

DESIGN-BUILD AGREEMENT

Exhibit C

TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	1
ARTICLE 2 DESIGN-BUILDER RESPONSIBILITIES	8
ARTICLE 3 SCHEDULE AND TIME	18
ARTICLE 4 WARRANTIES AND CORRECTIONS OF THE WORK.....	20
ARTICLE 5 THPRD'S RIGHTS AND RESPONSIBILITIES	22
ARTICLE 6 SUBCONTRACTORS	25
ARTICLE 7 COST OF THE WORK	26
ARTICLE 8 PAYMENT	32
ARTICLE 9 CHANGES IN THE WORK	38
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY	41
ARTICLE 11 INSURANCE AND INDEMNITY	46
ARTICLE 12 SUSPENSION, NOTICE TO CURE, AND TERMINATION	52
ARTICLE 13 DISPUTE RESOLUTION	55
ARTICLE 14 GENERAL CONDITIONS	58

DESIGN-BUILD AGREEMENT

This Design-Build Agreement is made as of _____ (the "Effective Date"), between Tualatin Hills Park & Recreation District, an park and recreation district organized under ORS Chapter 266 ("THPRD") and Design-Builder as identified below.

ARTICLE 1

1.1 Design-Builder. Design-Builder is:

Name:

Address:

Design-Builder's Representative is: _____

Address: _____

E-mail: _____ Phone: _____

THPRD's Representative is: Gery Keck _____

Address: _____

E-mail: _____ Phone: _____

1.2 [Reserved.]

1.3 Project Description (the "Project").

Location: THPRD New Administration Building

Address, Suite, Floor: 15400 NW Greenbrier Parkway, Beaverton, Or. 97006

Description: Design, permit, and construct the tenant improvements, and enclosed parking area for the district's new administration facility.

1.4 Design Professional. Design-Builder's Design Professional is

_____.

1.5 Estimated Project Schedule. The estimated Project schedule is as follows:

Milestone	Date or days
Design Services (Section 2.4)	
Preliminary Design	Aug. 15, 2025 – Nov. 30, 2025
Approved Project Plan	Dec. 1, 2025
Construction Documents	Dec. 1, 2025 – Feb. 28, 2026
Design Time	Aug. 15, 2025 – Feb. 28, 2026
Construction Responsibilities (Section 2.5)	
Commencement	January 1, 2026
Substantial Completion	August 1, 2026
Final Completion	September 1, 2026

Construction Time	Jan. 1, 2026 – Sep. 1, 2026
--------------------------	-----------------------------

1.6 Compensation. Design-Builder's compensation for the Project is indicated below. Unless otherwise agreed, payments for Work performed prior to the execution of the Approved Project Plan shall be made monthly, and shall be due and payable upon presentation of Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from the Design-Builder.

Design Phase	Stipulated Sum Design Fees: \$ _____ _____
Construction Phase (check appropriate box)	<input checked="" type="checkbox"/> Lump Sum Payment The lump sum amount will be established in accordance with Section 2.4.2.

1.7 Permit and Tax Payments. The party selected below will be responsible for paying the fees or costs listed below. The costs and fees below will be included in the Guaranteed Maximum Price or Contract Sum unless otherwise indicated in the chart below:

Type of Cost or Fee	Party Responsible for Payment		Included within Contract Sum?	
Building Permit Fee	<input checked="" type="checkbox"/> Design-Builder	<input type="checkbox"/> THPRD	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
With the exception of the Oregon Corporate Activity Tax, which is separately set forth below, federal, state, and local taxes, including but not limited to income, sales, consumer, use, business and occupation, and similar taxes for the Work.	<input checked="" type="checkbox"/> Design-Builder	<input type="checkbox"/> THPRD	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Oregon Corporate Activity Tax	<input checked="" type="checkbox"/> Design-Builder	<input type="checkbox"/> THPRD	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
All Other Permits, Licenses, and Inspection Fees	<input checked="" type="checkbox"/> Design-Builder	<input type="checkbox"/> THPRD	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

1.8 Design-Builder Insurance Minimum Requirements. Design-Builder will ensure that the insurance required by Section 11.1 is written for the minimum coverage limits set forth below:

.1 Workers' Compensation.

Statutory Limits

.2 Employer's Liability Insurance.

	Bodily injury for each Accident:	\$1,000,000.00
	Bodily injury by disease/employee	\$1,000,000.00
.3	Commercial General Liability.	
	Per Occurrence Limit:	\$1,000,000.00
	General Aggregate:	\$2,000,000.00
	Product/Completed Operations Aggregate:	\$1,000,000.00
	Personal & Advertising Aggregate:	\$1,000,000.00
.4	Automobile Liability.	
	Combined Single Limit:	\$1,000,000.00
.5	Pollution Liability.	
	Single Limit:	\$1,000,000.00
	Aggregate:	\$2,000,000.00
.6	Commercial Umbrella Coverage/Excess Coverage.	
	Umbrella/Excess Limit Per Occurrence:	\$2,000,000.00
	Umbrella/Excess Limit Aggregate:	\$2,000,000.00
.7	Professional Liability.	
	Each Claim:	\$2,000,000.00
	Aggregate:	\$2,000,000.00

1.9 Specified Subcontractor Insurance Minimum Requirements. Design-Build Subcontractors must carry the minimum limits of insurance set forth and required in Section 11.1 and written for the minimum coverage limits below unless otherwise approved in writing by THPRD:

.1	Workers' Compensation.	Statutory Limits
.2	Employer's Liability Insurance.	
	Bodily injury for each Accident:	\$1,000,000.00
	Bodily injury by disease/employee	\$1,000,000.00
.3	Commercial General Liability.	
	Per Occurrence Limit:	\$1,000,000.00
	General Aggregate:	\$2,000,000.00
	Product/Completed Operations Aggregate:	\$1,000,000.00
	Personal & Advertising Aggregate:	\$1,000,000.00
.4	Automobile Liability.	
	Combined Single Limit:	\$1,000,000.00
.5	Pollution Liability.	
	Single Limit:	\$1,000,000.00
	Aggregate:	\$2,000,000.00
.6	Commercial Umbrella Coverage/Excess Coverage.	
	Umbrella/Excess Limit Per Occurrence:	\$2,000,000.00
	Umbrella/Excess Limit Aggregate:	\$2,000,000.00

.7 Professional Liability.

Each Claim:	\$2,000,000.00
Aggregate:	\$2,000,000.00

1.10 Agreement. The "Agreement" is this Design-Build Agreement between THPRD and Design-Builder.

1.11 Allowance. An "Allowance" is a dollar amount budgeted for a particular portion of the Work. THPRD will select all materials and equipment governed by Allowances and may direct Design-Builder to obtain materials or equipment from certain suppliers, subject to Design-Builder's reasonable objection. All Allowances cover the burdened cost incurred by Design-Builder for (a) materials and equipment delivered at the Project Site, (b) all required taxes, less applicable trade discounts, (c) unloading and handling at the Project Site, (d) labor, (e) installation costs, (f) overhead, (g) profit, and (h) other expenses contemplated for stated Allowance amounts.

1.12 Amendment. An "Amendment" is (a) a written amendment to this Agreement signed by authorized representatives of both parties, (b) a fully-executed Change Order, (c) a THPRD Directive, (d) a written order for a minor change in the Work issued by the Design Professional and approved by THPRD, or (e) the Approved Project Plan. An Amendment changes the terms of this Agreement. No oral communications may be considered an Amendment.

1.13 Application for Payment. An "Application for Payment" is a collection of documents prepared by Design-Builder in accordance with Section 8.2 that constitutes Design-Builder's request to THPRD for payment on Work performed under this Agreement.

1.14 Approved Project Plan. An "Approved Project Plan" is a revised and complete project plan prepared by Design-Builder and reviewed, approved, and signed by THPRD that contains all the elements identified in Section 2.4.2(a) in final, agreed-upon form.

1.15 Auditors. "Auditors" are THPRD's accountants, clerks, or auditors.

1.16 Certificate for Payment. A "Certificate for Payment" is a document submitted with each payment for the Work that states, as applicable (a) the amount paid, (b) the amount withheld from payment, and (c) reasons for withholding payment amounts.

1.17 Change Order. A "Change Order" is a document signed by THPRD and Design-Builder that describes an agreement between the parties to change the Work, the Contract Sum, or the Construction Time.

1.18 Claim. A "Claim" is a demand or assertion by THPRD or Design-Builder for payment of money or other relief arising from the moving party's rights under the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between THPRD and Design-Builder arising out of or relating to this Agreement.

1.19 Commencement Date. The "Commencement Date" is the date on which Design-Builder may begin performing pre-construction Work for the Project.

1.20 Construction Documents. "Construction Documents" are Drawings and Specifications that set forth in detail the requirements to construct the Project, illustrate and further develop the Detailed Design Documents, and contain coordinated Drawings and Specifications setting

forth in detail the quality levels of materials, systems, and other requirements for the construction of the Work.

1.21 Construction Time. "Construction Time" is the period of time, including any extensions or reductions in time by Amendment, between the Commencement Date and the Final Completion Date.

1.22 Contract Sum. The "Contract Sum" is the total compensation payable by THPRD to Design-Builder for performance of the Work under this Agreement, as identified in Section 1.6. The Contract Sum will be structured as a lump sum amount, or an amount equal to the lesser of (a) cost of the Work plus a Design-Builder Fee or (b) the Guaranteed Maximum Price.

1.23 Defective Work. "Defective Work" is any Work that does not comply with the requirements of the Design-Build Documents in whole or in part.

1.24 Design-Build Documents. The "Design-Build Documents" consist of (a) this Agreement, (b) Drawings and Specifications, (c) Amendments, (d) THPRD's Request for Proposals, dated July 7, 2025, as amended, and (e) Design-Builder's proposal.

1.25 Design-Build Subcontractor or Subcontractor. A "Design-Build Subcontractor" or "Subcontractor" is a person or entity who has a direct contract with the Design-Builder to perform design Work, construction Work, or both for a portion of the Project.

1.26 Design Products. "Design Products" are Drawings, Specifications, and other documentation prepared by the Design Professional and furnished by Design-Builder.

1.27 Detailed Design Documents. "Detailed Design Documents" are detailed Drawings, Specifications, and other documents, including plans, outline specifications, sections, elevations, major mechanical and electrical equipment sizes and riser diagrams, typical construction details, and diagrammatic layouts of building systems, to fix and describe the size and character of the Project's architectural, structural, mechanical, and electrical systems, and any other elements as appropriate.

1.28 Drawings. "Drawings" are architectural and engineering drawings, illustrations, diagrams, and other data prepared by Design Professional, Design-Builder, or Subcontractor to depict the Work or some portion of the Work, either as designed, proposed, or constructed.

1.29 Final Completion Date. The "Final Completion Date" is the date by which Design-Builder must complete the entire Work, including all punch-list items.

1.30 Guaranteed Maximum Price. The "Guaranteed Maximum Price" or "GMP" is the maximum amount that THPRD will pay Design-Builder to perform its obligations under this Agreement, THPRD's Criteria, and the Approved Project Plan. Design-Builder guarantees that the sum of the cost of the Work and Design-Builder's Fee will not exceed the Guaranteed Maximum Price, which is established in the Approved Project Plan, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Design-Builder does not guarantee any specific line item provided as part of the Guaranteed Maximum Price, but agrees that it will pay without reimbursement, all costs of completing the Work that exceed the Guaranteed Maximum Price.

1.31 Hazardous Materials. "Hazardous Materials" are any substances regulated, classified, or otherwise characterized as radioactive, infectious, hazardous, dangerous, or toxic, or by

words of similar meaning or effect, by any federal, state, or local statute, regulation, or ordinance currently in effect or subsequently enacted.

1.32 Key Personnel. "Key Personnel" are Design-Builder's project manager, site superintendent, necessary assistants, the Design Professional and Design-Builder's Representative.

1.33 Lien Releases. "Lien Releases" are documents signed by the Design-Builder that release Design-Builder's liens, bonds, and claims against the Project.

1.34 Notice to Proceed. The "Notice to Proceed" is a document issued by THPRD that authorizes Design-Builder to commence construction of the Project.

1.35 Personnel. "Personnel" are Design-Builder's Subcontractors, the Design Professional, employees, consultants, affiliates, agents, or representatives.

1.36 Preliminary Design Documents. "Preliminary Design Documents" are drawings, outline specifications, and other conceptual documents issued by Design Professional illustrating the Project's basic elements and scale, and their relationship to the Project Site.

1.37 Project Site. The "Project Site" is the real property where the Project will be constructed.

1.38 THPRD Directive. A "THPRD Directive" is a written order prepared and signed by THPRD that directs Design-Builder to perform a change in the Work before agreement on adjustment, if any, in the Contract Sum, Guaranteed Maximum Price, or Construction Time.

1.39 THPRD Policies. "THPRD Policies" are documents or visuals that are attached to this Agreement as Exhibit A, B, D, E, F, G, H, I, J, K, L, M, N and establish rules, guidelines, or standards that govern construction and design Work performed for the benefit of THPRD.

1.40 THPRD's Criteria. "THPRD's Criteria" is a written statement or compilation of THPRD's objectives, programs, needs, and requirements that must be achieved in the Work by Design-Builder. It may include budget and schedule requirements, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. THPRD may amend the THPRD Criteria from time to time. Design-Builder's design services are to comply with and meet THPRD's Criteria.

1.41 Record Documents. "Record Documents" are a collection of drawings prepared by the Design Professional that display the exact location of each portion of the Project and reflect on-site changes Subcontractors made to the construction Work.

1.42 Records. "Records" are Design-Builder's books, documents, records, correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data, including without limitation all data that may be requested by governmental authorities, or any of their duly authorized representatives.

1.43 Related Entity. A "Related Entity" is any entity that is controlled by or exhibits control over Design-Builder, including without limitation (a) any entity owned in whole or part by Design-Builder; (b) any holder of more than 10 percent of the issued and outstanding shares of, or the holder of any ownership interest in, Design-Builder; or (c) any entity in which any officer, director, employee, partner, member, or shareholder (or member of the immediate family of any of the foregoing

persons) of Design-Builder, or any entity owned by Design-Builder, has a direct or indirect ownership or management interest.

1.44 Safety Program. The "Safety Program" is a specific set of guidelines and procedures created, implemented and enforced by the Design-Builder to preserve the safety of persons and property on the Project Site. Design-builder shall also complete the THPRD "Site Safety Plan" found in Exhibit A for approval prior to beginning work.

1.45 Schedule of the Work. "Schedule of the Work" is a statement and timeline that shows when each distinct portion of the Work will be completed during the Construction Time. Each Schedule of the Work must, at minimum, (a) contain details required by the Design-Build Documents, (b) provide for expeditious and practicable execution of the Work within the Construction Time, and (c) include periods of time for THPRD to review, and for governing authorities to approve, design documents and submissions by Design-Builder.

1.46 Specifications. "Specifications" are written requirements prepared by the Design Professional that identify materials, equipment, systems, standards, and performance of the Work and related services for the Project.

1.47 Subcontractor. A "Subcontractor" is a person or entity that directly or indirectly contracts with Design-Builder to perform all or a portion of the construction Work required by the Design-Build Documents or to provide materials, equipment, labor, or services for a portion of the Work. A Subcontractor does not include the Design Professional.

1.48 Substantial Completion. "Substantial Completion" is the point when (a) the Work or a designated portion is sufficiently complete in accordance with the Design-Build Documents so that THPRD can use it for its intended purpose; (b) Design-Builder, Design Professional, Subcontractors of any tier have completed or satisfied all conditions required of Design-Builder for the issuance of a temporary or permanent certificate of occupancy and, when applicable, authorization to operate by authorities having jurisdiction over the Project; (c) THPRD has conducted an inspection of the Work; and (d) THPRD has approved the Work submitted by Design-Builder for a Substantial Completion designation.

1.49 Work. "Work" is the (a) design, pre-construction, and construction tasks, and (b) services required of Design-Builder by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment, coordination, supervision, and services provided or to be provided by Design-Builder to fulfill Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

ARTICLE 2 DESIGN-BUILDER RESPONSIBILITIES

2.1 Project Responsibilities. Design-Builder will design and construct the Project and deliver it to THPRD within the Construction Time by performing its responsibilities in accordance with THPRD's Criteria and the Design-Build Documents, including without limitation the following:

2.1.1 Project Oversight. Supervising and coordinating the Work consistent with THPRD's Criteria, the Design-Build Documents, and the Approved Project Plan. Design-Builder is responsible to THPRD for the acts and omissions of Design-Builder's Personnel, Subcontractors, the Design Professional, and other persons or entities performing any portion of Design-Builder's obligations under the Design-Build Documents.

2.1.2 Design Services. Furnishing the Drawings, Specifications, Approved Project Plan, and other Design Products necessary to fully design the Project in accordance with THPRD's Criteria.

2.1.3 Construction Services. Constructing the Work in compliance with THPRD's Criteria, the Design-Build Documents, the Approved Project Plan, and the Construction Documents.

2.1.4 Quality Assurance. Conducting and coordinating inspections and reviews of the Work as necessary to ensure that the Work complies with all representations, warranties, and quality standards required by THPRD's Criteria, the Design-Build Documents, and the Approved Project Plan.

All tasks performed by Design-Builder or its Personnel, Subcontractors, or the Design Professional must be executed in a professional, safe, and workmanlike manner and in accordance with all applicable federal, state, and local laws and building codes, THPRD Policies, certification requirements applicable to the Project, and other policies, standards, or guidelines incorporated by or referenced in the Design-Build Documents. Design-Builder and its Personnel, Subcontractors, and Design Professional will perform all design services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances.

2.2 Qualifications to Perform the Work. Design-Builder represents and warrants the following:

2.2.1 Expertise. Design-Builder has substantial expertise in design-build projects, including design and construction services in the public sector.

2.2.2 Licensure Requirement. Design-Builder is lawfully licensed in the jurisdiction where the Project is located and will remain appropriately licensed throughout the course of the Work. Design-Builder will maintain all required bonding and insurance required by the jurisdiction where the Project is located.

2.3 Performance Requirements.

2.3.1 Trust Relationship. Design-Builder accepts the relationship of trust and confidence created by this Agreement, and will operate in a manner that consistently evidences its allegiance to THPRD. Throughout the course of the Project, Design-Builder will (a) exercise skill and judgment that furthers the interests of THPRD, (b) furnish efficient business administration and supervision, (c) conduct the Work in an expeditious manner consistent with THPRD's Criteria, (d) perform the Work for a cost that does not exceed the lesser of the Contract Sum or Guaranteed Maximum Price, (e) assist THPRD with responding to inspections or reviews by governing authorities, (f) guard THPRD against conduct by Design-Builder's Subcontractors or Personnel, that fails to align with THPRD's interests, (g) avoid conflicts of interest and promptly disclose to THPRD any conflicts that may arise, and (h) refrain from paying or receiving any contingent fees or gratuities to or from its Personnel, Subcontractors, or others for whom Design-Builder may be liable, to secure preferential treatment.

2.3.2 Government Compliance.

(a) Design-Builder will design and construct the Work in compliance with applicable laws, guidelines, codes, rules, and regulations.

(b) Design-Builder will prepare, submit, or file, as appropriate, all documentation required by governmental authorities to obtain permits, approvals, and certificates necessary to perform the Work. Design-Builder will respond to all comments, requests, or changes to the Design Products requested by the state or local governing authorities, or any certification agencies with jurisdiction over the Project, for any reason, including, when required, filing and prosecuting routine appeals or modifying Design Products. If a conflict arises between any of these requirements, Design-Builder will (i) notify THPRD, (ii) review and recommend proposals to resolve the conflict, and (iii) assist THPRD in obtaining approval for each conflict-resolving proposal, as necessary.

2.3.3 Personnel. Design-Builder will not employ unfit persons or individuals who are not skilled in tasks assigned to them. Design-Builder will hire all Personnel for the proper and diligent prosecution of the Work and will use its best efforts to maintain labor peace for the duration of the Project.

2.3.4 Management Personnel.

(a) Design-Builder's Representative, who is identified in Section 1.1, is authorized to act on Design-Builder's behalf on all matters related to the Project.

(b) Design-Builder will continuously employ Key Personnel and ensure that the project manager and superintendent are continuously present on the Project Site during performance of the Work. Design-Builder may not remove or replace any Key Personnel, or cause them to leave the Project for any reason, including without limitation to work on other projects or take extended vacations, without providing 45 days' advance written notice to, and receiving the prior approval of, THPRD. Design-Builder must select, and request THPRD's approval of, replacement Personnel in accordance with Section 2.3.4(d).

(c) THPRD may, in its sole discretion, require the removal and replacement of any Personnel upon ten days' notice to Design-Builder. Design-Builder must replace any Personnel rejected by THPRD no later than 48 hours after receiving notice from THPRD. Design-Builder must select, and request THPRD's approval of, replacement Personnel in accordance with Section 2.3.4(d).

(d) Design-Builder will consult THPRD before hiring replacement Personnel or Key Personnel and will ensure that all new or replacement Personnel and Key Personnel are qualified and have adequate experience with similar projects. Design-Builder will deliver to THPRD résumés of, and an opportunity to meet with, all proposed new or replacement Key Personnel.

2.3.5 Reserved.

2.3.6 Drug-Free Environment. THPRD maintains a drug-free environment except to the extent that drugs are medically prescribed and used consistently with those prescriptions. The unauthorized use, possession, sale, purchase, distribution, dispensing, or manufacture of unauthorized or illegal drugs or alcohol by Design-Builder or any of its Personnel while on property owned or operated by THPRD is strictly prohibited. Design-Builder's Personnel may not work under the influence of or be impaired or affected by any unauthorized or illegal drugs or alcohol while on the Project Site.

2.3.7 No Weapons. No person may possess firearms while on property owned or operated by THPRD. Weapons do not include tools required to perform the Work.

2.3.8 No Liens. Design-Builder will ensure that title to all Work covered by an Application for Payment passes to THPRD on or before the time of payment. Design-Builder warrants that on submission of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from THPRD will be free and clear of liens, claims, security interests, or encumbrances in favor of Design-Builder, Subcontractors, the Design Professional and its consultants, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work. If a lien remains unsatisfied after payments are made, Design-Builder will refund to THPRD all money that THPRD may be liable to pay in connection with the discharge of the lien, including all costs and reasonable attorney fees.

2.3.9 Lien Indemnification Responsibilities. If a Subcontractor of any tier, the Design Professional or its consultants, or any other person that Design-Builder is responsible for perfects a lien against all or any portion of the Project and THPRD paid Design-Builder for that portion of the Project, Design-Builder will indemnify THPRD and defend it against the lien and will reimburse THPRD for all costs, expenses, and attorney fees incurred by THPRD arising out of or in connection with the lien. If requested by THPRD, Design-Builder will furnish and pay for a bond to release the lien from the Project.

2.4 Design Services.

2.4.1 Preliminary Design. Design-Builder will familiarize itself with the requirements of THPRD's Criteria and prepare Preliminary Design Documents for THPRD's review. The Preliminary Design Documents must include, at minimum, a preliminary interior floor plan, finish schedule, typical structural bay plan, site plan, and outline specifications. Design-Builder will supplement the Preliminary Design Documents with the following items:

(a) A feasibility report that evaluates attributes of the Project Site, including general access, traffic patterns, drainage capabilities, parking, building placement, energy consumption, and other items impacting the function or effectiveness of the building. The report may also include alternative architectural, civil, structural, mechanical, electrical, and other systems for review by THPRD, which may achieve a more desirable approach with respect to cost, technology, quality, ecological footprint, and speed of delivery.

(b) A preliminary Schedule of the Work containing milestone dates and tasks to be performed by Design-Builder, Subcontractor, and the Design Professional.

(c) A preliminary cost estimate utilizing area, volume, or similar conceptual estimating techniques.

(d) A thorough code search identifying all applicable building codes, ordinances, and certification requirements.

Design-Builder will submit the Preliminary Design Documents to THPRD for review.

2.4.2 Development of Approved Project Plan.

(a) Design-Builder will prepare and submit to THPRD a draft project plan consistent with the Preliminary Design Documents approved by THPRD. The draft project plan must include (i) an estimated Contract Sum or Guaranteed Maximum Price, (ii) an updated Schedule of the Work, including but not limited to a substantial completion date (iii) Detailed Design Documents, (iv) a description of the material differences between the Detailed Design Documents and the Preliminary Design Documents, (v) a description of all Allowances and a statement of their basis, (vi) schedules of all alternate and unit prices, (vii) a list of Work that Design-Builder will self-perform, and (viii) a schedule of all intellectual property that will be incorporated in the Work and requires payment of royalties or license fees.

(b) Before submitting the draft project plan to THPRD, Design-Builder will evaluate the Detailed Design Documents and confirm that the design can be successfully constructed on the Project Site. Design-Builder's evaluation process will include reviews of (i) the location, condition, layout, and nature of the Project Site and surrounding areas, including without limitation structural, surface, and observable subsurface conditions, (ii) generally prevailing climatic conditions, (iii) all analyses, studies, and test data available to Design-Builder concerning the conditions of the Project Site, (iv) anticipated labor supply and costs, (v) availability and cost of materials, tools, and equipment, and (vi) the Work's chances of causing lateral or vertical movement on any adjacent structure. Design-Builder will notify THPRD in writing before submitting its draft project plan if it determines that it cannot satisfy these conditions. THPRD will not be required to make any adjustment in either the Contract Sum or the Construction Time if Design-Builder fails to comply with the requirements of this Section 2.4.2(b).

(c) Design-Builder and THPRD will meet to review the draft project plan promptly after it is submitted. If THPRD approves the draft project plan, then Design-Builder will prepare an Approved Project Plan as described in Section 2.4.3. If THPRD refuses to accept, or rejects, the draft project plan, then Design-Builder will revise the draft project plan to incorporate THPRD's revisions and comments. Design-Builder will not, however, be required to make revisions to a draft project plan that violate THPRD's Criteria, the Design-Build Documents, or applicable laws, codes, or regulations.

2.4.3 Finalization of Approved Project Plan.

(a) Design-Builder will prepare an Approved Project Plan for THPRD's approval and signature. The Approved Project Plan constitutes an Amendment to this Agreement and will govern the Work in conjunction with the Design-Build Documents and THPRD Criteria. No changes will be made to the Approved Project Plan unless performed by a subsequent Amendment.

(b) If THPRD and Design-Builder cannot agree on any elements of the Approved Project Plan, THPRD may terminate this Agreement under Section 12.4. Unless otherwise authorized in writing by THPRD's Representative, Design-Builder will not perform any construction Work on the Project before it receives an Approved Project Plan.

2.4.4 Construction Documents. Design-Builder will prepare Construction Documents for THPRD's review. The Construction Documents must conform to the Approved Project Plan, Design-Build Documents, THPRD's Criteria, and applicable codes, regulations, and industry standards of the jurisdiction, including without limitation requirements of the Americans With Disabilities Act and federal, state, and local government building codes. THPRD's Criteria includes, but is not limited to, the rules and regulations of the Corporate Center at Cornell Oaks Design Review Committee (the "Design Review Committee"), which must also review and approve the Construction Documents. The Design Review Committee's review may take up to 30 days after receipt of the Construction Documents.

THPRD may review the Construction Documents and request changes at its own discretion. All changes arising from Design-Builder's failure to prepare Construction Documents in conformance with the Approved Project Plan, Design-Build Documents, THPRD's Criteria, and applicable codes, regulations, and industry standards of the jurisdiction will be performed at Design-Builder's expense. All other changes requested to the Construction Documents will be performed through a Change Order and at THPRD's expense.

2.5 Construction Responsibilities.

2.5.1 Commencement of Construction Services. Design-Builder will construct the Project in conformance with the Approved Project Plan, Construction Documents, THPRD's Criteria, and Design-Build Documents. Design-Builder will commence construction Work no later than three days after THPRD issues the Notice to Proceed to Design-Builder or as THPRD and Design-Builder may otherwise agree.

2.5.2 Control of Project Construction. Design-Builder is solely responsible for and has control over all construction means, methods, techniques, sequences, and procedures. Design-Builder is responsible for coordinating all portions of the Work under the Design-Build Documents. Design-Builder will provide all construction supervision, permits, inspections, equipment, machinery, labor, materials, tools, water, heat, utilities, transportation, and other facilities and services required to perform the Work.

2.5.3 Policy Review. Before any Work commences, Design-Builder will meet with representatives of THPRD to review all required THPRD Policies. Design-Builder's Key Personnel, and representatives of Design-Builder's Subcontractors, are required to attend these meetings.

2.5.4 Project Site. Design-Builder is solely responsible for providing a safe and accessible Project Site from the Commencement Date to the date of Substantial Completion. To ensure safety and accessibility on the Project Site, Design-Builder will perform the following tasks.

(a) Before the Work commences, Design-Builder will review the Project Site with THPRD in detail and identify the Project Site, area of the Work, staging areas, connections or interfaces with existing structures and operations, and restrictions on the Project Site. Design-Builder will ensure that construction and design personnel on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Project Site. Design-Builder will erect any necessary barriers, signage, and devices to restrict Project Site access to approved personnel, and to prevent unauthorized access to non-Work areas by construction personnel.

(b) Design-Builder will confine operations at the Project Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents.

(c) Design-Builder and its Subcontractors must receive prior approval from THPRD before delivering or storing any materials or tools on THPRD's premises. All materials and tools must be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

(d) Design-Builder and its Subcontractors may not use THPRD's tools, equipment, or materials unless authorized in advance by THPRD's Representative.

(e) All signage intended to advertise or promote the names or businesses of Design-Builder, Subcontractors, or others must be approved by THPRD before placement on the Project Site.

(f) Design-Builder will provide all directional and informational signage that notifies all persons at the THPRD facility of ongoing construction on the Project Site.

(g) Design-Builder will not unreasonably burden the Project Site with construction equipment or materials and, whenever possible and to the extent required by applicable law, will allow safe access to THPRD's facilities by physically handicapped persons.

(h) Design-Builder is responsible for the safekeeping of THPRD's property, fixtures, materials, or other equipment that Design-Builder removes from the Project Site. Design-Builder will ensure that removed items are not lost, damaged, or destroyed, and are returned to their original location, reinstalled, replaced, or repaired, as necessary.

(i) Design-Builder will keep the Project Site and surrounding area free from accumulation of waste materials, debris, smoke, rubbish, or other airborne contamination. Design-Builder will also ensure that all access areas, such as ceiling tiles and access panels, are properly closed or sealed to prevent the transmission of contaminants. When the Work is complete, Design-Builder will remove from and about the Project Site and surrounding areas all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. Design-Builder will be responsible for all broken glass and, at Final Completion of the Work, will replace such damaged or broken glass. After broken glass has been replaced, the Design-Builder will remove all labels and wash and polish both sides of the all glass. In addition to general broom cleaning, the Design-Builder will perform the following final cleaning for all trades at completion of the Work: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural finished woodwork and other work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble and other finish materials, and wash or wipe clean; (d) clean fixtures, cabinet work and equipment, removing stains, paints, dirt and dust, and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f) clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust, and buff dry by machine to bring the surfaces to sheen. If Design-Builder fails to clean up as required by this Section 2.5.4(i)

and the Design-Build Documents, THPRD may do so and charge Design-Builder for cleanup costs incurred.

(j) If all or a portion of the Work is suspended for any reason, Design-Builder will securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

THPRD will not assume or maintain any responsibility or liability for the physical condition or safety of the Project Site from the Commencement Date to the date of Substantial Completion.

2.5.5 Weekly Meetings and Reports. Design-Builder will conduct weekly meetings with THPRD's Representative and submit weekly written reports to THPRD that contain (a) a summary of the progress of the Work, (b) a submittal log, (c) a Change Order proposal log, (d) requests for personnel changes on the Project Site, and (e) other details required by THPRD. Design-Builder may be required to conduct meetings and submit written reports more or less frequently, as requested by THPRD. THPRD's Representative may in its sole discretion require meetings to occur, and reports to be submitted, more or less frequently than weekly.

2.5.6 Executive Reports. If requested by THPRD's Representative, Design-Builder will submit an executive summary report that contains images of the Project and other facts that THPRD's Representative requests regarding the Project.

2.5.7 Compliance With Manufacturer Recommendations. Unless otherwise directed by THPRD, Design-Builder and Subcontractor must perform all Work in accordance with the product manufacturers' recommendations or directions for best results. No preparatory step or installation procedure may be omitted unless specifically authorized by the Design-Build Documents. Conflicts between manufacturers' directions will be resolved by the Design Professional and memorialized by written project documentation.

2.5.8 Utility Preparation and Interruption. Unless otherwise specified in the Design-Build Documents, Design-Builder will (a) confirm the location of each utility, (b) excavate and dispose of each on-site utility, and (c) replace, reroute, or cap each off-site utility as required by the Work and as may be included in the Design-Build Documents, and (d) notify THPRD's Representative at least seven days before the interruption of any utility or operating system, regardless of the area it services. Design-Builder will ensure that all existing systems, utilities, and access avenues are on and functioning properly before leaving the Project Site each day. If any system, utility, or access avenue will not be operable, Design-Builder must notify THPRD's Representative before Design-Builder may leave the Project Site that day.

2.5.9 Subsurface Work. Design-Builder has studied the results of the test borings and information that THPRD has concerning subsurface conditions and site geology. Design-Builder will make available to THPRD the results of any other site investigation, analyses, studies, or tests conducted by, or that are in the possession of, Design-Builder or any of its Personnel. Design-Builder will exercise special care in performing subsurface work near known subsurface utilities, improvements, and easements.

2.5.10 Operation System Shutdown. THPRD's operating systems at the Project Site may not be shut down unless and until Design-Builder has given notice to and coordinated with THPRD's Representative or a physical plant operations representative. Design-Builder will

shut down no utility or system used in THPRD's ongoing operations without receiving THPRD's prior approval.

2.5.11 Drawings, Product Data, Samples.

(a) Design-Builder will prepare a submittal schedule promptly after construction commences and whenever necessary thereafter to maintain a current submittal schedule. Design-Builder will submit all submittal schedules for THPRD's approval, which will not be unreasonably delayed or withheld. The submittal schedule must (i) be coordinated with the Schedule of the Work, and (ii) allow THPRD reasonable time to review submittals. If Design-Builder fails to submit a submittal schedule in accordance with this Section 2.5.11(a), Design-Builder will not be entitled to any increase in Contract Sum or extension of Construction Time based on the time required for review of submittals.

(b) Design-Builder will verify that materials, field measurements, and field construction criteria contained in all submitted Drawings, Product Data, and Samples are accurate, and will coordinate the information contained within those submittals with the requirements of the Work and the Design-Build Documents.

(c) Drawings, Product Data, and Samples are not Design-Build Documents, but will be prepared by Design-Builder to illustrate its proposed method for satisfying the Design-Build Documents' requirements.

2.5.12 Cutting and Patching. Design-Builder is responsible for cutting, fitting, or patching portions of the Work together in accordance with the Design-Build Documents. Design-Builder will not, however, cut or otherwise alter construction performed by THPRD or a separate contractor without written consent from THPRD.

2.5.13 Access to the Work.

(a) Design-Builder will provide THPRD with access to the Work throughout the course of the Work.

(b) Design-Builder is responsible for all keys issued to it, its Subcontractors, or the Design Professional, for mechanical or other locked rooms. Keys may not be copied, transferred, or used for any purpose other than performance of the Work. Design-Builder will return all keys to THPRD at the conclusion of the Work. If not all keys are returned and THPRD determines, in its reasonable discretion, to rekey affected locks, Design-Builder will pay the cost of rekeying those locks. This remedy does not exclude any other remedies available to THPRD. The term "key" includes any device used to secure a room or areas in THPRD's premises, whether by mechanical, electronic, or other means.

(c) Design-Builder and its Personnel will comply with THPRD's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on THPRD's property.

2.5.14 Discarding of Excess Materials. Design-Builder will assign ownership of unused materials to THPRD no later than 90 days after the Final Completion Date. THPRD

may require Design-Builder to sell excess construction materials and deduct the proceeds of material sales from the Contract Sum.

2.5.15 As-Built Documents.

(a) Design-Builder will maintain at the Project Site for THPRD one record as-built copy of the Drawings, Specifications, addenda, and Amendments, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Drawings, Product Data, Samples, and similar required submittals. Design-Builder will make all as-built documentation available for THPRD's review throughout the course of the Project.

(b) Design-Builder will maintain all approved permit drawings and make them accessible at the Project Site to governmental inspectors and other authorized agencies. All approved drawings will be marked and delivered to THPRD within 90 days of Substantial Completion.

(c) Design-Builder will continuously maintain at the Project Site all material safety data sheets, safety records, daily logs, and other documentation necessary to immediately ascertain the safety of the Work and to establish compliance with THPRD Policies, Hazardous Materials requirements, and the Design-Build Documents.

(d) Design-Builder will prepare final Record Documents showing all as-built conditions as required under Section 2.5.15(a) and THPRD's closeout policies and procedures. Design-Builder will submit the final Record Documents to THPRD as a condition of final payment and certify that the final Record Documents depict the exact "as-built" conditions of the Work accurately and completely.

(e) Within sixty days of Substantial Completion, Design-Builder will assemble for THPRD's approval two complete bound copies of all operating, maintenance, and warranty data from all manufacturers whose equipment is installed in the Work, in accordance with THPRD's closeout policies and procedures.

2.5.16 Correction of the Work Remedy.

(a) Design-Builder shall promptly correct Work rejected by the THPRD, or any governmental authority, for failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by THPRD expenses and compensation were made necessary thereby, shall be at Design-Builder's expense.

(b) In addition to Design-Builder's obligations under Article 4, Design-Builder will promptly correct Work discovered within one year after Substantial Completion that does not comply with the Design-Build Documents, the Approved Project Plan, or THPRD's Criteria. The Work will be corrected at Design-Builder's cost and expense. The one-year corrective period will be extended with respect to portions of Work first performed after Substantial Completion and corrective work performed after Substantial Completion by the number of days between the date of Substantial Completion and the completion or correction of the Work.

(c) THPRD may correct Defective Work if Design-Builder fails to perform appropriate corrections promptly after receiving written notice from THPRD of the Defective Work. If THPRD performs corrective work, an appropriate Change Order will be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Design-Builder. If the sum of all payments owed Design-Builder is less than the cost of correcting the Defective Work, Design-Builder will pay the difference to THPRD.

(d) Design-Builder will repair or replace any Work that is destroyed or damaged while correcting or removing defective Work.

(e) If THPRD chooses to accept Defective Work, the Contract Sum will be equitably adjusted for any diminution in the value of the Project caused by the Defective Work.

(f) Design-Builder's obligation to correct Work during the correction period described in this Section 2.5.16 does not alter, limit, or replace any obligations it may have under warranties, applicable laws, rules, regulations, or guidelines to correct the Work.

ARTICLE 3 SCHEDULE AND TIME

3.1 Performance Approach. Design-Builder will diligently and expeditiously perform the Work required by the Design-Build Documents in accordance with the Construction Time established in the Approved Project Plan, as amended under Article 9. Time is of the essence of this Agreement.

3.2 Specific Features of and Restrictions on Construction Time.

3.2.1 Establishment of Construction Time. Design-Builder must include in the Construction Time established in the Approved Project Plan additional time to accommodate anticipated weather conditions in the geographical area of the Project, reviews of the Work conducted by THPRD, and alterations of Work that fails to comply with the Design-Build Documents, Approved Project Plan, or THPRD's Criteria. THPRD will not be required to make any adjustment in the Construction Time for delays described in Section 3.4.

3.2.2 Critical Path Method Scheduling. Design-Builder's Schedule of the Work (and all updated Schedules of the Work) must (a) utilize the calculated "critical path method" logic of construction activities and sequence of operations, (b) begin with the Commencement Date established in the Approved Project Plan and conclude with the Final Completion Date of the Project, (c) incorporate all distinct parts of the Work, and (d) clearly indicate the calculated critical path for completion of the Project and the balance of any float time.

(a) The float or contingency time within the Schedule of the Work belongs to the Project. Float or contingency time belonging to the Project can be applied only upon prior notice to all parties and unanimous agreement to its application.

(b) Changes in the critical-path Schedule of the Work will not be approved unless the proposed revised Schedule of the Work incorporates critical path logic and methodology.

(c) Design-Builder will update the Schedule of the Work promptly whenever a change occurs in the scope of the Work that impacts the Project's critical path, consumes float or contingency time, or would extend Work beyond the date scheduled for Substantial Completion.

3.3 Substantial Completion.

3.3.1 Punchlist Submission. When Design-Builder believes the Work, or a portion of the Work that THPRD agrees to accept separately, is substantially complete, Design-Builder will prepare and submit to THPRD a comprehensive list of items to be completed or corrected before final payment. Failure to include an item on the list submitted to THPRD does not alter the responsibility of Design-Builder to complete all Work in accordance with the Design-Build Documents.

3.3.2 THPRD's Inspection. Promptly after receiving Design-Builder's list, THPRD will conduct an inspection to determine whether the Work or designated portion thereof is substantially complete. If THPRD's inspection discloses any item, whether or not included on Design-Builder's list, that is not substantially complete, Design-Builder will complete or correct that item. After completing or correcting each item identified during THPRD's inspection, Design-Builder will submit a request to THPRD for another inspection.

3.3.3 Disputes. All disputes regarding Substantial Completion of Design-Builder's Work must be resolved in accordance with Article 13.

3.3.4 Acknowledgment of Substantial Completion. When the Work or designated portion thereof is substantially complete, Design-Builder will prepare for THPRD's signature an Acknowledgment of Substantial Completion that, when signed by THPRD, will establish (a) the date of Substantial Completion of the Work, (b) responsibilities between THPRD and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance, and (c) the time within which Design-Builder must finish all responsibilities listed on the Acknowledgment of Substantial Completion. Warranties required by the Design-Build Documents will commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgment of Substantial Completion.

3.4 Delays and Extensions of Time.

3.4.1 Extensions of Construction Time. Design-Builder may obtain an equitable extension of Construction Time if (a) the delay is caused by an act of THPRD or someone contracting with THPRD directly for the Project, (b) THPRD orders changes in the Work that require an extension of Construction Time, or (c) events occur that are beyond the control of Design-Builder, its Subcontractors, or the Design Professional and cause delay that cannot be remedied by the exercise of reasonable diligence by Design-Builder (e.g., industrywide labor disputes, fire, unusual and extended delays in deliveries, unavoidable casualties, adverse weather or underground conditions not reasonably anticipated).

3.4.2 Diligent-Performance Requirement. Design-Builder will not, however, receive any extension of Construction Time as permitted under Section 3.4.1 if it fails to

(a) proceed diligently with performance of the Work while a request for an extension is reviewed by THPRD, or (b) provide a written request for an extension to THPRD within 21 days after occurrence of the event giving rise to the need for additional time.

3.4.3 Calculation of Extension. All extensions in Construction Time under this Section 3.4 will be net of any delays caused by or due to the fault or negligence of Design-Builder, its Subcontractors, or the Design Professional and will also be net of any contingency or "float" time allowance included in the Project's schedule.

3.4.4 Damage Recovery. Unless caused by THPRD or someone contracting with THPRD directly for the Project, Design-Builder may not recover delay damages, wage escalation, material escalation, extended overhead, or additional compensation of any kind resulting from delay in completion of the Work.

ARTICLE 4 WARRANTIES AND CORRECTIONS OF THE WORK

4.1 Warranty. Design-Builder warrants to THPRD, effective at the date of Substantial Completion, the following:

4.1.1 Unless otherwise permitted by the Design-Build Documents or THPRD's Criteria, all materials and equipment provided as part of the Work are of good quality and new.

4.1.2 The Work is performed in a nondefective, workmanlike manner.

4.1.3 The Work is free from defects.

4.1.4 The Work conforms to the requirements of the Approved Project Plan, Design-Build Documents, and THPRD's Criteria. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by THPRD.

If required by THPRD, Design-Builder will furnish satisfactory evidence as to the kind and quality of materials and equipment.

4.2 Exclusions. Design-Builder's warranties exclude remedy for damage or defect caused by THPRD after Substantial Completion, abuse, improper or insufficient maintenance/improper operation, normal wear and tear, and normal usage.

4.3 Failure to Cure Breach. If, after ten days' notice, Design-Builder fails to proceed to cure any breach of its warranties, THPRD may correct the defects and Design-Builder and its surety, if any, will be liable for all expenses incurred. In case of an emergency in which, in the opinion of THPRD, delay would cause serious loss or damage, corrective Work may be undertaken without advance notice to Design-Builder, but Design-Builder and its surety will remain liable for all expenses incurred. The remedies stated in this Section 4.3 are not exclusive, but are cumulative of any other remedies that THPRD may have.

4.4 Third-Party Warranties.

4.4.1 Design-Builder will obtain from its Subcontractors written guaranties and warranties consistent with the requirements of the Design-Build Documents. If the Design

Build Documents do not contain requirements for written guaranties or warranties, then Design Builder will obtain the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties. Design-Builder will assign and deliver to THPRD all manufacturers' warranties not later than the date of Substantial Completion.

4.4.2 All guaranties or warranties of third parties furnished to Design-Builder or its Subcontractors, including without limitation from any manufacturer or supplier, will be deemed to run for the benefit of THPRD.

4.4.3 Design-Builder will deliver to THPRD two bound volumes and one electronic PDF of all guaranties and warranties on material and equipment furnished by manufacturers and suppliers to Design-Builder and all its Subcontractors, with duly executed instruments properly assigning the guaranties and warranties to THPRD. The guaranties and warranties in each bound volume will be grouped together by trade and properly indexed. Design-Builder will assign and deliver to THPRD all manufacturers' warranties not later than the date of Substantial Completion.

4.4.4 Until Substantial Completion, Design-Builder will perform and document all required maintenance of equipment and systems and maintain in force all warranties.

4.4.5 Design-Builder hereby assigns to THPRD all warranties and guaranties of its Subcontractors and the Design Professional. This assignment will not, however, relieve Design-Builder of its warranty obligations to THPRD under the Design-Build Documents and THPRD's Criteria.

ARTICLE 5

THPRD'S RIGHTS AND RESPONSIBILITIES

5.1 THPRD's Designated Representative. THPRD's Representatives are identified in Section 1.1 of this Agreement. Only THPRD's Representatives have authority to bind THPRD on matters requiring THPRD's approval or authorization. Personnel of THPRD, other than THPRD's Representatives, do not have authority to bind THPRD on any matter regarding this Project. Design-Builder, its Subcontractors, and the Design Professional, may not rely on statements, requests, or purported authorizations made by persons or entities other than THPRD's Representatives for any purpose relating to the Work, the Design-Build Documents, changes, or payment.

5.2 Ownership of Project Site. THPRD may not own the real estate where the Work will be performed, but THPRD has obtained or will obtain rights necessary for the Work to be performed on the Project Site.

5.3 Limitation of Liability for THPRD Personnel. No officer, director, trustee, shareholder, member, manager, partner, employee, volunteer, or agent of THPRD, THPRD's Representative, or other representative of THPRD will have any personal liability to Design-Builder or any other person or entity other than THPRD for any acts or omissions arising out of or relating to this Agreement, whether based on tort, contract, statute, administrative laws, or otherwise.

5.4 Information and Services Required From THPRD.

5.4.1 Furnishing of Information. THPRD will furnish information or services reasonably needed by Design-Builder to perform the Work within a reasonable time after receiving a written request for the information or services from Design-Builder.

5.4.2 Worksite Information. THPRD will provide at its expense and with reasonable promptness the following information about the Project Site if required by the Design-Build Documents or applicable law:

(a) Information describing the known physical characteristics of the Project Site, including surveys, worksite evaluations, legal descriptions (with easements, title restrictions, zoning restrictions, and boundaries), data or drawings depicting known existing conditions, known utility details, subsurface and environmental studies, reports, and investigations; and

(b) Tests, inspections, and other reports dealing with environmental matters, Hazardous Materials, and other existing conditions, including structural, mechanical, air and water pollution, and chemical tests.

5.4.3 Additional Tests and Inspections. Design-Builder will advise THPRD of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required by law or by the Design-Build Documents or that should otherwise be procured. Design-Builder will recommend the services of engineers or consultants when those services are reasonably necessary or required. Design-Builder will arrange for and coordinate those tests or services that are approved by THPRD, and THPRD will contract with the appropriate professionals and pay the necessary costs of those tests or services that it has approved in advance.

(a) Design-Builder will review all inspections and reports, advise THPRD of their results and recommendations, provide THPRD with copies of those reports or results if necessary, and report to THPRD and the provider of the inspections or reports any errors or inconsistencies discovered.

(b) Design-Builder is responsible for obtaining the soil bearing, percolation, elevation, and other values necessary to prepare final and complete Instruments of Service.

5.4.4 Independent Reviews. THPRD may obtain independent reviews of Design-Builder's design or construction documents at its own expense from separate architects, engineers, contractors, or cost estimators.

5.4.5 Cooperation to Secure Permits. THPRD will cooperate with Design-Builder in obtaining licenses, permits, and inspections required by governing authorities. THPRD will not, however, be required to pay the fees for these licenses, permits, and inspections unless otherwise agreed under Section 1.7.

5.5 THPRD's Responsibilities During Design Phase. THPRD will provide Design-Builder with THPRD's Criteria before the design phase of the Work commences, and will conduct

timely reviews , no sooner than 10 days upon receipt, of all schedules, Preliminary Design Documents, project plans, and Construction Documents furnished during the design phase.

5.6 THPRD's Responsibilities During Construction Phase. THPRD will not have control over or charge of, nor will it be responsible for, the construction means, methods, techniques, sequences, procedures, coordination, scheduling, supervision, or safety precautions and programs connected to the Work. During the construction phase of the Project, THPRD will be responsible for only the following:

5.6.1 Schedule Review. Reviewing the Schedule of the Work and any updates in a timely manner.

5.6.2 Notification of Shortcomings. THPRD's failure to discover or give notice of any shortcomings, errors, omissions, or defects in the Work will not create any liability for THPRD or relieve Design-Builder of its obligations to fulfill the requirements of the Design-Build Documents, Approved Project Plan, and THPRD's Criteria.

5.6.3 Insurance. Securing and maintaining insurance required by THPRD in Article 11.

5.6.4 Payment. Tendering timely payments to Design-Builder in accordance with Article 8.

5.7 THPRD's Inspection Rights.

5.7.1 Right to Inspect. THPRD may visit and inspect the Project Site to evaluate the progression of the Work in accordance with the Design-Build Documents, Approved Project Plan, and THPRD's Criteria. THPRD's visitation and inspection rights do not, however, obligate THPRD to conduct exhaustive or continuous on-site inspections.

5.7.2 No Responsibility. THPRD will not be responsible for Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents, Approved Project Plan, and THPRD's Criteria, nor will THPRD have control over, have charge of, or be responsible for acts or omissions of Design-Builder, its Personnel, or any other persons or entities performing portions of the Work for Design-Builder.

5.7.3 Rejection of the Work. THPRD may reject Work that fails to comply with the Design-Build Documents, Approved Project Plan, and THPRD's Criteria regardless of whether the Work is fabricated, installed, or completed. THPRD's election or failure to reject any of the Work will not create any review or inspection obligations or liability for THPRD.

5.8 THPRD's Right to Partially Occupy the Work. THPRD may occupy or use any completed or partially completed portion of the Work at any stage if occupancy or use is consented to by Design-Builder, the insurer (if so required by the insurer), and all governmental authorities having jurisdiction over the Work. THPRD may partially occupy or use the Work regardless of whether that portion is substantially complete, as long as THPRD and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents.

5.8.1 Joint Inspection. Immediately before the commencement of any partial occupancy or use, THPRD and Design-Builder will jointly inspect the area to be occupied to determine the condition of the Work.

5.8.2 No Acceptance. Partial occupancy or use of the Work will not constitute acceptance of Work that fails to comply with the Design-Build Documents.

5.8.3 Certificates. Design-Builder will deliver to THPRD certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved Schedule of the Work. The costs of such procurement, payment, and delivery will be included within the Contract Sum.

5.9 THPRD's Right to Stop the Work.

5.9.1 THPRD may issue a written order to Design-Builder to stop the Work, or any portion of it, if:

(a) Design-Builder fails to correct Work as required by Section 2.5.16 or Section 4.3;

(b) Design-Builder fails to carry out Work in accordance with the Design-Build Documents, Approved Project Plan, and THPRD's Criteria; or

(c) THPRD determines that Work creates a safety hazard or threat to THPRD's own facility or its occupants.

Any written order issued by THPRD may be withdrawn after Design-Builder corrects the affected Work to THPRD's satisfaction.

5.9.2 THPRD's right to stop the Work imposes no duty on THPRD to stop the Work for the benefit of Design-Builder or any other person or entity.

5.9.3 If the Work is suspended under Section 5.9.1, the Construction Time will be adjusted accordingly, and the Contract Sum will be adjusted to the extent, if any, that additional costs are incurred by reason of the suspension.

5.10 THPRD's Right to Carry Out the Work. THPRD may carry out the Work and correct deficiencies in existing Work after providing ten days' advance written notice to Design-Builder. If THPRD elects to carry out the Work and correct deficiencies, it will issue a Change Order deducting the reasonable cost of the Work from payments then or thereafter due Design-Builder. If payments due Design-Builder are not sufficient to cover THPRD's costs, including THPRD's expenses and

compensation for any additional services made necessary by the default, neglect, or failure, Design-Builder will pay the difference to THPRD.

5.10.1 No Notice Required for Emergencies. If Design-Builder's default or neglect results in a hazard to the safety of persons or property, THPRD may carry out any Work necessary to mitigate the hazard immediately, regardless of the notice period, and charge Design-Builder for costs incurred.

5.10.2 No Obligation. THPRD's right to carry out the Work will not create any duty for THPRD to exercise this right to benefit Design-Builder or any other person or entity.

5.11 Exclusion and Replacement of Personnel. In addition to the removal rights under Section 2.3.4(c), THPRD may request that Design-Builder immediately exclude or remove from the Project Site any Personnel, or those for whom Design-Builder is responsible, who threaten the safety of others or disrupt the Project or THPRD's operations. Design-Builder will supply replacement personnel within forty-eight hours after receiving the request for exclusion or removal.

5.12 Nonwaiver. THPRD's rights and remedies stated in Sections 5.9 through 5.11 are in addition to, and not in restriction of, THPRD's other rights or remedies.

ARTICLE 6 SUBCONTRACTORS

6.1 Retaining Subcontractors. Design-Builder may perform Work using Subcontractors or Design Professional but cannot retain any Subcontractor or Design Professional that THPRD reasonably and timely rejects. THPRD may recommend Subcontractors to Design-Builder for portions of the Work, but Design-Builder will not be required to retain any Subcontractor to whom Design-Builder has a reasonable objection. When the Contract Sum is based on the cost of the Work, Subcontractor needs to be selected using the procedures in Section 7.2.2.

6.2 Management of Subcontractors. Design-Builder will manage each Subcontractor's performance of the Work and be responsible for each Subcontractor's actions on the Project Site.

6.3 Contingent Assignment of Subcontract. If this Agreement is terminated, Design-Builder will assign each contract agreement to THPRD, subject to the prior rights of any surety, provided that:

6.3.1 Termination of Agreement. THPRD terminates this Agreement in accordance with Article 12; and

6.3.2 Notification of Subcontractor. THPRD accepts the assignment by notifying Design-Builder and Design-Builder in writing, and assumes all rights and obligations of Design-Builder under the assigned contract agreement.

6.4 Binding of Subcontractors and Material Suppliers. By appropriate written agreement, Design-Builder will require each Subcontractor (a) to the extent of the Work to be performed by the Subcontractor, to be bound to Design-Builder by the scope of Work and requirements of the Design-Build Documents; (b) to assume toward Design-Builder all duties, obligations, and conditions imposed by the terms and conditions of the Design-Build Documents that Design-Builder assumes toward THPRD; and (c) to affirm the same representations to Design-Builder that Design-Builder makes to

THPRD. Design-Builder will require each Subcontractor to enter into similar agreements with sub-subcontractors of every tier. Design-Builder will make available to each proposed Subcontractor, before the execution of the subcontract, copies of the Design-Build Documents to which the Subcontractor will be bound.

6.5 Related Entities.

6.5.1 Notification Regarding Related Entities. Design-Builder must notify THPRD in advance if it, the Design Professional, or a Subcontractor of any tier proposes to enter into any subcontract, contract, agreement, purchase order, or other arrangement with a Related Entity. THPRD may, at its sole discretion, object to Design-Builder's choice to use a Related Entity.

6.5.2 Conditions to Hiring Related Entities. Before self-performing Work or contracting with a Related Entity to perform Work, Design-Builder will obtain at least three bids from other contractors or, if bids are not available, provide benchmark pricing data from other projects that is satisfactory to THPRD and comparable to the Work, to verify the proposed cost for that Work. If adequate benchmarks are unavailable for any reason, THPRD may issue a THPRD Directive instruction to Design-Builder to perform the Work subject to maximum price or cost verification requirements.

ARTICLE 7 Reserved

ARTICLE 8 PAYMENT

8.1 General Payment Process. Each month, Design-Builder will submit one request for payment to THPRD in the form of an Application for Payment prepared in accordance with this Article 8. THPRD will review Design-Builder's Applications for Payment and, if the Application for Payment is approved by THPRD, make payments to Design-Builder as permitted by this Article 8.

8.2 Applications for Payment.

8.2.1 Cost Spreadsheet. Design-Builder will prepare a spreadsheet that allocates all of the Contract Sum to the various portions of the Work. Design-Builder will submit the spreadsheet to THPRD for review before or simultaneously with the first Application for Payment. THPRD may use the spreadsheet as a basis for reviewing Design-Builder's Applications for Payment.

8.2.2 Content of Applications for Payment. On or before the fifth day of each month, Design-Builder will submit to THPRD one original and one copy of a written, itemized Application for Payment for completed portions of the Work. Each Application for Payment must be (a) on a THPRD-approved form, (b) supported by data substantiating Design-Builder's right to payment as THPRD may require, and (c) account for retainage amounts established by the Design-Build Documents. Design-Builder must include the following in each Application for Payment.

(a) The Project name, Project Site (e.g., address and suite), and THPRD's purchase order number.

- (b) Description of the Work.
- (c) Detailed cost report and updated cost spreadsheet.
- (d) Separate description of the Work and cost summary for Work required by an Amendment.
- (e) List of current balances for each Allowance.
- (f) Breakdown of Design-Builder's application of contingency.
- (g) Summary of payment for materials stored in locations outside the Project Site.
- (h) Lien Releases on forms acceptable to THPRD that provide a conditional release of liens, bonds, and claims for the Work subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.
- (i) All other information and materials required to comply with the requirements of the Design-Build Documents.

THPRD may, at its option, require documentation from Design-Builder evidencing that Subcontractors of every tier have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to Design-Builder for each Application for Payment.

8.3 Progress Payments.

8.3.1 Calculation of Payments. THPRD will make progress payments to Design-Builder that are calculated based on: (x) for a fixed-price Contract Sum, the percentage of the Work completed or (y) for a cost of the Work plus Design-Builder Fee Contract Sum, the Costs of the Work incurred as claimed in the Application for Payment, together with the proportional amount of Design-Builder's Fee, subject to the following:

- (a) Retainage will be withheld from the total progress payment amount at 5 percent of the total amount due to Design-Builder pursuant to ORS 279C.550 to .565 and ORS 701.410 to 701.420, unless Design-Builder elects to provide a bond, security, or other instrument deposited or acquired in lieu of retainage as permitted under ORS 279C.560.
- (b) Adjustments due to corrections made on prior Applications for Payment, when applicable.
- (c) The amount of the progress payment will be reduced by amounts withheld by THPRD, as described in Section 8.4.
- (d) For a cost of the Work plus Design-Builder's Fee Contract Sum, the amount of the progress payment may be adjusted by THPRD if the total amount of progress payments would exceed an amount commensurate with the percentage of completion of the Project as determined by THPRD with reference to the actual completion of the Work, Design-Builder's spreadsheet, and the Approved Project Plan.

8.3.2 Tendering Payment. To the extent that an Application for Payment has been approved, THPRD will tender payment to Design-Builder as follows within 30 days after receipt of Contractor's Application for Payment or 15 days after THPRD has approved payment to Contractor under the Application for Payment, whichever is the earlier date.

8.3.3 Payment for Design Services. Design-Builder will promptly pay the Design Professional and other consultants retained directly by Design-Builder upon receipt of payment from THPRD using the amount paid to Design-Builder for the portion of the Work performed by that party. Design-Builder may not pay the Design Professional or other consultants less than the amount to which they are entitled.

8.3.4 Payment for Construction Services. Design-Builder will promptly pay each Subcontractor upon receipt of payment from THPRD using the amount paid to Design-Builder for the portion of the Work performed by that Subcontractor. Design-Builder may not pay any Subcontractor less than the amount to which it is entitled but may withhold retainage from each payment. Design-Builder will, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to lower tier Subcontractors in a similar manner.

8.3.5 No Obligation to Confirm Payment. THPRD has no obligation to pay or confirm the payment of money to a Subcontractor except as may otherwise be required by law.

8.3.6 No Acceptance of Defective Work. THPRD will not accept any Work that fails to comply with the Design-Build Documents or THPRD's Criteria unless otherwise explicitly stated in writing. Neither progress payments nor partial or entire use or occupancy of the Work constitutes THPRD's acceptance of Defective Work.

8.3.7 Evidence of Payment. THPRD may request written evidence from Design-Builder that Design-Builder has properly paid each Subcontractor the amounts paid by THPRD to Design-Builder for subcontracted Work. If Design-Builder fails to furnish evidence satisfactory to THPRD within seven days, THPRD may contact each Subcontractor to confirm whether it has been properly paid. THPRD will have no obligation to pay or to see to the payment of money to a Subcontractor, unless otherwise be required by law. THPRD may at its sole discretion, however, make payments payable jointly to Design-Builder and a Subcontractor. THPRD will notify Design-Builder of joint payments, and THPRD will receive credit against the Contract Sum for the joint payments.

8.3.8 Account Reconciliation. THPRD or its Auditors may audit and review progress payments periodically during the course of the Project under the following terms and conditions:

(a) Upon request, Design-Builder will promptly make available to THPRD or its Auditors any or all payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by THPRD to demonstrate that cash disbursements already made by Design-Builder on account of the cost of the Work are accurate.

(b) THPRD will be entitled to rely on the accuracy and completeness of the information furnished by Design-Builder when reviewing Applications for Payment.

(c) Payment by THPRD does not represent that it has (i) made a detailed examination, audit, or arithmetic verification of the documentation submitted in conjunction with an Application for Payment or other supporting data; (ii) made exhaustive or continuous on-site inspections; or (iii) made examinations to ascertain how or for what purposes Design-Builder has used amounts previously paid on account of this Agreement. No certification, action, payment, or representation by THPRD before final payment of the Contract Sum will be considered a waiver or release of any right to correct amounts to be paid or to withdraw or modify certification of any payment requested by or paid to Design-Builder.

(d) If THPRD or its Auditors determines that an Application for Payment should be adjusted to accurately reflect the progression or incurred cost of the Work, THPRD will make the adjustment to a subsequent progress payment or, if necessary, the final payment.

8.4 Decisions to Withhold Certification.

8.4.1 Reasons for Withholding. THPRD may withhold payment or nullify previously issued Certificates of Payment, to the extent reasonably necessary to protect itself, if THPRD determines that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents or THPRD Criteria. Grounds for withholding or nullifying payment include the following:

- (a) Defective Work not remedied;
- (b) Third-party claims filed or reasonable evidence indicating probable filing of third-party claims unless Design-Builder provides security that is acceptable to THPRD;
- (c) Design-Builder's failure to make payments properly to Subcontractors or Design Professional for labor, materials, or equipment;
- (d) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (e) Damage to THPRD or a separate contractor;
- (f) Reasonable evidence that the Work will not be completed within the Construction Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) Repeated failure to carry out the Work in accordance with the Design-Build Documents;
- (h) Unsatisfactory Work progress;
- (i) Disputed Work, materials, or products, not to exceed 150 percent of the amount in dispute;
- (j) Failure to comply with other material provisions of the Design-Build Documents;

(k) Failure to maintain current as-built documents or safety documentation; or

(l) Failure to train personnel on Design-Builder's Safety Program.

8.4.2 Subsequent Payment. When the reasons for withholding payment are removed, THPRD will pay amounts previously withheld.

8.4.3 No Work Stoppage. Design-Builder will expeditiously continue the Work regardless of any disputes or disagreements regarding THPRD's payment determinations.

8.5 Completion of Project and Final Payment.

8.5.1 Final Inspection. THPRD will conduct a final inspection of the Work promptly after receiving written notice from Design-Builder that the Work is ready for final inspection and acceptance, and a final Application for Payment.

8.5.2 Final Payment. When THPRD finds that the Work complies with the Design-Build Documents and THPRD's Criteria, THPRD will, subject to Section 8.5.4, promptly make final payment to Design-Builder.

8.5.3 Retainage Payment. Upon final completion and consent of surety, if any, THPRD will pay to Design-Builder retainage applying to the Work or designated portion thereof. The retainage payment will be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents or THPRD's Criteria.

8.5.4 Final Payment Submissions. Neither final payment nor any remaining retained percentage will become due until Design-Builder has fully performed this Agreement as required by the Design-Build Documents and THPRD's Criteria except for those duties that extend beyond the date of final payment. Full performance of this Agreement includes complying with THPRD's policies for Project closeout and Applications for Payment, delivering Record Documents to THPRD, submitting a final accounting for the cost of the Work and a final Application for Payment to THPRD, returning the keys required by Section 2.5.13(b), providing two sets of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, taking all action necessary on Design-Builder's part for issuance of a temporary or final certificate of occupancy, or its substantial equivalent, by the appropriate permitting agency, and submitting to THPRD the following:

(a) An affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which THPRD or THPRD's property might be responsible or encumbered (less amounts withheld by THPRD) have been paid or otherwise satisfied;

(b) A certificate evidencing that insurance required by the Design-Build Documents will remain in force after final payment;

(c) A written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents;

(d) Consent of surety, if any, to final payment;

(e) Valid unconditional waivers of all construction lien claims, bond claims, and other Claims by Design-Builder, the Design Professional, and each Subcontractor in a form acceptable to THPRD;

(f) A certificate that no materials incorporated in the Work contain asbestos;

(g) All documents, warranties, record drawings, and other deliverables as required by Sections 2.5.15(a) through 2.5.15(d) and the Design-Build Documents; and

(h) If required by THPRD, other data establishing payment or satisfaction of obligations, including but not limited to receipts, releases and waivers of liens, claims, security interests, or encumbrances arising out of this Agreement, to the extent and in such form as may be designated by THPRD.

8.5.5 Delay in Final Completion. If final completion is not accomplished within 30 days after the date of Substantial Completion due to any fault of Design-Builder, THPRD may withhold from any subsequent progress payments and from the final payment 150 percent of the reasonable cost of the unfinished Work necessary to attain final completion. Withheld funds will be paid pro rata following successful completion of the unfinished Work if the Work is done by Design-Builder. If Design-Builder fails to complete the Work necessary to attain final completion, THPRD may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. THPRD will not withhold any amount under this section relating to Work arising from Change Orders or THPRD Directives issued following the date of Substantial Completion.

8.5.6 Waiver of Claims by Construction Professional. Acceptance of final payment by Design-Builder, or Subcontractors will constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

8.5.7 Requests for Payment Cutoff. THPRD will not review or pay requests for payment that are submitted (a) more than 90 days following completion of the Work performed, or (b) on or after the date of acceptance of final payment, whichever is earlier.

8.6 Final Payment Audit. The following sections apply when the basis of payment to Design-Builder is the Cost of the Work plus a fee with a Guaranteed Maximum Price.

8.6.1 Performance of Audit. THPRD or its Auditors will review and report on Design-Builder's final accounting within 30 days after Design-Builder delivers its final accounting to THPRD. THPRD will review its Auditors' findings and either (a) certify final payment or (b) notify Design-Builder in writing of the reasons for withholding a certificate as provided in Section 8.4.1.

8.6.2 Reduction of Audit Disputes. If Auditors report the Cost of the Work to be less than the amount claimed by Design-Builder in its final accounting, Design-Builder is entitled to request an initial decision or mediation of the disputed amount under Section 13.2. A request for initial decision or mediation must be made by Design-Builder within 30 days after Design-Builder's receipt of a copy of THPRD's certification decision. Failure to make the request within this 30-day period will result in the substantiated amount reported by Auditors becoming

binding on Design-Builder. Pending a final resolution of the disputed amount, THPRD will pay Design-Builder the amount certified. If the Cost of the Work, as finally determined under this section, is less than the amount for the Cost of the Work previously paid by THPRD to Design-Builder, Design-Builder will remit the overpayment to THPRD within 30 days of the final determination, together with interest at an annual rate of 1 percent over the prime lending rate published by *The Wall Street Journal* on the date of final payment, accruing from the date of final payment until the date of Design-Builder's remittance of the overpaid amount.

8.7 Costs Incurred After Final Payment. If, after final payment and at THPRD's request, Design-Builder incurs costs described in Section 7.2 and not excluded by Section 7.3 to correct Defective Work, THPRD will reimburse Design-Builder for those costs and the applicable Design-Builder's Fee on the same basis as if the costs had been incurred before final payment, but not in excess of the Guaranteed Maximum Price. If Design-Builder has participated in savings, the amount of such savings will be recalculated and appropriate credit given to THPRD in determining the net amount to be paid by THPRD to Design-Builder.

ARTICLE 9 CHANGES IN THE WORK

9.1 General. THPRD may require, or Design-Builder may request, changes in the Work during the course of the Project without invalidating this Agreement by issuing an Amendment, subject to the limitations stated in this Article 9 and elsewhere in the Design-Build Documents.

9.2 Grounds for Changes. Design-Builder may request a change in the Work by preparing and submitting a Change Order. THPRD will review the Change Order submitted by Design-Builder if:

9.2.1 Changes in the Law. A change in applicable laws, guidelines, codes, rules, or regulations that was not reasonably anticipated is enacted after THPRD signs the Approved Project Plan under Section 2.4.3.

9.2.2 Unforeseen Conditions. Design-Builder reasonably believes, and THPRD agrees, that changes in the Work are warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work.

9.2.3 Scope Changes. THPRD-initiated, material changes to Project scope items upon which the current Contract Sum is based. For purposes of this Section 9.2.3, a material change is one that THPRD determines will affect the Contract Sum or the Contract Time.

9.2.4 Allowances. Design-Builder's costs fail to meet, or exceed, an Allowance. The increase or decrease in the Contract Sum must reflect the difference between actual costs and the Allowances. Savings realized on an Allowance will be returned to THPRD as a reduction in the Contract Sum.

If Design-Builder has grounds to request a Change Order and the parties cannot agree on an adjustment in the Contract Sum or Construction Time, Design-Builder will submit a Claim under Section 13.1.

9.3 Change Orders. Design-Builder or THPRD may request changes in the Work within the general scope of the Design-Build Documents by signing a Change Order and complying with the provisions of this Section 9.3. Issuance of a Change Order will not invalidate this Agreement.

9.3.1 Prompt Performance. Design-Builder will promptly perform the instructions in each properly executed Change Order, unless otherwise stated in the Change Order or a subsequent Amendment.

9.3.2 Bidding. Before both parties sign a Change Order, Design-Builder will produce copies of all bids or other proposals, including those from Subcontractors, for Work proposed to be performed under the Change Order.

9.3.3 Final Settlement. Agreement on any Change Order will constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs and all adjustments to the Contract Sum according to the terms and any conditions stated in the Change Order. This Section 9.3.3 does not, however, affect THPRD's audit rights.

9.4 THPRD Directives. THPRD may issue a THPRD Directive that orders changes in the Work within the general scope of the Design-Build Documents and complies with the provisions of this Section 9.4. Issuance of a THPRD Directive will not invalidate this Agreement.

9.4.1 Usage. THPRD may use a THPRD Directive in the absence of an agreement between THPRD and Design-Builder to change the Work.

9.4.2 Contract Sum Adjustment Options. If a THPRD Directive requires an adjustment to the Contract Sum, the adjustment will be based on one of the following methods:

- (a) Mutual acceptance of one lump-sum payment that is supported by sufficient substantiating documentation;
- (b) Unit prices stated in the Design-Build Documents or subsequently agreed on;
- (c) Cost of the Work, to be determined in a manner agreed on by the parties and a mutually acceptable fixed or percentage fee; or
- (d) The adjustment provided for in Section 9.4.4.

9.4.3 Prompt Performance. Upon receipt of a THPRD Directive, Design-Builder will promptly proceed with the change in the Work and notify THPRD of Design-Builder's agreement or disagreement with the method, if any, provided in the THPRD Directive for determining the proposed adjustment in the Contract Sum or Construction Time. Failure by Design-Builder to promptly respond to Contract Sum or Construction Time adjustments in a THPRD Directive constitutes Design-Builder's agreement with the terms of that THPRD Directive.

9.4.4 Contract Sum Adjustment Default. If Design-Builder disagrees with the Contract Sum adjustment authorized in a THPRD Directive, the method and the adjustment will be determined by THPRD on the basis of reasonable expenditures and savings of those performing the changes in the Work, including, when the THPRD Directive contains an increase

in the Contract Sum, a reasonable allowance for overhead and profit. Design-Builder will submit, in a form permissible to THPRD, an itemized accounting of all costs and fees incurred from the change in the Work together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs and fees for the purposes of this Section 9.4.4 will be limited to the following:

- (a) Additional costs of professional services;
- (b) Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- (c) Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- (d) Rental costs of machinery and equipment, exclusive of hand tools, whether rented from Design-Builder or others;
- (e) Permit fees, taxes, and increased costs of bonds and insurance necessitated by the changed Work; and
- (f) Additional costs of supervision and field office personnel directly attributable to the change.

9.4.5 Disputed and Nondisputed Payment Amounts. Undisputed costs arising from changes in the Work will be included in Applications for Payment and accompanied by a Change Order during the course of the Project. For costs that remain in dispute, THPRD will make an interim determination and issue monthly payments accordingly. Design-Builder may assert a Claim in accordance with Article 13 if it disagrees with THPRD's interim determination.

9.4.6 Adjustment Agreements. If THPRD and Design-Builder agree to an adjustment after a THPRD Directive has been issued, then the adjustment will be effective immediately and the parties will promptly sign a Change Order.

9.5 Overhead and Profit Increases. Overhead and profit adjustments for net increases in the cost of any portion of the Work are governed by the following terms and limitations:

9.5.1 For Work performed by Design-Builder's own forces or Related Entities, Design-Builder may claim no more than the Design-Builder's Fee or 5 percent of the actual Cost of the Work, whichever is less. There will be no separate markup by a Related Entity.

9.5.2 For Work performed by a Subcontractor, Design-Builder may claim no more than the Design-Builder's Fee or 5 percent of the actual amount due to Design-Builder for the Cost of the Work, whichever is less.

9.5.3 For Work performed by a Subcontractor, Subcontractor may claim no more than 10 percent of its actual Cost of the additional Work.

9.5.4 The Costs of the Work to which overhead and profit are to be applied at any tier are determined by Article 7.

9.5.5 All cost proposals, except those so minor that their propriety can be readily determined, must be accompanied by a complete itemization of costs, including without limitation the costs of labor, materials, contracts, and subcontracts. Subcontractor costs exceeding \$1,500 must be similarly itemized.

9.5.6 All general conditions or general requirements costs of Design-Builder, Related Entities, and all Subcontractors of any tier are to be included in the overhead and profit allowance stated in this section and may not be separately stated or recovered as Costs of the Work.

9.5.7 Design-Builder bears the burden of establishing the reasonableness of any proposed increase in the Contract Sum or Construction Time.

9.6 Overhead and Profit Decreases. Overhead and profit adjustments for net decreases in the cost of any portion of the Work will include a deduction of the overhead and profit, fee, and general conditions or general requirements costs that would be allowed for that Work by the terms of Section 9.5.

9.7 Minor Changes in the Work. THPRD may make minor changes in the Work consistent with the intent of the Design-Build Documents, if the changes do not involve an adjustment in the Contract Sum or Construction Time.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Basic Duty. Design-Builder acknowledges the risks associated with construction of public works projects. Design-Builder assumes a duty to (a) protect persons and property at the Project Site during the entire course of its Work and (b) create, implement, and enforce a specific Safety Program for the Project. In conjunction with this duty, Design-Builder will take all necessary and reasonable precautions to prevent damage, injury, or loss to:

10.1.1 Personnel. Employees on the Project Site, THPRD's administrative staff, visitors, and vendors, and other persons who may be affected;

10.1.2 Construction Work. The Work and materials and equipment to be incorporated in the Work, whether in storage on or off the Project Site or under the care, custody, or control of Design-Builder or Design-Builder's Subcontractors;

10.1.3 Other Property. Other property at the Project Site or adjacent to it, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and

10.1.4 Adjoining Operations. Adjoining operations of THPRD and other tenants.

10.2 Safety Program. Before commencement of the Work, Design-Builder will publish its Safety Program to THPRD, each Subcontractor, and other persons affected or required for its implementation and maintenance. THPRD may suspend the Work or cancel this Agreement, all at Design-Builder's sole expense, if Design-Builder fails to adequately implement its Safety Program.

10.2.1 Contents of Safety Program. Design-Builder will ensure that its Safety Program (a) is consistent with and incorporates THPRD's safety and infection control policies and procedures in their current form and (b) includes a fire response plan consistent with THPRD policies for the Project Site. Design-Builder will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project Site, to maintain a safe working environment.

10.2.2 Appointment of Administrator. Design-Builder must designate and train its superintendent or a specific safety officer to administer the Safety Program.

10.2.3 Safety Program Review. As a condition precedent to its commencement of the Work, Design-Builder must review (a) its Safety Program in detail with each of its Subcontractors of every tier and all other personnel who will be required to comply, and (b) the methods, means, materials, tools, and equipment that the Subcontractor is to use, to verify the Subcontractor's knowledge of and compliance with the Safety Program.

10.2.4 Legal Notice and Compliance. Design-Builder will give notice of and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the protection of persons or property from damage, injury, or loss.

10.3 Specific Safety Considerations. Without limiting any other requirement of this Article 10, Design-Builder will:

10.3.1 Rating. Ensure that all equipment furnished and installed is rated by Underwriters Laboratories or another method approved by the state testing laboratory or THPRD, as appropriate.

10.3.2 Safeguards. Erect and maintain reasonable safeguards for safety and protection, including without limitation posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.3.3 Protection of Adjoining Property. Protect adjoining property and provide barricades, temporary fences, and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances, or other laws, or the Design-Build Documents. Design-Builder will repair any damage it causes to adjoining property at its own expense.

10.3.4 Hazardous Materials, Explosives, and Fires. Obtain advance approval before proceeding with the storage or use of explosives, Hazardous Materials, or unusual equipment for prosecution of the Work. When use or storage of explosives or other Hazardous Materials or equipment is necessary for execution of the Work, Design-Builder will exercise utmost care and carry on such activities under supervision of properly qualified personnel. Design-Builder will not permit open fires on the Project Site.

10.3.5 Loading. Not load or permit any part of the Work or Project Site to be loaded so as to endanger its safety.

10.3.6 Weather Protection. Keep Work, materials, and apparatus free from damage caused by rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, Design-Builder will cease Work and notify THPRD of the cessation. When all or a portion of the Work is suspended for any reason,

Design-Builder will securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

10.3.7 Storage Practices. Ensure that storage practices on the Project Site will keep combustible load levels at a minimum and in approved containers that are clearly labeled. Design-Builder will provide material safety data sheets to THPRD for all chemicals used on the Project Site.

10.4 Repairs.

10.4.1 Repair of Unintended Damage. Without limiting any other requirement of this Article 10, Design-Builder will, at its sole cost and expense, promptly repair any unintended damage or disturbance to walls, utilities, sidewalks, curbs, and property of third parties (including without limitation utility companies and governments) resulting from performance of the Work. Design-Builder will maintain streets in good repair and traversable condition.

10.4.2 Property Repairs. Design-Builder will promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.1.1 through 10.1.4 to the extent caused by Design-Builder, the Design Professional, a Subcontractor of any tier, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable under Sections 10.1.1 through 10.1.4, but not to the extent of damage or loss attributable to acts or omissions of THPRD or of anyone for whose acts THPRD is liable. The duties of Design-Builder under this Section 10.4.2 are in addition to and do not affect Design-Builder's indemnification obligations under this Agreement.

10.5 Hazardous Materials.

10.5.1 Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding Hazardous Materials. For purposes of this Section 10.5, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Materials were specified, required, or otherwise addressed in the Design-Build Documents.

(a) With respect to Hazardous Materials to be used during the course of the Work, Design-Builder will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project Site, maintain available for inspection at the Project Site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. This program will incorporate and include THPRD's Emergency Response Plan (ERP) Hazardous Material Spill/Exposure and be subject to approval of and modification by THPRD. The program must contain notification procedures for all personnel of potential chemical hazards. Review of these hazards must be included in Design-Builder's safety training program. Design-Builder will submit to THPRD a list of all Hazardous Materials to be brought by Design-Builder or its Subcontractors onto THPRD's property. The list must include the intended use for each Hazardous Material on the Project.

(b) In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur

because of any material or substance (including but not limited to Hazardous Materials) encountered on the Project Site, Design-Builder will immediately (i) stop the Work or the portion of the Work affected, (ii) notify THPRD orally and in writing, and (iii) protect against exposure of persons to the materials or substance. Design-Builder will provide all written warnings, notices, reports, or postings required at law or by the Design-Build Documents for the existence, use, release, or discovery of Hazardous Materials.

10.5.2 If Design-Builder discovers and reports to THPRD the existence of Hazardous Materials or other materials or substances that were not introduced to the Project Site by Design-Builder or its Subcontractors of any tier, THPRD will obtain the services of a qualified environmental consultant to verify the presence or absence of the Hazardous Material, or other material or substance reported by Design-Builder. If the material or substance is found to be present, THPRD will hire a consultant to determine the risk of harm to persons and property. Unless otherwise required by the Design-Build Documents, THPRD will furnish in writing to Design-Builder the names of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of a reported Hazardous Material or other material or substance. Design-Builder will promptly reply to THPRD in writing stating whether or not Design-Builder has reasonable objection to the persons or entities proposed by THPRD. If Design-Builder has an objection to a person or entity proposed by THPRD, THPRD will propose another to whom Design-Builder has no reasonable objection. When the material or substance has been rendered harmless by THPRD, Work in the affected area will resume. The Construction Time may, subject to agreement by THPRD and Design-Builder, be extended appropriately, and the Contract Sum will be increased in the amount of Design-Builder's reasonable additional costs of shutdown, delay, and start-up. These adjustments will be accomplished as provided in Article 8.

10.5.3 With respect to any Hazardous Materials or other material or substance reported to THPRD under Section 10.5.1(b) that was introduced to the Project Site by Design-Builder or its Subcontractors of any tier, Design-Builder will (a) propose to THPRD an acceptable environmental consultant, (b) obtain and pay for the services of the environmental consultant, and (c) verify that the material is rendered harmless, as otherwise set forth in Section 10.5.1(b). Design-Builder will not be entitled to an increase in the Contract Sum if it or its Subcontractors of any tier are responsible for the condition requiring the testing and suspension of Work. Remediation work must be conducted by properly qualified contractors approved in advance by THPRD. Generally, THPRD may at its option contract directly with remediation contractors or environmental consultants, regardless of whether the work will be performed at Design-Builder's expense.

10.5.4 Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, THPRD will indemnify Design-Builder and its Personnel, and hold them harmless from and against Claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance:

- (a) Exists on site as of the date of this Agreement;
- (b) Is not disclosed in the Design-Build Documents;
- (c) Was not introduced to the Project Site by Design-Builder or anyone for whom it is responsible;

(d) Presents the risk of bodily injury or death as described in Section 10.5.1; and

(e) Has not been rendered harmless.

No indemnification provided by THPRD under this Section 10.5.4 will be required to indemnify Design-Builder or its Personnel to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but indemnity is required to the extent of the fault of THPRD, its agents, or their respective employees and representatives.

10.5.5 To the fullest extent permitted by law, Design-Builder will indemnify THPRD and its agents and hold them harmless from and against Claims, damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance:

(a) Was introduced to the Project Site by Design-Builder or those for whom it is responsible;

(b) Presents the risk of bodily injury or death as described in Section 10.5.1; and

(c) Has not been rendered harmless.

No indemnification provided by Design-Builder under this Section 10.5.5 will be required to indemnify THPRD or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by THPRD's own negligence, but will require indemnity to the extent of the fault of Design-Builder or its Personnel.

10.6 Emergencies. In an emergency affecting safety of persons or property, Design-Builder will act, at Design-Builder's reasonable discretion, to prevent threatened damage, injury, or loss and will immediately notify THPRD. Adjustments to the Contract Sum or Construction Time claimed by Design-Builder on account of an emergency will be determined as provided in Article 9.

ARTICLE 11 INSURANCE AND INDEMNITY

11.1 Required Insurance. Design-Builder agrees to procure and maintain the following insurance for the duration of the Project and for at least six years following final payment, with insurance carriers that are rated A VII or better by A.M. Best's rating service.

11.1.1 Workers' Compensation. Workers' compensation sufficient to meet statutory liability limits.

11.1.2 Employer's Liability. Employer's liability insurance with at least the minimum limits below.

11.1.3 Commercial General Liability. Commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by THPRD and including separation-of-insureds language. CGL coverage must include all major coverage categories, including bodily injury, property damage, contractual liability, and products/completed operations coverage. The CGL insurance will also

include the following: (a) separation of insured and (b) per-project aggregate for premises operations.

11.1.4 Professional Liability. Professional liability/errors-and-omissions insurance.

11.1.5 Automobile Liability. Automobile liability insurance with coverage for owned, hired, and nonowned vehicles on ISO Form CA 00 01 or an equivalent form approved in advance by THPRD.

11.1.6 Pollution Liability. If required by THPRD, Pollution Liability ("CPL") insurance. Coverage must include third-party claims for bodily injury, property damage, and environmental damage resulting from pollution conditions caused during the performance of covered operations both onsite and migrating from the Project Site and pollution conditions arising from covered operations, including work performed by Subcontractors, and third-party claims against Design-Builder alleging improper supervision of Subcontractors. Design-Builder will arrange for, and be responsible for, the selection of Subcontractors used to transport all Hazardous Materials that leave the Project Site.

11.1.7 Commercial Umbrella/Excess Coverage. Commercial umbrella or excess liability insurance to meet the minimum limits as described below. Coverage must include: (a) "Pay on behalf of" wording; (b) concurrency of effective dates with primary coverage; (c) punitive damages coverage (if not prohibited by law); (d) application of aggregate (when applicable) in primary coverage; and (e) drop-down feature. The third-party liability insurance will be scheduled to the umbrella/excess coverage.

11.2 Limits. Design-Builder will ensure that the insurance required by Section 11.1 is written for the minimum coverage limits set forth in Section 1.9.

11.3 Insurance Effective Date. Unless otherwise approved by THPRD in writing, Design-Builder will not commence construction Work on the Project Site before the effective date of all insurance required by Article 11 of this Agreement. The Commencement Date will not be altered to accommodate the effective date of Design-Builder's insurance.

11.4 Additional Insureds. Design-Builder's third-party liability insurance, except for workers' compensation, employer's liability, and professional liability insurance, must include THPRD and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The insurance must extend premise operations and products/completed operations coverage to the additional insureds. The additional-insured endorsement for CGL insurance must be written on ISO Forms CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but will not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

11.5 Joint Venture. If Design-Builder is a joint venture, the joint venture will be a named insured for the liability insurance of the joint venture members, whose policies must comply with the requirements of this Section 11.5.

11.6 Design-Builder Holds Primary Insurance. Design-Builder's insurance identified in Section 11.1 will be the primary insurance coverage, and Design-Builder may not seek contribution from any insurance or self-insurance carried by THPRD, including any property damage coverage carried by THPRD. Design-Builder's insurance will apply separately to each insured against whom a claim is made or suit is brought. Design-Builder's insurance will not include any cross-suit

exclusion or preclude an additional insured party from asserting a claim as a third party. Design-Builder waives all rights of subrogation against THPRD and coverage that THPRD maintains.

11.7 Failure to Maintain Insurance. Design-Builder's failure to maintain the required insurance coverage will be deemed a material breach of this Agreement, and THPRD, in its sole discretion, may suspend or terminate this Agreement under Section 12.2. THPRD may, but has no obligation to, purchase the required insurance and, without further notice under this Agreement, deduct from the Contract Sum any premium costs advanced by THPRD for the insurance. Failure to maintain the insurance coverage required by this Article 11 does not waive Design-Builder's obligations to THPRD.

11.7.1 Discontinuance of Insurance. Design-Builder will notify THPRD in writing at least 30 days before any cancellation, lapse, or expiration of any insurance required by this Article 11.

11.7.2 Notification of Reduction. Design-Builder will notify THPRD in writing of any reduction in available insurance coverage, including without limitation revised coverage limits or claims paid under the general aggregate, or both, that would cause the insurance available to THPRD to fall below or outside the requirements set forth in this Article 11 or by law.

11.8 Subcontractor Insurance. Design-Builder will cause each Subcontractor to purchase and maintain in full force and effect the same insurance specified for Design-Builder under Section 11.1, unless otherwise agreed to by THPRD in writing. Design-Builder will provide coverage for any Subcontractor that fails to purchase and maintain the required insurance. If requested by THPRD, Design-Builder will furnish copies of certificates of insurance establishing coverage for each Subcontractor. THPRD may in its sole discretion agree to adjust coverage limits or terms for a specific Subcontractor on this Project.

11.9 Design-Build Subcontractors. Before any construction Work commences, Design-Builder will submit to THPRD a list of all Design-Build Subcontractors retained to perform portions of the Work. Design-Builder will place in its contracts with each of its Design-Build Subcontractors the following terms and conditions:

11.9.1 THPRD is an intended third-party beneficiary of the contract and Design-Build Subcontractor's services and Work. Design-Build Subcontractor is not a third-party beneficiary of this Agreement or any other agreement between Design-Builder and THPRD.

11.9.2 Design-Build Subcontractor will maintain throughout the Project, and for a period of six years after Substantial Completion of the Project, standard professional errors and omissions liability insurance in a form and with an insurance company satisfactory to Design-Builder and THPRD.

11.9.3 Design-Build Subcontractor's professional errors-and-omissions insurance will have the terms and limits as required in Section 1.8 or as otherwise agreed in advance by THPRD and Design-Builder.

11.9.4 Design-Build Subcontractor will notify Design-Builder and THPRD no less than 45 days before any cancellation, nonrenewal, or material modification of the professional errors-and-omissions insurance.

11.9.5 Design-Build Subcontractor will submit to THPRD and Design-Builder proof of all insurance required by Section 1.8 before commencing Work on the Project.

Design-Builder will verify that insurance policies between Design-Builder and Design-Build Subcontractors contain no limitation-of-liability clauses.

11.10 Coverage Limitations.

11.10.1 Liability Limitation. No insurance provided by Design-Builder under this Article 11 must indemnify THPRD, or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of THPRD or its employees or agents, but the insurance must require indemnity to the extent of the fault of Design-Builder or its Personnel.

11.10.2 No Guarantee of Sufficiency. By requiring insurance, THPRD does not represent that coverage and limits will necessarily be adequate to protect Design-Builder. Insurance in effect or procured by Design-Builder will not reduce or limit Design-Builder's contractual obligations to indemnify and defend THPRD for and against claims or suits that result from or are connected with the performance of this Agreement.

11.11 Insurance Certificates. The Design-Builder will supply to THPRD certificates of insurance including the additional insured endorsement for the insurance policies described in this Article 11 prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project Site. Certificates of insurance acceptable to THPRD will be filed with THPRD prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.11 must contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the THPRD. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 8.6.4. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

11.11.1 Additional Certificates. Design-Builder will deliver to THPRD with its final Application for Payment a completed Certificate of Insurance and all required attachments evidencing continuation of Design-Builder's required insurance coverage.

11.11.2 Prohibition Until Certificates Received. THPRD may, but is not obligated to, prohibit Design-Builder and its Subcontractors from entering the Project Site until the Certificates and all required attachments have been received and approved by THPRD.

11.12 Deductibles and Self-Insured Retentions. Design-Builder will not include payments for deductibles or self-insured retentions in the Cost of the Work, and will not include those payments in the Contract Sum or Guaranteed Maximum Price. Design-Builder is solely responsible for satisfying all self-insured retentions and deductibles.

11.13 Property Insurance. Design-Builder will maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance in the amount of the initial Contract Sum, plus value of subsequent Amendments and cost of materials supplied or installed by others, constituting total value for the entire Project at the Project Site on a

replacement-cost basis on a course-of-construction property insurance form or its equivalent. If any construction that is part of the Work shall commence prior to execution of the Approved Project Plan, the Design-Builder shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the Project Site on a replacement cost basis without optional deductibles. The property insurance will be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 8.5 or until no person or entity other than THPRD has an insurable interest in the property required by this Section 11.13 to be covered, whichever is later. This insurance will include interests of THPRD, the Design-Builder, and Subcontractors on the Project. This property insurance will not cover adjacent property that is not owned by THPRD.

11.13.1 All-Risk Policy. The property insurance will provide coverage equivalent to an "all-risk" policy form and will include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earth movement, flood, windstorm, falsework, testing and start-up, temporary buildings, and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and will cover reasonable compensation for Design-Builder's services and expenses required as a result of such an insured loss.

11.13.2 Deductibles. The property insurance requires deductibles. For each claim, the deductible or deductibles applicable will be satisfied as follows: (a) to the extent that the underlying loss that occurred was not caused by the act or omission of Design-Builder, its Subcontractor, or any person or entity for whom either or both of them are responsible, THPRD will satisfy the deductible(s); (b) to the extent that the underlying loss was caused by the act or omission of Design-Builder, its Subcontractor, or any person or entity for whom either or both of them are responsible, Design-Builder will satisfy the deductible(s); and (c) the parties will satisfy the applicable deductible(s) according to this section promptly and without delay to adjustment of the claim. If the cause of the underlying loss is disputed between THPRD and Design-Builder, the parties will nevertheless cooperate with adjustment of the insurance claim and continue the Work and the Project (including without limitation repairs, as applicable) pending resolution of the dispute. The dispute will be subject to the procedures for resolution of claims under Article 13 of this Agreement, but either party may without prejudice to its position, claim, or defense pay each required deductible and claim recovery of it from the appropriate party.

11.13.3 Off-Site Work Coverage. This property insurance will cover portions of the Work stored off the Project Site, and also portions of the Work in transit.

11.13.4 Adjustment. A loss insured under the property insurance required under this Section 11.13 will be adjusted by Design-Builder, as fiduciary and made payable to Design-Builder, as fiduciary, for all those whose interests are insured, or their assigns. Any covered loss will be made payable to Design-Builder for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.16. Design-Builder will pay Subcontractors their just shares of insurance proceeds received by Design-Builder, and by appropriate written agreements will require Subcontractors to make payments to their lower tier Subcontractors in similar manner.

11.13.5 Distribution. Design-Builder will deposit proceeds received from the property insurance identified in this Section 11.13 in a separate account, and distribute those proceeds in accordance with an agreement between the parties in interest, or as determined in

accordance with the method of binding dispute resolution identified in Article 13. If after such a loss no other special agreement is made and unless THPRD terminates this Agreement for convenience, replacement of damaged property will be performed by Design-Builder under a separate account established only for repair of the Work, separate from the Contract Sum.

11.13.6 Settlement. Design-Builder as a fiduciary will have power to settle a loss with insurers unless one of the parties in interest objects for cause in writing within five days after occurrence of loss to Design-Builder's exercise of this power. If such an objection is made, the dispute will be resolved in the manner identified in Article 13 as the method of binding dispute resolution. If THPRD and Design-Builder have selected arbitration as the method of binding dispute resolution, Design-Builder will make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

11.14 Insurance Maintained by THPRD.

11.14.1 Liability Insurance. THPRD will be responsible for maintaining its usual liability insurance.

11.14.2 [Reserved.]

11.15 Performance Bond and Payment Bond.

11.15.1 Furnishing Bonds. On or before the Effective Date, Design-Builder shall execute and deliver to THPRD the following in, executed by a surety company authorized to do business in the State of Oregon and approved by THPRD:

(a) A good and sufficient performance bond, in a form acceptable to THPRD, covering faithful performance of this entire Agreement, including both construction work and preparation and completion of Design-Builder's design services, as required under ORS 279C.380.

(b) A payment bond Design-Builder in an amount equal to 100% of the Contract Sum, solely for the protection of claimants under ORS 279C.600, as required under ORS 279C.380.

11.15.2 Evidence of Bonds. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, Design-Builder will promptly furnish a copy of the bonds or authorize a copy to be furnished.

11.16 Indemnification Responsibilities.

11.16.1 General Indemnity. To the fullest extent permitted by law, Design-Builder will indemnify and defend (with counsel of THPRD's choice) THPRD and its consultants, agents, representatives, and employees of any of them and hold them harmless for, from, and against claims, damages, losses, and expenses, including but not limited to attorney fees, arising out of or resulting from performance of the Work by Design-Builder, the Design Professional, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable:

(a) For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (i) the material breach of this Agreement or the Design-Build Documents; (ii) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (iii) any negligent or tortious acts or omissions of Design-Builder, its Subcontractors of any tier, or anyone for whose acts they may be liable;

(b) For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of Design-Builder, its Subcontractor of any tier, or anyone for whose acts they may be liable; and

(c) For claims for liquidated damages or other economic damages caused by (i) the material breach of this Agreement or the Design-Build Documents or (ii) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

11.16.2 No Limitation. None of the indemnification obligations arising from this Section 11.16 will be restricted by any limitations on the amount or type of damages, compensation, or benefits payable by or for Design-Builder, the Design Professional, or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

11.16.3 Indemnification Limitation.

(a) Design-Builder is not required to indemnify THPRD or its agents and their respective employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of THPRD or its agents or their respective employees, but Design-Builder is required to indemnify THPRD and its agents and their respective employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of Design-Builder, or the fault of Design-Builder's Personnel.

(b) Notwithstanding anything to the contrary in this Section 11.16 or any other provision of this Agreement or the Design-Build Documents, Design-Builder will not have a duty to defend THPRD and its consultants, agents, representatives, and employees representatives from, for, or against a claim for professional negligence relating to the professional services provided under this Agreement, except to the extent that Design-Builder's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of Design-Builder.

ARTICLE 12

SUSPENSION, NOTICE TO CURE, AND TERMINATION

12.1 Termination by Design-Builder.

12.1.1 Reasons for Termination. Design-Builder may terminate this Agreement if THPRD suspends the Work for 30 or more consecutive days for any of the following reasons:

- (a) Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- (b) An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- (c) THPRD's failure to make payment to Design-Builder in accordance with the Design-Build Documents for a period of 30 days.

Design-Builder may not terminate this Agreement, however, if the suspension of the Work was caused by an action or fault of Design-Builder or its Personnel or any other persons or entities performing portions of the Work under the direct or indirect supervision of Design-Builder.

12.1.2 Termination for Extended Delays and Interruptions. Design-Builder may terminate this Agreement if THPRD causes repeated suspensions, delays, or interruptions of the entire Project that constitute in the aggregate at least 100 percent of the total number of days scheduled for completion of the Work, or 120 days in any 365-day period. Design-Builder may not terminate this Agreement for any suspension, delay, or interruption caused in whole or in part by Design-Builder or its Personnel, or other persons performing Work under its direct or indirect supervision.

12.1.3 Recovery of Costs. If Design-Builder elects to terminate this Agreement under Section 12.1.1 or 12.1.2, Design-Builder must provide 14 days' advance written notice to THPRD. Design-Builder may recover proven costs for Work executed and losses related to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit, if the Agreement is terminated under this Section 12.1.

12.1.4 Termination for Extended Work Stoppage. Design-Builder may terminate this Agreement upon 14 days' notice and recover from THPRD under Section 12.1.3 if the Work is stopped for at least 60 consecutive days because THPRD has repeatedly failed to fulfill THPRD's contractual obligations regarding matters important to the progress of the Work. Design-Builder may not, however, terminate this Agreement under this Section 12.1.4 if the Work stoppage is caused by an action or fault of Design-Builder or its Personnel, or any other persons or entities performing portions of the Work under the direct or indirect supervision of Design-Builder.

12.2 THPRD's Termination for Cause.

12.2.1 Reasons for Termination. THPRD may terminate this Agreement if Design-Builder:

- (a) Repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- (b) Fails to make payment to Subcontractors or the Design Professional for services, materials, or labor in accordance with the respective agreements between Design-Builder and Subcontractors or the Design Professional;
- (c) Repeatedly disregards applicable laws, statutes, ordinances, codes, rules, regulations, or orders of a public authority;
- (d) Is otherwise guilty of substantial breach of a provision of the Design-Build Documents; or
- (e) Fails to observe the training, safety, and other precautions required in Article 10, including THPRD's policies incorporated in Article 10 or Design-Builder's own safety policies for the Project.

12.2.2 THPRD's Rights After Termination. THPRD may without prejudice to any of its other rights or remedies terminate this Agreement by giving 14 days' advance notice to Design-Builder and Design-Builder's surety. Subject to any prior rights of Design-Builder's surety (if any), THPRD may:

- (a) Exclude Design-Builder from the Project Site and take possession of the site and all materials, equipment, tools, and construction equipment and machinery on the site owned by Design-Builder;
- (b) Accept assignment of contracts under Section 6.3; and
- (c) Complete the Work.

12.2.3 Payments to Design-Builder After Termination. Design-Builder will not receive any payments until the Work is finished if THPRD terminates this Agreement under Section 12.1.2.

12.2.4 Payment for Excess Costs. Design-Builder will pay for costs of finishing the Work and damages incurred by THPRD that exceed the unpaid balance of the Contract Sum.

12.2.5 Wrongful Termination by THPRD. Any termination for cause later determined to be wrong or unjust will be deemed a termination for convenience.

12.3 Suspension by THPRD for Convenience.

12.3.1 Right to Suspend. THPRD may, without cause, order Design-Builder in writing to suspend, delay, or interrupt the Work in whole or in part for a period of time as determined by THPRD.

12.3.2 Adjustments After Suspension. The Contract Sum and Construction Time will be adjusted for increases in the cost and time caused by suspension, delay, or interruption as described in Section 12.3.1. Adjustment of the Contract Sum will include profit. No adjustment will be made to the extent that:

- (a) Performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Design-Builder is responsible; or
- (b) An equitable adjustment is made or denied under another provision of this Agreement.

12.4 Termination by THPRD for Convenience.

12.4.1 Right to Terminate for Convenience. THPRD may, at any time, terminate this Agreement for THPRD's convenience and without cause by sending advance written notice to Design-Builder.

12.4.2 Response to THPRD's Termination for Convenience. If THPRD elects to terminate this Agreement under Section 12.4.1, Design-Builder will:

- (a) Cease operations as directed by THPRD in the notice;
- (b) Take actions necessary, or that THPRD may direct, for the protection and preservation of the Work; and
- (c) Terminate all existing contracts and purchase orders and enter into no further contracts or purchase orders, unless directed by THPRD.

12.4.3 Payment After Termination. In the event of termination for THPRD's convenience before the Commencement Date, Design-Builder is entitled to receive payment for design services performed. If THPRD terminates for convenience after the Commencement Date, Design-Builder is entitled to receive payment for Work executed, along with reasonable overhead and profit on the Work executed. Design-Builder hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

12.4.4 Partial Termination. THPRD may terminate a portion of the Work for THPRD's convenience and without cause, in which case the provisions of this Section 12.4.4 will apply only to the portion of the Work terminated and Design-Builder will continue with performance of the remaining Work that is not terminated.

12.5 Guaranteed Maximum Price Adjustment.

12.5.1 Calculation. When the basis of payment to Design-Builder is the Cost of the Work plus a fee with a Guaranteed Maximum Price, and THPRD terminates this Agreement for cause as provided in this Article 12 the amount, if any, to be paid to Design-Builder under Section 12.2.3 of this Agreement will not cause the Guaranteed Maximum Price to be exceeded, nor will it exceed an amount calculated as follows:

- (a) Cost of the Work incurred by Design-Builder to the date of termination; plus

(b) Design-Builder's Fee computed on the Cost of the Work to the date of termination at the rate stated in Section 1.6 of this Agreement or, if Design-Builder's Fee is stated as a fixed sum in that section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; minus

(c) The aggregate of previous payments made by THPRD.

12.6 Retainage of Equipment. THPRD will also pay Design-Builder fair compensation, either by purchase or by rental at the election of THPRD, for any equipment owned by Design-Builder that THPRD elects to retain and that is not otherwise included in the Cost of the Work under Article 7. Design-Builder will, as a condition of receiving the payments referred to in this section, execute and deliver any papers and take any steps, including the legal assignment of subcontracts and other contractual rights of Design-Builder, that THPRD may require for the purpose of fully vesting in THPRD the rights and benefits of Design-Builder under the subcontracts or purchase orders.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Claim Types and Attributes.

13.1.1 Claim Submission. Either party may make a Claim against the other party in accordance with the terms of this Article 13. Claims must be initiated by written notice. The responsibility to substantiate a Claim will rest with the party making the Claim.

13.1.2 Claim Time Limits. A claim by either party must be made by written notice to the other party within 21 working days after occurrence of the event giving rise to the Claim or within 21 working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice to the other party and must identify the known bases for each Claim and the nature and amount of the relief sought.

13.1.3 Continuing Performance. Design-Builder will proceed diligently with performance of this Agreement and THPRD will continue to make payments in accordance with the Design-Build Documents while any Claim remains pending or ongoing.

13.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the Project Site that are (a) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (b) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party will give notice to the other party promptly before conditions are disturbed and in no event later than ten working days after the first observance of the conditions. THPRD will promptly investigate the conditions and, if it determines that the conditions differ materially and cause an increase or decrease in Design-Builder's cost of, or time required for, performance of any part of the Work, will negotiate with Design-Builder an equitable adjustment in the Contract Sum or Construction Time. If THPRD determines that the conditions at the Project Site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Approved Project Plan is justified, THPRD will so notify Design-Builder in writing, stating the reasons. Claims by Design-Builder in opposition to such a determination must be made within 21 working days after THPRD has given notice of the decision. If the conditions encountered are materially different,

the Contract Sum and Construction Time will be equitably adjusted, but if THPRD and Design-Builder cannot agree on an adjustment in the Contract Sum or Construction Time, the adjustment will proceed under Section 13.2.

13.1.5 Claims for Additional Cost. Design-Builder will provide advance written notice of a Claim for an increase in the Contract Sum before performing the Work giving rise to the Claim. Prior notice is not required for a Claim relating to an emergency endangering life or property arising under Section 10.6.

13.1.6 Claims for Work Stoppage. If Design-Builder believes it has incurred additional costs due to (a) an order by THPRD to stop the Work when Design-Builder was not at fault, (b) a THPRD directive, (c) failure of payment by THPRD, (d) termination of this Agreement by THPRD, (e) THPRD's suspension, or (f) other reasonable grounds, then Design-Builder will file a Claim in accordance with this Section 13.1.

13.1.7 Claims for Additional Time. If Design-Builder wishes to make a Claim for additional Construction Time, Design-Builder must provide written notice within 21 working days after the occurrence of the event giving rise to the Claim. Design-Builder's Claim will include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary. If adverse weather conditions are the basis for a Claim for additional time, the Claim will be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled construction.

13.1.8 Injury or Damage to Person or Property. Design-Builder will immediately report to THPRD by telephone or messenger whenever any damage to persons or property occurs on the Project Site or adjoining property. Design-Builder will also provide a written report to THPRD promptly after the incident. The written report will provide sufficient detail that allows the other party to investigate the matter.

13.1.9 Unit Price Changes. Unit prices will be equitably adjusted by the parties if the quantities originally contemplated under a certain unit price are materially changed in a proposed Change Order or THPRD Directive and application of the unit prices would cause substantial inequity to THPRD or Design-Builder.

13.2 Resolution of Claims.

13.2.1 Discussions Between the Parties. The parties agree to attempt in good faith to resolve Claims made before final payment using the following resolution process. Neither party will proceed to arbitration until the following process has been attempted, and neither party's rights, defenses, Claims, or remedies will be considered waived, released, or adversely affected by its participation in this process. This process will not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

(a) All reasonable efforts will be made by THPRD's Representative and Design-Builder's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between THPRD's senior executive responsible for the Project and Design-Builder's senior executive responsible for the Project.

(b) The parties' senior executives will meet at a mutually agreed time and place within ten days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in this Agreement.

(c) The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 13.4.

13.2.2 Notification of Surety. In the event of a Claim against Design-Builder, THPRD may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of Design-Builder's default, THPRD may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

13.2.3 Lien Notices. If a Claim relates to or is the subject of a construction lien, the party asserting the Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines before initial resolution of the Claim.

13.3 Mediation. The parties may endeavor to resolve a Claim by mediation as they may agree after the Claim has been made.

13.4 Litigation. Every Claim will be subject to litigation in Washington County Circuit Court. If a Claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

ARTICLE 14 GENERAL TERMS

14.1 THPRD Approval. All approvals issued by THPRD, whether orally or in writing, constitute an authorization for Design-Builder to proceed with its next obligation or responsibility under this Agreement. THPRD's approvals are not representations by THPRD that the Work prepared by Design-Builder is of a certain type or quality. THPRD assumes no liability, and does not forfeit any contractual, legal, or equitable remedies it has, from approving the Work. Design-Builder remains responsible for producing Work that complies with the requirements of the Design-Build Documents after receiving THPRD's approval.

14.2 Ownership of Design Products.

14.2.1 THPRD's Rights. Design-Builder, the Design Professional, and other providers of professional services individually will retain all common-law, statutory, and other reserved rights, including copyright, in Design Products furnished by them.

14.2.2 Grant of License. As of the Effective Date, Design-Builder grants THPRD an irrevocable, nonexclusive license to reproduce and use the Design Products for the development of the Project. This license may be extended to other design professionals and parties retained by THPRD to further develop the Project. Design-Builder will secure for THPRD similar irrevocable, nonexclusive licenses from the Design Professional and other consultants. THPRD will not otherwise assign or transfer any license granted under this Agreement to another party without prior written consent from Design-Builder. Any unauthorized reproduction or use of the Design Products by THPRD or its designees will be at

THPRD's sole risk and expense without liability to Design-Builder, the Design Professional, or their consultants.

14.2.3 Electronic Design Products. Design-Builder or the Design Professional may be asked or required to supply Design Products in electronic form. Design-Builder or the Design Professional must, however, provide printed and physically stamped Design Products for the Project and will be bound only by the printed and stamped Design Products after their delivery to THPRD. Design-Builder and the Design Professional will not be responsible for any change made in electronic forms of any Design Product, whether intentional or unintentional, after the Design Product leaves their control.

14.2.4 License Use During Default or Dispute. If this Agreement is terminated for any reason other than the default of THPRD after construction commences, then Design-Builder, the Design Professional, and any consultant designing a portion of the Work will convey to THPRD a nonexclusive license to use the Design Professional's Design Products. During the pendency of any dispute between THPRD and Design-Builder, including any dispute for payment, THPRD may continue to use the Design Products. If Design-Builder defaults under this Agreement, the license granted under Section 14.2.2 will be supplemented by a second, nonexclusive license permitting THPRD to authorize other similarly credentialed design professionals to reproduce and, if permitted by law, make changes, corrections, or additions to the Design Products solely for purposes of completing, using, and maintaining the Project.

14.2.5 Design Product Alterations. Design-Builder, the Design Professional, and their consultants will not be responsible for alterations made in or to their Design Products by anyone other than Design-Builder, the Design Professional, or their consultants, or for the use or adaptation of the Design Products by THPRD or others without the participation of Design-Builder, the Design Professional, or their consultants. Any such adaptation, alteration, reproduction, or use by THPRD or others will be at their sole risk and expense and without liability to Design-Builder or the Design Professional.

14.2.6 Inclusion of Notices. Design-Builder will include on each page of the Design Products and bid sets all notices as may be required. The language for the notices will be provided by THPRD.

14.2.7 Intellectual Property Indemnification. Design-Builder will defend suits or claims for infringement of intellectual property rights and will defend THPRD and hold it harmless from any resulting loss, unless the design, process, or product at issue is required or unless the copyright violations are contained in Drawings, Specifications, or other documents prepared by or furnished to Design-Builder by THPRD. If, however, Design-Builder has reason to believe that the required design, process, or product is an infringement of a copyright or patent, and Design-Builder fails to promptly notify THPRD, then Design-Builder is responsible for damages and losses incurred by THPRD from the infringement.

14.3 THPRD's Policies. This Agreement incorporates by reference current versions of all THPRD Policies and standards applicable to the Project. If requested by Design-Builder in writing, THPRD will promptly provide copies of all applicable policies and procedures to Design-Builder.

14.4 Access to Books and Records. Design-Builder must keep and make available to THPRD and its Auditors full and detailed Records, and must exercise controls as necessary for proper financial management under this Agreement and to substantiate all costs incurred. For purposes of this Section 14.4, Records are all of Design-Builder's accounting entries, books, documents, records,

correspondence, instructions, Drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data necessary to certify the nature, and extent of the cost of, the Work. Design-Builder must maintain the Records for inspection during regular business hours for audit and copying until the expiration of six years from the date of final completion or termination of the Project, or for a longer period as may be required by law.

14.5 Order of Precedence. The terms of this Agreement govern the relationship between the parties take precedence over (a) all Project Specifications, (b) Drawings and addenda issued before execution of this Agreement, and (c) any other written documents or proposals presented by Design-Builder. The terms of any Amendment, however, take precedence over the terms of this Agreement.

14.6 Extent of Agreement. Unless otherwise expressly stated in writing, this Agreement is for the exclusive benefit of Design-Builder and THPRD, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representation, or agreements, either written or oral.

14.7 Time Periods. All uses of the word "day" or "days" refer to a calendar day unless otherwise specifically stated in this Agreement.

14.8 Headings. The heading titles given to the articles, sections, and subsections are for ease of reference only and are not be relied on or cited for any other purpose.

14.9 No Waiver of Performance. Historical lack of enforcement of any local law will not constitute a waiver of Design-Builder's responsibility to comply with such a law in a manner consistent with the Design-Build Documents unless and until Design-Builder has received written consent for the waiver of compliance from THPRD and the agency responsible for the local law enforcement.

14.10 Notice. All notices and other communications under this Agreement must be in writing and will be deemed to have been given if delivered personally, sent by facsimile (with confirmation), mailed by certified mail, or delivered by an overnight delivery service (with confirmation) to the parties. Any notice or other communication will be deemed to be given (a) on the date of personal delivery, (b) at the expiration of the third day after the date of deposit in the United States mail, or (c) on the date of confirmed delivery by facsimile or overnight delivery service.

14.11 Assignment. Neither this Agreement nor any of the rights, interests, or obligations under this Agreement may be assigned by Design-Builder without the prior written consent of THPRD.

14.12 Governing Law. This Agreement will be governed by the law in effect at the location of the Project.

14.13 Joint Drafting. The parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms before execution. Therefore, this Agreement will be construed in a neutral manner.

ARTICLE 15

PUBLIC CONTRACTING CODE PROVISIONS

15.1 ORS 279A.110 (Non-discrimination certification). Design-Builder shall

certify that Design-Builder has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or a business that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

15.2 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing). Design-Builder shall make payment promptly, as due, to all persons supplying to such Design-Builder labor or material for the performance of the Work provided for in this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such Design-Builder or Subcontractor incurred in the performance of the Agreement; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Design-Builder shall further demonstrate that an employee drug testing program is in place. If Design-Builder neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, THPRD may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Design-Builder. THPRD's payment of such a claim shall not relieve Design-Builder or Design-Builder's surety from its obligation to any unpaid claims.

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

15.4 13.1.5 ORS 279C.515 (Failure to Pay Promptly). If Design-Builder fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Design-Builder or a Subcontractor by any person in connection with this Agreement as such claim becomes due, THPRD may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Design-Builder by reason of this Agreement. The payment of a claim in the manner authorized in this section shall not relieve the Design-Builder or the Design-Builder's surety from any obligation with respect to any unpaid claims.

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

15.5 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, Design-Builder 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 Agreements for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

15.5.1 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

15.5.2 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

15.5.3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

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.

Design-Builder shall, and shall require its Subcontractors, to give notice in writing to their employees who perform Work under this Agreement, either at the time of hire or before commencement of Work on the Agreement, 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.

15.6 279C.520(1)(b) and 279C.520(1)(c) (Compliance with Pay Equity Provisions; Employee Pay Discussion).

15.6.1 Discrimination Prohibition. The Design-Builder shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Agreement and failure to comply is a breach that entitles THPRD to terminate the Agreement for cause.

15.6.2 Salary Discussion. The Design-Builder may not prohibit any of the Design-Builder's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

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

15.7.1 Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services,

Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.

15.7.2 State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.

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

15.7.4 Tribal Governments.

15.8 ORS 279C.530 (Payment for Medical Care and Workers'

Compensation. Design-Builder shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Design-Builder, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

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

15.9 ORS 279C.545 (Time Limitations on Claims for Overtime).

Construction workers employed by the Design-Builder or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Agreement unless a claim for payment is filed with the Design-Builder or Subcontractor within 90 days from the completion of the Agreement, provided the Design-Builder or Subcontractor has:

15.9.1 Caused a circular clearly printed in boldfaced 12-point 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

15.9.2 Maintained such circular continuously posted from the inception to the completion of the Agreement on which workers are or have been employed.

15.10 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors).

Design-Builder shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Design-Builder to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Design-Builder by THPRD. Design-Builder shall also include in each subcontract a clause that states that if the Design-Builder fails to pay any claim for materials or labor furnished under this Agreement within 30 days after being paid by THPRD, 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). Design-Builder 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 sub-subcontractor or supplier.

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

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

15.12.1 This Agreement is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that Design-Builder, any subcontractor, or other person who is party to the contract uses in performing all or part of the Agreement must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publications: Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and amendments to either since the most current date of publication. The applicable prevailing wages will be those in effect on the date that the design-builder and THPRD execute the Approved Project Plan or, if applicable, the date of the first early work amendment under the Contract.

15.12.2 The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at <https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx> and are hereby incorporated as part of the Design-Build Documents.

15.12.3 This Agreement may also be subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Agreement is subject to payment of prevailing wages under the Davis-Bacon Act, Design-Builder and any Subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Washington County, Building

Construction Type) and are hereby incorporated by reference as part of the Design-Build Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.

15.12.4 Design-Builder and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

15.12.5 THPRD 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.

15.12.6 If Design-Builder or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it 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.

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

15.13.1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

15.13.2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

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

15.14.1 Design-Builder and every Subcontractor shall file certified statements with THPRD in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Design-Builder or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Agreement, which certificate and statement shall be verified by the oath of Design-Builder or Design-Builder's surety or Subcontractor or Subcontractor's surety that Design-Builder and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Design-Builder or Design-Builder'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.

15.14.2 The certified statement shall be delivered or mailed by Design-Builder or Subcontractor to THPRD. Certified statements for each week during which the Design-Builder 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 Agreement and in addition to any other retainage required under this Agreement, THPRD shall retain 25% of any amount earned by the Design-Builder until the Design-Builder has filed the certified statements with THPRD as required by this Section. THPRD will pay the retainage required under this Section within 14 days after the Design-Builder files the certified statements required by this Section.

15.14.3 Design-Builder and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Agreement.

15.15 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required). If Design-Builder is performing work as a landscape contractor as defined in ORS 671.520(2), Design-Builder must have a current, valid landscape contractor's license issued under ORS 671.560. If Design-Builder is performing work as a Subcontractor as defined in ORS 701.005(2), Design-Builder must have a current, valid construction contractor's license issued under ORS 701.026. Design-Builder shall further certify that all Contractors and 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 Agreement. Design-Builder shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Design-Builder shall notify THPRD immediately if any license, permit, or certification required for performance of this Agreement shall cease to be in effect for any reason.

THPRD

By: _____
[INSERT NAME],
[INSERT TITLE]

DESIGN-BUILDER

[NAME]

By:

Name:

Title:

EXHIBIT A, B, D, E, F, G, H, I, J, K, L, M, N
(THPRD Policies)