for the Work.
- Manage all Subcontracts and Subcontractors.
- Receive delivery of UV disinfection system and ensure its conformity with the specifications.
- Implement the UV disinfection system installation in accordance with final construction documents.
- Review submittals and shop drawings to ensure compliance with project design requirements and contract documents.
- Respond to Requests for Information (RFIs) and provide necessary clarifications or interpretations of contract documents.
- Review laboratory, shop, and test reports for materials and equipment to verify QA/QC.
- Conduct construction progress meetings with subcontractors, consultants, and City staff, including preparation of agendas and meeting summaries.
- Coordinate and document final startup and commissioning of facilities.
- Complete Project Closeout, Training and Delivery of O&M Manuals.

3.2 PUBLIC INVOLVEMENT PROCESS

The Design-Builder is expected to be a part of the public involvement process. The selected Design-Builder should anticipate, resources required for responding to public inquiries and attending meetings with City Staff and City Council.

3.3 QUESTIONS, ADDENDUMS, CONTACT WITH CITY PERSONNEL:

The City of Canby shall not be held responsible for any oral instructions. Any changes to this RFP will be in the form of a written addendum.

Every request for an interpretation shall be made in writing and addressed to Monica Stone, WWTP Supervisor at stonem@canbyoregon.gov. To be given consideration, requests must be received at least ten (10) days prior to the submittal due date. Any and all such interpretations or addendums will be placed on the City's website <https://www.canbyoregon.gov/RFPS> not later than five (5) days prior to the due date for RFPs. Failure of any firm to receive any such addendum or interpretation shall not relieve such firm from any obligation under this RFP as submitted. All addenda published shall become as much a part of the RFP documents as if bound herein.

All firms interested in this project will refrain, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process. This policy is intended to create a level playing field for all potential firms, to ensure that contract decisions are made in public, and to protect the integrity of the selection process. All contact on this selection process should be addressed to the authorized representative identified above.

CONTENTS

4.1 GENERAL SUBMITTAL REQUIREMENTS:

The submitted proposals should contain the required elements as stated in Sections 4.2, “Detailed Proposal Contents” and address the project scope in Section 3, “Scope of Work and Conditions.” The City reserves the right to solicit additional information or clarification from the firms, or any one firm submitting proposals, should the City deem such information necessary. Any firm-supplied material that is to be considered confidential must be so marked.

The RFPs shall be submitted in sealed envelopes and received at the **City of Canby, City Hall**, no later than **3:00 p.m. PST, April 10, 2025**, addressed to the attention of Monica Stone, WWTP Supervisor, 1470 NE Territorial Rd. Canby, OR 97013. **The City does not receive postal mail at this address, please submit in person.** Include the project name (UV Disinfection Project) in the subject title. Applicants will receive an email response stating their application was received. No late responses, hardcopy, or faxed materials will be accepted.

Please keep proposals to a maximum of 15 pages (plus a maximum of 5 resumes) to address the RFP criteria. If a firm wishes to submit a company brochure, this may be done under a separate cover. The brochure will not be used in the selection process and may be retained in the city files.

4.2 DETAILED CONTENTS: Proposals will generally be evaluated based on the following criteria:

Section 1 Cover Letter and Table of Contents

- a. A one-page, dated cover letter indicating the firm’s understanding and interest in the project with signature shall be submitted containing the name, address, tax filing name, number of the corporation or business structure submitted to the RFP. Cover letters should also include the name, telephone, email, and title of the person authorized to represent the firm. Please indicate if the firm is a resident vendor, as defined in ORS 279A.120. Prospective firms must also complete the “Acceptance of Terms Signature Page” at the end of the RFP.

Section 2 General Firm Information

- a. Provide a general description of the firm. Include a delineation of proposed services, company experience specific to the project, and preliminary approach to the projects outlined. This section may include a flow chart, methodology, unique management strategies, etc. Provide an organizational chart showing key personnel and their work location(s).
- b. Demonstrate specific capabilities for fulfilling the project requirements according to similar previous experience including years of business, bankruptcy filings, and bonding capability.
- c. Describe your firm’s internal procedures related to work quality and cost control.
- d. Identify any contract or subcontract held by the firm which has been terminated, in default, or had claims made against it that resulted in litigation or arbitration in the last five years.
- e. Provide information on the types and amounts of insurance carried by the firm.
- f. If not submitting as an Oregon registered joint-venture, provide similar information for any firm(s) that the firm will team with to complete the scope of work (e.g., if your firm is a design firm, provide information related to your intended construction contractor partner; if a construction contractor, provide information related to your intended design professional partner).

Section 3 Experience, Organization, and Qualifications of the Project Team

- a. Provide organizational structure of teams who would be assigned to this project, including experience and relevance of key personnel assigned to this project. Identify relevant education, professional certifications, years of experience and resumes (5 maximum resumes) of key personnel.

Identify a proposed project manager(s) as a key point of contact for the city. Describe the project

- b. manager's experience with similar projects.
- c. Include names, address, phone number, and a statement of qualifications and experience of subcontractors that may be used to complete project tasks.

Section 4 Project Understanding, Approach, Example Projects and References

- a. Describe in narrative form, with tables or other figures as desired, the firm's understanding of the type of work required for this project, the proposed approach, and technical plan for accomplishing the work listed herein.
- b. Describe the firm intends to control costs on the project and ensure that the City obtains the best value at the lowest price for the Work, including how the firm approaches solicitations for subcontractors and suppliers during Phase 2, how the firm intends to manage general conditions costs, construction costs, etc.
- c. Describe similar projects performed within the last 5 years which best characterize your firm's (and any teaming firm's) capabilities, work quality, and cost control. Include project size, schedule, quality of performance, and role of participation in project by key personnel. For each project, include the name, address, email, and phone number of a person who can be contacted regarding your performance on the project. When submitting projects for which your team worked in an auxiliary capacity or in a joint venture or partnership, include the name of the lead firm.
- d. Provide any written letters of reference from agencies with similar projects if available.

Section 5 Principal Office Location and Local Participation

- a. Identify the location of the firm's principal office and the office location of key partnering firm(s) and staff expected to work on the project. Discuss staff availability and scheduling to work on City projects, in addition to ability to provide local presence for site visits and meetings.

Section 6 Compliance, Maintenance & Innovation

- a. Describe any expected synergies between the firm and any partner designer or construction contractor, any innovative approaches to the Work the firm will bring, any value engineering the firm anticipates, any beneficial equipment or supplier relationships, or any other added or additional benefits that the firm will provide beyond the requested Scope of Work (e.g. additional warranties, etc.).
- b. Describe how the firm will ensure that the minimum performance requirements are met and how they can be sustained for the intended life of the Project.
- c. Provide information about proposed approach, efficiencies, innovative design, etc.

Section 7 Price for Phase 1 and Design Builder Proposed Fee Percentage

- a. Provide a Phase 1 Services price per Article 6, as listed in the draft contract (Exhibit 1). The Phase 1 Services price should be a not to exceed amount with a schedule of anticipated costs. The price shall include a breakdown of the time and expense the firm believes are necessary to complete all tasks for Phase 1. The firm shall include the rates of all persons (or categorization of persons) that will work on the Phase 1 Services and any expenses or costs associated with the Work and the Design Builder Proposed Fee percentage.

Section 8 Other and List of Exceptions

- a. Please provide any other information you feel would help the review committee evaluate your firm for this project.
- b. Describe any exceptions taken to any section in the RFP that were previously submitted by not addressed by the City.

EVALUATION AND SELECTION CRITERIA

5.1 REVIEW:

Firms will be selected through a qualifications-based selection process as described in the City's Local Public Contracting Rules and as provided under ORS 279C. Each proposal will be evaluated based on responses provided to Sections 4, "Request for proposals Contents" and how they address project scope as described in Section 3, "Scope of Work and Conditions".

The Review Committee will evaluate the submitted RFPs and will consist of select City of Canby staff. The three (3) highest qualified firms will be contacted for further evaluation, if necessary, that may include oral interviews and reference verifications. If interviews are held, they will be based on the following criteria and total points (maximum 20 points):

1. Proposer's response to clarifying questions about their proposal.
(10 points maximum)
2. Proposer's ideas on mitigating issues identified in the scope of work.
(10 points maximum)

The primary intent in the selection process is to provide the city with a given level of specialized skill, knowledge, and resources and qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment.

A sample Contract may be found at the end of this document. During negotiation, the City may require any additional information it deems necessary to clarify the approach and understanding of the services requested. Any changes agreed upon during contract negotiations will become part of the final contract. The negotiations will identify the level of work and a fair and reasonable fee that best represents the efforts required. The City reserves the right to reject all proposals. If necessary, staff will negotiate with the highest ranked proposer to modify the scope of work and price. If no agreement can be reached with the highest ranked proposer in a timely manner as determined in the sole discretion of the City, staff will move to the second highest ranked proposer, and so on.

5.2 EVALUATION CRITERIA (Total Possible Points = 100):

The following criteria will be considered in evaluating all proposals. Use of the rating points system is only a guide to the Review Committee. A major deficiency in any one category can disqualify the firm.

1. **Content: (Section 4)** **0-5 points**
Submitted Proposal contain all required items as described in Section 4, "Contents."
2. **General Firm Information: (Section 4.2.3)** **0-10 points**
The organization, experience, value engineering, and capability offered by the firm (and proposed partner(s)) will be evaluated in terms of its applicability to the requirements and scope specified in this RFP.
3. **Experience, Organization, and Qualifications of the Project Team: (Section 4.2.4)** **0 -30 points**
Professional experience of the project team including key personnel and expected subcontractors with similar projects will be evaluated. Include any time savings specialized services.
4. **Project Understanding, Approach, and Example Projects: (Section 4.2.5)** **0-30 points**
Understanding of desired project outcomes and approach with emphasis on meeting the desired schedule. Applicability of recently completed projects by the firm. Ability to design and control,

quality, schedule, and workflow. Ability to demonstrate history of public partnership management techniques.

- 5. Principal Office Location and Local Participation: (Section 4.2.6) 0-5 points**
Availability of firm and staff to promptly respond and be available for project requirements.

- 6. Compliance, Maintenance and Innovation: 0-10 points**
Relevant work experience that demonstrates the Proposer’s ability to meet compliance requirements, utilizing innovative solutions, that are designed for long term reliability and ease of maintenance.

- 7. Price for Phase 1 0-10 points**
Competitively, transparent, well-justified pricing structures are favored.
Best value for the investment, with a balance between cost and quality preferred.

TOTAL POINTS 100

ACCEPTANCE OF TERMS SIGNATURE PAGE

Name of Firm: _____

Mailing Address: _____

Contact Person: _____

Telephone: _____ **Email:** _____

The Firm as defined in ORS 279A.120 is a: Resident Proposer Non-Resident Proposer

The undersigned proposes to perform all work as listed in this Proposal and that all items supplied under any resultant contract will conform to the specifications herein. The undersigned agrees to be bound by all applicable laws and regulations, the accompanying specifications, and by City policies and regulations.

The undersigned, by submitting a Request for proposals (“RFP”), represents that:

1. The Firm has read and understands the specifications.
2. Failure to comply with the specifications or any terms of the Request for Proposals may disqualify the Firm as being non-responsive.
3. The RFP has arrived independently and has been submitted without any collusion designed to limit competition.
4. All addenda to the RFP have been received and duly considered.

The undersigned accepts all the terms and conditions contained in the City of Canby’s Request for Proposals and the referenced Personal Services Agreement and therefore offers and provides this proposal to furnish services herein in fulfillment of the attached requirements and specifications of the City of Canby.

Signature of Authorized Representative

Title

Date

EXHIBIT 1

SAMPLE CONTRACT

City of Canby
UV Disinfection
Project:
Progressive Design-
Build Agreement

Document No. 544

Second Edition, 2024

© Design-Build Institute of America
Washington, D.C.





Progressive Design-Build Agreement

This document has important legal consequences. Consultation with an attorney is recommended with respect to its completion or modification.

This **AGREEMENT** is made as of the _____ [TBA] _____ day of _____ [TBA] _____ in the year of 20____ [TBA]____, by and between the following parties, for services in connection with the Project identified below:

OWNER:

(Name and address)

**City of Canby, an Oregon municipal corporation
PO Box 930
Canby, Oregon 97013**

DESIGN-BUILDER:

(Name and address)

TBA

PROJECT:

(Include Project name and location as it will appear in the Contract Documents)

**UV Disinfection Project
1480 Territorial Rd
Canby, Oregon 97013**

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

Note: To be added (TBA) are terms that will be added prior to execution and based on objective criteria; to be determined (TBD) are terms that may be negotiated with the selected proposer.

Article 1

Design-Builder's Services and Responsibilities

1.1 General Services.

1.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

1.2 Phased Services.

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.1.1 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 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, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, or at such other time as directed by Owner, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that will be based Design-Builder's Fee and Cost of the Work, not to exceed a GMP, which shall be the sum of:

- i Design-Builder's Fee as defined in Section 6.4.1 hereof;
- ii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and

iii If applicable, any prices established under Section 6.1.3 hereof;

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

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

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

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

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

1.3.2 Review and Adjustment to Proposal.

1.3.2.1 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, if the Proposal is not consistent with the preliminary assumptions, if the Proposal cannot be validated against an independent cost estimate within ten percent (10%), or if there are any inconsistencies or inaccuracies in the information presented, Owner 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 Proposal. Design-Builder's failure to address Owner's reasonable concerns shall be considered a material breach of contract by Design-Builder.

1.3.2.2 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.2.3 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect (the Proposal shall

allot a minimum of sixty (60) days for Owner's acceptance to allow time to obtain approval from Canby City Council). In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.2 above; or
- ii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder (a) shall have the right to suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (b) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.3 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.3 iii, or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition), as amended for the Canby UV Disinfection Project ("General Conditions of Contract");

2.1.2 The Contract Price Amendment accepted by Owner in accordance with Section 1.3 above.

2.1.3 This Agreement, including all exhibits but excluding, if applicable, the Contract Price Amendment;

2.1.4 The General Conditions of Contract;

2.1.5 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract;

2.1.6 Exhibit A, Owner's Project Criteria;

2.1.7 Exhibit B, Scope of Services; and

2.1.8 The following other documents, if any:

2.1.8.1 Exhibit C, Oregon Statutorily Required Contracting Provisions

2.1.8.2 Exhibit D, Bonds and Insurance

2.1.8.3 Design-Builder's Proposal

Article 3

Interpretation and Intent

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. The parties agree that all drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") is "work made for hire" of which the City is the author within the meaning of the United States Copyright Act. If for any reason the Work Product is not "work made for hire" Design-Builder hereby irrevocably assigns to the City any and all of its rights, title, and interest in all Work Product delivered under this Agreement, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon the City's reasonable request, Design-Builder shall execute such further documents and instruments to fully vest such rights in the City. Design-Builder waives any and all rights relating to Work Product created pursuant to this Agreement, including without limitation any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications.

Article 5

Contract Time

5.1 Date of Commencement. The Phase 1 Services shall commence upon Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall

commence upon Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than [TBD at time of Contract Price Amendment ("TBD@CPA")] (TBD@CPA) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

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

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

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner **Five Hundred Dollars (\$500.00)** per day, unless otherwise modified when the Contract Price (GMP) Amendment is executed, as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

Design-Builder understands that if Final Completion is not achieved within thirty (30) days of Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within thirty (30) days of Substantial Completion, Design-Builder shall pay to Owner **Five Hundred Dollars (\$500.00)** per day, unless otherwise modified when the Proposal is accepted, as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.5 Any liquidated damages assessed pursuant to this Agreement 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, Interim Milestone Dates (if any), or Final Completion. The Owner has the right to recover additional damages that are not based solely on delay in addition to liquidated damages, such as the excess costs of re-procurement or completion, the costs of restoring uncompleted Work, and costs paid to other contractors, or Owner's own employees, to complete the Work.

5.6 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.6.1 Owner shall have a minimum of **seven (7) days** of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

5.6.2 Owner shall review and (if applicable) provide a response to Design-Builder on all Design Submissions, the Project Schedule, and any updates thereto within **twenty-one (21)** days of receipt by Owner.

Article 6

Contract Price

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder its actual costs in accordance with Article 6 of the General Conditions of Contract the sum not to exceed _____[TBD]_____ Dollars (\$____[TBD]____) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract and pursuant to the agreed upon schedule of rates negotiated in Exhibit [TBD as part of negotiations with successful proposer], which shall include hourly rates, expenses and overhead. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the to the Design-Builder's Fee (as defined in Section 6.4 hereof) plus the Cost of the Work (as defined in Section 6.5 hereof), subject to any GMP established in Section 6.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: [TBD] *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

6.1.4 The Total Contract Price shall be the sum of (1) the Design-Builder Phase 1 Services Costs and (2) the actual Cost of the Work and (3) the Design-Builder Fee. The Total Contract Price shall not exceed the GMP, as adjusted by any Change Orders.

6.2 Contract Price Guarantees.

6.2.1 Phase 1 Services. The Design-Builder acknowledges and agrees that, if and when a Contract Price (GMP) Amendment is executed by the parties, the Design-Builder will have the sole and exclusive responsibility and liability for the design and construction of the Work in accordance with and subject to the terms and conditions of the Contract Documents. Accordingly, the Design-Builder shall have the right and the responsibility to develop and provide the Basis of Design documents and to perform the Phase 1 Services under this Agreement in a manner that would permit a design-build contractor, acting reasonably and having the experience and qualifications required to successfully undertake and complete the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Design-Builder shall not propose or agree to any element of the Basis of Design Documents or other work product to be incorporated in any Contract Price (GMP) Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

6.2.2 Phase 2 Services. In the event the parties execute a Contract Price (GMP) Amendment, it shall be deemed to constitute a representation by the Design-Builder that:

6.2.2.1 It has examined, carefully studied, and thoroughly understands the Contract Documents associated with the Work;

6.2.2.2 It has thoroughly reviewed and verified all information provided to or obtained by the Design-Builder through the performance of the Phase 1 Services, including:

6.2.2.2.1 Reports of explorations and tests of subsurface conditions at or contiguous to the Project Sites and all drawings of physical conditions in or relating

to existing surface or subsurface structures at or contiguous to the Project Site which have been identified or made available by the Owner; and

6.2.2.2 Reports as to Regulated Substances, if any, at the Project Site which have been identified or made available by the Owner;

6.2.2.3 It has become familiar with and is satisfied as to the general, local, and Project Site conditions that may affect cost, progress, and performance of the Work;

6.2.2.4 It is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Design-Build Work;

6.2.2.5 It has considered the information known to the Design-Builder, including information commonly known to designers and contractors doing business in the locality of the Project Site; information and observations obtained from visits to the Project Site; and the Project Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:

6.2.2.5.1 The cost, progress, and performance of the Work;

6.2.2.5.2 The means, methods, techniques, sequences, and procedures of construction to be employed by the Design-Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and

6.2.2.5.3 Design-Builder's health and safety precautions and programs;

6.2.2.6 Based on all of the foregoing and the performance of the Phase 1 Preliminary Services, the Project Site constitute acceptable and suitable sites for the performance of the Work;

6.2.2.7 It does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the Contract Price (GMP) Amendment for the performance of the Work for the GMP on or before the Substantial Completion Date, and in accordance with the other terms and conditions of this Agreement;

6.2.2.8 The Basis of Design Documents are sufficient to enable the Design-Builder to determine the Guaranteed Maximum Price; and

6.2.2.9 Subject to the terms and conditions of this Agreement, the Work can be completed in accordance with the Basis of Design Documents for the Guaranteed Maximum Price by the scheduled Substantial Completion date.

6.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Section 9.4.1. of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of [TBA (from response to RFP)] percent ([TBA] %) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit [TBD] hereto.

6.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only.]

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____[TBA (from response to RFP)]_____ percent (____[TBA]____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____[TBD]_____ hereto applied to the direct costs of the net reduction.

6.4 Design-Builder's Fee.

6.4.1 Design-Builder's Fee shall be:

[Choose one of the following.]

_____[TBD]_____ Dollars (\$ _____[TBD]____), as adjusted in accordance with Section 6.4.2 below.

or

_____[TBA from response to RFP]_____ percent ([TBA from response to RFP] %) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

6.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of _____[TBA from response to RFP]_____ percent (____[TBA]____%) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit _____[TBD]_____ hereto.

6.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

[Check one box only.]

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) _____[TBA from response to RFP]_____ percent (____[TBA]____%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit _____[TBD]_____ hereto applied to the direct costs of the net reduction.

6.5 Cost of the Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit __[TBD@CPA]__ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a __[TBD@CPA]__ percent (__[TBD@CPA]__%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, but excluding bonuses, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants when such insurance and bonds are required to be provided by the Contract Documents.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.8 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

6.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

6.5.1.10 Costs of removal of debris and waste from the Site.

6.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.

6.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at

the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work, provided such rental costs do not exceed the cost of purchasing such items.

6.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.14 All fuel and utility costs incurred in the performance of the Work.

6.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

6.5.1.16 Reasonable legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, when approved in writing by the Owner, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

6.5.1.21 Accounting and data processing costs related to the Work when approved in writing by the Owner.

6.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2, and 6.5.1.3 hereof.

6.5.2.2 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

6.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.6 The Guaranteed Maximum Price.

6.6.1 Design-Builder guarantees that it shall not exceed the GMP of [TBD@CPA] Dollars (\$ TBD@CPA) to complete all Work required under the Agreement. Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion

to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, 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. *(While the Contract Price Amendment will be developed in advance or concurrently with the execution of this Agreement, it is recommended that such exhibit include the items set forth in Section 1.3 above, to ensure that the basis for the GMP is well understood).*

[In lieu of 6.6.1, Owner and Design-Builder may want to include the following language.]

Design-Builder guarantees that it shall not exceed the GMP of [TBD@CPA] Dollars (\$ [TBD@CPA]). Documents used as basis for the GMP shall be identified as the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP, provided, however, that it does guarantee the line item for its general project management and general conditions costs, in the amount of [TBD@CPA] Dollars (\$ [TBD@CPA]), and as set forth in the Contract Price Amendment (“General Conditions Cap”). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said general conditions line item and the GMP may be adjusted in accordance with the Contract Documents, including but not limited to the markups for Change Orders set forth in Section 6.3 herein.

6.6.2 The GMP includes a Contingency in the amount of [TBD@CPA] Dollars (\$ [TBD@CPA]) which is available for Design-Builder’s exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder’s Fee (and, if applicable, any prices established under Section 6.1.3 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference (“Savings”) shall accrue to Owner.

6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will

continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

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

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

6.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

Article 7

Procedure for Payment

7.1 Payment for Preliminary Services (Phase 1). Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder:

7.1.1 Phase 1 Design Services. Design Builder will be compensated for its actual costs for labor and expenses based the labor rates as set forth in Exhibit [TBD; proposed rates in response to RFP], up to a not-to-exceed limit of [TBD; Proposed Not-To-Exceed Price in response to RFP as modified through negotiations].

7.1.2 Design-Builder shall submit invoices to Owner each month for the Phase 1 Services for all actual costs for labor and expenses incurred in the prior month. Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment up to the Not-To-Exceed Price.

7.1.3 Each invoice must include an itemized breakdown of Work completed for the billing period, progress report detailing milestones achieved, certified payroll records (if required), lien waivers and proof of payment to Design Consultants, Subcontractors and Subcontractors (if applicable).

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the twenty-fifth (25) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 Each invoice must include an itemized breakdown of work completed for the billing period, progress report detailing milestones achieved, certified payroll records (if required), lien waivers and proof of payment to Design Consultants, Subcontractors and Subcontractors (if applicable).

7.3 Retainage on Progress Payments.

7.3.1 Owner will retain five percent (5%) of each Application for Payment.

If Design-Builder provides a Retainage Bond in lieu of retainage pursuant to Oregon law, Owner will not withhold Retainage from Design-Builder on this Project.

7.4 Payment for Changes in the Scope of Work. Any Change Orders must be submitted in writing and approved before additional work is completed and payment may be made. Cost adjustments due to unforeseen conditions, design modifications, or regulatory changes shall be negotiated and documented in a Change Order, pursuant to Article 9 of the General Conditions of the Contract.

7.5 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for Final Payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.6 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest in accordance with Oregon law.

7.7 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. 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 as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, 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 six (6) years after Final Payment. Design-Builder shall provide copies of all such records, unless originals are specifically requested, to Owner's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

Article 8

Termination for Convenience

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions of Contract, Design-Builder's sole remedy shall be for the value of the services provided as of the date of the termination and any reasonable and necessary closeout costs. Design-Builder shall not be entitled to any consequential damages or anticipated profits on uncompleted Work.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: **Jerry Nelzen, Public Works Director, PO Box 930, c/o Jerry Nelzen, Canby, Oregon 97013, 503-266-0759** (Identify individual's name, title, address, and telephone numbers.)

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: **Monica Stone, WWTP Supervisor, PO Box 930, c/o Monica Stone, Canby, Oregon 97013, 503-266-0648** (Identify individual's name, title, address, and telephone numbers.)

9.2 Design-Builder's Representatives.

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

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

9.3 Notices.

9.3.1 All notices required to be given under the Agreement by Design Builder shall be sent to the Owner's Representative, and all notices required to be given under the Agreement by Owner shall be sent to the Design-Builder's Representative

Article 10

Bonds and Insurance

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

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

Performance Bond in the full value of the Contract at the time of the Amendment setting the GMP and/or any Early Work. The bond shall be in the form provided by the City.

(Check one box only. If no box is checked, then no bond is required.)

Required Not Required

Payment Bond in the full value of the Contract at the time of the Amendment setting the GMP and/or any Early Work. The bond shall be in the form provided by the City.

[Check one box only. If no box is checked, then no bond is required.]

Required Not Required

Other Performance Security.

[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]

Required Not Required

Design-Builder may supply a Retainage Bond in lieu of the Owner holding retainage on the Project and in the form required under Oregon law.

Article 11

Other Provisions

11.1 Other provisions, if any, are as follows:

11.1.1 Design-Builder Warranty. Design-Builder provides the following to Owner:

11.1.1.1 Project Warranties. Design-Builder expressly warrants that the Work shall be performed to the highest standards of good workmanship and that all completed materials, equipment, systems and structures comprising the Project, shall: (i) be new, of recent manufacture and of good quality; (ii) conform to the requirements of the Contract Documents; (iii) be free of material faults or defects; and (iv) be suitable for its intended purposes, as established by the Contract Documents (the "Project Warranties") for a period of one (1) year following Final Completion unless the parties agree to an extended period elsewhere in the Contract Documents. If any of the Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of the Project Warranties, Design-Builder agrees to make all necessary repairs and replacements to remedy any and all defects, breaks, or failures of the Work (the "Warranty Work"), unless the damage or defect is caused by improper or insufficient maintenance or improper operation by the City. If Design-Builder performs any Warranty Work, the Warranty Work also shall have a one (1) year warranty period from the date of its completion and acceptance by Owner. The maximum time for Warranty Work claims shall be two (2) years from the date of Final Completion. If Design-Builder fails to commence and complete the Warranty Work, the Owner may commence and complete the correction of such nonconforming Design-Build Work with its own forces or with third party contractors, and the Design-Builder shall be responsible for all costs reasonably incurred in performing such correction.

11.1.1.2 Performance Guarantee. If Owner properly maintains and operates the Project, including making all necessary repairs and replacements to the Work, Design-Builder warrants that the Project will meet or exceed the performance specifications indicated in the Basis of Design Documents for a period of six (6) years from Final Completion.

11.1.1.3 Design-Builder acknowledges and agrees that the Project Warranties and Performance Guarantee are in addition to, and not in limitation of, any other warranties, including manufacturers' warranties, rights and remedies available under this Agreement and under law, and shall not limit the Design-Builder's liability or responsibility imposed by this Agreement or applicable law with respect to the Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud. The provisions of this Section shall survive the termination of this Agreement.

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria
Exhibit B – Scope of Services

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition), as amended ("General Conditions of Contract")
Contract Price Amendment, if any.
Exhibit C – Oregon Statutorily Required Contract Provisions
Exhibit D – Insurance Requirements

DRAFT

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:

(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Date: _____

Date: _____

DRAFT

Standard Form of
General Conditions of
Contract Between Owner
and Design-Builder, as
amended for the Canby
UV Disinfection Project

Document No. 535

Third Edition, 2022

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Washington, D.C.



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Article 1

General

1.1 Mutual Obligations.

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

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under *Standard Form of Progressive Design-Build Agreement (2024 Edition)*, as amended.

1.2.2 *Basis of Design Documents* are as follows: Owner's Project Criteria, Design-Builder's Proposal, and the Deviation List, if any.

1.2.3 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.4 *Day* or *Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

1.2.5 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.6 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.7 *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

1.2.8 *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

1.2.9 *Force Majeure Events* are those unforeseeable events that are beyond the reasonable control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

1.2.10 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)*, as amended.

1.2.11 [Intentionally Omitted.]

1.2.12 *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in

accordance with Section 6.6 of DBIA Document No. 544, *Progressive Design-Build Agreement*, as amended.

1.2.13 Hazardous Conditions are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

1.2.14 Legal Requirements are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.15 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, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.16 Site is the land or premises on which the Project is located.

1.2.17 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.

1.2.18 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.

1.2.19 Substantial Completion or Substantially Complete means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

1.2.20 Work is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work

for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and 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). 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 seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.2 Design Professional Services.

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

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, 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. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

2.2.3 Design-Builder shall be responsible for the performance of the Work, including the Work of all of its Design Consultants, Subcontractors, and Sub-subcontractors.

2.3 Standard of Care for 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 applicable profession practicing under similar conditions at the same time and locality of the Project.

2.3.2 The standard of care for all other services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions

at the same time and locality of the Project.

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule and the Contract Documents.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

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 by the parties and recorded in the Contract Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

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 that directly affect the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

2.6 Government Approvals and Permits.

2.6.1 Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

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

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. 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. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld. Design-Builder's subcontracts shall incorporate all

terms of the Contract Documents that are required to be included therein and that are necessary to Design-Builder's compliance with these Contract Documents.

2.7.4 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor 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. 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.

2.7.6 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.7 Design-Builder shall provide Owner with the ability to test Materials furnished and inspect Work performed by the Design-Builder to ensure compliance with the Contract Documents. The Design-Builder shall not cover any portion of the Work until the Owner has been given the opportunity to conduct an inspection. The Design-Builder shall provide reasonable access to the Owner to all portions of the Work at all times and to plants of manufacturers and suppliers. If Design-Builder performs Work that Owner reserved the right to inspect or covers work without giving the Owner appropriate notice, Design-Builder shall uncover portions of the completed Work at Design-Builder's expense. Owner may also request work be uncovered at any time before Final Completion. After inspection by the Owner, Design-Builder shall restore these portions of Work to the standard required by the Contract Documents. If the Owner rejects Work due to Materials or workmanship, the Design-Builder shall bear all costs of uncovering and restoring the Work. If the Owner accepts the uncovered Work, and the Design-Builder performed the Work after giving sufficient notice to Owner, Design-Builder shall be entitled to a Change Order pursuant to Article 9.

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. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.8.2 Design-Builder's Safety plan shall permit Owner the right to enter and inspect, upon reasonable times and reasonable notice, the Project Site for purposes of assessing the Project Site's conditions, to protect Owner's interests, to inspect the operations of Design-Builder, or for public safety purposes. In the event the Project Site is not in a safe or satisfactory condition due to the action of Design-Builder, the Owner shall have the right to cause Design-Builder to correct the unsafe or unsatisfactory condition. Design-Builder shall ensure that emergency response teams

shall have access at all times to the Project Site for the purpose of protecting life and property.

2.8.3 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, 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 quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

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

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the 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. If the parties have opted in Section 11.1.1 of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section 11.1.1 of the Agreement. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

2.10.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.10.2 Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

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

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule and the Contract Documents.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

3.2 Furnishing of Services and Information.

3.2.1 Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

3.2.1.1 [Intentionally Omitted];

3.2.1.2 [Intentionally Omitted.]

3.2.1.3 [Intentionally Omitted.];

3.2.1.4 A description of the Site;

3.2.1.5 To the extent available, record drawings of any existing structures at the Site; and

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

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

3.3 [INTENTIONALLY OMITTED].

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. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner, to the extent authorized by Owner.

3.5 Government Approvals and Permits.

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

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

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Unless working with Hazardous Conditions that are within the identified scope of the Work, 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 that are not part of the Work, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

4.1.5 [Intentionally Omitted.]

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees

and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents, such conditions were reasonably unforeseeable to the Design-Builder when submitting its price, and Design-Builder reasonably relied on its interpretation of 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) 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 three (3) day 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. After receipt of the notice, Design-Builder will meet with Owner to investigate the conditions. If Owner finds the conditions are materially different and will cause a material increase in the cost or time to complete the Work pursuant to Articles 8, 9 and 10.

4.2.3 Notwithstanding the preceding provisions of this Section 4.2, Owner is not responsible for Differing Site Conditions where Design-Builder, Subcontractors, Design Consultant or anyone whose acts they may be liable was responsible for identifying the conditions indicated in the Contract Documents or fails to give appropriate notice required under the Contract Documents.

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit D to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.2 [Intentionally Omitted.]

5.3 Builder's Risk Insurance and Owner's Property Insurance.

5.3.1 Design-Builder shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The builder's risk insurance obtained by Design-Builder shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal, testing and start-up of building systems, reasonable compensation for design professional's and contractor's expenses as a result of loss, and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to Owner and shall include coverage for physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner.

5.3.2 Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.3 Owner will obtain and maintain property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the Builder's Risk insurance, in Section 5.3.1, and will be maintained until the Work is complete.

5.3.4 Prior to Design-Builder commencing any Work, each party shall provide the other with certificates evidencing that (i) each party's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to the other party. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.5 Any loss covered by the builder's risk insurance or Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.6 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages to the extent covered by the builder's risk insurance or Owner's property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 Design-Builder shall provide performance and payment bonds equaling the Contract Price, consistent with the requirements in Exhibit D, upon the execution of the Contract Price (GMP)

Amendment.

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will provide an update the Schedule of Values with the Proposal for the GMP Amendment, and the Schedule of Values shall be based on the cost estimates provided as part of the Proposal.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

6.2 Monthly Progress Payments.

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

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

6.2.3 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.4 The Application for Payment shall constitute and contain a signed certification that, to the best of Design Builder's knowledge and belief, the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing within fifteen (15) days of the Application for Payment

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

6.3.2 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within thirty days of the Application for Payment appropriately submitted under the Agreement.

6.4 Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder shall be entitled to interest pursuant to ORS 279C.570.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties and ORS 279C.580, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) 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.

6.6.2 [Intentionally Omitted.]

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Payment.

6.7.1 Design-Builder shall notify Owner when it believes the Work has achieved Final Completion. Within five (5) business days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it has reached Final Completion in accordance with the requirements of the Contract Documents. If there are any defects in the Work or Work yet uncompleted, Owner will notify Design-Builder, who shall promptly remedy such items.

When Owner agrees that the Work has reached Final Completion, Design-Builder may submit a Final Application for Payment, and Owner shall make final payment by the time required in the Agreement.

6.7.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

6.7.2.1 An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment and specifically noted in the release;

6.7.2.3 Unconditional waiver and final release upon Final Payment, in a form acceptable to Owner, from all Subcontractors, Sub-Subcontractors, and Design Consultants.

6.7.2.4 Consent of Design-Builder's surety, if any, to final payment;

6.7.2.5 All operating manuals, warranties and other deliverables required by the Contract Documents; and

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process

or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work.

7.2 [Intentionally Omitted.]

7.3 Payment Claim Indemnification.

7.3.1 Design-Builder shall indemnify, defend and hold harmless Owner 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 three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Unless otherwise limited by ORS 30.140, Design-Builder shall indemnify and hold the City, its officers, agents, elected officials, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees, arising out of, or resulting directly or indirectly from, the professional negligent acts, errors or omissions of Design-Builder or its Subcontractors, Sub-Subcontractors, Design Consultants, suppliers, agents or employees in performance of professional services under this Agreement. Where limited by ORS 30.140, Design-Builder's duty to defend the City against a claim for professional negligence and relating to the professional services provided by Design-Builder shall not arise until the Design-Builder's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and such obligation shall not exceed the proportionate fault of the Design-Builder.

7.4.2 The Design-Builder shall indemnify, defend, and hold the City, its officers, agents, elected officials, volunteers, and employees harmless from and against any and all claims, actions, proceedings, judgments, losses, injuries, damages, costs, expenses, and liabilities, including court costs and attorney's fees, to the extent they arise out of, or result directly or indirectly from, all other negligent acts or omissions of the Design-Builder, or any of its Subcontractors, Sub-Subcontractors, Design Consultants, suppliers, agents or employees arising in connection with the performance of this Agreement that are not otherwise identified in Subsection (a) of this Section.

7.4.3 The obligations of the indemnifications extended by the Design-Builder to the City shall survive the termination or expiration of this Agreement.

7.4.4 Except to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Design-Builder or Design-Builder's agents, representatives, Subcontractors, Sub-Subcontractors, suppliers, employees or Design Consultants, the indemnities in subsection (i) and (ii) do not require Consultant or Consultant's surety (if any) or insurer to indemnify the City for damage arising out of the death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the City.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order, but only to the extent that the critical path of the Contract Time has been impacted. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder may be entitled to an equitable adjustment of the Contract Price where such delays are Owner-caused. Design-Builder shall not be entitled to an adjustment where such Owner-caused delays are concurrent to Design-Builder caused delays or delays outside the control of Design-Builder or Owner, including Force Majeure Events.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

9.1.1.2 The amount of the adjustment to the Contract Price; and

9.1.1.3 The extent of the adjustment to the Contract Time(s).

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

9.1.3 A Change Order shall constitute the parties agreement that the change in Contract Price or Contract Time is the total amount of increased or reduced compensation due to Design-Builder for all costs, whether labeled as direct, indirect, impact costs, profit, and overhead or any other cost, associated with the Change Order and that the total amount of additional or reduced Contract Time, if any, is the total amount of Contract Time associated with the Change Order, unless stated otherwise.**9.2 Work Change Directives.**

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

Time(s).

9.2.2 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.

9.3 Minor Changes in the Work.

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

9.4 Contract Price Adjustments.

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

9.4.1.1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

9.4.1.2 A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

9.4.1.3 Costs, fees and any other markups set forth in the Agreement; or

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. Design-Builder shall maintain written daily records of all costs incurred related to the Work.

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

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. 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. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide initial written notice to the other party of the basis for its claim for relief. Such initial 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 of Contract and shall give a description of the event and a preliminary analysis of cost and time impacts related to the event. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed seven (7) 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. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

10.1.2 Within forty-five (45) days of the completion of any Work related to the claim, if a Design-Builder claim has not been resolved via a Change Order, Design-Builder shall provide a claims package consisting of the following:

- 10.1.2.1** A description of the event giving rise to the claim;
- 10.1.2.2** The basis for the entitlement to the claim for relief, including the specific contractual provisions under which the claim is justified;
- 10.1.2.3** The relief requested for the claim, including the adjustment to the Contract Time and/or Contract Price;
- 10.1.2.4** The estimated time to complete the work for which the adjustment to the Contract Time and/or Contract Price is claimed, including a proposed revised schedule;
- 10.1.2.5** Any efforts that can be made to mitigate the impacts of the event;
- 10.1.2.6** All documentation establishing the right to an adjustment of the Contract Time and/or Contract Price, including payroll records, purchase order, quotations, invoices, estimates, profit and loss statements, daily logs, ledgers and journals; and
- 10.1.2.7** A certification that the Claim is made in good faith upon the information and belief of the claimant.

10.1.3 Failure of Design-Builder to provide the information in Subsections 10.1.2.1 through

10.1.2.7 within the time period set forth in Subsection 10.1.2 shall preclude Design-Builder from seeking additional Contract Time or increasing the Contract Price for the event or claim, unless otherwise agreed to in writing by the Owner.

10.1.4 Notwithstanding anything to the contrary in the Contract Documents, any legal proceeding brought by Design-Builder against the Owner that asserts a breach of contract, a declaratory judgment proceeding, or any other legal or equitable claim related to, or arising from, work performed pursuant to the Contract Documents shall be brought within one (1) year of the date that Final Payment is made to the Design-Builder, regardless of whether the Design-Builder is aware of the legal claim it might have during that time. If the legal proceeding is not brought within that one (1) year period, the Design-Builder expressly waives any and all claims that are in any way related to the Contract. For the purposes of this Subsection, Final Payment is considered made when the Owner sends a check to the Design-Builder that contains the Final Payment, notwithstanding any outstanding claims that Design-Builder specifically withheld in any release in exchange for Final Payment. Any subsequent payments that constitute less than two percent (2%) of the total Contract Price and any payment of claims by Owner to Design-Builder after Final Payment shall not affect the date when Final Payment is considered to have been made.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the initial written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days after Substantial Completion, unless such dispute or disagreement is so significant that Work cannot reasonably proceed, in which case within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement, to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 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 Section 10.2 above, shall be decided by arbitration in accordance with the Construction

Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 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) substantially 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.

10.3.4 In any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, each party shall be responsible for their own attorneys' fees and expenses.

10.4 Duty to Continue Performance.

10.4.1 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 for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 AND 10.5.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL DAMAGES UNDER THE AGREEMENT.

10.5.2 The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

10.5.3 The consequential damages waiver shall not apply to limit a party's right of recovery related to the following:

10.5.3.1 Losses (including defense costs) to the extent the loss is covered by insurance required to be carried under the Agreement, for which Design-Builder was required to provide coverage, or for which Design-Builder self-insured;

10.5.3.2 Losses related to illegal activities, fraud, recklessness, intentional misconduct, gross negligence, bad faith, or criminal conduct;

10.5.3.3 Losses arising out of Design-Builder's release of Hazardous Materials; or

10.5.3.4 Design-Builder's indemnity obligations under the Agreement.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

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

11.1.2 Design-Builder is entitled to seek an equitable adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been materially and adversely impacted by any suspension of stoppage of the Work by Owner, subject to the provisions of Section 8.2, and if Design-Builder complies with the requirements of Article 10.

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

11.2.1 If Design-Builder fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or 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 its obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the 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 to the Owner's satisfaction, then Owner then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may 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. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder for the reasonable cost of Work completed prior to the termination. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work if Owner fails to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the

right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within sixty (60) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the sixty (60) day cure period. If Owner does not cure the problem within such sixty (60) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 [Intentionally Omitted.]

11.5 Bankruptcy of Owner or Design-Builder.

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

11.5.1.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

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

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

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

11.6 Termination for Convenience.

11.6.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement or any portion thereof. In such event, Owner shall pay Design-Builder for the following:

11.6.1.1 The Cost of the Work executed prior to the termination;

11.6.1.3 A portion of the General Conditions and Design-Builder Fee, as adjusted for the percentage of Work that was completed (which will be made by a deductive Change Order); and

11.6.1.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants.

11.6.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

11.6.2.1 cease operations as directed by the Owner in the notice;

- 11.6.2.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
- 11.6.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice and for subcontracts for which the Owner requests assignment, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
- 11.6.2.4 settle outstanding claims arising out of such termination of subcontracts with, to the extent required by Owner, Owner's prior approval;
- 11.6.2.5 complete Work not terminated by Owner; and
- 11.6.2.6 turn over any Work Product to Owner.

11.6.3 Notwithstanding anything to the contrary contained herein, if a termination occurs prior to the Proposal or execution of any applicable GMP amendment, the amount payable to Design-Builder, inclusive of all payments previously made to Design-Builder and costs of demobilization, shall in no event exceed the applicable Not To Exceed Amount.

11.6.4 Under no circumstances is Design-Builder entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 11.6 or Agreement Section 8.

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or

otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Public Records Requests. Design-Builder acknowledges that the City is subject to the Oregon Public Records Act and federal law. Third persons may claim that the Design-Builder Confidential Information that Design-Builder submitted to the City hereunder may be, by virtue of its possession by the City, a public record and subject to disclosure pursuant to the Oregon Public Records Act. The City's commitments to maintain certain information confidentially under this Agreement are all subject to the constraints of Oregon and federal laws. All information submitted by Design-Builder to the City is a public record and subject to disclosure pursuant to the Oregon Public Records Act, except such portions for which Design-Builder requests and meets an exemption from disclosure consistent with federal or Oregon law, in accordance with the process set forth in Section 13.1.3. Within the limits and discretion allowed by those laws, the City will make a good faith effort to maintain the confidentiality of information.

13.1.2 Public Records Retention. The City will retain one (1) copy of any public records for the express purposes of complying with State of Oregon public records and archiving laws.

13.1.3. Confidentiality.

13.1.3.1 Design-Builder's Confidential Information. During the term of this Agreement, Design-Builder may disclose to the City certain Design-Builder confidential information pertaining to Design-Builder's business ("Design-Builder Confidential Information"). Design-Builder shall be required to mark Design-Builder Confidential Information CONFIDENTIAL with a restrictive legend or similar marking, together with a written statement describing the material which is requested to remain protected from

disclosure and the justification for such request. If Design-Builder Confidential Information is not clearly marked, or the Design-Builder Confidential Information cannot be marked with a restrictive legend or similar marking or is disclosed either orally or by visual presentation, Design-Builder shall identify the Design-Builder Confidential Information as confidential at the time of disclosure or within a reasonable time thereafter. This Agreement itself shall not be considered Design-Builder Confidential Information. Design-Builder Confidential Information does not include information that (1) is or becomes (other than by disclosure by City) publicly known; (2) is furnished by Design-Builder to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in City's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than Design-Builder without the obligation of confidentiality, (5) is disclosed with the written consent of Design-Builder, or; (6) is independently developed by employees or agents of City who can be shown to have had no access to the Design-Builder Confidential Information. Subject to subsection (13.1.1) and (13.1.2), the City shall: (1) limit disclosure of Design-Builder Confidential Information to those directors, elected and appointed officials, employees, contractors and agents of the City who need to know the Design-Builder Confidential Information in connection with the Services and who have been informed of confidentiality obligations at least as strict as those contained in this Agreement, and (2) exercise reasonable care to protect the confidentiality of the Design-Builder Confidential Information, at least to the same degree of care as the City employs with respect to protecting its own proprietary and confidential information.

13.1.4 City's Confidential Information. Any and all information that the City provides to Design-Builder or its employees or agents in the performance of this Agreement that City designates as confidential (either on the document itself or through related correspondence), as well as all reports and other documents and materials that result from Design-Builder's use of such information and any other Work Product that City designates as confidential, is deemed to be confidential information of City ("City Confidential Information"). City Confidential Information does not include information that (1) is or becomes (other than by disclosure by Design-Builder) publicly known; (2) is furnished by City to others without restrictions similar to those imposed by this Agreement; (3) is rightfully in Design-Builder's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (4) is obtained from a source other than City without the obligation of confidentiality, (5) is disclosed with the written consent of City, or; (6) is independently developed by employees or agents of Design-Builder who can be shown to have had no access to the Confidential Information.

13.1.5 Design-Builder shall treat as confidential any City Confidential Information that has been made known or available to Design-Builder or that Design-Builder has received, learned, heard or observed; or to which Design-Builder has had access. Design-Builder shall use City Confidential Information exclusively for the City's benefit in the performance of this Agreement. Except as may be expressly authorized in writing by the City, in no event shall Design-Builder publish, use, discuss or cause or permit to be disclosed to any other person such City Confidential Information. Design-Builder shall (1) limit disclosure of the City Confidential Information to those directors, officers, employees, subcontractors, subconsultants and agents of Design-Builder who need to know the City Confidential Information in connection with the Services and who have agreed in writing to confidentiality obligations at least as strict as those contained in this Agreement, (2) exercise reasonable care to protect the confidentiality of the City Confidential Information, at least to the same degree of care as Design-Builder employs with respect to protecting its own proprietary and confidential information, and (3) return immediately to the City, upon its request, all materials containing City Confidential Information, in whatever form, that are in Design-Builder's possession or custody or under its control. Design-Builder is expressly restricted from and shall not use the intellectual property rights of the City without the City's prior written consent.

13.1.6 Retroactivity. This Section shall apply to all City Confidential Information previously received, learned, observed, known by or made available to Design-Builder and related to this Agreement.

13.1.7 Survival. Design-Builder's confidentiality obligations under this Agreement shall survive termination or expiration of this Agreement.

13.1.8 Equitable Relief. Design-Builder acknowledges that unauthorized disclosure of City Confidential Information will result in irreparable harm to the City. In the event of a breach or threatened breach of this Agreement, the City may obtain injunctive relief prohibiting the breach, in addition to any other appropriate legal or equitable relief. The Parties agree that, notwithstanding any other section of this Agreement, in the event of a breach or a threatened breach of the Agreement's terms related to Confidential Information or intellectual property rights, the non-breaching Party shall be entitled to seek equitable relief to protect its interests, including but not limited to injunctive relief. Nothing stated herein shall be construed to limit any other remedies available to the Parties.

13.1.9 Discovery of Documents. In the event a court of competent jurisdiction orders the release of Confidential Information submitted by one Party, the other Party will notify the Party whose Confidential Information is being requested to be disclosed of the request. The Party receiving the request shall allow the other Party to participate in the response at its own expense. Each Party will comply with any effective court order.

13.2 Assignment.

13.2.1 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.

13.3 Successorship.

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

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the State of Oregon, without giving effect to its conflict of law principles. Any litigation arising out of the Contract Documents shall be brought in the appropriate court of Clackamas County, Oregon.

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

meaning of any provision.

13.8 Notice.

13.8.1 Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) 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; or (iii) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

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

13.10 Survival.

13.9.1 All provisions in this Agreement, which by their nature should remain in effect beyond termination or expiration of this Agreement, will survive until fulfilled.

13.11 Non-Discrimination.

13.11.1 Each party agrees not to discriminate on the basis of age, citizenship status, color, familial status, gender identity or expression, marital status, mental disability, national origin, physical disability, race, religion, religious observance, sex, sexual orientation, and source or level of income in the performance of this Agreement.

13.12 No Third-Party Beneficiaries.

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

Exhibit A – Project Criteria and Program Requirements

1. Project Criteria

The UV Disinfection Project at the City of Canby Wastewater Treatment Plant (WWTP) aims to implement a reliable, energy-efficient, and cost-effective disinfection system that ensures compliance with Oregon DEQ and EPA effluent standards, specifically meeting E. coli limits.

The system shall be designed to minimize ongoing maintenance costs and facilitate ease of maintenance by incorporating durable, low-maintenance components with readily available replacement parts. To optimize performance and reduce operational oversight, the system must integrate automated controls and real-time SCADA monitoring, allowing remote tracking of UV intensity, lamp status, dose monitoring, flow rate, megajoule (MJ) energy consumption, and alarm conditions. The control system shall be capable of dynamically adjusting UV output based on real-time water quality parameters, such as flow rate and UV transmittance (UVT), to enhance energy efficiency while maintaining permit compliance.

Additionally, the system shall include automated cleaning mechanisms to prevent fouling and maintain optimal performance with minimal operator intervention. MJ monitoring will be incorporated to track energy usage per unit of treated flow, enabling operators to assess efficiency, optimize dosing, and reduce power consumption while ensuring effective disinfection.

Preference will be given to energy-efficient, low-consumable UV technology with remote diagnostic capabilities and long-term, local manufacturer support. The overall design shall focus on long-term operational efficiency, reducing lifecycle costs and minimizing staff workload while ensuring a robust and reliable disinfection process.

A. Project Goals

1. Implement a reliable, energy-efficient, and cost-effective UV disinfection system that meets current and future treatment demands, consistent with discussions with Oregon DEQ and EPA, which will be completed during Phase 1 services.
2. Ensure compliance with Oregon DEQ and EPA effluent standards, specifically meeting permit requirements for redundancy, E. coli limits, 3-log reduction and other disinfection performance criteria.
3. Minimize ongoing maintenance costs by selecting a system with durable, low-maintenance components and readily available replacement parts.
4. Design for ease of maintenance, ensuring operators have safe and convenient access for inspections, lamp replacements, and routine servicing.
5. Integrate automated controls and SCADA monitoring for real-time performance tracking, system adjustments, and alarm notifications to reduce manual oversight.

6. Incorporate MJ (megajoule) monitoring to track energy consumption, improve efficiency, and optimize UV dosing for cost savings.
7. Ensure the system dynamically adjusts UV output based on real-time flow rates and UV transmittance (UVT) to enhance energy efficiency while maintaining disinfection effectiveness.
8. Include automated cleaning mechanisms (e.g., mechanical wipers or chemical cleaning) to minimize fouling and maintain peak performance with minimal operator intervention.
9. Provide N+1 redundancy to ensure system reliability and uninterrupted disinfection during maintenance or equipment failures.
10. Design with future expansion in mind, allowing for increased capacity or additional treatment needs while minimizing future infrastructure modifications.
11. Minimize hydraulic impacts, ensuring that the system does not introduce excessive headloss or require significant modifications to upstream or downstream processes.
12. Ensure seamless integration with existing plant infrastructure, including SCADA, electrical, and control systems.
13. Optimize long-term operational efficiency, reducing lifecycle costs, energy use, and staff workload while ensuring a robust and reliable disinfection process.
14. Provide comprehensive operator training and O&M documentation to ensure staff can efficiently operate and maintain the system.

B. Design & Performance Requirements

1. Target Effluent Limits: Ensure treated water meets or exceeds NPDES permit requirements, as determined during Phase 1 services.
2. Redundancy: System must include N+1 redundancy to ensure reliability, consistent with Oregon DEQ and EPA requirements identified during Phase 1 services.
3. UV Transmittance (UVT) Considerations: Design must accommodate expected maximum/minimum fluctuations in influent UVT.
4. Hydraulic Considerations: Ensure system does not create excessive headloss or require major upstream/downstream modifications, such as to allow consistent use of the existing WWTP processes.
5. Minimum Equipment Requirements:
 - a. Medium- or low-pressure UV lamp system with validated performance.

- b. Automatic quartz sleeve cleaning system.
 - c. UV intensity sensors and real-time monitoring.
6. Integration with SCADA: System must integrate with existing SCADA & controls.
7. Future Expansion: As part of Phase 1 services, consider future flow increases and ease of expansion when developing options for the Scope of Services for the Work (or future improvements).

2. Program Requirements for Agreement

A. Design-Build Process & Responsibilities

- **Design-Build Team Responsibilities:**
 - Completing all Work under the Agreement
 - Provide a project schedule for both Phase 1 and Phase 2 Services and update as needed.
 - Review and comment on Owner specified Project criteria.
 - Complete Preliminary & final design.
 - DEQ Permitting support .
 - Develop a Project Proposal, which shall include the Basis of Design Documents and a Guaranteed Maximum Price
 - Construction, commissioning, and training.
- **Owner Responsibilities:**
 - Provide existing site conditions and operational data.
 - Facilitate permitting discussions with state agencies.

B. Compliance & Regulatory Requirements

- DEQ & EPA Compliance: System must meet Oregon Administrative Rules (OARs) and National Pollutant Discharge Elimination System (NPDES) permit requirements.
- Electrical & Safety Standards: NFPA 820, NEC, OSHA compliance.
- Building Code Requirements
- Applicable ASCE Requirements (including seismic requirements)
- Design-Builder, Design Consultant, Subcontractors and Sub-Subcontractors to hold appropriate Oregon professional licenses, be licensed to do business in the State of Oregon, and not be barred from working on public projects.
- Comply with Oregon Statutorily Required Public Contracting Provisions, Exhibit C.

C. Schedule & Milestones

- **Key Milestones:**
 - Proposal and GMP at 60 days from Notice to Proceed.

- 30%, 60%, 90% design submittals.
- Equipment procurement timeline.
- Construction start & completion deadlines.
- Commissioning and performance validation.
- Substantial Completion and Final Completion

D. Cost & Payment Structure

- Design-Builder Phase 1 Services Cost (Not to Exceed) +
- Phase 2 Cost of the Work +
- Phase 2 Design-Builder Fee (Percentage of Cost of the Work) +
- Design-Builder Contingency and any Owner Allowances =
- Guaranteed Maximum Price (GMP)
- Payment schedule tied to milestones, schedule, and Schedule of Values.

E. Testing, Commissioning, & Training

- Startup & Performance Testing:
 - Verify UV dose delivery.
 - Ensure redundancy and alarms function as designed.
- **Operator Training & O&M Manuals:**
 - Hands-on training for staff.
 - Provide detailed O&M documentation and as-built drawings.

F. Warranty & Long-Term Support

- Project Warranties (e.g., 1 year minimum).
- Performance Guarantee (6 years minimum, assuming Owner properly operates and maintains the Work)
- Ongoing technical support and spare parts availability from local providers.

Exhibit B – Scope of Services

The successful Proposer shall be responsible for delivering a turnkey UV disinfection system, ensuring seamless integration, regulatory compliance, and long-term operational efficiency. The scope of work will include fulfilling all requirements identified in the Agreement, and shall include, but will not be limited to, the following tasks:

Phase 1 Preliminary Services:

Task 1 – Project Management

- Develop and maintain the project schedule and budget controls.
- Manage Design Consultants, Subcontractors and Sub-Subcontractors (collectively “Subcontractors”).
- Implement risk analysis and response protocols.
- Develop and enforce Quality Assurance and Quality Control (QA/QC) standards and procedures.
- Develop the baseline requirements for the Site Specific Safety and Health Plan
- Prepare monthly invoices and project status reports.
- Lead coordination meetings to review milestone deliverables.

Task 2 – Project Initiation

- Conduct a project kickoff meeting to confirm scope, schedule, budget, and planning approach.
- Introduce the Design-Builder’s team to City staff and external stakeholders.
- Establish internal procedures for communication, budget management, invoicing, and reporting.
- Identify and compile necessary data sources, ensuring proper ownership and accessibility.

Task 3 – Planning & Preliminary Design Services

- Validate the Owner’s Project Criteria and Program Requirements
- Analyze data to establish design parameters.
- Consult with Oregon DEQ to ensure compliant design requirements.
- Provide a value analysis to the Owner that includes cost-effective design options, life cycle cost analysis and maintenance intensity. Collaborate on equipment selection.
- Confirm site-specific seismic and foundation design criteria for the new UV system.
- Conduct utility conflict investigations along planned corridors and within the project footprint.
- Provide 30% Design Deliverables for review.

- Prepare a preliminary design report, i.e. the Basis of Design Documents, that forms the basis of the Proposal and guaranteed maximum price (GMP) within sixty (60) days of Notice to Proceed (unless otherwise negotiated prior to Award).

Task 4 – Prepare and Present a Proposal for Phase 2 Services with a Guaranteed Maximum Price

- Prepare a Proposal consistent with the Agreement, which will include the Basis of Design Documents
- Develop and submit a GMP to complete all Work required under the Agreement to complete the Project, including all design, construction, procurement, permitting, project management, etc. The GMP Proposal shall conform to the requirements of the Agreement, and at a minimum, include the following:
 - A breakdown estimate of the Cost of the Work
 - Design-Builder Fee
 - Design-Builder Contingencies and Owner’s Allowances
 - Assumptions, Exclusions, and Clarifications document
- Meet with Owner to discuss the Contract Price (GMP) Proposal and to clarify any unexpected pricing issues.
- If the parties agree on the Proposal and GMP, execute the Contract Price (GMP) Amendment.

Phase 2 (Anticipated Services)

Task 1 – Project Management

- Maintain and update the agreed upon project schedule and budget controls.
- Manage Design Consultants, Subcontractors and Sub-Subcontractors.
- Implement updated risk analysis and response protocols.
- Finalize and implement Quality Assurance and Quality Control (QA/QC) standards and procedures.
- Finalize and implement the Site Specific Safety and Health Plan
- Prepare monthly invoices and project status reports.
- Lead coordination meetings to review milestone deliverables.
- Provide construction project management and supervision.

Task 2 – Final Design Services (Phase 2 Services)

- Provide 60%, 90%, and bid-ready design deliverables, as appropriate.
- Conduct review meetings for each design phase.
- Prepare 100% construction documents, including site civil, structural, electrical, mechanical, and instrumentation drawings, along with associated specifications.
- Due to long equipment lead times, procure the UV disinfection system as soon as possible.

Task 3 – Construction Services

- To the extent practicable, bid the work to Subcontractors to achieve the lowest cost and best value for the Work.
- Manage all Subcontracts and Subcontractors.
- Receive delivery of UV disinfection system and ensure its conformity with the specifications.
- Implement the UV disinfection system installation in accordance with final construction documents.
- Review submittals and shop drawings to ensure compliance with project design requirements and contract documents.
- Respond to Requests for Information (RFIs) and provide necessary clarifications or interpretations of contract documents.
- Review laboratory, shop, and test reports for materials and equipment to verify QA/QC.
- Conduct construction progress meetings with subcontractors, consultants, and City staff, including preparation of agendas and meeting summaries.
- Coordinate and document final startup and commissioning of facilities.
- Complete Project Closeout, Training and Delivery of O&M Manuals.

Exhibit C - Oregon Statutorily Required Contract Provisions

Design-Builder shall observe all applicable state and local laws pertaining to public contracts. Pursuant to ORS Chapters 279A, 279B and 279C, which require every public contract to contain certain provisions, and other state law, the following provisions shall be a part of this contract, as applicable. All defined terms in this Attachment shall be interpreted in accordance with Solicitation or Contract Document and the relevant statutory provision. For purposes of this Design-Build agreement, references to “Contractor” shall be read to be “Design-Builder” and references to “Subcontractor” shall be read to include “Design Consultant,” “Subcontractor,” and “Sub-Subcontractor.”

1. ORS 279A.110 (Non-discrimination Certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a disadvantaged business enterprise, minority-owned business enterprise, woman-owned business enterprise, a business enterprise that a veteran owns, or an emerging small business enterprise(certified under ORS 200.055.), or a business that is owned, controlled by, or employs a disabled veteran (as designed in ORS 408.225).
2. Pursuant to ORS 279B.220 or 279C.505, as applicable, Contractor shall make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract; shall pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished, and; pay to the Department of Revenue all sums withheld from employees under ORS 316.167.
3. Pursuant to ORS 279B.225, every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.
4. Pursuant to ORS 279B.230(1) or 279C.530(1), as applicable, 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 the 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.
5. Pursuant to ORS 279B.230(2) or 279C.530.(2), as applicable, in every public contract,

all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

6. Pursuant to ORS 279B.235(1) and 279B.020 and ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Subcontractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279A.055, the laborer shall be paid at least time and a half pay:
 - i. For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
 - ii. For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - iii. For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or ORS 279C.540(1)(b).
 - iv. The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.
 - v. Contractor shall and shall require its Subcontractors to give notice in writing to their employees who work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
7. Environmental Laws. Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
8. Oregon Tax Law Compliance: Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Contractor (to the best of Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the date of this Contract, represents and warrants that it has faithfully complied with, and will continue to comply with during the term of this Contract: (A) all tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (B) any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (C) any tax provisions imposed by a political subdivision of this state that applied to

Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions. Failure to comply with this section is a default for which the City may terminate the Contract and seek damages and other relief available under the terms of the Contract or under applicable law.

9. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the state of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor shall demonstrate its legal capacity to perform these services in the state of Oregon prior to entering into this Contract.
10. Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the Contracting Agency's prior Written consent. Unless otherwise agreed by the Contracting Agency in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the Contracting Agency consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the Contracting Agency for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the Contracting Agency otherwise agrees in Writing.

For all public improvement contracts:

1. Pursuant to ORS 279C.505(2), Contractor shall demonstrate that an employee drug-testing program is in place.
2. Pursuant to ORS 279C.510, if this Contract includes demolition work, Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. All excavated PCC and AC debris from this Project shall be sorted, separated, and taken to a facility or site so that the material may be recycled or re-used in the future as appropriate. All costs associated with Project material recycling shall be incidental to the Project, and no additional payment will be made. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective
3. Pursuant to ORS 279C.515(1), if Contractor fails, neglects, or refuses to make prompt payment of any Claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such Claim becomes due, the City may pay such Claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor

by reason of this Contract. The payment of a Claim in the manner authorized in this Section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid Claims.

4. Pursuant to ORS 279C.515(2), if 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 improvement contract within 30 days after receipt of payment from the contract agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(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 on the amount due is nine percent per annum. ORS 279C.515(2). The amount of interest may not be waived.
5. Pursuant to ORS 279C.515(3), in every public improvement contract and every contract related to the public improvement contract, if Contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.
6. Pursuant to ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:
 - i. Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Federal Highway Administration, and Water Resources Council.

- ii. State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, and Department of Water Resources.
 - iii. Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other and special governmental agencies such as Tri-Met, urban renewal agencies, and Port districts.
 - iv. Tribal Governments.
7. Pursuant to ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, providing the Contractor or Subcontractor has:
- i. Caused a circular clearly printed in blackface pica type and containing a copy of this Section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work; and
 - ii. Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.
8. Contractor is advised of the statutory Retainage requirements in ORS 279C.550 to 570.
9. Contractor is advised of the prompt-payment requirements in ORS 279C. 570.
10. Pursuant to ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier Subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the City. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by City, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its

Subcontractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.

11. Pursuant to ORS 279C.580(4), Contractor shall include in each of its subcontracts for a public improvement, for the purpose of performance of such contract condition, a provision requiring the subcontractor to include a payment clause and an interest penalty clause conforming to the standards of ORS 279C.580 (B) (4) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.
12. Contractor is advised of the rights of action and procedures on payment bonds and public works bonds under ORS 279C.600-.625.
13. Pursuant to ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):
 - i. 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 for each trade or occupation as defined by the Commissioner of the Oregon Bureau of Labor and Industries in the applicable publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon available at <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>.
 - ii. This Contract is subject to the prevailing wage rates published as specified in an exhibit to be added at the time of any Early Work Amendment or the Contract Price Amendment and shall be the rates then in effect.
 - iii. 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.
 - iv. The City 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 under the administrative rule of the Commissioner.
 - v. 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. Pursuant to ORS 279C.830(2), on public works contracts, Contractor shall have, and ensure that its subcontractors have, a public works bond filed with the Construction Contractors Board before starting work on the project, unless the contractors or subcontractor is exempt under ORS 279C.836.
15. ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- i. Contractor and every Subcontractor shall file certified statements with City in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - ii. The certified statement shall be delivered or mailed by Contractor or Subcontractor to City. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the City shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the City as required by this Section. The City will pay the retainage required under this Section within 14 days after Contractor files the certified statements required by this Section.
 - iii. Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.
16. ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Subcontractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above-noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify City immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

Exhibit D – Bonds and Insurance

I. Insurance

Design-Builder and its Design Consultants, Subcontractors, and Sub-Subcontractors (collectively, “Subcontractors”) shall provide the following insurance coverages against any claims that may arise from or relate to the performance of the Work. Design-Builder and its Subcontractors must maintain the insurance until all of their obligations have been discharged, including any warranty periods under the Agreement. The City in no way warrants that the limits stated in this section are sufficient to protect the Design-Builder or its Subcontractors from the liabilities that might arise out of the performance of the Work under this Agreement by Design-Builder, its agents, representatives, employees, or Subcontractors, and Design-Builder may purchase such additional insurance as they determine necessary.

i. Commercial General Liability Insurance: Design-Builder shall provide evidence of commercial general liability insurance that meets the following requirements.

a. The policy must be in an occurrence form and include bodily injury, property damage, and broad form contractual liability coverage in the following amounts:

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Each Occurrence	\$2,000,000

b. The policy shall be endorsed to name the City of Canby and its elected and appointed officials, officers, agents, and employees as an additional insured with respect to liability for bodily injury, property damage, and personal and advertising injury with respect to premises, ongoing operations, products and completed operations, and liability assumed under an insured contract arising out of the activities performed by, or on behalf of, the Design-Builder related to this Agreement.

c. The endorsement shall be indicated on the Certificate of Insurance, and there shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City as an additional insured.

d. The Design-Builder’s insurance coverage must be primary insurance and non-contributory with respect to any insurance or self-insurance carried by the City.

ii. Automobile Liability: Design Builder shall provide evidence of automobile liability insurance that meets the following requirements.

- a. The policy shall cover bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Agreement. Automobile Liability coverage shall be written in an amount not less than \$2,000,000 combined single limit.
 - b. The policy shall be endorsed to include the City, its elected and appointed officials, officers, agents and employees as an additional insured with respect to liability arising out of the activities performed by, or on behalf of, the Design-Builder relating to this Agreement.
 - c. The City shall be an additional insured to the full limits of liability purchased by the Design-Builder.
- iii. Workers' Compensation Coverage: Design-Builder certifies that it has qualified for State of Oregon Workers' Compensation coverage for all Design-Builder's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407 or as a self-insured employer. Design-Builder shall provide to City within ten (10) days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to the City. A copy of the certificate of self-insurance issued by the State shall be provided to the City if the Design-Builder is self-insured. To the extent permitted by law, a waiver of subrogation in favor of the City shall be included in the policy.
- iv. Professional Liability (Errors and Omissions Liability): Design-Builder shall provide City with evidence of professional errors and omissions liability insurance covering any damages caused by negligent acts, errors, or omissions related to the professional services and performance of duties and responsibilities under this Agreement, in an amount not less than \$3,000,000 combined single limit per occurrence. Design-Builder may opt to provide a claims-made policy with a combined single limit per claim of not less than \$3,000,000; but in doing so, Design-Builder warrants that any retroactive date under the policy precedes the effective date of this Agreement and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two years beginning at the time work under this Agreement is completed. Where any Subcontractor provides professional services related to this Agreement, they must provide equivalent coverage.
- v. Excess Umbrella Liability: Design-Builder shall provide City with evidence of excess umbrella liability insurance, on an occurrence basis, issued as broad form excess to all other Professional Liability, Errors and Omissions, Commercial General Liability, and Commercial Auto Liability coverage's not less than \$5,000,000.

- vi. Certificates: Design-Builder shall furnish the City with certificates evidencing the date, amount, and type of insurance required by this Agreement (ACCORD form or equivalent approved by the City). The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All policies will provide for not less than thirty (30) days' written notice to the City before they may be canceled. Such notice will be mailed and emailed to Monica Stone at Stonem@canbyoregon.gov. All certificates and any required endorsements are to be received and approved by the City before the work commences. Each insurance policy required by this Agreement must be in effect at or prior to the commencement of the work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of this Agreement.
- vii. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary and noncontributory, and any other insurance carried by City shall be excess.
- viii. Subcontractors: Design-Builder shall require the same insurance requirements from its Subcontractors. Design-Builder's certificates shall include all Subcontractors as additional insureds under its policies **-OR-** Design-Builder shall be responsible for ensuring and verifying that all Subcontractors have valid and collectible insurance. At any time throughout the term of the Agreement, the City reserves the right to require proof from the Design-Builder that its Subcontractors have insurance coverage. All Subcontractors providing services included under this Agreement are subject to the insurance coverages identified above and must include the City as an additional insured. In certain circumstances, the Design-Builder may, on behalf of its Subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Design-Builder assumes liability for all Subcontractors with respect to this Agreement.
- ix. Acceptability of Insurers: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Oregon and with an "A.M. Best" rating of not less than A- VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Design-Builder from potential insurer insolvency.

II. Bonds

If the City and Design-Builder enter into an Early Work Amendment or a Contract Price (GMP) Amendment for the Work, Design-Builder shall provide a performance and payment bond in the amount of the Contract Price as of the date of the respective amendment. Sample draft forms are attached. In lieu of the City withholding Retainage, Design-Builder may supply a Retainage Bond in the form required by Oregon law.

PAYMENT BOND

Bond Number: [Bond Number]

Amount: [Bond Amount in \$]

KNOW ALL PEOPLE BY THESE PRESENTS that we, [Legal Name of Contractor] , as Principal (Contractor), and [Legal Name of Surety] , a corporation organized and existing under the laws of the State of [Surety's State of Incorporation] and duly authorized to transact a surety business in the State of Oregon, as Surety, are held and firmly bound unto the City of Canby, a municipal corporation of the State of Oregon, as City, in the sum of [Bond/Contract Amount in Text] Dollars (\$[Bond amount as Number]), lawful money of the United States of America, for the payment whereof well and truly to be made, we and each of us, jointly and severally, bind ourselves, our and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

THE CONDITIONS of this obligation are such that, whereas the above Principal did enter into a Contract with the City for the [Project name exactly as it appears on the Contract/Bid Documents/Task Order] – Bid/RFP/Task Order No. [xxxx] , which Contract is made a part hereof as if fully copied herein;

NOW, THEREFORE, if the said Principal faithfully, punctually and completely performs and abides by all covenants and conditions of said Contract, and with all laws, ordinances, regulations, and orders of the State of Oregon and the City, and the agencies and departments thereof, directly or indirectly governing or applicable to the Principal's performance under the said Contract, including but not limited to the requirements of Oregon Revised Statutes Chapters 279A, 279B and 279C relating to public contracts, which are hereby made a part hereof as if fully copied herein, and shall make payment promptly, as due, to the City of Sandy and all other public entities as may be required, and to all subcontractors and to all persons supplying to the Principal or Principal's subcontractors, equipment, supplies, labor, or materials for the prosecution of the work or any part thereof, provided for in said Contract, then this obligation shall be null and void, otherwise to be in full force and effect.

Surety agrees (1) that any extension of time allowed said Principal for completion of work or for delivery under the said Contract shall not impair this obligation or reduce any period of maintenance or warranty provided in said Contract; (2) that any change made in the terms or provisions of said Contract increasing the price to be paid to Principal, without notice to the Surety shall not impair this obligation, PROVIDED that all such increases shall not in the aggregate exceed twenty-five percent (25%) of the original Contract Price without consent of the Surety, however, any such change shall not increase the obligation of the Surety hereunder; and (3) that this obligation shall continue to bind the said Principal and Surety notwithstanding successive payment made hereunder for successive breaches, until the full amount of the said obligation is exhausted.

Nonpayment of the bond premium will not invalidate this bond.

If this is a federal-aid project with funds provided through the Oregon Department of Transportation, then the State of Oregon and the Oregon Department of Transportation are additional ~~obligees~~ under this bond and obligation.

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be executed on this [Day in #] day of [Month], 20[Year].

PRINCIPAL/CONTRACTOR

SURETY

 [Legal Name of Contractor] [Legal Name of Surety]
Corporate Name of Principal Corporate Name of Surety

 [Signature of Contractor] [Signature of Attorney in Fact]
Signature of Principal's Representative Signature of Surety's Attorney in Fact

 [Printed Name] [Printed Name]
Printed Name of Principal's Representative Printed Name of Surety's Attorney in Fact

 [Title] [Firm Name]
Title of Principal's Representative Firm Name (if any) of Surety's Attorney in Fact

 [Date] [Address 1]
Date Street Address of Surety's Attorney in Fact

 [Address 2]
City, State, Zip of Surety's Attorney in Fact

 [Telephone Number]
Telephone of Surety's Attorney in Fact

 [Email Address]
Email of Surety's Attorney in Fact

 [Date]
Date

Surety's Corporate Seal

NOTE

If the Principal is operating under an assumed business name there must also be set forth in the first paragraph of the bond, the names of all the partners or the individuals owning the business, and the bond must be executed by one of them.

If the Principal is a corporation, the bond must be executed by one of the officers authorized to execute bonds, showing the officer's official title and the seal of the corporation.

PERFORMANCE BOND

Bond Number: [Bond Number]

Amount: [Bond Amount in \$]

KNOW ALL PEOPLE BY THESE PRESENTS that we, [Legal Name of Contractor], an [Entity Type (corporation/limited liability company/etc.)] of the state of [State], as Principal (Contractor), and [Legal Name of Surety], a corporation organized and existing under the laws of the State of [Surety's State of Incorporation], and duly authorized to transact a surety business in the State of Oregon, as Surety, are held and firmly bound unto the City of Canby, a municipal corporation of the State of Oregon, as City, in the sum of [Bond/Contract Amount in Text] Dollars ([\$Bond amount as Number]), lawful money of the United States of America, for the payment whereof well and truly to be made, we and each of us, jointly and severally, bind ourselves, our and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

THE CONDITIONS of this obligation are such that, whereas the above Principal did enter into a Contract with the City for the [Project name exactly as it appears on the Contract and Solicitation Documents] – Bid/RFP No. [xxx], [Task Order No. XX], which Contract is made a part hereof as if fully copied herein;

NOW, THEREFORE, if the said Principal faithfully, punctually and completely performs and abides by all covenants and conditions of said Contract, and with all laws, ordinances, regulations, and orders of the State of Oregon and the City, and the agencies and departments thereof, directly or indirectly governing or applicable to the Principal's performance under the said Contract, including but not limited to the requirements of Oregon Revised Statutes Chapters 279A, 279B and 279C relating to public contracts, which are hereby made a part hereof as if fully copied herein, then this obligation shall be null and void, otherwise to be in full force and effect.

Surety agrees (1) that any extension of time allowed said Principal for completion of work or for delivery under the said Contract shall not impair this obligation or reduce any period of maintenance or warranty provided in said Contract; (2) that any change made in the terms or provisions of said Contract increasing the price to be paid to Principal, without notice to the Surety shall not impair this obligation, PROVIDED that all such increases shall not in the aggregate exceed twenty-five percent (25%) of the original Contract Price without consent of the Surety, however, any such change shall not increase the obligation of the Surety hereunder; and (3) that this obligation shall continue to bind the said Principal and Surety notwithstanding successive payment made hereunder for successive breaches, until the full amount of the said obligation is exhausted.

Nonpayment of the bond premium will not invalidate this bond.

If this is a federal-aid project with funds provided through the Oregon Department of Transportation, then the State of Oregon and the Oregon Department of Transportation are additional ~~obligees~~ under this bond and obligation.

IN WITNESS WHEREOF, the Principal and Surety have caused these presents to be executed on this [Day in #] day of [Month] , 20[Year].

PRINCIPAL/CONTRACTOR

SURETY

 [Legal Name of Contractor]
Corporate Name of Principal

 [Legal Name of Surety]
Corporate Name of Surety

 [Signature of Contractor]
Signature of Principal's Representative

 [Signature of Attorney in Fact]
Signature of Surety's Attorney in Fact

 [Printed Name]
Printed Name of Principal's Representative

 [Printed Name]
Printed Name of Surety's Attorney in Fact

 [Title]
Title of Principal's Representative

 [Firm Name]
Firm Name (if any) of Surety's Attorney in Fact

 [Date]
Date

 [Address 1]
Street Address of Surety's Attorney in Fact

 [Address 2]
City, State, Zip of Surety's Attorney in Fact

 [Telephone Number]
Telephone of Surety's Attorney in Fact

 [Email Address]
Email of Surety's Attorney in Fact

 [Date]
Date

Surety's Corporate Seal

NOTE

If the Principal is operating under an assumed business name there must also be set forth in the first paragraph of the bond, the names of all the partners or the individuals owning the business, and the bond must be executed by one of them.

If the Principal is a corporation, the bond must be executed by one of the officers authorized to execute bonds, showing the officers official title and the seal of the corporation.