



**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT FOR THE DESIGN AND CONSTRUCTION OF THE KELLOGG CREEK BRIDGE (#22142) REPLACEMENT PROJECT AND DECLARING AN EMERGENCY.**

**WHEREAS**, the City Council of the City of Milwaukie approved the replacement of the Kellogg Creek Bridge (#22142) under an emergency situation; and

**WHEREAS**, an emergency exemption from competitive bidding was made for of the Kellogg Creek Bridge (#22142) replacement project; and

**WHEREAS**, the City of Milwaukie adopted findings authorizing the use of alternative contracting per Resolution No. 123-2016; and

**WHEREAS**, a formal competitive request for proposal process following Chapter 10.105B of the City’s Public Contracting Rules was conducted; and

**WHEREAS**, HP Civil Inc. is recommended as the lowest responsible firm for the project.

**Now, Therefore, be it Resolved that**

Section1: The Milwaukie City Council, acting as the Local Contract Review Board for the City of Milwaukie, authorizes the City Manager to execute a contract with HP Civil Inc. for the construction of the Kellogg Creek Bridge (#22142) Emergency Replacement Project. Waive any irregularities or informalities in the bid documents. And authorize the Engineering Director to administer the project in accordance with the project specifications with a project authorization of \$2,740,500.00.

Section 2: Emergency. It is necessary for the public health, safety and general welfare that the Kellogg Creek Bridge (#22142) be replaced in an expedited manner; therefore, an emergency is declared to exist, upon the adoption of this resolution, to facilitate the immediate construction of the Kellogg Creek Bridge (#22142) Emergency Replacement Project.

Introduced and adopted by the City Council on 5/16/17.

This resolution is effective on 5/16/17.

Mark Gamba, Mayor

ATTEST:

APPROVED AS TO FORM:  
Jordan Ramis PC

Scott S. Stauffer, City Recorder

City Attorney



# MILWAUKIE

*Dogwood City of the West*

## CHANGE ORDER 0

Project Name: Kellogg Creek Bridge (BR#22142) Design Build Project

Project Number: CIP2016-D22

Contractor: HP Civil, Inc.

In the DB Special Provisions SP170.70(a)B - Professional Liability replace the first sentence with the following:

Design Professional, its subcontractors, if any, shall obtain, and keep in effect for the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission, or any negligent act.

In the DB Special Provisions SP170.70(a)C - Workers Compensation Insurance replace the word "Engineer" with "Design Professional".

In the DB General Conditions DB170.70(a) – Insurance Coverages, under Professional Liability, delete the second paragraph and replace it with the following:

"If Design-Builder subcontracts Design Services for the Project, Design-Builder shall require its Subcontractors that provide Design Services for the Project to obtain and maintain during the term of this Contract, at Design-Builder's expense or its Subcontractor's expense, Professional Liability Insurance covering any damages caused by any error, omission or any negligent acts of the Subcontractors, their subcontractors, agents, officers, or employees performing Design Services for the Project, in the dollar amount indicated in DB Special Provisions, SP170.70."

City of Milwaukie

  
\_\_\_\_\_  
Signature

*Ann Over, CM*  
\_\_\_\_\_  
Print Name & Title

*6-26-17*  
\_\_\_\_\_  
Date

HP Civil, Inc.

  
\_\_\_\_\_  
Signature

*LARRY GESCHER, PRESIDENT*  
\_\_\_\_\_  
Print Name & Title

*6-23-2017*  
\_\_\_\_\_  
Date



## Public Improvement Contract With The City of Milwaukie, Oregon For Kellogg Creek Bridge (BR #22142) Emergency Replacement Design-Build

**THIS CONTRACT**, made and entered into this 16th day of May, 2017, by and between the City of Milwaukie, a municipal corporation of the State of Oregon, hereinafter called "City" and HP Civil Inc, PO Box 556, Stayton, OR 97383 hereinafter called "Design-Builder", duly authorized to perform such services in Oregon.

### RECITALS

**WHEREAS**, the City requires construction and related services which Design-Builder is capable of providing, under terms and conditions hereinafter described; and

**WHEREAS**, time is of the essence in this contract and all work under this contract shall be completed within the time period stated in the Bid; and

**WHEREAS**, City may require additional related Work within the general vicinity of the Project which, if required, shall be included in the Project and added to the Contract by Change Order; and

**WHEREAS**, City requires a Design-Build Design-Builder competent to perform all Work necessary to complete the Project in accordance with the terms and conditions of the Contract, and able to do so within the Contract Time allocated herein; and

**WHEREAS**, Design-Builder asserts that they are competent and prepared to perform all Work necessary to complete the Project in accordance with the terms and conditions of the Contract, and that it is able to do so within the Contract Time allotted herein;

**THEREFORE**, in consideration of the promises and covenants contained herein, the parties hereby agree as follows:

#### 1. Services

Design-Builder's services under this Agreement shall consist of the following:

##### 1.1 GENERAL CONTRACT PROVISIONS, DEFINED TERMS AND GENERAL SCOPE OF WORK

**1.1.1 Incorporation of Recitals** – The foregoing Recitals incorporated herein and made a part hereof for all purposes as if fully set forth, constitute additional promises, representations and warranties of the Parties.

**1.1.2 Contract Documents** - The Contract Documents, incorporated herein and made a part hereof for all purposes as if fully set forth, are intended to reflect the complete understanding of the Parties concerning their respective rights and responsibilities under the Contract.

**1.1.3 Effective Date** - The Contract shall become effective on the date on which each Party has signed this Agreement and all necessary approvals have been obtained (the “**Effective Date**”).

**1.1.4 The Contract** - The Contract, which includes this Agreement and all other Contract Documents, forms the entire agreement between the Parties.

**1.1.5 Defined Terms** - Defined terms utilized in this Agreement and in the other Contract Documents are either set forth in **DB General Provisions**, Subsection 110.20, or defined in the text accompanying the term.

**1.1.6 Applicable Version of Law or Standard** - All Work shall be performed in accordance with the Laws and Standards then in effect, unless otherwise specified in the Contract Documents.

#### **1.1.7 Minimum Contract Requirements**

**1.1.7.1 City-Supplied** - Among the Contract Documents, City has mandated certain Contract requirements from which Design-Builder may not deviate in the performance of the Work, except as necessary to comply with all applicable Legal Requirements. City has also established certain minimum Contract requirements that set a minimum standard of performance or quality that Design-Builder must meet or exceed in performance of the Contract.

**1.1.7.2 Design-Builder Supplied** - Design-Builder has (a) established certain minimum Contract requirements located in Exhibit A, Proposal, consisting of those provisions of its Proposal that meet or exceed minimum Contract requirements established by City and upon which City has relied in awarding the Contract to Design-Builder; and (b) obligated itself to develop further performance obligations during the term of the Contract (identified in Article 11) (collectively, “Design-Builder-supplied Contract provisions”).

Design-Builder-supplied Contract provisions shall be incorporated into the Contract, and upon resolution of issues, if any, raised through City’s Review and Comment, or upon City’s Acceptance, as applicable, shall become additional minimum Contract requirements with which Design-Builder must comply. Provided, those portions of Exhibit A, Proposal, that conflict with or do not meet minimum Contract requirements established by City shall be of no force or effect.

**1.1.8 Design Services** - The Design Services required under the Contract will include, at a minimum, each of the following:

- Provision of all Design Documents
- Performance of all Professional Services, including but not limited to structural design, Roadway design, hydraulic design, geotechnical design, environmental design, drainage design, landscape design, and traffic control design
- Performance of all other Design Services required under the Contract and/or otherwise necessary to complete the Work in accordance with all Contract requirements

**1.1.9 Construction Services** - The construction services required under the Contract will include, at a minimum, each of the following:

- Construction of permanent Structures
- Removal of existing Structures
- Construction of new or realigned permanent Roadway, to include matching in at each Work Location
- Removal of existing Roadways
- Temporary traffic control
- Installation of temporary and permanent traffic control and guidance devices
- Erosion control
- Protection of environmental resources, including plant and animal life and associated habitats
- Construction and removal of temporary Structures
- Construction and removal of temporary Roadway
- Repair of existing Structures
- Construction and Re-establishment of Landscaping and other Environmental Mitigation

**1.1.10 Quality Management Services** - Quality Management services will include performance, at a minimum, of all activities and obligations, including preparation of all documentation, described in **DB General Provisions**, Sections 154, 155, and 156, and as otherwise necessary to ensure that the Work is performed in accordance with all Contract requirements.

**1.1.11 Project Management Services** - Project management services shall be integrated with the Design Services, Quality Management Services, and construction services described herein and in the Contract Documents, and shall include, at a minimum, the following:

- Construction management
- Contract management
- Safety management
- Traffic management

## 1.2 DESIGN AND CONSTRUCTION SERVICES

**1.2.1 General Standards for Performance of the Work** - Concerning the general Standards set forth in Subsection 1.2.2 for performance of all Design Services and the general standards set forth in Subsection 1.2.3 for performance of all construction services, the Parties agree as follows:

**1.2.1.1** All Design Services to be performed under the Contract are appurtenant to construction services being provided by Design-Builder.

**1.2.1.2** Whether Design-Builder is a Design Professional, has a Design Professional as a member or on staff, or will otherwise provide a consultant to perform the services of a Design Professional, all Design Services (whether constituting the practice of architecture, the practice of engineering, the practice of surveying, or the practice of other Design Services) referred to in the Contract shall be provided by duly-licensed and competent Design Professionals employed or otherwise retained by Design-Builder as a consultant.

The Design Professionals currently designated to provide such Design Services are listed in Subsection 3.4. All Design Services shall be performed by a Design Professional of the appropriate professional discipline in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

**1.2.1.3** Design-Builder shall provide and perform all Design Services, Quality Management, and construction services in good faith and as expeditiously as is consistent with the applicable standards of skill and care ordinarily exercised by members of the profession under similar conditions and circumstances, and the orderly prosecution of the Work.

**1.2.1.4** Where specific performance Standards for any aspect of the Work have been established in the Contract Documents, the Work shall be performed so as to meet or exceed such Standards.

**1.2.1.5** The Baseline Progress Schedule establishes the schedule and deadlines for Contract performance, with which Design-Builder must comply. The Baseline Progress Schedule, as it may be modified during the course of the Project pursuant to **DB General Provisions**, Subsection 180.41, shall anticipate and accommodate such periods of time as may be required for Agency's review of Design Documents, and for approval by Authorities having jurisdiction over the Project of any required submissions, including but not limited to, applications for permits and environmental impact evaluations.

**1.2.1.6** Agency's consideration, Review and Comment, or Acceptance of any matters, or Agency's authorization of any action, will not be deemed or construed as relieving Design-Builder of its sole responsibility for, and its complete and exclusive control over the means, methods, sequences and techniques for, performance of the Work in accordance with the terms of the Contract.

## 1.2.2 Design Documents

**1.2.2.1 Design Documents** - Design-Builder shall generate and provide to Agency all Design Documents.

**1.2.2.2 Readiness-for-Construction Plans and Specifications** - Upon completion of the Definitive Design Reviews, Working Plan Design Reviews, Interim Design Reviews (if any), and Readiness-for-Construction Design Reviews, as specified in the DB General Provisions, Section 155, Design-Builder shall finalize the Readiness-for-Construction Plans and Specifications. In performing these services, Design-Builder shall meet the following requirements:

- All Design Documents and Design Reviews shall be provided and performed in accordance with the Design Review schedule established in the Baseline Progress Schedule, and in accordance with all Contract requirements.
- Readiness-for-Construction Plans and Specifications shall comply with all applicable Laws and all Contract requirements.
- Readiness-for-Construction Plans and Specifications shall be a complete, fully coordinated, integrated package, without any significant modifications or further clarifications required.
- Design-Builder shall file all documents required for the approval of Authorities having jurisdiction over the Project, shall obtain all necessary permits not obtained by Agency, and shall pay for all associated fees, including application, filing, plan review, and appeal fees.
- Design-Builder shall provide Agency with written certification and all Design Documents required for the Readiness-for-Construction certification, in accordance with **DB General Provisions**, Section 155.
- Design-Builder shall submit to Agency all documentation and Design Quality Records required under **DB General Provisions**, Subsections 155.12 and 155.14.
- Design-Builder shall submit to Agency As-Constructed Plans and **Design-Builder Specifications**, compiled and organized in accordance with all Contract requirements that incorporate all changes in the design and construction of the Project
- Design-Builder shall prepare and deliver to Agency all As-Constructed Plans, **Design-Builder Specifications**, and other Design Documents, information, and data required under the Contract to be provided to Agency.

**1.2.2.3 Cost-Reduction Proposals** - During development of the Design Documents, Design-Builder and Agency may collaborate on identifying, evaluating and implementing cost-reduction options in accordance with **DB General Provisions**, Subsection 140.70. Design-Builder's development of the Design Documents and completion of the Readiness-for-

Construction Plans and Specifications shall not preclude further identification and implementation by Design-Builder and Agency of additional cost-reduction options during construction. Cost Reduction Proposals adopted by Agency will be implemented through Change Orders pursuant to **DB General Provisions**, Subsection 140.70(e).

- 1.2.3 Construction Services** - Design-Builder shall provide all necessary Work to furnish to Agency complete, fully-functional Structures and road improvements specified in **DB Special Provisions**, SP140.05, capable of being fully utilized for the purposes described in the Contract, and constructed in compliance with all Contract requirements, including all Legal Requirements. Design-Builder shall perform the construction services as follows:
- 1.2.3.1** Design-Builder shall supervise and administer all construction activities in accordance with Contract requirements.
- 1.2.3.2** In the event of the existence of any dispute between the Parties under the Contract, Design-Builder shall continue to perform the Contract in accordance with its terms and seek resolution in accordance with **DB General Provisions**, Section 199.
- 1.2.3.3** The construction Work shall be of good quality, free from faults and defects, and in conformance with all Contract requirements, including all Legal Requirements. At its own expense, Design-Builder shall correct construction Work that does not conform to these requirements.
- 1.2.3.4** Design-Builder shall utilize new Materials and Equipment in the Work, unless otherwise specified in the Contract Documents.
- 1.2.3.5** Design-Builder shall pay all taxes, fees, and costs associated with the acquisition of tools, Equipment, Materials, and the performance of the Work, in accordance with **DB General Provisions**, Subsection 170.02.
- 1.2.3.6** Design-Builder shall comply with all applicable Laws.
- 1.2.3.7** Design-Builder shall keep each Work Location and its vicinity free from accumulation of waste materials and rubbish caused by Design-Builder's operations.
- 1.2.3.8** Design-Builder shall have authority to make minor changes in the design and construction of the Project, consistent with the overall purpose of the Project, as long as any such minor changes do not involve deviations from Contract requirements, an adjustment in the Contract Amount, or an extension of Contract Time. Provided, further, that Design-Builder shall immediately notify Agency of such minor changes and shall provide to Agency such Design Documents as may be necessary to clearly identify the minor changes.
- 1.2.3.9** Design-Builder shall notify Agency when the Work or an agreed-upon portion thereof has been completed, in accordance with **DB General Provisions**, Subsection 180.41.
- 1.2.3.10** Design-Builder shall maintain a set of the Contract Documents on the Project Site and at each Work Location, in accordance with **DB General Provisions**, Subsection 150.40(c)(1).

- 1.2.3.11** Consistent with **DB General Provisions**, Subsection 170.60, Design-Builder shall be fully responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work, including but not limited to, taking reasonable precautions to ensure the safety of, and prevention of damage, injury, or loss to: (a) employees of Agency present on or in the vicinity of a Work Location, employees of Design-Builder and other persons performing Work on or in the vicinity of a Work Location, and other persons, including the traveling public, who may be affected; (b) Materials and Equipment to be incorporated into the Project; (c) portions of the Project under construction or completed; and (d) other property within or adjacent to a Work Location.
- 1.2.3.12** Design-Builder shall be liable for damage to or loss of property at Work Locations and on private property affected by Design-Builder's activities, pursuant to **DB General Provisions**, Subsections 170.80 and 170.82. This subparagraph shall in no way affect the applicability or coverage of the bonds and insurance required under Article 7 of this Agreement.
- 1.2.3.13** Design-Builder shall deliver to Agency all notices regarding completion of the Work pursuant to **DB General Provisions**, Subsection 150.90.
- 1.2.3.14** Design-Builder shall perform all other construction Work required to complete the Project in conformance with all Contract requirements, including Legal Requirements.
- 1.2.4** **Extra Work to be Provided by Design-Builder** - Design-Builder shall perform Extra Work pursuant to **DB General Provisions**, Subsection 140.60, and shall be compensated for any such Extra Work in accordance with **DB General Provisions**, Section 196.

**2. Prevailing Wage**

If the contract price exceeds \$50,000 and this Contract is not otherwise exempt, workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C.840. The applicable prevailing wage rates may be accessed via the internet at: <https://www.oregon.gov/boli/WHD/PWR/Pages/January-1,-2017-PWR-Rates.aspx>. Hard copies of the prevailing wage rates publication may be obtained by contacting the Oregon Bureau of Labor and Industries via telephone at: (971) 673-0839. This project is NOT subject to the Davis-Bacon Act. The state prevailing rate of wage does not apply.

The Design-Builder must have a public works bond filed with the Oregon Construction Design-Builders Board before starting work on the Project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). The Design-Builder shall pay the applicable prevailing wage rates that are in effect at the time Owner enters into this Construction Contract with Design-Builder.

For contracts \$50,000 or greater, City shall pay a fee to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries  
Wage and Hours Division  
Prevailing Wage Unit  
800 NE Oregon Street, # 32

Portland, Oregon 97232

**3. Contract Documents**

The Design-Builder is hereby bound to comply with all requirements of this agreement, the Design-Builder's proposal, the detailed specifications and requirements, the drawings, and the special conditions and modifications in conditions as set forth in the documents prepared by the City Engineer and the performance pertaining to this contract, in the City of Milwaukie, Oregon, and by this reference made a part hereof to the same legal force and effect as if set forth herein in full.

**3.1 Contract Documents List**

The Contract Documents include the following:

- This Public Improvement Contract.
- DB General Provisions
- DB Special Provisions
- DB Standard Special Provisions
- DB Standard Specifications
- City of Milwaukie Public Works Standards
- Exhibit B., Those portions of the Quality Proposal and Price Proposal included in Exhibit B that meet or exceed minimum Contract requirements established by Agency.
- RFP Conceptual Plans [DB Special Provisions, Attachment "A"]
- Regulatory authority permits, orders, opinions, authorizations, and any other permits or reports required for the Project
- Change Orders
- Force Account Work Orders
- Written orders and authorizations issued by Agency
- Contract Baseline Concepts [DB155]
- Accepted Definitive Design [DB155]
- Readiness-for-Construction Plans [DB155]
- Working Plans [DB155]
- Design-Builder Specifications [DB155]
- As-Constructed Plans [DB155]
- All other Programmatic Plans or any other documents, in any form, required to be submitted to Agency pursuant to the terms of applicable **DB General Provisions, DB Special Provisions, DB Standard Specifications, DB Standard Special Provisions, or Attachment B to DB Special Provisions** – Additional Contract Documents Matrix.

**3.2 Order of Precedence**

All Contract Documents are intended to be complementary. Conflicts, if any, will be resolved utilizing the following descending order of precedence.

- 3.2.1** Contract Change Orders
- 3.2.2** This Design-Build Agreement executed by the Parties, excluding all other Contract Documents
- 3.2.3** Exhibit B, Those portions of the Quality Proposal and Price Proposal included in Exhibit B that meet or exceed minimum Contract requirements established by Agency.
- 3.2.4** DB Special Provisions

- 3.2.5 DB General Provisions
- 3.2.6 Definitive Design
- 3.2.7 Design-Builder Specifications
- 3.2.8 Readiness-for-Construction Plans
- 3.2.9 City of Milwaukie Public Works Standards
- 3.2.10 Standard Drawings
- 3.2.11 DB Standard Special Provisions
- 3.2.12 DB Standard Specifications
- 3.2.13 Unstamped Working Plans
- 3.2.14 All other Contract Documents

4. **City's Representative**

For purposes hereof, the City's authorized representative will be the Engineering Director, 6101 SE Johnson Creek Blvd, Milwaukie, Oregon 97206, telephone 503-786-7600.

5. **Design-Builder's Representative**

For purpose hereof, the Design-Builder's authorized representative will be Larry Gescher.

**Address:** PO Box 556, Stayton, OR 97383

**E-mail Address:** larryg@hpcivil.com

**Fax Number:** (503) 769-2761

**Phone Number:** (503) 769-2466

5.1 **Key Personnel** - Key Personnel shall consist of Design-Builder's Project Management Personnel, Design-Builder's Design Professionals, and Design-Builder's Major Subcontractors (the "**Key Personnel**"). The following Key Personnel shall perform the functions established under the Contract for the duration of the Contract.

5.1.1 **Project Management Personnel** - Design-Builder's Project management personnel shall consist of the following Key Personnel:

**Project Principal:** Roger Silbernagel

**Project Manager:** Larry Gescher

**Project Quality Manager:** Kevin Timmins, PE

**Construction Manager:** Josh Smith

**Design Manager:** Doug Sarkkinen, PE, SE

**Design Quality Manager:** Ken Acherman, PE

**Construction Quality Manager:** Ian Machan, PE

**Safety Manager:** Scott Plummer

**Environmental Manager:** Randy Reeve

**Traffic Control Design Engineer:** Allen Hendy, PE

**Traffic Control Supervisor:** Scott Plummer

**5.1.2 Design Professionals** - Design-Builder's Design Professionals shall consist of the following Key Personnel:

**Bridge Design Engineer:** Greg Mines, PE

**Lead Roadway Design Engineer:** Dave Weller, PE

**Traffic Signal/Sign Design Engineer:** Allen Hendy, PE

**Archeological Investigations (if necessary):** N/A

**Design Survey:** John Yamashita

**Geotechnical Design Lead Engineer:** Matt Shanahan

**Hydraulic Design Lead Engineer:** Gary Wolff, PE

**Drainage/Water Quality:** Ashley Cantlon

**Landscape Architecture/Erosion Control:** David Haynes

**Utility Specialist:** Adrian Esteban

**5.1.3 Major Subcontractors** - Design-Builder's Design Professionals shall consist of the following Entities:

5.1.3.1 OTAK Inc.

5.1.3.2 Reeve Sherwood Consultants

5.1.3.3 Geotechnical Resources, Inc.

5.1.3.4 Global Transportation Engineering

5.1.3.5 Materials Testing & Inspection

**5.2 Substitution of Key Personnel and/or Major Subcontractors** – The Parties agree that each Key Personnel and Major Subcontractor is unique, and that Agency has relied upon their qualifications in selecting Design-Builder to perform the Contract. Therefore, Design-Builder shall not replace any Key Personnel or Major Subcontractors during the term of the Contract. Notwithstanding the foregoing, in those limited circumstances in which Agency elects to consider substitutions, the process shall be governed by the provisions of **DB General Provisions**, Subsections 180.35(c) and 180.35(d). Should Agency, in its sole discretion, elect to authorize a substitution, such authorization shall not relieve Design-Builder of its sole responsibility under the Contract to complete all Work and deliver the Project in accordance with all Contract requirements.

**6. Design-Builder Identification**

Design-Builder shall furnish to the City the Design-Builder's employer identification number, as designated by the Internal Revenue Service, or Design-Builder's social security number, as City deems applicable.

**7. Compensation**

**A. Payments:** City agrees to pay Design-Builder **Two Million Six Hundred Ten Thousand Dollars (\$2,610,000.00)** for performance of those services provided hereunder, which payment shall be based upon the following applicable terms:

Payment shall be based upon the unit prices bid by the Design-Builder, as listed in attached bid. Design-Builder shall prepare and submit each month to the City Engineer, 6101 SE Johnson Creek Blvd, Milwaukie, OR 97206, a statement of services rendered, (indicating the description of each service used in the bid and the dollar amount of each service completed through the stated date), together with a request for payment duly verified by the Design-Builder's Representative.

Payment by the City shall release the City from any further obligation for payment to Design-Builder for services performed or expenses incurred as of the date of the statement of services. Payment of installments shall not be considered acceptance or approval of any work or waiver of any defects therein. City certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract.

Design-Builder shall include proof of payment to any and all subcontractors and suppliers with each statement submitted to the City. The City shall retain the right to withhold payments if required proof of payment to subcontractor and suppliers is not included with a statement.

**B. Timing of Payments and Liquidated Damages:** Progress payments, less a five percent retainage as authorized by ORS 279C.555, shall be made to the Design-Builder within thirty (30) days of the City's receipt of the statement of services. The Design-Builder agrees that the "Time of Completion" is defined in the Section SP180.85(b) of the DB Special Provisions, part of the Bid documents, and agrees to complete the work by the date specified in said document. The Design-Builder and City agree that the City will suffer damages each day the work remains uncompleted after the Time of Completion and that the amounts of those damages are difficult to calculate. Design-Builder and City agree that the amounts indicated in the DB Special Provisions, part of the Bid documents, are a reasonable amount of damages for late completion and Design-Builder agrees to pay such amounts as liquidated

damages if the work is not completed by the Time of Completion. Design-Builder agrees that the liquidated damages specified herein are a fair way of ascertaining damages to the City and are not a penalty for late completion.

- C. Final Payment:** The Design-Builder shall notify the City in writing when the Design-Builder considers the project complete, and the City shall, within 15 days after receiving the written notice, either accept the work or notify the Design-Builder of work yet to be performed on the contract.

If accepted by the City, the remaining balance due to the Design-Builder, including the retained percentage, shall be paid to the Design-Builder by the City within 30 days after the date of said acceptance.

The City shall pay to the Design-Builder interest at the rate of one and one-half percent per month on the final payment due the Design-Builder, to commence 30 days after the work under the Contract has been completed and accepted and to run until the date when final payment is tendered to the Design-Builder. If the City does not, within 15 days after receiving written notice of completion, notify the Design-Builder of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

As a further condition of final acceptance, the City may require the Design-Builder to submit evidence, satisfactory to the City's Representative, that all payrolls, material bills, and other indebtedness connected with the project have been paid. If any indebtedness or liens are in dispute, the Design-Builder may submit a surety bond satisfactory to the City guaranteeing payment of all such disputed amounts if such payment has not already been guaranteed by surety bond.

**8. Status of Design-Builder as Independent Contractor**

Design-Builder certifies that:

- A.** Design-Builder acknowledges that for all purposes related to this Agreement, Design-Builder is and shall be deemed to be an independent Contractor as defined by ORS 670.600 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Design-Builder is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Design-Builder under the terms of this Agreement, to the full extent of any benefits or other remuneration Design-Builder receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Design-Builder or to a third party) as a result of said finding.
- B.** The undersigned Design-Builder hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Design-Builder, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.

- C. If this payment is to be charged against Federal funds, Design-Builder certifies that he or she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.
- D. Design-Builder and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- E. Design-Builder certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- F. Design-Builder is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**9. Subcontracts - Assignment & Delegation**

Design-Builder shall submit a list of Subcontractors for approval by the City, and Design-Builder shall be fully responsible for the acts or omissions of any Subcontractors and of all persons employed by them, and neither the approval by City of any Subcontractor nor anything contained herein shall be deemed to create any contractual relation between the Subcontractor and City.

This agreement, and all of the covenants and conditions hereof, shall inure to the benefit of and be binding upon the City and the Design-Builder respectively and their legal representatives. Design-Builder shall not assign any rights nor delegate any duties incurred by this contract, or any part hereof without the written consent of City, and any assignment or delegation in violation hereof shall be void.

**9.1 Use of Registered Subcontractors - Design-Builder certifies that:**

It shall require and ensure that all Subcontractors performing Work are registered with the Construction Contractors' Board or licensed by the State Landscape Contractors' Board in accordance with ORS 701.035 to 701.055 before such Subcontractors commence Work and for the duration of the subcontract.

**10. Design-Builder - Payment of Benefits - Hours of Work**

**A.** The Design-Builder shall:

- 1) 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 contract;
- 2) Pay all contributions or amounts due the Industrial Accident Fund under the Worker's Compensation Law from such Design-Builder or Subcontractor incurred in the performance of this contract;
- 3) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167; and
- 4) Not permit any lien or claim to be filed or prosecuted against the City of Milwaukie on account of any labor or material furnished;

**B.** The Design-Builder or the Design-Builder's Surety and every Subcontractor or the Subcontractor's Surety shall file certified statements with the City in writing on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Design-Builder or the Subcontractor has employed

upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract, which certificate and statement shall be verified by the oath of the Design-Builder or the Design-Builder's Surety or Subcontractor or the Subcontractor's Surety that the Design-Builder or Subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Design-Builder's or Subcontractor's knowledge.

- 1) The certified statements shall set out accurately and completely the payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, and the gross wages the worker earned during each week identified in the certified statement.
  - 2) Each certified statement required herein shall be delivered or mailed by the Design-Builder or Subcontractor to the City. A true copy of the certified statements shall also be filed at the same time with the Commissioner of the Bureau of Labor and Industries. Certified statements shall be submitted as set forth in OS 279C.845.
- C. The Design-Builder agrees that if the 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 contract as such claim becomes due, the proper office of the City of Milwaukie 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 to the Design-Builder by reason of such contract. Payment of a claim in this manner shall not relieve the Design-Builder or the Design-Builder's Surety from obligation with respect to any unpaid claims.
- D. Design-Builder agrees that no person shall be employed for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or when public policy absolutely requires it, and in such cases the laborer shall be paid at least time and a half pay for all overtime in excess of eight (8) hours in any one day or forty (40) hours in any one week when the workweek is five consecutive days, Monday through Friday, or ten (10) hours in any one day and or forty (40) hours in any one week when the workweek is four consecutive days, Monday through Friday and for all work performed on Saturday and on any legal holiday as specified in ORS 279C.540.
- E. No City employee shall be required to work overtime or on a Saturday, Sunday or holiday in the fulfillment of this contract except where the Design-Builder agrees to reimburse the City in the amount of money paid the employee for such work as determined by state law, the City's personnel rules or union agreement. The Design-Builder shall require every Subcontractor to comply with this requirement.

#### **11. Drug Testing Program**

ORS 279C.505 requires that all public improvement contracts contain a provision requiring Design-Builders to demonstrate that an employee drug-testing program is in place. The Design-Builder demonstrates that a drug-testing program is in place by signing of the contract. The drug testing program will apply to all employees and will be maintained for the duration of the Contract awarded. Failure to maintain a program shall constitute a material breach of contract.

#### **12. Design-Builder's Employee Medical Payments**

Design-Builder agrees to pay promptly as due, 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 Design-Builder's employees, of all sums which the Design-Builder agreed to pay for such services and all money and sums which the Design-Builder collected or deducted from employee wages pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

**13. Salvage, Composting or Mulching**

If this is a contract for demolition work, the Design-Builder shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this is a contract for lawn and landscape maintenance, Design-Builder shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**14. Early Termination**

**A.** This agreement may be terminated without cause prior to the expiration of the agreed upon term by mutual written consent of the parties and for the following reasons:

- 1)** If work under the Contract is suspended by an order of a public agency for any reason considered to be in the public interest other than by a labor dispute or by reason of any third party judicial proceeding relating to the work other than a suit or action filed in regard to a labor dispute; or
- 2)** If the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the Contract.

**B.** Payment of Design-Builder shall be as provided by ORS 279C.660, in accordance with DB General Provisions 00195.70, and shall be prorated to and include the day of termination and shall be in full satisfaction of all claims by Design-Builder against City under this Agreement.

**C.** Termination under any provision of this paragraph shall not affect any right, obligation, or liability of Design-Builder or City which accrued prior to such termination.

**15. Cancellation with Cause**

**A.** City may terminate this Agreement effective upon delivery of written notice to Design-Builder, or at such later date as may be established by City, under any of the following conditions:

- 1)** If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds,
- 2)** If Federal or State regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement,
- 3)** If any license or certificate required by law or regulation to be held by Design-Builder, or its design professionals, subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed, or

- 4) If Design-Builder becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Design-Builder, if a receiver or trustee is appointed for Design-Builder, or if there is an assignment for the benefit of creditors of Design-Builder.
- 5) If Design-Builder fails to maintain reasonable relations with the public. Verbal abuse, threats, or other inappropriate behavior towards members of the public constitutes grounds for termination.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

**B.** City, by written notice of default (including breach of contract) to Design-Builder, may terminate the whole or any part of this Agreement:

- 1) If Design-Builder fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Design-Builder fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Design-Builder shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (b), Design-Builder shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Design-Builder bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Design-Builder. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

## 16. Access to Records

- A.** City shall have access to such books, documents, papers and records of Design-Builder as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.
- B.** The following access to records requirements apply to this contract:
  - (1) The Design-Builder agrees to provide Oregon Emergency management, City of Milwaukie, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Design-Builder which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - (2) The Design-Builder agrees to permit any of the foregoing parties to reproduce by any means whatsoever of to copy excerpts and transcriptions as reasonably needed.

- (3) The Design-Builder agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

**17. Work is Property of City**

All work performed by Design-Builder under this Agreement shall be the property of the City.

**18. Adherence to Law**

- A.** Design-Builder shall adhere to all applicable laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning workers' compensation, and minimum and prevailing wage requirements. Specifically, but not by way of limitation, this contract is subject to all applicable provisions of ORS 279C.505, 279C.510, 279C. 515, 279C.520, 279C.525, 279C.530, 279C.540, 279C.570, 279C. 580, and 279C.800- 279C.870.
- B.** To the extent applicable, the Design-Builder represents that it will comply with Executive Order 11246 as amended, Executive Order 11141, Section 503 of the Vocational Rehabilitation Act of 1973 as amended and the Age Discrimination Act of 1975, and all rules and regulations issued pursuant to the Acts.
- C.** As provided by ORS 279C.525, all applicable provisions of federal, state or local statutes, ordinances and regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the work under this contract are by reference incorporated herein to the same force and affect as if set forth herein in full. If the Design-Builder must undertake additional work due to the enactment of new or the amendment of existing statutes, ordinances or regulations occurring after the submission of the successful bid, the City shall issue a Change Order setting forth the additional work that must be undertaken. The Change Order shall not invalidate the Contract and there shall be, in addition to a reasonable extension, if necessary, of the contract time, a reasonable adjustment in the contract price, if necessary, to compensate the Design-Builder for all costs and expenses incurred, including overhead and profits, as a result of the delay or additional work.

**19. Changes**

City may at any time, and without notice, issue a written Change Order requiring additional work within the general scope of this Contract, or any amendment thereto, or directing the omission of or variation in work. If such Change Order results in a material change in the amount or character of the work, an equitable adjustment in the Contract price and other provisions of this Contract as may be affected may be made. Any claim by Design-Builder for and adjustment under this section shall be asserted in writing within thirty (30) days from the date of receipt by Design-Builder of the notification of change or the claim will not be allowed. Whether made pursuant to this section or by mutual agreement, no change shall be binding upon City until a Change Order is executed by the Authorized Representative of City, which expressly states that it constitutes a Change Order to this Contract. The issuance of information, advice, approvals, or instructions by City's Representative or other City personnel shall not constitute an authorized change pursuant to this section. Nothing contained in this section shall excuse the Design-Builder from proceeding with the prosecution of the work in accordance with the Contract, as changed.

**20. Force Majeure**

Neither City nor Design-Builder shall be considered in default because of any delays in completion of responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the party so disabled, including, but not restricted to, an act of God or of a public enemy, volcano, earthquake, fire, flood, epidemic, quarantine, restriction, area-wide strike, freight embargo, unusually severe weather or delay of Subcontractor or suppliers due to such cause; provided that the party so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the causes of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under Contract.

**21. Non-waiver**

The failure of the City to insist upon or enforce strict performance by Design-Builder of any of the terms of this contract or to exercise any rights hereunder shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

**22. Warranties**

All work shall be guaranteed by the Design-Builder, as specified, after the date of final acceptance of the work by the Owner. Design-Builder warrants that all practices and procedures, workmanship, and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Design-Builder from liability under warranties contained in or implied by this contract.

**23. Attorney's Fees**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the Court may adjudge reasonable attorney's fees and court costs including attorney's fees and court costs on appeal.

**24. Governing Law**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any questions arising under this Agreement must be brought in the Circuit Court of Clackamas County or the U. S. District Court in Portland.

**25. Conflict Between Terms**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid of the Design-Builder, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said bid conflicting herewith.

**26. Indemnification**

Design-Builder warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a Design-Builder's work by City shall not operate as a waiver or release.

Design-Builder agrees to indemnify and defend the City, its officers, agents, consultants and employees and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except liability arising out of the sole negligence of the City and its employees. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**27. Insurance**

Design-Builder and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all risks arising directly or indirectly out of Design-Builder's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary insurance with respect to the interests of City and that any other insurance maintained by City is excess and not contributory insurance with the insurance required hereunder.

The policy or policies of insurance maintained by the Design-Builder and its subcontractors shall provide at least the limits and coverages as identified in the DB Special Provisions, SP00170.70(a)

**28. Method and Place of Giving Notice, Submitting Bills and Making Payments**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail or by email. Notices, bills and payments sent by mail should be addressed as follows:

<b>City of Milwaukie</b>	<b>HP Civil Inc.:</b>
Attn: Accounts Payable	Attn: Larry Gescher
10722 SE Main Street	PO Box 556
Milwaukie, Oregon 97222	Stayton, OR 97383
Phone: 503-786-7523	Phone: 503-769-2466
Fax 503-786-7528	Fax: 503-769-2761
Email Address:	Email Address:
ap@milwaukieoregon.gov	larryg@hpcivil.com; ap@hpcivil.com

and when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**29. Hazardous Materials**

Design-Builder shall supply City with a list of any and all hazardous substances used in performance of this Agreement. That list shall identify the location of storage and use of all such hazardous substances and identify the amounts stored and used at each location. Design-Builder shall provide City with material safety data sheets for all hazardous substances brought onto City property, created on City property or delivered to City pursuant to this Agreement. For the purpose of this section, "hazardous substance" means hazardous substance as defined by ORS 453.307(5). Design-

Builder shall complete the State Fire Marshall's hazardous substance survey as required by ORS 453.317 and shall assist City to complete any such survey that it may be required to complete because of substances used in the performance of this Agreement.

**30. Hazardous Waste**

If, as a result of performance of this Agreement, Design-Builder generates any hazardous wastes, Design-Builder shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Design-Builders shall provide City with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Design-Builder shall defend, indemnify, and hold harmless City for any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.

**31. Severability**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected or invalidated thereby.

**32. Nondiscrimination**

Design-Builder certifies that in compliance with ORS 279A.110, Design-Builder will not discriminate against minority, women or emerging small business enterprises in obtaining any subcontracts. It shall not discriminate on the basis of race, color, national origin or sex in the performance of the Contract and in the award of subcontracts.

**33. Disclosure of Tax Identification Number**

Design-Builder shall provide its federal tax ID number to Agency. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of State, federal and local tax Laws.

**34. Media Contacts; Confidentiality**

Unless otherwise specifically authorized in writing, Design-Builder shall provide no news release, press release, or any other statement to a member of the news media regarding this Project without Agency's prior written authorization. Furthermore, except in the case where Agency specifically authorizes disclosure of Agency's confidential information in writing, Design-Builder shall maintain the confidentiality of Agency's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Design-Builder from establishing a claim or defense in an adjudicatory proceeding. Design-Builder shall require of its Subcontractors similar agreements to maintain the confidentiality of Agency's information.


**35. Complete Agreement**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Design-Builder, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

36. **Joint Ventures and Partnerships** - If Design-Builder is a joint venture or a partnership, each joint venture member or partner is executing this Agreement on behalf of and thereby binds both itself and Design-Builder, and each joint venture member or partner and Design-Builder shall be jointly and severally liable under this Agreement and the Contract.

**IN WITNESS WHEREOF**, the City has caused this agreement to be executed by its duly authorized undersigned officer, acting pursuant to authorization of the City Council, duly passed at the regular meeting held on the 16th day of May, 2017, and the Design-Builder has executed this agreement on the date herein above first written.

**DESIGN-BUILDER**

  
\_\_\_\_\_  
Signature

LARRY GESCHER, PRESIDENT  
Printed Name & Title

6-27-17  
Date

**CITY OF MILWAUKEE**

  
\_\_\_\_\_  
Signature

Ann Ober, City Manager  
Printed Name & Title

6-26-17<sup>th</sup>  
Date

## City of Milwaukie, Oregon Public Works Contract Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that we,

HP Civil Inc.  
(Official Name & Form of Organization)

Whose address is: P.O Box 556  
(Street Address)

Stayton OR 97383  
(City) (State) (Zip)

as Principal, and,

North American Specialty Insurance Company  
(Name of Surety)

650 Elm St. Manchester NH 03101  
(Street Address of Surety) (City) (State) (Zip)

A.G. Sadowski Company / Derek A. Sadowski 503-362-2711  
(Print - Agent / Contact Name) (Phone Number)

a corporation duly authorized to conduct a general surety business in the State of Oregon, as Surety, are jointly and severally held and bound unto the City of Milwaukie, Oregon, a municipality of the State of Oregon, hereinafter called Obligee, in the sum of

--Two Million Six Hundred Ten Thousand \_\_\_\_\_ and 00 /100 DOLLARS (\$ 2,610,000.00 \_\_\_\_\_),  
(The Contract Price, Both in Words & Figures)

lawful money of the United State of America, for the payment of which we, as Principal, and as Surety, jointly and severally bind ourselves, our successors and assigns firmly by these presents,

### TERMS AND CONDITIONS

On the 17th day of May, 2017.

HP Civil Inc.  
(Name of Contractor)

Principal, entered into a contract with the City of Milwaukie, Oregon, Obligee, to construct certain public improvements and to provide material, labor and equipment for the construction of those improvements. The public improvements and work to be performed by Principal are more fully

described in the contract documents between Principal and Obligee. Those contract documents are incorporated herein by reference.

In the event that Principal fails to complete the work as required under the contract, Surety shall either complete the work or pay Obligee the costs of completion of the work. Work is only complete when it meets the standards required by the Contract and applicable City standards. Surety's obligation shall remain in effect until the work is accepted by Obligee, but shall terminate on acceptance by Obligee.

The total amount of the Surety's liability to Obligee under this bond shall in no event exceed the amount stated above.

Surety agrees that no change, extension of time, alternation, or addition to the terms of the contract, or to the work to be performed thereunder or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or the specifications.

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond to be executed in Triplicate, Oregon, this 18th day of May, 2017.

HP Civil Inc.  
Contractor

*Larry Drescher*  
Principal Signature

LARRY DRESCHER  
Principal Printed Name

Witnesses: *Roger Silken*  
\_\_\_\_\_

North American Specialty Insurance Company  
Surety

(A true copy of the Power of Attorney must be attached to the original of this bond)

*Ty Moffett*  
Surety Attorney of Fact Ty Moffett

Countersigned:  
A.G. Sadowski Company  
1605 Liberty St. SE, Salem, OR 97302  
\_\_\_\_\_  
Resident Agent



## City of Milwaukie, Oregon Public Works Contract Payment Bond

KNOW ALL MEN BY THESE PRESENTS, that we,

HP Civil Inc.  
(Official Name & Form of Organization)

Whose address is: P.O Box 556  
(Street Address)

Stayton OR 97383  
(City) (State) (Zip)

as Principal, and,

North American Specialty Insurance Company  
(Name of Surety)

650 Elm St. Manchester NH 03101  
(Street Address of Surety) (City) (State) (Zip)

A.G. Sadowski Company / Derek A. Sadowski 503-362-2711  
(Print - Agent / Contact Name) (Phone Number)

a corporation duly authorized to conduct a general surety business in the State of Oregon, as Surety, are jointly and severally held and bound unto the City of Milwaukie, Oregon, a municipality of the State of Oregon, hereinafter called Obligee, in the sum of

--Two Million Six Hundred Ten Thousand and \_\_\_/100 DOLLARS (\$ 2,610,000.00 ),  
(The Contract Price, Both in Words & Figures)

lawful money of the United State of America, for the payment of which we, as Principal, and as Surety, jointly and severally bind ourselves, our successors and assigns firmly by these presents,

### TERMS AND CONDITIONS

On the 18th day of May, 2017,

HP Civil Inc.  
(Name of Contractor)

Principal, entered into a contract with the City of Milwaukie, Oregon, Obligee, for the construction of certain public improvements. As part of the contract, Principal is required to furnish materials, labor, and equipment to construct the improvements. The contract documents between Principal and Obligee are incorporated herein by this reference.

In the event that Principal fails to make payments when due to suppliers of labor, equipment or materials, Surety shall pay the suppliers the amounts they are due. In the event that Obligee pays any amounts to suppliers that Principal was required to pay, Surety shall reimburse Obligee for those payments. In the event that Principal permits any lien or claim to be filed or prosecution against the City on account of any labor or material furnished, Surety shall take such steps as are necessary to clear the lien, claim or prosecution. In the event that Principal fails to (1) promptly pay all contributions or amounts due the State Unemployment Compensation Trust Fund incurred to the performance of the contract, (2) promptly, as due, make payments to the person, co-partnership, association, or corporation entitled thereto of the money and sums mentioned in Section 279C.600 of the Oregon Revised Statutes, or (3) promptly pay to the Oregon State Tax Commission all sums required to be deducted and retained from wages of employees of the Principal and his sub-Contractors, pursuant to the Section 316.711, Oregon Revised Statutes, Surety shall make the required payments. Surety's obligations under this bond shall terminate when all payments required of Principal described in this paragraph are made in full.

The total amount of the Surety's liability under this bond both to the Obligee and to the persons furnishing labor or materials, provisions and goods to any person or persons, shall in no event exceed the amount stated above.

Surety agrees that no change, extension of time, alternation, or addition to the terms of the contract, or to the work to be performed there under or the specifications accompanying the same shall in anywise affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the contract or to the work or the specifications.

**IN WITNESS WHEREOF**, the parties hereto have caused this Bond to be executed in TriPLICATE, Oregon, this 18th day of May, 2017.

HP Civil Inc.

Contractor



Principal Signature

Larry Gescher

Principal Printed Name

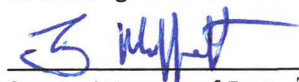
Witnesses:



North American Specialty Insurance Company

Surety

(A true copy of the Power of Attorney must be attached to the original of this bond)



Surety Attorney of Fact Ty Moffett

Countersigned:

A.G. Sadowski Company  
1605 Liberty St. SE, Salem, OR 97302

Resident Agent

NAS SURETY GROUP

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Manchester, New Hampshire, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Schaumburg, Illinois, each does hereby make, constitute and appoint:

A.G. SADOWSKI, KATHLEEN M. SADOWSKI

DEREK A. SADOWSKI and TY MOFFETT

JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION (\$50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."



By [Signature] Steven P. Anderson, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company



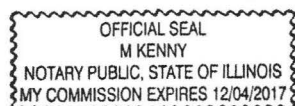
By [Signature] Michael A. Ito, Senior Vice President of Washington International Insurance Company & Senior Vice President of North American Specialty Insurance Company

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 22nd day of September, 2015.

North American Specialty Insurance Company
Washington International Insurance Company

State of Illinois
County of Cook ss:

On this 22nd day of September, 2015, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Michael A. Ito, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.



[Signature] M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 18th day of May, 2017.

[Signature] Jeffrey Goldberg, Vice President & Assistant Secretary of Washington International Insurance Company & North American Specialty Insurance Company

Potential Staging Area

WILLAMETTE RIVER

ORDINARY HIGH WATER ELEV. 19.8'

EXTEND SHEET PILE WALL AND ARMOR SLOPE

FILING

KELLOGG CREEK

Driveway connection to Hwy 99E shown in concept. Design-Build Contractor to finalize driveway alignment and profile to provide viable access.

CONNECT TO EXISTING WALK

APPROX. CONSTRUCTION LIMITS

CONNECT TO EXISTING CURB

INSTALL RAMP CONNECT TO EXISTING PATH

APPROX. CONSTRUCTION LIMITS

CONNECT TO EXISTING CURB

WALL  
ADJUST MANHOLE TO FINISH GRADE. PROTECT SANITARY SEWER

PED PATH

WALL

APPROX. CONSTRUCTION LIMITS

BRIDGE BENT LOCATION TBD

PROPOSED BRIDGE

BRIDGE BENT LOCATION TBD

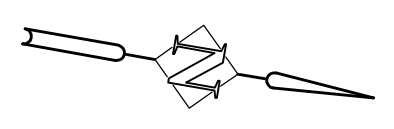
WALL  
100 YEAR FLOOD PLAIN ELEV. 36'

REPLACE SIGNAL CONTROL LOOPS

CONNECT ROADWAY TO EXISTING ENTRANCE

HWY 99E  
M'CLOUGHLIN BLVD

Design components shown on this drawing are intended to be "concept level" only. Design-Build Contractor will be responsible for providing and ensuring viability of final design. Dimensions, elevations, slopes, locations of design features, or other design-related information shown on this drawing should be independently verified.



0 10 20 40  
SCALE: 1" = 20'

CITY OF MILWAUKIE  
PUBLIC WORKS DEPARTMENT  
6101 SE JOHNSON CREEK BLVD.  
MILWAUKIE, OREGON 97206  
TEL. (503) 786-7600  
FAX. (503) 774-8236

DATE	NO.	DESCRIPTION
R E V I S I O N S		

DESIGNED: KKV  
DRAWN: ABM  
CHECKED: AJI  
DATE: 1/20/2017

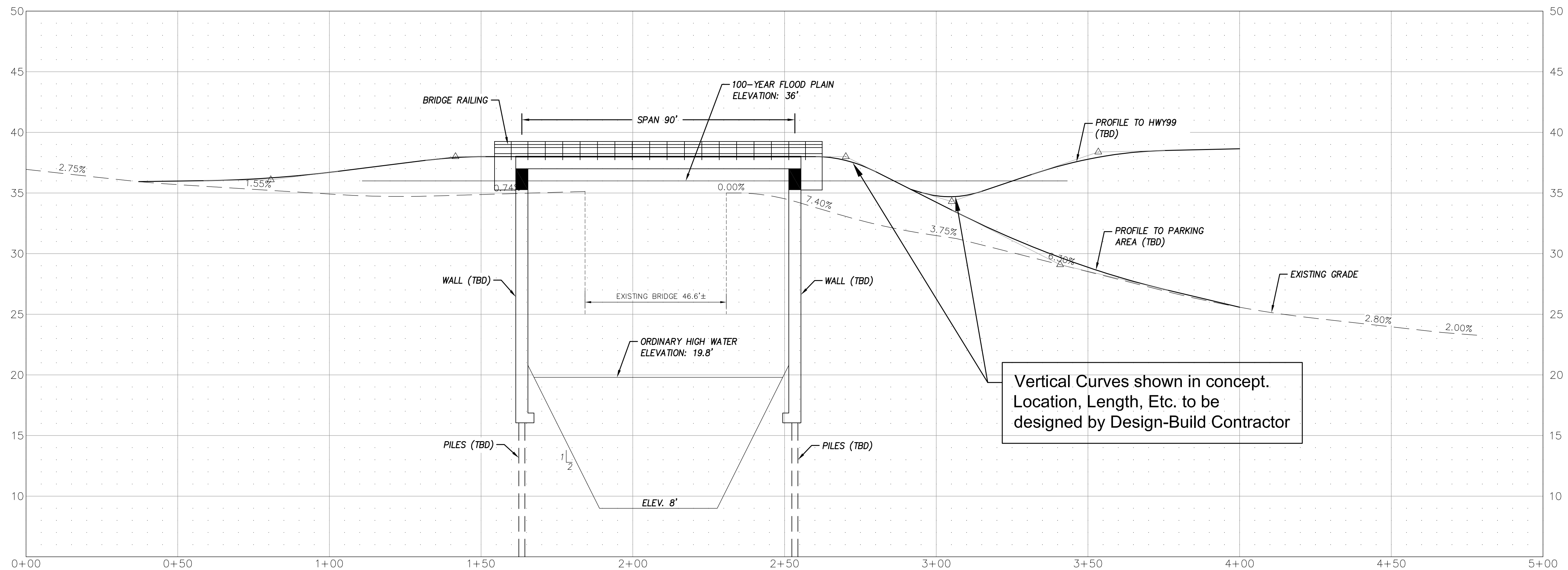
**HHPR** Harper Houf Peterson Righellis Inc.  
ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS  
205 SE Spokane Street, Suite 200, Portland, OR 97202  
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

EXHIBIT "A" - DESIGN BUILD SPECIAL PROVISIONS  
KELLOGG CREEK BRIDGE REPLACEMENT  
MILWAUKIE, OREGON

SHEET NO.  
1 OF 2  
JOB NO.  
MWK-25

P:\MWK\City of Milwaukie\MWK-25 (Riverfront Park Bridge) REPI\MWK25-DWG\SHEETS\MWK25 - KELLOGG CREEK.dwg

P:\MWK (City of Milwaukie)\MWK-25 (Riverfront Park Bridge RFP)\MWK25-DWG\SHEETS\MWK25 - BRIDGE PROFILE.dwg



ELEVATION  
1" = 40' HORIZ. - 1" = 10' VERT.

Design components shown on this drawing are intended to be "concept level" only. Design-Build Contractor will be responsible for providing and ensuring viability of final design. Dimensions, elevations, slopes, locations of design features, or other design-related information shown on this drawing should be independently verified.

CITY OF MILWAUKIE  
PUBLIC WORKS DEPARTMENT  
6101 SE JOHNSON CREEK BLVD.  
MILWAUKIE, OREGON 97206  
TEL. (503) 786-7600  
FAX. (503) 774-8236

DATE	NO.	DESCRIPTION
R E V I S I O N S		

DESIGNED:	KKV
DRAWN:	ABM
CHECKED:	AJI
DATE:	1/20/2017

**HHPR** Harper Houf Peterson Righellis Inc.  
ENGINEERS • PLANNERS  
LANDSCAPE ARCHITECTS • SURVEYORS  
205 SE Spokane Street, Suite 200, Portland, OR 97202  
phone: 503.221.1131 www.hhpr.com fax: 503.221.1171

EXHIBIT "A" - DESIGN BUILD SPECIAL PROVISIONS  
KELLOGG CREEK BRIDGE REPLACEMENT  
MILWAUKIE, OREGON

SHEET NO.	2	OF	2
JOB NO.	MWK-25		

**DB SPECIAL PROVISIONS - EXHIBIT "B"**  
**KELLOGG CREEK BRIDGE (22142) EMERGENCY REPLACEMENT**  
**ADDITIONAL CONTRACT DOCUMENTS**

The Contract Documents identified in this form are in addition to the Contract Documents listed in the DB Agreement, Article 11 - Contract Documents.

Form Number	Report / Form Name	RFP Section	Summary [Refer to the referenced Section for complete requirements ]
	Quality Plan <i>(Note: Including Utility, R/W, Environmental; CS<sup>3</sup> and Railroad QA work)</i>	DB154.10 DB155.04 DB174.20(b)	The DB shall submit a Quality Plan to the Agency for Review and Acceptance within 30 Calendar Days following NTP and prior to start of any Work. Updated if any changes. The plan shall be acceptable to the Agency within 60 Calendar Days of NTP or the Work shall be stopped.  DB may submit partial Q-Plan prior to submittal of full Q-Plan. Must cover item of Work being performed. Must be acceptable to Agency within 30 Calendar Days, or Work shall be stopped.  DB shall submit annual a.) updated Quality Plan or b.) statement that no updates or revisions have been made.
	Pre-Construction Survey	DB141.12(c-12)	DB and Agency shall perform a joint Pre-Construction Survey. Record and photo/video documentation of the survey, signed and stamped by a Design Professional, shall be submitted to Agency at Readiness For Construction.
	Environmental Permits	DB141.51(c)(9)(e)	DB shall deliver a copy of all permit applications to Agency PM at least 7 Business Days prior to submittal to regulatory Agency for Review & Comment. DB shall deliver to Agency PM copies of all permits, orders, etc., obtained from Authorities upon receipt.
	Directory of Key Personnel	DB180.35(a)(4)	Within 15 Calendar Days after NTP, the DB shall submit to the Agency PM a directory and organization chart showing all of it's Key Personnel.  Agency will in turn provide a directory of Agency staff to the DB.
	Geotechnical Investigation Plan	DB141.12(c)(1)	Within 45 days of NTP, the DB will prepare a Geotechnical Investigation Plan and provide to the Agency for Review and Comment. Agency to respond within 15 Calendar Days.
	Contract Submittals List	DB180.41(f)	Within 30 Calendar Days of NTP, the DB shall prepare and submit to the Agency PM a Contract Submittals List covering all submittals required during the first six (6) months of the Contract. DB shall submit monthly updates with the Monthly Progress Report.
	Safety Plan, Project Specific	DB 170.60(e-g)	45 Calendar Days prior to the start of any on-site work or other construction activities, the DB shall submit it's Safety Plan to the Agency PM for Review and Comment.  Every 12 months on or near the anniversary of NTP, the DB shall review its Safety Plan. Within 7 Calendar Days of finishing this review DB shall issue a review report to the Agency PM. Within 30 Calendar Days of issuance of the review report, DB shall submit the revised Safety Plan to the Agency PM for Review and Comment.

Form Number	Report / Form Name	RFP Section	Summary [Refer to the referenced Section for complete requirements ]
	Geotechnical Design Report / Data Sheets	DB141.12(c)(3)(a)	DB shall document all geotechnical data and findings in the form of a Draft Geotechnical Design Report submitted with Definitive Design. DB shall document all geotechnical data and findings in the form of a Final Geotechnical Design Report. Submitted at Readiness-for-Construction
	Instrumentation Working Plan	DB141.12(c)(13)	DB shall submit to the Agency PM not less than 14 Calendar Days prior to the installation of instrumentation.
	Traffic Management Plan (TMP) - Draft and Final (includes Incident Management Plan, Emergency Communications Plan & Contingency Plan)	DB141.31(c)	DB shall prepare, submit, and maintain a Draft TMP within 75 Calendar Days of NTP or 15 Calendar Days prior to Definitive Design for Agency Review and Comment. Final TMP, incorporating Agency comments, prior to commencing construction.
	Emergency Vehicle Access Plans (subset of TMP)	DB141.31(c)(10)	At least 7 Calendar Days-prior to starting construction, DB shall provide updated Emergency Vehicle Access Plans to the Agency for Review and Comment.
	Temporary Traffic Control Plan (TCP) - Conceptual and Final	DB141.31(c)(3)	Prepare a conceptual TCP at Definitive Design and final TCP at Readiness-For-Construction for Agency Review and Comment. Any revisions must be submitted to the Agency for Review and Comment 14 Calendar Days in advance of implementation of revisions.
	Landscaping Plan	DB141.27(c)(1)	The DB shall develop, under the direction of a licensed Landscape Architect, a Landscaping Plan and submit to the Agency PM for Review and Comment at Readiness-For-Construction and prior to start of construction of Project elements impacted by or impacting the Landscaping Plan.
	Noxious Weed Control Plan (part of Landscape Plan)	DB141.27(c)(1)	Prior to commencement of construction activities, DB shall resurvey the Project Site and develop a Noxious Weed Control Plan, as part of the Landscaping Plan.
	Tree Replacement Plan (part of Landscape Plan)	DB141.27(c)(3)	The DB shall complete a Tree Replacement Plan, with input from State and federal regulatory Authorities, as part of the Landscape Plan.
	Daily Manpower & Equipment Reports	DB156.50	Daily manpower and Equipment reports for DB and each Subcontractor shall be prepared by DB using Agency forms. Reports become part of the Project Records submitted to Agency.
	Construction Instrumentation Monitoring Reports	DB141.12(c)(11)	Construction instrumentation monitoring reports shall be provided to the Agency PM on a weekly basis.
	Weekly Traffic Volume and Speed Measurement Report	DB141.31(c)(9)	Submit to Agency PM for Review and Comment on a weekly basis.
	Weekly Certified Payrolls	DB170.65(a) DB141.55(e) DB172(V.2) DB180.20(c)(3)	The DB and each Subcontractor shall furnish each week to the Agency PM a certified statement in writing on a form prescribed by the Commissioner of the Bureau of Labor and Industries including Rate of Pay, Daily and Weekly Number of Hours Worked, Deductions made, and Actual Wages Paid..
	Weekly Environmental Status & Compliance Report	DB141.51(c)(11)	The DB shall provide weekly environmental status and compliance reports to the Agency PM. Also schedule weekly or bi-weekly meetings with Agency PM.
	Project TCP Diary	DB 141.31(c)(1)(c)	The DB shall maintain a Project TCP Diary for each Work Location. Project TCP diaries will be available upon request by Agency PM and as part of the final Project Records.
	Monthly Progress Report	DB180.41(b)	The DB shall submit a Monthly Progress Report with each periodic payment request. Submittals required to be submitted with the report are listed in DB180.41.
	Monthly Progress Estimate and Pay Request	DB195.50(a)	The Agency will make progress payments upon delivery to the Agency PM of a Progress Estimate and Pay Request.

Form Number	Report / Form Name	RFP Section	Summary [Refer to the referenced Section for complete requirements ]
	Safety Report	DB170.60(n)	The DB shall submit a monthly safety report with the Monthly Progress Report and request for periodic payment to the Agency PM.
734-2536DB	Subcontractors Paid - Summary Report	DB171.20 Section 9 DB180.41(e)	DB shall submit the form to Agency PM no later than the 5th day of the month following the date that payment was made to a Subcontractor or supplier.  A copy of the form to also be submitted with the Monthly Progress Report (DB180.41).  A final form to be submitted at Project completion indicating the total amounts paid to all Subcontractors and suppliers.
734-2631DB	Report on Subcontracting	DB180.21(b)	DB must submit Report on Subcontracting forms for each subcontract, at any tier, to the Agency, along with a duplicate original subcontract, prior to the subcontracted Work commencing.  DBE subcontracts will require Agency approval.
	Erosion and Sediment Control Plan	DB141.22(c)(6)	At least 30 Calendar Days prior to commencing clearing activities or construction of Project elements affecting the drainage system, at each Work Location. DB shall update the Erosion and Sediment Control Plan as needed to meet changing conditions of the Project Site.
734-2126DB	Certificate of Materials Origin	DB160.20	DB shall obtain and maintain on file a certificate of materials origin on a form furnished by the Agency before incorporating any iron or steel products into the Project.
734-2510DB	Request for Release of Retainage for Subcontracted Work	DB195.50(f)	The Subcontractor will request a release of retainage from the DB. The DB will submit the request to the Agency PM when the Subcontractor's work on the Project is complete.
734-3320DB	Contractors Request for Adjustment of Contract Time	DB180.80(c)	DB's request for adjustment of Contract Time shall be submitted to the Agency on a form provided by, or in a format acceptable to, the Agency, and shall include a copy of the written Notice of Delay. Must be submitted within 21 Calendar Days after the date of Final Second Notification.
	Utility Adjustment Master Plan	DB174.10(d)(5)	DB shall develop the Master Plan for each Work Location and obtain Agency approval prior to any adjustments and before submittal of the Readiness For Construction Plans.
	Adjustment of Utilities Sketch	DB174.10(d)(4)	DB shall obtain, or together with the Utility owner, prepare a sketch for each Utility that requires adjustment in preparation of the Utility Adjustment Master Plan. DB must review the sketch and certify in a written statement to the Agency that adjustments will not conflict with any proposed improvements.
	Maintenance Warranties and Guarantees	DB150.96	Prior to Third Notification, DB shall transfer to Agency all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project.
	Sign Plan	DB141.25(c)(2)(a)	The DB will develop a Sign Plan for each Work Location, and wherever else within the Project corridor that it is necessary to correct signs that have been rendered inaccurate due to Project modifications at Readiness For Construction and submit to the Agency PM for Review and Comment.
	Environmental Permits	DB141.51(c)(8)	DB shall submit permit applications at least 7 Calendar Days-prior to submittal to permitting agency to the Agency PM.
	Demolition Plan	DB141.11(c)(5)(e)(7)	DB shall submit a Demolition Plan to the Agency PM for Review and Comment at least 10 Calendar Days prior to commencement of bridge removal activities.
	Blasting Plan	DB141.12(c)(9)(d)	DB shall submit to the Agency PM not less than 14 Calendar Days-before commencing blasting operations, or at any time a proposal to change drilling and blasting methods is made. Prepared and signed by the Blasting Specialist.
7434-3485	ODOT Pile Record Book	DB141.12(c)(7)	Pile Record Book shall be used to record all pile-driving records. DB shall submit to Agency PM after pile driving is completed for each Work Location.
	Stormwater Technical Memorandum	DB141.22(c)(1)	DB shall prepare a Stormwater Technical Memorandum and submit at Definitive Design
	Stormwater Management Plan	DB141.22(c)(7)	If required by programmatic or individual environmental permits - at least 30 Calendar Days prior to commencing clearing activities or construction of Project elements affecting the drainage system.

Form Number	Report / Form Name	RFP Section	Summary [Refer to the referenced Section for complete requirements ]
	Stormwater Operation and Maintenance ('O & M') Manual	DB141.22(c)(5)(b)	DB shall develop and submit to the Agency, prior to Final Inspection, an Agency "Operation and Maintenance Manual" for each stormwater treatment facility designed and constructed under the Contract.
734-2361DB	Erosion Control Monitoring Reports	DB141.22(c)(6)	DB shall keep and maintain all erosion control and monitoring and maintenance using the Erosion Control Monitoring Reports. Submit as requested by Agency and as part of the final Project Records.
	Traffic Signal Plans	DB141.25(c)(2)(c)	DB shall develop a Traffic Signal Plan for each Work Location and submit to the Agency for Review and Comment at Readiness For Construction.
	Pavement Marking Plans	DB141.25(c)(2)(c)	DB shall develop a Pavement Marking Plan for each Work Location and submit to the Agency PM for Review and Comment at Readiness For Construction.
	Pavement Design Report	DB141.26(c)(1)	Prior to commencement of paving work, DB shall submit to the Agency PM for Review and Comment a Pavement Design Report prepared by a Design Professional.
	Pavement Mix Designs	DB141.26(c-3)	DB shall submit all pavement mix designs to the Agency PM for Review and Acceptance at least 30 Calendar Days prior to the scheduled date of installation for each affected Pavement section.
	Design Review Notice	DB155.10(b)	DB shall give written notice of scheduled Design Reviews to Agency PM at least one (1) week prior to any Design Review, and shall not schedule more than two (2) concurrent Design Reviews.
	Proposed Materials Source Notification	DB160.01(a)	DB shall notify Agency in writing of all proposed Materials sources of supply, including steel or other fabricators, within 15 Calendar Days before using or fabricating if within the State, or at least 45 Calendar Days if outside the State.
	Subcontractor Insurance Certificates	DB170.70(f)	DB shall submit Subcontractor Insurance Certificates to Agency PM for Review and Comment prior to the commence of Work by the Subcontractor. Agency will review and respond within 28 Calendar Days.
	Force Account Billings	DB197.90	DB shall submit its bills for Force Account Work to the Agency PM for approval and payment.
	Notice of Claim	DB199.30(b)	At any time during the progress of the Work, but not later than 15 Calendar Days following the date of Final Second Notification, DB shall submit to the Agency claims for compensation additional to that specified in the Contract.
	Project Quality Manager Monthly Report	DB154.20(c)	Written monthly report provided to Agency PM and Design-Builder senior management

### DESIGN DELIVERABLES

	Survey Diary	DB155.03(h) & (i)	Diary of all Work performed by the survey party. Survey diary becomes part of the Project Records submitted to Agency.
	Design Review Plan (subset of Quality Plan)	DB155.04	As part of the Quality Plan, within 30 days of NTP, and prior to the design mobilization meeting, the DB shall prepare and submit a written Design Review Plan to the Agency PM for Review and Comment.
	Design Unit Report	DB155.06	Within 30 Calendar Days of NTP, and prior to the design mobilization meeting, the DB shall provide a written report identifying each Design Unit. Submit any revisions to this report in writing to the Agency PM concurrent with the Monthly Progress Report.
	Design Activities Record	DB155.12(b)(1)	The DB shall prepare and maintain daily records of design activities using forms acceptable to the Agency PM. Maintain on file and make available for review at any time.
	Monthly Design Report	DB155.12(b)(2)(a)	The DB Design QC Manager shall submit a monthly report directly to the Agency PM by the third working day of the following month after the design activities are performed.

Form Number	Report / Form Name	RFP Section	Summary [Refer to the referenced Section for complete requirements ]
	Final Design Report	DB155.12(b)(2)(b)	Upon completion of the Readiness For Construction plans and specifications for each Design Unit, the DB Design QC Mgr shall notify the DB, with a copy to the Agency, of any outstanding monitoring report issues, unresolved review comments, or non-conformances.
	As-Constructed Plans	DB155.11(f)(8)	The DB shall submit As-Constructed Plans and Design-Builder Specifications for each Design Unit to the Agency for review and Acceptance within 30 Calendar Days of completion of the construction Work.

### AGENCY PROVIDED NOTIFICATIONS OR FORMS

	Notice-to-Proceed (NTP)	DB180.44	Agency will issue Notice-to-Proceed (NTP) to the DB within five (5) Calendar Days of the date of the Contract execution.
734-3483DB	Weekly Statement of Contract Time Charges	DB180.44	Agency will furnish the DB a Weekly Statement of Contract Time Charges for calendar completion times.
734-3233DB	Notification of Commencement & Completion <b>(FIRST NOTIFICATION)</b>	DB180.44	The Agency will issue to the DB a First Notification acknowledging the date the Work commenced on the Project.
734-3233DB	Notification of Commencement & Completion <b>(INTERIM SECOND NOTIFICATION)</b>	DB150.90(a)	When all On-Site Work at any Work Location has been completed except plant establishment and Punch-List Items, the Agency will issue Interim Second Notification for that Work.
734-3233DB	Notification of Commencement & Completion <b>(FINAL SECOND NOTIFICATION)</b>	DB150.90(b) DB180.50(d)	The Agency will issue Final Second Notification when DB has completed all Work except for plant establishment and Punch-List Items.
734-3233DB	Notification of Commencement & Completion <b>(THIRD NOTIFICATION)</b>	DB150.90(c)	The Agency will issue Third Notification when all Work under the Contract is complete, including submittal of all Design Documents, completion of plant establishment and Punch-List Items, and submittal of all required documents.
734-3428	Daily Force Account Record	DB197.01	If the Agency orders the performance of Extra Work as Force Account Work, the Agency will record on a daily basis, the Materials, Equipment, labor and Special Services used for Work performed on that day. The Agency and DB shall sign the record of Force Account Work daily to indicate agreement.

**REQUEST FOR PROPOSALS (RFP)**  
**DB-General Conditions**

**For The**

*Kellogg Creek Bridge (BR #22142)*  
*Emergency Replacement*  
**DESIGN-BUILD PROJECT**

The bidder shall incorporate all applicable provisions of the *2015 Oregon Standard Specifications for Construction as amended*, and the General Conditions and Technical Specifications contained herein, into his bid proposal. All work performed, materials used in the project, and the legal relations between the parties and the Contractor's requirements shall be as set forth in said Standard Specifications, except as specially and specifically modified or deleted by these Special Conditions.

## **DB SECTION 100 – GENERAL CONDITIONS**

Delete Part 100 and replace with DB100 as follows:

### **DB Section 110 – Organization, Conventions, Acronyms, and Definitions**

#### **DB110.00 Organization**

The Specifications are comprised of the following:

- **DB Standard Specifications** defined below in Subsection 110.20. The DB Standard Specifications consist of Parts 00200 through 03000 found within the current edition of the ODOT publication titled *Oregon Standard Specifications for Construction*
- **DB General Provisions** defined below in Subsection 110.20
- Such other Specifications defined below in Subsection 110.20

#### **DB110.05 Conventions Used Throughout the Contract Documents**

**(a) Capitalization of Terms** – Capitalized terms, other than titles, acronyms, and grammatical usage, indicate that they have been given a defined meaning in Subsection 110.20 or in the text accompanying the term. Defined terms will always be capitalized in the **DB General Provisions** and **DB Special Provisions**. In the **DB Standard Specifications** and the **DB Standard Special Provisions** defined terms may not be capitalized.

**(b) References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, and Permits** – References are made in the text of the Contract Documents to "Laws," "acts," "rules," "statutes," "codes," "regulations," and "ordinances" (collectively referred to for purposes of this Subsection as "Laws"), and to "orders," "opinions," "programmatic agreements," "authorizations," and "permits" (issued by a governmental or regulatory Authority, whether local, State, or federal, and collectively referred to for purposes of this Subsection as "Permits"). Reference is also made to "applicable Laws and regulations." The following conventions apply in interpreting these terms.

**Law** – In each case, unless otherwise expressly stated in the Contract Documents, the Law is to be understood to be the current version in effect at the time the event governed by the Law takes place. This applies regardless of whether a specific Law has been cited, included, summarized, or paraphrased in the Contract Documents. Design-Builder is therefore cautioned to check the actual text of the Law to confirm its terms.

**Permits** – Permits may be modified during the course of performing the Work under the Contract. Therefore, wherever the term "order," "permit," "opinion," "programmatic agreement," or "authorization" is used in the Contract Documents, it is intended to refer to the current version in effect at the time the event governed by it takes place. That version may be embodied in a modified, superseding order, permit, opinion, programmatic agreement, or authorization, or it may consist of all terms and conditions of prior orders, permits, opinions, programmatic agreements, and authorizations that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders, permits, opinions, programmatic agreements, and authorizations are identified by name in the Contract Documents; in other cases, the terms are used in their generic sense. Design-Builder is cautioned to check the text of each order, opinion, permit, programmatic agreement, and authorization identified either by name or by generic reference.

**(c) References to "Engineer"** – The Specifications refer to the "Engineer." Wherever the term "Engineer" is used in the context of a matter or function that is Design-Builder's responsibility under its Quality Plan or Quality Plan in accordance with **DB General Provisions**, Sections 154, 155, and 156, "Engineer" shall mean "Design-Builder." Wherever else in the Specifications the term "Engineer" is used, it shall be assumed to mean Agency. If Design-Builder does not agree with the assumption in a given context, Design-Builder shall obtain clarification from Agency PM prior to acting. Additionally, Agency, without a request from Design-Builder, may issue a clarification to Design-Builder. Agency's determination shall be final.

In all cases in which notice is to be given to the "Engineer"/Design-Builder, it shall also be given to Agency PM.

**(d) Section and Subsection Numbering** – Section and Subsection numbering is not consecutive within either the **DB General Provisions** or the **DB Standard Specifications**. Where numbering is not consecutive, the interval has been intentionally reserved for future expansion.

**(e) Interpretation of Drawings** – Notes on a drawing shall take precedence over drawing details. Dimensions shown on a drawing, or that can be computed, shall take precedence over scaled dimensions.

**DB110.10 Acronyms** – Meanings of acronyms used in the Contract Documents are as follows:

AAR	-	Association of American Railroads
AASHTO	-	American Association of State Highway and Transportation Officials
ABC	-	Associated Builders and Contractors, Inc.
AC	-	Asphalt Concrete
ACI	-	Asphalt Concrete Institute

ACLB	-	Appraiser Certification and Licensing Board, state of Oregon
ACOE	-	Army Corps of Engineers
ACWS	-	Asphalt Concrete Wearing Surface
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
AISI	-	American Iron and Steel Institute
ANSI	-	American National Standards Institute
APA	-	American Plywood Association
APHIS	-	Animal and Plant Health Inspection Service, USDA
APWA	-	American Public Works Association
ARA	-	American Railway Association
AREA	-	American Railway Engineering Association
AREMA	-	American Railway Engineering and Maintenance of Way Association
ASCE	-	American Society of Civil Engineers
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing and Materials
ATPB	-	Asphalt-Treated Permeable Base
AWG	-	American Wire Gauge
AWPA	-	American Wood Preservers Association
AWS	-	American Welding Society
AWWA	-	American Water Works Association
<i>BDDM</i>	-	<i>ODOT Bridge Design and Drafting Manual</i>
BDM	-	Basis of Design Memorandum
BLM	-	Bureau of Land Management, USDI
BOLI	-	Bureau of Labor and Industries, state of Oregon
CAGt	-	Certified Aggregate Technician
CAT-I	-	Certified Asphalt Technician I
CAT-2	-	Certified Asphalt Technician II
CBM	-	Certified Ballast Manufacturers
CCO	-	Contract Change Order
CCT	-	Concrete Control Technician
CDT	-	Certified Density Technician
CEBT	-	Certified Embankment and Base Technician
CERCLA	-	Comprehensive Environmental Response, Compensation and Liability Act
CFR	-	Code of Federal Regulations
CMDT	-	Certified Mixture Design Technician

COE	- Corps of Engineers, United States Army
CPF	- Composite Pay Factor
CRSI	- Concrete Reinforcing Steel Institute
CS	- Commercial Standard, Commodity Standards Division, USDOC
DB-	- Design-Build
DBE	- Disadvantaged Business Enterprise
DEQ	- Department of Environmental Quality, state of Oregon
DLCD	- Department of Land Conservation and Development, state of Oregon
DOGAMI	- Department of Geology and Mineral Industries, state of Oregon
DSL	- Division of State Lands, state of Oregon
EAC	- Emulsified Asphalt Concrete
EPA	- Environmental Protection Agency, US
ESA	- Endangered Species Act
ESCP	- Erosion and Sediment Control Plan
FAA	- Federal Aviation Administration, USDOT
FHWA	- Federal Highway Administration, USDOT
FMV	- Fair Market Value
FSS	- Federal Specifications and Standards, GSA
FTA	- Federal Transit Administration
GSA	- General Services Administration, US
<i>HDM</i>	- <i>Highway Design Manual</i> , ODOT
HMAC	- Hot Mix Asphalt Concrete
HPC	- High Performance Concrete
IA	- Independent Assurance
ICEA	- Insulated Cable Engineers Association (formerly IPCEA)
IES	- Illuminating Engineering Society
IGA	- Intergovernmental Agreement
IMSA	- International Municipal Signal Association
ISO	- International Standards Organization
ISTEA	- Intermodal Surface Transportation Efficiency Act
ITE	- Institute of Transportation Engineers
JMF	- Job Mix Formula
JV	- Joint Venture
LRFR	- Load and Resistance Factor Rating
LLC	- Limited Liability Company
LLP	- Limited Liability Partnership
MACMP	- Monthly Asphalt Cement Material Price
MCTD	- Motor Carrier Transportation Division, state of Oregon

MEUR	- Monthly Employment Utilization Report
MFP	- Monthly Fuel Price
<i>MFTP</i>	- <i>ODOT Manual of Field Test Procedures</i>
MIL	- Military Specifications
MPH	- Miles per Hour
MSC	- Minor Structure Concrete
MSDS	- Material Safety and Data Sheet
MSE	- Mechanically-Stabilized Earth
<i>MUTCD</i>	- <i>Manual on Uniform Traffic Control Devices for Streets and Highways</i> , FHWA, USDOT
NCHRP	- National Cooperative Highway Research Board
NEC	- National Electrical Code
NEMA	- National Electrical Manufacturer's Association
NESC	- National Electrical Safety Code
NEPA	- National Environmental Policy Act
<i>NFTMAG</i>	- <i>ODOT NonField Tested Materials Acceptance Guide</i>
NHS	- National Highway System
NIST	- National Institute of Standards and Technology
NMFS	- National Marine Fisheries Service, NOAA, USDOC
NOAA	- National Oceanic and Atmospheric Administration, USDOC
NPDES	- National Pollutant Discharge Elimination System
NPS	- Nominal Pipe Size (dimensionless)
NRCS	- Natural Resources Conservation Service, USDA
OD	- Over-Dimension
OAR	- Oregon Administrative Rules
ODA	- Oregon Department of Agriculture
ODF	- Oregon Department of Forestry
ODFW	- Oregon Department of Fish and Wildlife
ODOT	- Oregon Department of Transportation
OHWE	- Ordinary High Water Elevation
OPRD	Oregon Parks and Recreation Department
<i>ORS</i>	- <i>Oregon Revised Statutes</i>
OR-OSHA	- Oregon Occupational Safety and Health Division of the Department of Consumer and Business Services
OSHA	- Occupational Safety and Health Administration, USDOL
OWEB	- Oregon Watershed Enhancement Board
OWR	- Oregon Water Resources Department
PCA	- Preconstruction Assessment

PC	-	Price Center
PCA	-	Preconstruction Assessment
PCE	-	Passenger Car Equivalent
PCI	-	Precast/Prestressed Concrete Institute
PCP	-	Pollution Control Plan
PCV	-	Price Center Value
PDA	-	Pile Driving Analyzer
PDLT	-	Project Development Leadership Team
PE -	-	Professional Engineer
PF	-	Pay Factor of a Constituent
PLS	-	Professional Land Surveyor
PM	-	Project Manager
PMBB	-	Plant Mixed Bituminous Base
PTI	-	Post-Tensioning Institute
PUC	-	Public Utility Commission, state of Oregon
QA-	-	Quality Assurance
QC	-	Quality Control
QCT	-	Quality Control Technician
PL	-	Quality Level
QLA	-	Quality Level Analysis
QPL	-	ODOT Qualified Products List
QTS	-	Quantity Tracking System
RAP	-	Reclaimed Asphalt Concrete Pavement
REA	-	Rural Electrification Administration, USDA
RMA	-	Radio Manufacturers' Association or Rubber Manufacturers' Association
ROE	-	Right of Entry
ROW	-	Right of Way
SAE	-	Society of Automotive Engineers
SHPO	-	State Historic Preservation Office, OPRD
SI	-	International System of Units (Système Internationale)
SP	-	Special Provision
<i>SRCM</i>	-	<i>Soil and Rock Classification Manual</i> , ODOT
SSPC	-	Steel Structures Painting Council
T	-	Tolerances, AASHTO Test Method
TCD	-	Traffic-Control Devices
TCDE	-	Traffic-Control Design Engineer
TCM	-	Traffic-Control Measure

TCP	-	Traffic-Control Plan
TM	-	Test Method (ODOT)
TMP	-	Traffic-Management Plan
TV	-	Target Value
UBC	-	Uniform Building Code (as adopted by the state of Oregon)
UL	-	Underwriters Laboratory, Inc.
UPC	-	Uniform Plumbing Code (as adopted by the state of Oregon)
US	-	United States
USACE	-	United States Army Corps of Engineers
USC	-	United States Code
USDA	-	United States Department of Agriculture
USDI	-	United States Department of Interior
USDOC	-	United States Department of Commerce
USDOJ	-	United States Department of Justice
USDOL	-	United States Department of Labor
USDOT	-	United States Department of Transportation
USFWS	-	United States Fish and Wildlife Service, USDI
USGS	-	United States Geological Survey
WAQTC	-	Western Alliance for Quality Transportation Construction
WBS	-	Work Breakdown Structure

**DB110.20 Definitions** – Following are definitions of words and phrases used in the RFP and Contract Documents. Other definitions may be found in the text accompanying the term to which they apply.

**Accept or Acceptance** – Agency's written statement indicating that the subject Work appears to comply with all Contract requirements and authorizing Design-Builder to proceed at its risk with Contract performance, utilizing the Work or incorporating the Work into the Project. Such Acceptance shall not constitute affirmation that the subject Work complies with all Contract requirements. Further, Acceptance will only be given for those submittals, activities, and Work specifically identified as "for Acceptance" in the Contract Documents. With regard to Final Acceptance, see definition.

**Access** – The right of ingress and egress from a property abutting a Highway.

**Access Control** – A limitation of the right and use of Access either by Law or agreement.

**Act of God or Nature** – A natural phenomenon of such catastrophic proportions or intensity as would prevent performance.

**Addendum** – A written instruction issued by Agency adding, deleting, or making material changes in provisions of the RFP or previously issued Addenda.

**Additional Work** – Increased quantities of any Price Item, within the scope of the Contract, for which a Unit Price has been established.

**Agency** – The City of Milwaukie, Oregon and/or its representatives.

**Agency-Controlled Lands** – Real property owned by Agency, controlled by Agency under lease or agreement, or under the jurisdiction and control of Agency for purposes of the Contract.

**Agency-Supplied Specifications** – The **DB Standard Specifications**; the **DB Standard Special Provisions**; the **DB General Provisions**; and the **DB Special Provisions**.

**Aggregate** – Rock of specified quality and gradation.

**As-Constructed Plans** – Plans reflecting the construction Work as actually performed under the Contract.

**Associate** – An employee, executive, director, Key Personnel, or proposed consultant or Subcontractor of Design-Builder, or any immediate family member of the foregoing.

**Authorities** – Regulatory agencies, courts, and Federal, State, and local political subdivisions with jurisdiction over the activity, the Entity, the workers, the Work, the Project, a particular Work Location or Materials development source, or the Project Site.

**Award** – Written notification to the Proposer that the Proposer has been awarded a Contract.

**BAFO** – *See*, “Proposal Revision.”

**Base** – A Course of specified Material of specified thickness placed below the Pavement.

**Baseline Progress Schedule** – The time-scaled, Critical Path network, updated from time to time in accordance with Contract requirements and depicting (a) Price Centers (PCs) and subordinated activities; (b) durations, sequences, and interrelationships that represent Design-Builder's Work plans; and (c) Design-Builder's Work Breakdown Structure (WBS) for designing, constructing, and completing the Project.

**Best and Final Offer** – *See*, “Proposal Revision.”

**Best Value** – A selection method utilizing both price and quality evaluation factors.

**Bike Lane** – A lane in the Traveled Way, designated by striping and Pavement markings for the preferential or exclusive use of bicyclists.

**Borrow** – Material lying outside of planned or required Roadbed excavation used to complete Project earthwork.

**Boulders** – Particles of rock that will not pass a 12-inch square opening.

**Bridge** – A single or multiple span Structure, including supports, that carries motorized and non-motorized vehicles, pedestrians, or Utilities on a Roadway, walk, or track over a watercourse, Highway, Railroad, or other feature.

**Business Day** – Any Calendar Day, beginning and ending at midnight, between Monday and Friday, inclusive, excluding State-recognized holidays.

**Buttress** – A rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.

**By-Products** – All waste, excess, and other materials generated during or remaining from the manufacture or production of Materials severed from Agency-Controlled Lands.

**Calendar Day** – Any day shown on the calendar, beginning and ending at midnight.

**Camber** – A slight arch in a surface or Structure to compensate for loading.

**Change Order** – A written order issued by Agency to Design-Builder modifying Work required by the Contract, and, if applicable, establishing the basis of payment or a change in schedule for the modified Work.

**Changed Work** – Work included in a Price Item and within the scope of the Project that is different from that reflected in the Contract. (See **DB General Provisions**, Subsection 140.30.)

**City** – The City of Milwaukie, Oregon and/or its representatives.

**Class of Project** – A designation based on the Project's funding source, i.e., State or federal-aid.

**Clay** – Soil passing a No. 200 sieve that can be made to exhibit plasticity (putty-like properties) within a range of water contents.

**Clear Zone** – Roadside border area, starting at the edge of the Traveled Way that is available for safe use by errant vehicles. Establishing a minimum width Clear Zone implies that rigid objects and certain other hazards within the Clear Zone should be relocated outside the Clear Zone, or shielded, or remodeled to make them break away on impact or be safely traversable.

**Close Conformance** – Where working tolerances are given on the Plans or in the Specifications, Close Conformance means compliance with those tolerances. Where working tolerances are not given, Close Conformance means compliance, in Agency's judgment, with reasonable and customary manufacturing and construction tolerances.

**Coarse Aggregate** – Crushed Rock or crushed Gravel retained on a ¼-inch sieve, with allowable undersize.

**Cobbles** – Particles of Rock, rounded or not, that will pass a 12-inch square opening and be retained on a three-inch (3”) sieve.

**Commercial Grade Concrete** – Concrete furnished according to Contractor proportioning, placed in minor Structures and finished as specified.

**Communications** – Exchanges between Agency and Proposers conducted after the Proposal Due Date and preceding establishment of the Competitive Range to enhance Agency’s understanding of Proposals, allow reasonable interpretation of Proposals, or facilitate Agency’s evaluation process. Communications may only be conducted with those Entities identified in 23 CFR 636.407.

**Competitive Range** – The number of highest-scoring Proposers that may be considered for Award.

**Conflict of Interest (COI)** – A personal Conflict of Interest or organizational Conflict of Interest and includes an actual, potential, or apparent Conflict of Interest.

**Contract** – The written agreement between Agency and Design-Builder, including all Contract Documents, describing the Work to be completed and defining the rights and obligations of Agency and Design-Builder.

**Contract Amount** – The total amount to be paid for the Work performed under the Contract, as it may be adjusted from time to time to account for modifications to work as required by Agency or adjustments provided for by the Contract.

**Contract Baseline Concepts** – Design Documents either (a) included in the Contract as of the Effective Date or (b) developed during the term of the Contract, that meet or exceed minimum Contract requirements, as determined by Agency in its sole discretion, and otherwise comply with all Contract terms.

**Contract Completion Date** – The date identified in the **DB Agreement**, Article 4.2, by which all Work under the Contract, with the exception of plant establishment and Punch-List Items, must be completed.

**Contract Documents** – The documents identified as such in Article 11 of the Design-Build Agreement, as well as all documents incorporated therein by reference during the term of the Contract.

**Contract Specifications** – Specifications from which Design-Builder is authorized to assemble **Design-Builder Specifications**, which include (a) Agency-Supplied Specifications

and (b) such additional Specifications, if any, developed by Design-Builder and authorized for use pursuant to Change Order.

**Contract Time** – The amount of time allowed under the Contract to complete all Work, except for plant establishment and Punch-List Items, by the Contract Completion Date specified in the **DB** Agreement, Article 4.2. Multiple Interim Completion Dates within the Contract Time may be stipulated in the Contract.

**Cost-Reduction Proposal** – A proposal submitted by Design-Builder to Agency requesting potential modifications in design or construction, such as Materials, methods, finishes, and techniques, that will result in cost savings. Provided, such modifications do not include substitution of Equipment pursuant to **DB General Provisions**, Subsection 180.31.

**Course** – A specified Surfacing Material placed in one or more Lifts to a specified thickness.

**Coverage** – One Pass by a piece of Equipment over an entire designated area.

**Critical Path** – The sequence of activities, events and dependencies that determine the longest overall duration and the shortest time possible to complete the Project. Any delay of an activity on the Critical Path directly impacts the planned Project completion date (i.e. there is no float on the Critical Path).

**Cross Section** – The exact image formed by a plane cutting through an object, usually at right angles to a central axis, to determine area.

**DB General Provisions** – Contract Documents identified as such in the Design-Build Agreement, consisting of Sections 110 through 199.

**DB Special Provisions** – Agency-supplied additions and revisions to the **DB Standard Specifications** the **DB Standard Special Provisions**, and the **DB General Provisions**, that are applicable solely to the Project.

**DB Standard Special Provisions** – Boilerplate Special Provisions for Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction* (current edition). These are downloadable from:

[https://www.oregon.gov/ODOT/HWY/SPECS/Pages/2015\\_special\\_provisions.aspx](https://www.oregon.gov/ODOT/HWY/SPECS/Pages/2015_special_provisions.aspx)

**DB Standard Specifications** – Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction* (current edition).

**Deficiency** – A material failure of a Proposal to meet Agency requirements, or a combination of Significant Weaknesses in a Proposal that increases the risk of unsuccessful Contract performance to a level unacceptable to Agency.

**Definitive Design** – Contract Baseline Concepts developed by Design-Builder to such a degree of completion as will enable Agency to make a meaningful evaluation, and which, upon Agency Acceptance, will form the contractual basis upon which the Plans and **Design-Builder Specifications** must be developed.

**Definitive Design Review** – The process whereby Agency: (a) evaluates Design-Builder’s proposed Definitive Design; (b) collaborates with Design-Builder in developing and incorporating any modifications they may agree upon; and (c) formally Accepts the resulting Definitive Design.

**Design-Build Project Estimate** – Agency’s Project cost estimate prepared from Project-specific features, components and issues; based upon historical ODOT cost data, trends, and market forecasting.

**Design-Builder Intellectual Property** – Any intellectual property owned by Design-Builder and developed independently from the Project.

**Design-Builder Specifications** – Specifications implementing the Plans, and otherwise complying with all Contract requirements, that Design-Builder assembles from (a) the **DB Standard Specifications** and **DB Standard Special Provisions** (modified by Design-Builder as necessary to conform to Contract terminology and requirements); (b) the **DB Special Provisions** that modify the **DB Standard Specifications** and **DB Standard Special Provisions**; and (c) additional Specifications, if any, developed by Design-Builder and authorized for use pursuant to Change Order.

**Design Documents** – The Contract Baseline Concepts, Definitive Design, Interim Design, Readiness-for-Construction Plans, **Design-Builder Specifications**, As-Constructed Plans, Working Plans, all other design documents, if any, referenced in Subsection 2.2 of the Design-Build Agreement or required to construct the Project, and all required Quality Management documentation identified in **DB General Provisions**, Section 155.

**Design Professional** – (a) An architect who is registered and holds a valid certificate in the practice of architecture in the state of Oregon; (b) an engineer who is registered and holds a valid certificate in the practice of engineering in the state of Oregon; (c) a surveyor who is registered and holds a valid certificate in the practice of land surveying in the state of Oregon; (d) an architect who is registered and holds a valid certificate in the practice of landscape architecture in the state of Oregon; and (e) other professional persons required under Oregon Law to be registered and hold a valid certificate in order to perform Design Services or other Work called for under the Contract.

**Design Review** – A comprehensive and systematic examination of the design by Design-Builder to verify that the design is in conformance with all Contract requirements.

**Design Services** – (a) Development of all Programmatic Plans required under the Contract; (b) performance of all necessary pre-design and construction and Utility relocation

engineering, including but not limited to those tasks identified as Design Services in the Design-Build Agreement; (c) development and delivery of all Design Documents; (d) mobilization and demobilization relating to the performance of Design Services; (e) identification of, and compliance with, all applicable Laws, Standards, administrative processing requirements, and permit processing requirements; (f) performance of all necessary geotechnical investigation and data analysis pertaining to site conditions; (g) performance of all Materials and Equipment testing and inspection necessary to confirm quality and conformance to required Specifications; (h) implementation of all aspects of the safety and quality plans and Programmatic Plans related to Design Services; (i) acquisition of all necessary permits not obtained by Agency, filing of all required documents with Authorities, and payment of all associated fees, including application, filing, Plan review, and appeal fees; (j) performance of ROW Services; and (k) performance of all other design and design-related activities required or reasonably implied under the terms of the Contract, or otherwise reasonably necessary to deliver the Project in accordance with all Contract requirements.

**Design Unit** – A unit of design, not to exceed an individual Work Location, comprising similar and coherent significant parts of the Project that can be checked and reviewed for design integrity as a self-contained package with due consideration for accommodating interfaces with other Project components.

**Designer** – A Principal Participant, Subcontractor, or in-house Design Professional who leads Design-Builder’s design team in performing the Design Services.

**Discussions** – Written or oral exchanges that take place after the establishment of the Competitive Range with the intent of allowing the Proposers to revise their Proposals.

**Durable Rock** – Rock that has a slake durability index of at least 90%, based on a two-cycle slake durability test according to ASTM D 4644. In the absence of test results, the material will be evaluated according to the *Manual of Field Test Procedures*.

**Emulsified Asphalt** – Emulsified asphalt cement.

**Emulsified Asphalt Concrete** – A mixture of Emulsified Asphalt and graded Aggregate.

**Engineering Data** – Project information provided by the Agency as a basis for the Project’s design and construction which can be relied upon in the design process.

**Entity** – A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or non-profit unincorporated association, business trust, joint venture, or any other person with legal capacity to contract, or a government or governmental subdivision.

**Equipment** – All machinery, tools, manufactured products, and fabricated items either needed to perform the Contract or specified for incorporation into the Project.

**Establishment Period** – The time specified to assure satisfactory establishment and growth of planted Materials, as more particularly identified in **DB Standard Specifications** (Parts 01030 and 10140).

**Existing Surfacing** – Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, portland cement concrete, bituminous treated materials, and granular surfacing materials on existing Highways.

**Extra Work** – Work not included in the Contract, that Agency deems to be necessary to complete the Project.

**Final Acceptance** – Written confirmation by Agency that the Project has been completed in accordance with Contract requirements, with the exception of latent defects and Warranty obligations, if any, and has been accepted.

**Final Inspection** – The inspection conducted by Agency to determine that the Project has been completed in accordance with Contract requirements.

**Final Second Notification** – Written acknowledgement by Agency of the date the Work required to be completed by the Contract Completion Date specified in the **DB Agreement**, Article 4.2, has actually been completed.

**Final Trimming and Cleanup** – *See, DB General Provisions*, Subsection 140.90.

**Fine Aggregate** – Crushed Rock, crushed Gravel, or Sand that passes a ¼-inch sieve, with allowable oversize.

**First Notification** – Written acknowledgment by Agency of the date on which Design-Builder has begun performance of the Contract, including design, Aggregate source development, or any other Work associated with the awarded Contract.

**Force Account Work** – Items of Extra Work ordered by Agency that are to be paid according to **DB General Provisions**, Section 197.

**Granular Material** – Graded and selected free-draining material composed of particles of Rock, Sand, and Gravel.

**Gravel** – Particles of Rock, rounded or not, that will pass a three-inch (3”) sieve and be retained on a No. 4 sieve.

**Hazardous Materials** – Any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC 5101, et seq.; the Resource Conservation and Recovery Act, 42 USC 6901, et seq.; the Toxic Substances Control Act, 15 USC 2601, et seq.; the Clean Water Act of 1977, 33 USC 1251, et seq.; the Clean Air

Act, 42 USC 7401, et seq.; and any other federal, State, or local Law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous product, waste, substance, or material.

**Highway** – Every road, street, thoroughfare and place, including Bridges, viaducts and other Structures within the boundaries of the State, open, used, or intended for use by vehicular traffic.

**Incidental** – A term identifying those acts, services, transactions, property, or items for which Agency will make no separate or additional payment to Design-Builder under the Contract.

**Independent Assurance** – Independent evaluation and confirmation performed by Agency of all sampling and testing procedures, Equipment calibration, and qualifications of personnel.

**Inspect or Inspection** – Visual examination and evaluation by Design-Builder of construction, manufacturing, design, safety, and maintenance practices, processes, and products, including document control and review, to ensure that such practices, processes, and products comply with all Contract requirements. Agency may conduct Inspections to evaluate whether such practices, processes, and products appear to comply with Contract requirements. However, Agency’s Inspections shall not relieve Design-Builder of its sole responsibility to perform the Contract according to its terms.

**Interim Completion Date(s)** – The date(s) established in **DB Agreement**, Article 4.2 as the deadline by which certain specified components of the construction Work must be completed, with the exception of plant establishment and Punch-List Items. There may be one or more Interim Completion Dates established for a Project. Any applicable liquidated damages will be identified in **DB Special Provisions**, Subsection 180.85(b).

**Interim Second Notification** – Written acknowledgement by Agency of the date the Work required to be completed by the Interim Completion Date(s) specified in the **DB Agreement**, Article 4.2, has actually been completed.

**Key Personnel** – Persons and Entities specifically identified in Subsection 3.4 of the Design-Build Agreement, as well as persons and Entities holding such additional positions as may be identified in **DB General Provisions**, Subsection 150.40(a).

**Laws or Legal Requirements** – Statutes, regulations, rules, ordinances, codes, permits, opinions, orders, judgments, and decrees issued by Authorities.

**Leveling** – Placing a variable-thickness Course of Materials to restore horizontal and vertical uniformity to existing Pavements, normally continuous throughout the Project.

**Lift** – The compacted thickness of Material placed by Equipment in a single Pass.

**Major Subcontractors** – Subcontractors identified anywhere in the text or forms of the SOQ or Proposal.

**Mandatory Source** – An Agency-furnished Materials source, use of which by Design-Builder is required.

**Materials** – Any natural or manmade substance specified for use in the construction of the Project or for incorporation into the Project.

**Median** – The portion of a divided Highway separating traffic traveling in opposite directions.

**Milestone** – A defined step, identified on the Schedule of Milestones, toward the completion of Work within a PC.

**Multiple-Course Construction** – Two or more Courses, exclusive of Patching or Leveling, placed over the entire Roadway width.

**Multi-Use Path** – That portion of the Highway ROW or a separate ROW, physically separated from motor vehicle traffic and designated for use by pedestrians, bicyclists and other non-motorized users.

**Neat Line** – Theoretical lines specified or indicated on the Plans for measurement of quantities.

**Negotiations** – Clarification, after selection of the Best Value Proposal and prior to Contract execution, of any remaining issues regarding scope, schedule, financing, or other information provided by the Proposer, as permitted by 23 CFR 636.513, and in compliance with 23 CFR 636.507 (prohibited subjects).

**Nondurable Rock** – Rock that has a slake durability index of less than 90% based on a two-cycle slake durability test, as tested by ASTM D 4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.

**Notice of Intent to Award** – Written notification issued by Agency identifying the apparent Best Value Proposer selected for award of the Contract.

**Notice to Proceed (NTP)** – Written notice authorizing Design-Builder to begin performance of the Work.

**On-Site Work** – Any Work taking place at a Project Site, including designated staging areas adjacent to the Project Site, except for installation of covered temporary signs.

**Options** – Work identified as such and included within the scope of the RFP and resulting Contract that Agency may elect to have performed by Change Order under the Contract, but

is not obligated to authorize. Options will be included in the Work that is made the subject of evaluation leading to Best Value determination.

**Ordinary High Water Elevation (OHWE)** – The line on the bank or shore to which the high water ordinarily rises annually in season. OHWE is indicated in the field by the following characteristics: (a) clear, natural line impressed on the shore; (b) change in vegetation (riparian (e.g. Willows) to upland (e.g. Oak, fir) dominated); (c) textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils); (d) elevation below which no fine debris (needles, leaves, cones, seeds) occurs; (e) presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or (f) other appropriate means that consider the characteristics of the surrounding area.

**Organic Soil** – A Soil with sufficient organic content to influence the Soil properties.

**Panel** – The width of specified Material being placed by Equipment in a single Pass.

**Partial Suspension** – Suspension of the Work on some, but not all, aspects of the Project.

**Pass** – One movement of a piece of Equipment over a particular location.

**Patching** – Placing a variable-thickness Course of Materials to correct sags, dips, and/or bumps to the existing grade and Cross Section, normally intermittent throughout the Project.

**Pavement** – Asphalt concrete or portland cement concrete placed for the use of motor vehicles, bicycles, or pedestrians on Roadways, Shoulders, Multi-Use Paths and parking areas.

**Pay Item** – *See*, “Price Item.”

**Pay Request** – The formal request for payment for units of Work identified in the Schedule of Prices that is submitted to Agency and paid only upon Agency’s approval of the associated Progress Estimate.

**Payment Bond** – The approved security furnished by Design-Builder's Surety as a guaranty of Design-Builder's performance of its obligation to pay promptly in full all sums due for Materials, Equipment, and labor furnished to complete the Work.

**Peat** – A Soil composed primarily of vegetative matter in various stages of decomposition, usually with an organic odor, dark brown to black color, and a spongy consistency.

**Performance Bond** – The approved security furnished by Design-Builder's Surety as a guaranty of Design-Builder's performance of the Contract.

**Performance Specifications** – Specifications that define the required results in terms of performance attributes, as opposed to specifying the required Materials and means and methods to be used to achieve the required results.

**Plans** – Drawings prepared by or for Design-Builder and stamped and signed by the Responsible Engineer, that show Work Location, type, dimensions, and details of construction Work to be performed under the Contract, as well as Agency-prepared Standard Drawings and other details produced by Agency if used in, or referenced in, Design-Builder's drawings.

**Price Center (PC)** – A component of the Project, comprised of Price Items, for which Design-Builder provides a Price Center Value for all Work included in the component. A PC may represent all of the Work to be performed at a Work Location, or a grouping of inter-related Work within a Work Location.

**Price Center Value (PCV)** – The value of a PC, as set out in the Schedule of Prices.

**Price Items** – Price Center component tasks for which Design Builder has assigned Price Item Values.

**Price Item Values** – Values assigned by Design-Builder to individual Price Items and task components of individual Price Items for purposes of calculating the value of Work performed, that must be detailed in the Progress Estimate to support payment.

**Price Proposal** – The document submitted in accordance with the “Proposal Preparation and Submittal Instructions” section of the RFP Standard Instructions to Proposers and the additional instructions included in the Instructions to Proposers.

**Price Realism** – Prices set forth in a Proposer's Price Proposal: (a) are realistic for the Work to be performed; (b) reflect a clear understanding of all Contract requirements; and (c) are consistent with the costs associated with various elements of the Proposer's Technical Solutions, if any are requested.

**Price Reasonableness** – Prices do not exceed what would be paid by a prudent person in the conduct of competitive business. Factors include: (a) whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the Proposer's business or performance of the Contract; (b) whether the costs reflect generally-accepted sound business practices, arm's-length bargaining, and federal and State Laws; (c) any significant deviations from the Proposer's established practices; (d) comparisons of Proposal price information to the Design-Build Project Estimate; and (e) comparison with price information submitted by other Proposers.

**Principal Participant** – The following Entities: (a) each partner or joint venture member of the Proposer or Design-Builder; and (b) each Entity holding (directly or indirectly) a 15% or greater interest in the Proposer or Design-Builder.

**Professional Services** – Services required by Law to be performed by or under the direct supervision of Design Professionals.

**Programmatic Plans** – The Safety Plan, Public Information Plan, Quality Plan, and all other plans identified in the Contract Documents that describe programs or processes to be followed in performing the Contract, other than construction drawings, means or methods.

**Progress Estimate** – The detailed Price Item Value breakdown of the Work included in a Pay Request, that serves as the basis for measuring the value of Work performed, and which must be approved by Agency as a condition of payment of the Pay Request.

**Project** – The sum of all Work to be performed under the Contract.

**Project Records** – All information in any way relating to the Project or performance of the Contract, including but not limited to all:

- Financial and accounting records and information;
- Correspondence – including internal communications, emails, field notes, file notes, diary entries, communications with Agency, Subcontractors and Authorities;
- Notices, orders, permits, opinions;
- Survey data – including survey drawings, reports, maps, original computations and other data;
- Materials testing records and Materials certifications;
- Work Products;
- All other documents and information whether generated by or for, or received by the Design Builder in the performance of the Contract, and whether any of such records are:
  - Paper-based,
  - In the form of electronic data,
  - In electronic/digital format capable of being reduced to paper-based or electronic/digital format.
  - In audio format, or
  - Constitute visual reproductions such as photos or videotape.

**Project Section** – A portion of the Project Site designated in terms of Highway milepost numbers or Structure number.

**Project Site** – The physical location within the confines of which construction and related activities are to be performed, including authorized State-controlled contiguous storage and staging areas.

**Proposal** – The written offer submitted by a Proposer in response to an RFP, consisting of the Quality Proposal and Price Proposal, to do stated Work in the manner indicated and at the price quoted.

**Proposal Due Date** – The date and time after which Proposals, Proposal modifications, and Proposal withdrawals will no longer be accepted.

**Proposal Evaluation Team** – Agency representatives who are responsible for evaluating Proposals in accordance with the evaluation criteria established in the RFP.

**Proposal Revision (Best and Final Offer or BAFO)** – A change to a Proposal made after the solicitation closing date at the request of, or as allowed by, Agency as the result of Discussions.

**Proposal Security** – A Proposal bond, cashier’s check, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, or certified check submitted with a Proposal to assure that the Proposer will enter into the Contract if the Proposal is accepted.

**Proposer** – The Entity submitting a Proposal in response to a Request for Proposals.

**Prospective Source** – A Materials source provided by Agency, from which Design-Builder has the option of obtaining Materials. Agency makes no guarantee or representation, by implication or otherwise, of the land-use status, quantity, quality, or acceptability of Materials available from it, except as may be stated in the **DB Special Provisions**.

**Public Traffic** – Vehicular or pedestrian movement, not associated with the Work, on a public way.

**Public Works Bond** – The statutory bond required under ORS 279C.836 that must be filed with the Construction Contractors Board before starting work on a contract or subcontract for a public works project.

**Publicly-Owned Equipment** – Equipment acquired by a State or political subdivision primarily for use in its own operations.

**Punch-List Items** – Minor corrective Work; Final Trimming and Cleanup; demobilization; and submittal of all Design Documents, certifications, bills, forms, warranties, operation and maintenance manuals, certificates of insurance coverage, and other documents required to be submitted to Agency PM before Third Notification will be issued.

**Qualified Products List (QPL)** – The list of products Agency has determined are appropriate for incorporation into Structures and road improvements in Highway construction.

**Quality Level Analysis** – *See, DB General Provisions*, Subsection 165.40(c).

**Quality Management** – The activities performed by Design-Builder to ensure that the Work meets all Contract requirements, including documentation of all Quality Plan activities. For design Quality Management, this includes, but is not limited to: (a)

procedures for evaluating, establishing, monitoring, and maintaining design quality; (b) Design Reviews, and (c) design checks, evaluations, and review of Design Documents for constructability, conformance to applicable Design Professional standards of practice, and compliance with the Law, applicable Standards, and other Contract requirements. For construction workmanship and Materials Quality Management, this includes, but is not limited to: (a) procedures for Materials handling and for evaluating, establishing, monitoring, and maintaining construction quality; (b) inspection of source development and Aggregate production plants, fabrication and production of manufactured products, and Materials certification; (c) inspection, sampling and testing of Materials and manufactured products; (d) calibration and maintenance of Equipment; (e) production process control; and (f) monitoring of environmental compliance. Quality Management also includes preparation of all Quality Management documentation required under the terms of the Contract, including but not limited to **DB General Provisions**, Section 155.

**Quality Plan** – Design-Builder’s Programmatic Plan for (a) meeting or exceeding the Contract’s quality requirements, and (b) coordinating Design-Builder’s Quality Management activities with those of Agency.

**Quality Proposal** – The document submitted in response to the “Quality Proposal Submittal Information and Instructions” section of the Standard Instructions to Proposers, as well as the Proposal Revision submitted in response to a request for BAFOs.

**Railroad** – Publicly- or privately-owned rail carriers, including passenger, freight, and commuter rail carriers, their tenants, and licensees. Also, Utilities that jointly own or use such facilities.

**Readiness-for-Construction Plans and Specifications (RFC Plans and Specifications)** – The Plans submitted at RFC Design Review that must be Accepted by Agency prior to Design-Builder’s commencing any of the construction Work represented therein and **Design-Builder Specifications** that describe the construction Work represented in the RFC Plans accepted by Agency prior to Design-Builder’s commencing any of the construction Work represented therein.

**Reference Documents** – Documents provided by Agency for informational purposes only.

**Regulated Work Area** – The portion of each Work Location that is located below the OHWE or is otherwise regulated by the Oregon Division of State Lands (DSL) and/or the Army Corps of Engineers (ACOE). Both the DSL and the ACOE issue permits with restrictions that apply to Work within the Regulated Work Area. Other authorizations, including the Biological Opinion or Letter of Concurrence from the National Marine Fisheries Service (NMFS) and/or the United States Fish and Wildlife Service (USFWS), may also contain Work restrictions relative to the area. The Oregon Department of Fish and Wildlife (ODFW) in-water work period applies to the entire area within the Regulated Work Area. Unless otherwise noted in the issued permits or authorizations, the entire area within the Regulated Work Area is regulated by the in-water Work restrictions, including the in-

water Work period, for the purposes of permit conditions, whether or not some of these areas become seasonally or periodically exposed as dry ground.

**Request for Proposals (RFP)** – The document, including all documents incorporated by reference therein, through which Agency requests the submittal of Proposals. “Request for Proposals” is equivalent to the term “Solicitation Document” defined in OAR 731-005-0430(35).

**Request for Qualifications (RFQ)** – The document through which Agency requests the submittal of Statements of Qualifications (SOQs) by Entities interested in the Project.

**Responsible Engineer** – The Oregon-registered professional engineer (PE) who must sign and seal the Design Documents.

**Review and Comment** – Agency's reviews, observations, and/or inspections based solely on information provided by Design-Builder (not based on any independent investigation or inquiry by Agency) and Agency's written response resulting from such Agency actions. Review and Comment does not constitute Acceptance, and shall not be construed to waive or excuse Contract obligations or relieve Design-Builder of any aspect of its obligation to perform the Contract according to its terms.

**Right of Way (ROW)** – Real property or a property interest, usually in a strip, acquired for or devoted to transportation or other public works purposes.

**Roadbed** – Completed excavations and embankments for the Subgrade, including ditches, side slopes, and slope rounding, if any.

**Roadside** – The area between the outside edges of the Shoulders and the ROW boundaries. Unpaved median areas between inside Shoulders of divided Highways and infield areas of interchanges are included.

**Roadway** – That portion of a Highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or Shoulder. If a Highway includes two or more separate Roadways, the term "Roadway" refers to any such Roadway separately, but not to all such Roadways collectively. (*See*, “Traveled Way.”)

**Rock** – Natural deposit of solid material composed of one or more minerals occurring in large masses or fragments.

**Sand** – Particles of Rock that will pass a No. 4 sieve and be retained on a No 200 sieve.

**Safety Plan** – The Programmatic Plan that sets out Design-Builder's means of complying with its obligations in relation to Project safety.

**Schedule of Items** – The list of Pay Items, their units of measurement, estimated quantities, and prices.

**Schedule of Prices** – The breakdown of Price Center and Price Item Values.

**Schedule of Values** – *See*, “Schedule of Prices.”

**Scope of Work** – The Work to be performed to design and construct the Project, as described in the Contract.

**Short-List** – Entities that Agency determines are the most highly qualified among those responding to an RFQ that will be invited to submit Proposals in response to the RFP.

**Shoulder** – The part of a Roadbed contiguous to the Traveled Way or Roadway, whether paved or unpaved, for accommodating stopped vehicles, for emergency use, and for lateral support of Base and surface Courses.

**Significant Weakness** – A flaw in the Proposal that appreciably increases the risk of unsuccessful Contract performance. (*See*, “Weakness.”)

**Silt** – Soil passing a No. 200 sieve that is nonplastic or exhibits very low plasticity.

**Single-Course Construction** – A wearing Course only, not including patching or leveling Courses or partial-width Base Course.

**Slope** – Vertical distance to horizontal distance, unless otherwise specified.

**Soil** – Accumulations of particles produced by the disintegration of Rock, which sometimes contains organic matter. Particles may vary in size from Clay to Boulders.

**Solicitation Document** – *See*, “Request for Proposals.”

**Special Conditions** – The terms Special Conditions and Special Provisions are considered to be the same.

**Special Services** – Force Account Work that Agency and Design-Builder agree cannot be satisfactorily performed by Design-Builder’s and Subcontractors’ forces (e.g., fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as set forth in **DB General Provisions**, Subsection 180.20(c)).

**Specifications** – (a) The **DB Standard Specifications**; (b) the **DB Standard Special Provisions**; (c) the **DB General Provisions**; (d) the **DB Special Provisions**; (e) the **Design-Builder Specifications**; and (f) such other specifications, if any, that Agency may authorize via Change Order; together with all provisions of other documents incorporated into the foregoing by reference.

**Stakeholder** – The Stakeholders for the Project may include the following: (a) the City, primarily represented by Agency, including its subsidiary agencies and departments; (b)

federal and State regulatory and permitting agencies having jurisdiction over portions of the Work or Project Site; (c) Native American Tribes and tribal members of Oregon affected by the Project; (d) counties, cities, towns, and villages within the State directly affected by the Project; (e) other public or private Entities impacted or potentially impacted by the Project, such as political subdivisions, Utility owners, transit systems, and Railroads; and (f) other Entities specifically identified by Agency.

**Standard Drawings** – Agency-prepared detailed drawings for Work or methods of construction that normally do not change from project to project.

**Standards** – Standards labeled as such in the Contract Documents, including but not limited to publications by Authorities that are required to be complied with by Agency or the issuing Authority in performance of the Work.

**State** – The state of Oregon.

**Structures** – Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, pedestrian bridges, high mast luminaries, overhead sign support structures, and other similar features encountered at a Work Location or specified in the Work to be performed, as well as all components and systems incorporated into a Structure.

**Subbase** – A Course of specified Material of specified thickness between the Subgrade and a Base.

**Subcontractor** – Any Entity with whom Design-Builder contracts to perform a portion of the Work.

**Subgrade** – The top surface of completed earthwork on which Subbase, Base, Surfacing, Pavement or a Course of other Materials is to be placed.

**Substructure** – Those parts of a Structure which support the Superstructure, including bents, piers, abutments, and integrally built wingwalls, up to the surfaces on which bearing devices rest. Substructure also includes portions above bearing surfaces when those portions are built integrally with a Substructure unit (e.g., backwalls of abutments). When Substructure and Superstructure elements are built integrally, the division between Substructure and Superstructure is considered to be at the bottom soffit of the longitudinal or transverse beam, whichever is lower. Culverts and rigid frames are considered to be entirely Substructure.

**Superstructure** – Those parts of a Structure above the Substructure, including bearing devices.

**Supplemental Drawings** – Agency-prepared detailed drawings for Work or methods of construction that are Project-specific, and are denoted by title in the Project title block.

**Surety** – The Entity that issues the performance and payment bonds and any other required bonds.

**Surfacing** – The Course or Courses of material on the Traveled Way, auxiliary lanes, Shoulders, or parking areas for vehicle use.

**Temporary Right of Entry** – Temporary legal authority to enter onto private property for a purpose specified in the permit.

**Third Notification** – Written acknowledgment by Agency, subject to Final Acceptance, of the date Design-Builder has completed all Work for the Project in accordance with the Contract, including without limitation completion of all plant establishment and Punch-List Items and submittal of all Design Documents, certifications, bills, forms warranties, and other documents required under the Contract.

**Third Party Intellectual Property** – Any intellectual property owned by parties other than Agency or Design-Builder.

**Topsoil** – Soil ready for use in a planting bed.

**Traffic Lane** – That part of the Traveled Way marked for moving a single line of vehicles.

**Traveled Way** – That part of the Highway for moving vehicles, exclusive of auxiliary lanes, berms and Shoulders.

**Typical Section** – That Cross Section established by the Plans which represents in general the lines to which the Contractor shall work in the performance of the Contract.

**Unsuitable Material** – Frozen material, or material that contains organic matter, muck, humus, peat, sticks, debris, chemicals, toxic matter, or other deleterious materials not normally suitable for use in earthwork.

**Uniform Act** – The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894; 42 USC 4601 et seq., Pub. L 91-646) and amendments thereto, including the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 246-256.

**Unit Price** – The price established by the Contract for a specified unit or quantity of Work that is measured for payment.

**Utility** – A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, storm water not connected with Highway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the Utility company, district, or

cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

**Verification Sampling and Testing** – Sampling and testing performed to validate the quality of the Material or product.

**Warranty Bond** – The approved security furnished by Design-Builder's Surety as a guaranty of Design-Builder's performance of its warranty obligations.

**Weakness** – A flaw in the Proposal that increases the risk of unsuccessful Contract performance. (*See*, “Significant Weakness.”)

**Wetlands** – Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Wetted Channel** – Any flowing stream, river, or standing water within the Regulated Work Area. The boundaries and extent of the Wetted Channel shall be established by Design-Builder during ESA consultation with NMFS and USFWS.

**Work** – Design, construction, and Quality Management, which collectively include the furnishing of all Materials, Equipment, tools, labor, services, and Incidentals necessary to successfully complete any individual Contract item or the entire Contract, and the carrying out of all duties and obligations imposed by the Contract.

**Work Location** – The physical location within a Project Site as identified in **DB Special Provisions**, SP140.05.

**Work Product** – Contract Baseline Concepts, Definitive Design, Drawings, Plans, **Design-Builder Specifications**, and all other documents, analysis, computations, models, computer programs, and information obtained or developed for the Project or in performance of the Contract, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract.

**Work Zone** – An area identified by advance warning where Work is being performed on or adjacent to a Highway, regardless of whether or not workers are actually present.

**Working Plans or Working Drawings** – Those Plans prepared by Design-Builder to specify particular details and procedures for construction of the Project, including the following:

- Construction details
- Erection Plans
- Fabrication Plans
- Field design change Plans

- Stress sheets
- Shop Plans
- Lift Plans
- Bending diagrams for reinforcing steel
- Falsework Plans
- Similar data required for the successful completion of the Work

**DB110.31 Use of Customary ("English") System - Design-Builder Specifications** shall identify dimensions in customary units of measurement, also known as "English units." Only customary units may be used in the Design Documents.

**DB Section 120 – RESERVED**

**DB Section 130 – RESERVED**

**DB Section 140 – Scope of Work; Changes in the Work**

**DB140.00 Purpose of Contract** - The purpose of the Contract is to set forth the rights and obligations of the Parties and the terms and conditions governing completion of the Work. Design-Builder's obligations shall include without limitation the following:

(a) Design-Builder shall furnish all Design Services, Quality Management, and Materials, Equipment, labor, transportation, and Incidentals required to complete the construction Work according to Plans, Specifications, and terms of the Contract.

(b) Design-Builder shall perform the construction Work according to the lines, grades, Typical Sections, dimensions, and other details shown on the Plans, as modified by written order, or as directed by Agency.

(c) Design-Builder shall perform all Work determined by Agency to be necessary to complete the Contract.

(d) Design-Builder shall contact Agency PM for any necessary clarification or interpretation of the Contract.

**DB140.05 Project Scope**

(a) **General** - The Scope of the Project includes all Project components identified in **DB Special Provisions**, SP140.05(b)(2), Table SP140.05(b)(2), and performance of all Work described in **DB Special Provisions**, **SP140.05**, in accordance with all Contract

requirements. Design-Builder shall not rely solely on the Project description contained in SP140.05, however, to identify all Project components to be designed, constructed, and installed. Design-Builder shall determine the full scope of the Project through thorough examination of all of the Contract Documents and the Project Site.

Design-Builder shall be responsible for designing, furnishing, constructing, and installing all components of the Project, except for those components, if any, as may be stipulated herein or in the **DB Special Provisions** to be furnished and/or installed by Agency.

**(b) Project Configuration**

**(1) Project Limits** - Project limits are set out in **DB Special Provisions**, SP140.05(b)(1).

**(2) Work Locations** - The Work Locations identified in **DB Special Provisions**, Table SP140.05(b)(2) will be used for Project administrative and payment purposes, and are not meant to constrain Design-Builder's design or construction schedule or approach, except as such schedule or approach may be affected by Agency-designated Milestones and Work limitations, if any, identified in the Contract Documents.

**(c) Bridge Information** – Exhibit “A” is a conceptual layout. Final design of the Bridge and other Structures and improvements listed in **DB Special Provisions**, SP140.05 shall not be based upon the conceptual design shown on Exhibit “A”. Final design includes but not limited to alignment, elevations, and construction limits.

**DB140.30 Agency-Required Changes in the Work** - Changes to the Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of Project construction.

Without impairing the Contract, Agency reserves the right to require changes it deems necessary or desirable within the scope of the Project. These changes may modify, without limitation:

- Specifications and design
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- Method or manner of performance of Work
- Increases and decreases in quantities
- Additional Work
- Elimination of any Contract item of Work
- Project Limits
- Acceleration or delay in performance of Work

Upon receipt of a Change Order, Design-Builder shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, Design-Builder shall

notify its Surety of the increase and shall provide Agency PM with a copy of any resulting modification to bond documents. Design-Builder's performance of Work pursuant to Change Orders shall neither invalidate the Contract nor release the Surety. Payment for changes in the Work shall be made in accordance with **DB General Provisions**, Subsection 195.20. Contract Time adjustments shall be made in accordance with **DB General Provisions**, Subsection 180.80.

**DB140.40 Differing Site Conditions** - The following constitute differing Project Site conditions, provided such conditions are discovered at the Project Site after commencement of the Work:

- Subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents, or
- Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

The Party discovering such a condition shall promptly notify the other Party, in writing, of the specific differing conditions before they are disturbed and before the affected Work is performed. Design-Builder shall not continue Work in the affected area until Agency PM has inspected such condition according to **DB General Provisions**, Subsection 195.30 to determine whether an adjustment to Contract Amount or Contract Time is required.

Payment adjustments due to differing Project Site conditions, if any, will be made according to **DB General Provisions**, Subsection 195.30. Contract Time adjustments, if any, will be made according to **DB General Provisions**, Subsection 180.80.

**DB140.50 Environmental Pollution Changes** - ORS 279C.525 will govern any increases in the scope of the Work required as a result of environmental or natural resources Laws enacted after the submission of Proposals.

Pursuant to ORS 279C.525, Agency has compiled a list under DB170.01 of those federal, State and local agencies, of which the Agency has knowledge, that have enacted ordinances or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of Agency Contracts.

**DB140.60 Extra Work** - If directed by Agency PM through a written order, Design-Builder shall perform work not included in the Contract according to the Specifications.

Payment for Extra Work will be governed by **DB General Provision**, Section 196. Contract Time adjustments, if any, will be governed by **DB General Provisions**, Subsection 180.80.

**DB140.65 Disputed Work** - Design-Builder may dispute any part of a Change Order, written order, or an oral order from Agency PM by procedures set forth in **DB General Provisions**, Section 199.

**DB140.70 Cost-Reduction Proposals** – Design-Builder may submit written Cost-Reduction Proposals to Agency PM that modify the Plans, Specification, or other Contract Documents for the sole purpose of reducing the total cost of construction.

**(a) Proposal Requirements** – Agency will not adopt a Cost-Reduction Proposal that impairs essential functions or characteristics of the Project, including, but not limited to, service life, economy of operation, ease of maintenance, designed appearance, or design and safety Standards.

To conserve time and funds, Design-Builder may first submit a written request for a feasibility review by Agency. The request should contain a description of the proposal, together with a rough estimate of anticipated dollar and time savings. Agency will, within a reasonable time, advise Design-Builder in writing whether or not the proposal would be considered by Agency, should Design-Builder elect to submit a detailed Cost-Reduction Proposal.

A detailed Cost-Reduction Proposal shall include, without limitation the following information:

- (1) A description of existing Contract requirements for performing the Work and the proposed change;
- (2) The Contract items of Work affected by the proposed change, including any quantity variations caused by the proposed change;
- (3) A detailed cost estimate for performing the Work under the existing Contract and for performing the Work under the proposed change. Cost estimates shall be based on a Force Account payment basis. Costs of re-design which are incurred after Agency has authorized the proposal will be included in the cost of proposed work; and
- (4) A date by which Agency must adopt the proposal in order to accept the proposed change without impacting the Contract Time or the cost reduction amount.

**(b) Continuing to Perform Work** - Design-Builder shall continue to perform the Work according to all Contract requirements until Agency issues a Change Order incorporating the Cost-Reduction Proposal. If Agency fails to issue a Change Order by the date specified in the proposal, the proposal shall be deemed rejected.

**(c) Consideration of Proposal** – Agency is not obligated to consider any Cost-Reduction Proposal. Agency will not be liable to Design-Builder for failure to accept or act upon any Cost-Reduction Proposal submitted.

Agency will determine in its sole discretion whether to accept a Cost Reduction Proposal as well as the estimated net savings in construction costs from the adoption of all or any part of the proposal. In determining the estimated net savings, Agency may disregard the Schedule

of Prices. Agency will establish prices that represent a fair measure of the value of the Work to be performed or to be deleted as a result of the Cost Reduction Proposal.

**(d) Sharing Investigation Costs** - As a condition for considering a Design-Builder's Cost-Reduction Proposal, Agency reserves the right to require Design-Builder to share in Agency's costs of investigating the proposal. If Agency exercises this right, Design-Builder shall provide written acceptance of the condition to Agency. Such acceptance will authorize Agency to deduct its share of investigation costs from payments due or to become due Design-Builder under the Contract.

**(e) Acceptance of Proposal Requirements** - If Design-Builder's Cost-Reduction Proposal is accepted in whole or in part, acceptance will be made by a Change Order that will include without limitation, the following:

- (1) A statement that the Change Order is made in accordance with this Subsection;
- (2) Revised Plans and **Design-Builder Specifications** that reflect all modifications necessary to implement the approved cost-reduction measures;
- (3) Any conditions upon which Agency's approval is subject;
- (4) Estimated net savings in construction costs attributable to the approved cost-reduction measures;
- (5) A payment provision pursuant to which Design-Builder will be paid 80% of the estimated net savings amount as full and adequate consideration for performance of the Work of the Change Order Work.

Design-Builder's cost of preparing the Cost Reduction Proposal and Agency's costs of investigating the proposal, including any portion paid by Design-Builder, will be excluded from determination of the estimated net savings in construction costs. Costs of re-design, which are incurred after Agency has accepted the proposal, will be included in the cost of the Work attributable to the cost-reduction measures.

If Agency accepts the Cost Reduction Proposal, the Change Order that authorizes the cost reduction measures will also address any Contract Time adjustment.

**(f) Right to General Use** - Once submitted, the Cost-Reduction Proposal becomes the property of Agency. Agency reserves the right to adopt the Cost-Reduction Proposal for general use without additional compensation to Design-Builder when it determines that a proposal is suitable for application to other contracts.

**DB140.80 Use of Publicly-Owned Equipment** - Design-Builder is prohibited from using publicly-owned Equipment except in the case of emergency. In an emergency, Design-Builder may rent publicly-owned Equipment, provided that:

- (a) Agency provides written approval stating that such rental is in the public interest; and
- (b) Rental does not increase the Project cost.

**DB140.90 Final Trimming and Clean-up** - Before Final Inspection, Design-Builder shall neatly trim and finish the Project and remove all remaining unincorporated Materials and debris. “Final Trimming and Cleanup” shall include without limitation the following:

- Design-Builder shall re-trim and reshape earthwork, and shall repair deteriorated portions of the Project Site.
- Where the Work has impacted existing facilities or devices, Design-Builder shall restore or replace those facilities to their pre-existing condition.
- Design-Builder shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.
- Design-Builder shall clean up and leave in a neat, orderly condition, Rights of Way, Materials sites, and other property occupied in connection with performance of the Work.
- Design-Builder shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.
- Design-Builder shall dispose of Materials and debris, including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of Design-Builder. Design-Builder shall dispose of these Materials and debris immediately.
- Restore and replant or resurface adjoining properties.
- Erosion and sediment control needed to stabilize the site.

Unless the Contract specifically provides for payment for this item, Agency will make no separate or additional payment for Final Trimming and Clean-Up.

### **DB Section 141 - Performance Specifications**

**DB141.00 General** - Design-Builder shall comply with the Performance Specifications set forth in this Section in performing the Work.

**(a) Applicable Standards; Election Among Options** - Applicable Standards are listed in Subsection (b) of each Performance Specification. The latest edition is the applicable version, except where for a particular purpose a different publication date is specified in the text.

**(b) Options** - Should the applicable Standard contain options, it shall be Design-Builder’s responsibility to bring the options to the attention of Agency PM and obtain written direction prior to proceeding with the affected Work. Design-Builder shall identify each

available option and recommend the one most appropriate or advantageous to Agency, together with the reason for the recommendation.

**(c) References** - References, if any, listed in Subsection (b)(2) of each Performance Specification are provided for Design-Builder's general information.

**(d) Resolution of Ambiguities, Conflicts, Uncertainty; Clarification to be Requested** - Design-Builder shall be responsible for obtaining from Agency PM, prior to proceeding with the affected Work, written clarification of any apparent ambiguity or conflict, or any uncertainty concerning either the subject matter, scope, or meaning of any Performance Specification, or the Standard that controls a particular aspect of the Work. Design-Builder shall in each case submit to Agency PM a written request for clarification. In it, Design-Builder shall identify the particular language that conflicts, is ambiguous, or creates uncertainty, and the Work involved, and shall recommend a resolution, together with the reason for the recommendation.

### **DB Section 141.11 - Structures**

**(a) Scope** - This Section covers the design and construction of new Bridges, Bridge replacements, permanent Bridge repairs, culvert Structures, and sign Structures. The goal of the design and construction of all structural systems and components is to provide functionality, durability, ease of maintenance, safety, and aesthetics consistent with the context of the Project Site.

**(b) Standards and References** - Design-Builder shall design and construct Structures in accordance with the requirements of this Section 141.11.

#### **(1) Standards**

##### **a. Design**

- ODOT *Bridge Design and Drafting Manual (BDDM)*
- ODOT LRFR *Interim Scoping Load Rating Guidelines*
- AASHTO LRFD *Bridge Design Specifications*
- AASHTO *Standard Specifications for Highway Bridges*
- AASHTO *Guide Specifications for Horizontally Curved Highway Bridges with Design Examples for I-Girder and Box-Girder Bridges*
- AASHTO *Guide Design Specifications for Bridge Temporary Works*
- AASHTO *Construction Handbook for Bridge Temporary Works*
- AASHTO *Guide Specifications for Distribution of Loads for Highway Bridges*
- AASHTO *Guide Specifications for Seismic Isolation Design*

- *AASHTO Guide Specifications for Strength Evaluation of Existing Steel and Concrete Bridges*
- *AASHTO Guide Specifications for Design and Construction of Segmental Concrete Bridges*
- *AASHTO Guide Specifications for Thermal Effects on Concrete Bridge Superstructures*
- *AASHTO Guide Specifications for Structural Supports for Highway Signs, Luminaries, and Traffic Signals*
- *AASHTO Guidelines for Geometric Design of Very Low-Volume Local Roads* for “Rural Minor Access Road” classification
- *AREMA Manual for Railroad Engineering*
- *ANSI/AASHTO/AWS D1.5 Bridge Welding Code*
- *ANSI/AASHTO/AWS D1.1 Welding Code*
- *AASHTO Manual on Subsurface Investigations*
- *ODOT Bridge Inspection Coding Guide*
- *Oregon Coding Guide for the Inventory and Appraisal of Oregon Bridges*
- *AASHTO Guide Manual for Condition Evaluation and Load and Resistance Factor Rating of Highway Bridges*
- *AASHTO Maintenance Manual for Roadways and Bridges*
- “Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation’s Bridges,” FHWA-PD-96-001, 1995
- *ODOT Hydraulics Manual*
- “Bridge Inspector’s Training Manual 90,” FHWA-PD-91-015 (1991; rev.1995)
- Appropriate ODOT/APWA Oregon Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>
- *ODOT Bridge Section Load Rating Procedures*
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- ODOT Bicycle and Pedestrian Plan
- *AASHTO Model Drainage Manual*
- AASHTO/FHWA Research Report RD-87-014, Bridge Deck Drainage Guidelines

**b. Construction**

- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- *AASHTO LRFD Bridge Construction Specifications*
- *AASHTO Construction Handbook for Bridge Temporary Works*

- AASHTO *Guide Specifications for Design and Construction of Segmental Concrete Bridges*
- ODOT Construction Manual

(Other Standards applicable to inspection and verification are found in the relevant text.)

**(2) References**

- ODOT Bridge Engineering Section, Bridge Log
- ODOT Qualified Products List (QPL) at the following site:  
<http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>
- “Improved Seismic Design Criteria for California Bridges: Provisional Recommendations,” ATC-32, Applied Technology Council, 1996

**(c) Requirements**

**(1) General** – Design-Builder shall follow the design, detailing and drafting practices identified in the *BDDM* and the *Bridge Office Practices Manual*, as well as the Standards cited herein.

**(2) Materials** – Any agency required Materials will be set forth in **DB Special Provisions**, SP141.11(c)(2).

**(3) Corrosion Protection** – Design-Builder shall confirm the elevation and location of Structures. Certain corrosion-protection measures apply when Structures are located in the coastal zone or snow/ice areas.

**(4) Aesthetics** – See **DB Special Provisions** for any specific Structure aesthetic requirements.

**(5) Bridge Replacement and New Bridges**

**a. General** – Bridge type will not be restricted to those traditionally proposed by Agency. Other types and components may be used if they have been generally accepted as appropriate within the Highway Bridge industry, and Design-Builder can demonstrate that its proposed design of the Bridge type and components will perform in accordance with Contract requirements under the Project’s environmental conditions and life cycle expectations. Exceptions include: experimental Bridge types, timber Bridges, masonry Bridges, fiber-reinforced polymer Bridges, tied-arch trusses, and structural-plate arches, which are all not permitted.

Bridges shall be designed and constructed for a minimum 75-year service life (without significant, non-routine maintenance required) and shall meet ODOT design Standards.

Design-Builder shall obtain Bridge numbers, drawing numbers, and calculation book numbers from Agency PM. Design-Builder shall use Bridge numbers on all Plans, calculation books and correspondence. Design-Builder shall be responsible for inputting all Structure and Project data for all Bridges into ODOT's Bridge Data System.

**b. Geometry** – Horizontally-curved steel girder Bridges shall be designed in accordance with the AASHTO *Guide Specifications for Horizontally Curved Steel Highway Bridges*. Design-Builder shall locate supports radially for curved Structures where practicable.

Bridge skew shall be minimized wherever practicable.

All fill and cut Slopes along the longitudinal axis of Bridges with spill-through abutments shall not be steeper than 1.5:1 or the project-specific Geotechnical Recommendations, whichever is less.

**c. Seismic Loading** – Permanent Structures shall be designed for seismic loading according to the ODOT *Bridge Design and Drafting Manual*.

**d. Bridge Elements**

**1. Decks**

- All decks shall be high-performance concrete (HPC) (full-depth cast-in-place micro silica concrete with fly ash)
- The minimum deck thickness shall be in accordance with ODOT *Bridge Design and Drafting Manual*, Section 1.1.14.1, for concrete decks that are fully supported by precast slabs or precast box beams
- Deck systems shall be watertight
- Decks shall be designed for a future wearing surface allowance of 25 psf
- Open or filled grating decks and orthotropic decks shall not be allowed
- For deck construction, stay-in-place forms shall not be allowed

**2. Deck Joints and Bridge Bearings** – Bridges shall incorporate as few joints and bearings as possible, be continuous over supports, and use integral or semi-integral abutments wherever possible. It is highly desirable to have jointless Bridges. A jointless Bridge is considered to be one with the expansion movement occurring at the Roadway ends of the end panels.

**3. Bridge Railing**

- See the **DB Special Provisions** for project-specific bridge railing requirements.

**4. Deck Drainage**

- Direct deck drainage discharge is not allowed

- The number of deck drains shall be kept to a minimum consistent with the hydraulic requirements. If deck drains are used, Design-Builder shall provide a piping system to collect the deck drainage and convey it to a suitable treatment area. The piping system shall be designed to allow for ease of maintenance.

**5. Utilities** – Utilities shall not be placed on the Structures without Agency authorization. If authorized, Design-Builder shall have a Design Professional assess the Structure for stresses induced by the Utility on the Structure, and shall incorporate the resulting design into the Plans and Design-Builder Specifications.

Utility attachments, if any, to Structures shall not alter the appearance of the Structure, and shall be located only inside the girder line, as close as possible to the soffit, or as required to make the installation as inconspicuous as possible.

**6. End and Interior Bents** – For all support locations where integral or semi-integral abutments are used, the girders shall be seated upon permanent concrete pads. If precast, prestressed girders are used, a minimum embedment of eight (8) inches shall be provided at all bents to accommodate transverse dowels through the girders with appropriate concrete cover, and to provide adequate seat width.

Any bents that are within a distance of 30 feet from the edge of the Traveled Way shall be designed in compliance with either AASHTO *LRFD Bridge Design Specifications*, Section 3.6.5 or Section 1.6 of the BDDM.

The use of mechanically-stabilized earth (MSE) walls shall follow the provisions of *BDDM*, Section 1.1.8.4. Retaining walls may replace wingwalls at abutments.

**7. Foundations** – Design-Builder shall comply with the ODOT *Bridge Design and Drafting Manual*, Section 1.1.5 – Foundation Design, and shall provide a seismic design approach for all foundations. Differential settlement shall not exceed 0.5” within a bent or abutment, or between adjacent bents or abutments. Down drag shall be investigated and included in the design.

Abutments adjacent to MSE walls require deep foundations. Design-Builder shall design for down drag on deep foundations where required by code.

**8. Scour** – See **DB General Provisions**, Section 141.13 Hydraulics.

**e. Bridge Removal** – Design-Builder shall use Bridge removal techniques conforming to the requirements of **DB Standard Specifications**, Section 00310 – Removal of Structures and Obstructions, and shall comply with the following:

1. Remove the existing Bridge spread footings completely if any portion of the footing is above the existing ground or is exposed.

2. Remove seals and grouted material to a minimum of three (3) feet below ground level.
  3. Remove the existing columns, including drilled shafts, to a minimum of three (3) feet below the finished grade, or for those within the Ordinary High Water Elevation, to a minimum of three (3) feet below ground level or as required by permits.
  4. Remove the existing Bridge pile caps and piles to a minimum of three (3) feet below the finished grade.
  5. Underwater blasting and blasting within the Wetted Channel are prohibited.
  6. Disposal of rubble from demolition of the existing Bridge(s) on the bed or banks of any State waters or in any Wetlands is prohibited.
  7. Submit a Demolition Plan to Agency PM for Review and Comment at least 10 Calendar Days prior to commencement of Bridge removal activities.
- f. Temporary Access and Detour Structures** – Temporary detour Bridges shall be designed and constructed according to **DB Standard Special Provisions**, Section 00250 – Temporary Bridges, and the *BDDM*, Sections 1.4.9 and 1.1.21.4.
- g. Maintenance Accessibility** - Design-Builder shall provide inspection and maintenance accessibility to the key structural elements of the Bridge.
- h. Submittal Requirements**
1. **Definitive Design** - In addition to the requirements of **DB General Provisions**, Subsection 155.14, Design-Builder shall include, at a minimum, the following Plans with its Definitive Design submittal, in conformance with the sequence and content described below:
    - a. **Plan and Elevation sheet** - The purpose of this sheet is to provide the overall scope of structural Work for the Project. This sheet shall contain a Plan, elevation, and Typical Section for the final Bridge configuration. On the Plan, the existing and proposed ROW lines, the location of approach roadways, and the location of scour protection devices for piers and abutments shall be shown. On the elevation, OG and FG, along each EOD, shall be shown. On each of the Plan and elevation details, an outline of the existing Structure shall be shown. In addition, grade line diagrams, a hydraulics data table shall be shown on this sheet. Approximate design flood elevations shall be shown on the elevation and provided within a table on the sheet. The hydraulics data table shall show recurrence interval in years (50, 100, and the 500 or overtopping flood), discharge in CFS, water surface elevation, and Bridge backwater.

**b. Construction Staging sheet** A construction staging diagram, depicting the location of maintained traffic, the extent of construction, and the extent of demolition, shall be prepared. Typical Sections of the Bridge should be used to depict the staging. Dimensions for the controlling layout lines, locations and types of barriers proposed, and method of connection shall be shown for each stage. The edge of saw-cut lines in the existing Bridge deck shall also be shown. The stages shall be placed vertically, in the order of the construction sequence, with the same scale.

**c. End Bent Plan and Elevation sheet** – The purpose of this sheet is to provide the overall concept for the end bents (abutments). This sheet shall contain a Plan, elevation (looking from the interior of the Bridge towards the exposed abutment face), footing plan (if piles are required), and section. Reinforcing details are not necessary. Aesthetic considerations shall be included on the details, where appropriate.

**2. Readiness-for-Construction (RFC) Plans** – Design-Builder shall submit RFC Plans and Specifications for all structural elements in accordance with standard ODOT Bridge detailing practices, as identified in the *BDDM*, Section 2.

**3. As-Constructed Plans and Design-Builder Specifications** – refer to **DB General Provisions**, Section 155, for specific requirements.

**i. Bridge Inspection**

**1. Notification for Inspection** – Before any Bridge may be opened for public use, Design-Builder shall notify Agency PM that the Bridge is complete and ready for an Agency performed inspection. As part of such inspection notice, Design-Builder must submit redlined Readiness-for-Construction Plans and Specifications for the Bridge(s) to be inspected.

**2. Agency Inspection** – After notification by Design-Builder and prior to the opening of the Bridge for public use, Agency will perform an inspection of the Bridge.

**(6) Permanent Bridge Repair**

**a. General** – The purpose of permanent Bridge repair is to restore or prolong the Bridge’s ability to carry specific live load levels. The service life shall be a minimum of 20 years without significant (non-routine) maintenance required to be performed on the repair.

Design-Builder shall determine the existing Bridge deficiencies based on the preparation and assessment of load-rating calculations. A “deficient” location is defined as any point in the superstructure or bent cap / crossbeam where the load -

rating calculations show that an ODOT permit vehicle rating factor for moment or shear is less than 1.0. For all deficient members, Design-Builder shall design and construct a structural repair in conformance with the following Subsection, "Design Requirements." In addition, Design-Builder shall perform a concrete crack injection, where required, in conformance with **DB Standard Special Provisions**, Section 00503 - Injecting Cracks in Existing Bridge. Concrete crack injection shall not be considered a structural repair. Materials and design schemes that shall not be utilized for permanent Bridge repair applications include fiber-reinforced polymers, external post-tensioning, and the shoring of major load-carrying members. See the **DB Special Provisions** for any specific permanent Bridge repair requirements.

**b. Design Requirements**

**1. Live Loading** – All permanent Bridge repairs shall be designed in accordance with the ODOT *Bridge Design and Drafting Manual*, Section 1.1.7.2(4).

**2. Load Rating and Inspection** – Design-Builder shall prepare a scoping load rating of the Bridge using the ODOT LRFR *Interim Scoping Load Rating Guidelines* and the AASHTO *Guide Manual for Condition Evaluation and Load and Resistance Factor Rating of Highway Bridges*. Design-Builder shall prepare the load-rating based on the current condition of the Bridge, as required. Load-rating instructions and guidance can be found at:  
<ftp://ftp.odot.state.or.us/Bridge/LoadRating/>

Design-Builder shall perform a load-rating that includes the current condition of the Bridge, as identified in the latest Bridge Inspection Report. Assessing the Bridge's current condition may require additional detailed inspection. Design-Builder shall conduct such inspections according to the procedures outlined in the following Standards:

- ODOT *Bridge Inspection Coding Guide*
- *Oregon Coding Guide for the Inventory and Appraisal of Oregon Bridges*
- "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," FHWA-PD-96-001, 1995
- "Bridge Inspector's Training Manual 90," FHWA-PD-91-015, 1991 (rev. 1995)

Changes to the ODOT Bridge Inspection Report, identified through Design-Builder inspections, which result in a reduction in the type or quantity of repairs, shall be Approved by Agency.

In its Definitive Design submittal for each Bridge to be repaired, Design-Builder shall include a load-rating calculation book that demonstrates conformance to load-rating procedures and associated ODOT technical memos.

**3. Materials** – Materials used for permanent Bridge repair (structural and non-structural) shall consist of any of the following:

- Epoxy for crack injection
- High-strength steel threaded rods
- Galvanized or Coated structural steel
- Stainless steel or epoxy-coated prestressing strand
- High-strength post-tensioning rods
- Concrete for concrete jacketing
- Bar reinforcement
- Resin for bonding bar reinforcement

**c. Permanent Repair Elements**

**1. Concrete Crack Sealing** – Concrete crack sealing, if required, shall be constructed according to **DB Standard Special Provisions**, Section 00503 - Injecting Cracks in Existing Bridge.

**2. Additional Elements** – If Design-Builder identifies additional elements (apart from the primary load-carrying elements and items listed by Bridge in the **DB Special Provisions**) that should be repaired or replaced, it shall promptly notify Agency. Any additional repair Work must be authorized by Agency via Change Order and will constitute Extra Work.

**d. Maintenance Accessibility** – Design-Builder shall provide inspection and maintenance accessibility to the key structural elements of the repair. The repair shall not restrict existing maintenance and inspection accessibility.

**e. Submittal Requirements**

**1. Definitive Design** – At a minimum, Design-Builder shall include in its Definitive Design submittal a Repair Plan Technical Memorandum. The Repair Plan Technical Memorandum shall describe the type of repair(s) to be performed, including plans that show the area(s) of the Bridge to be repaired, the type of construction staging required for the repairs, and any girder or bent cap details.

**2. Readiness-for-Construction (RFC)** – At a minimum, Design-Builder shall include the following in its Readiness-for-Construction submittal, in conformance with the sequence and content described below. It is Design-Builder’s responsibility to add sheets not provided in this list, when needed. Unless otherwise stated herein, Design-Builder shall submit RFC Plans and Specifications for all structural elements in accordance with standard ODOT Bridge detailing practice, as defined in the *BDDM*, Section 2.

- **Plan and Elevation** – The purpose of this sheet is to provide the overall scope of structural Work for the Project. This sheet shall contain a Plan, elevation, and Typical Section. ROW lines should be shown on the Plan.
- **General Notes** – All general notes and generic design notes pertaining to the Bridge shall be shown on this sheet.
- **Construction Staging (when needed)** – If applicable, a construction staging diagram depicting the location of maintained traffic, the extent of construction, and the extent of demolition shall be prepared. Typical Sections of the Bridge should be used to depict the staging. Dimensions for the controlling layout lines shall be shown for each stage. The edge of saw-cut lines in the existing Bridge deck shall also be shown.
- **Epoxy Injection Details (when needed)** – This sheet shall contain all necessary details and information to perform the crack injection. If space permits, these details may be placed on the general notes sheet, and this sheet may be eliminated.
- **Girder Repair Details (when needed)** – These sheets shall contain details pertaining to the specific girder repair scheme derived from the repair report.
- **Crossbeam (or Bent Cap) Repair Details (when needed)** – These sheets shall contain details pertaining to the specific crossbeam or bent cap repairs.
- **Miscellaneous Details (when needed)** – These sheets shall contain any miscellaneous details required for the construction of the project.

**3. As-Constructed Plans and Design-Builder Specifications** – refer to **DB General Provisions**, Section 155, for specific requirements.

**(7) RESERVED**

**(8) Submittals**

**a. Demolition Plan** – Design-Builder shall submit a Demolition Plan to Agency PM for Review and Comment at least 10 Calendar Days prior to commencement of any Bridge removal activities.

**b. Bridge Replacements and Culverts** – Design-Builder shall submit the following Bridge replacement submittals:

- Definitive Design submittal
- Readiness-for-Construction submittal
- As-Constructed submittal (which includes “D” size mylars and electronic files in Microstation format placed on CD or DVD). Files shall be named per the BDDM Section 2.
- Final Bridge calculations book – with as-constructed submittal

- As-constructed load-rating calculations book – with as-constructed submittal

**c. Bridge Repairs** – Design-Builder shall submit the following Bridge repair submittals:

- Definitive Design submittal
- Readiness-for-Construction submittal
- As-Constructed submittal (which includes “D” size mylars and electronic files in Microstation format placed on CD or DVD). Files shall be named per the BDDM Section 2.
- Final Bridge calculations book – with as-constructed submittal
- As-constructed load-rating calculations book – with as-constructed submittal

**d. As-Constructed Load Rating Calculations** – Design-Builder shall submit to Agency PM load-rating reports that include the following:

1. One (1) CD for each Bridge containing load-rating electronic files (files shall be located under a directory whose name is the Bridge number); and

2. One (1) hard copy of the report, including supporting information, bound in a labeled pressboard report cover with provisions for CD storage. Reports shall be bound in the following order:

- Posting Summary Sheet
- Table of Contents
- Load-Rating Summary Report
- Reduced Copy of the Plans (or sketches)
- Printout of FILELIST.TXT (this may be combined v DB 141.11(c)(8)d.2. contents and omitted as a separate section)
- Preliminary (pre-BRASS) file(s)
- BRASS \_T (LRFD strength) output file for the 1st beam line and for each additional beam line investigated
- BRASS \_N (NBI Load Factor) output file for the 1st beam line and for each additional beam line investigated
- Cross Beam calculations completed for the 1st cross beam investigated and for each additional cross-beam investigated

All sheets after the Table of Contents shall be numbered consecutively in the upper right corner.

Load Rating Reports shall constitute Project Records and shall be prepared by, signed by, and stamped with the seal of a Design Professional.

## DB Section 141.12 - Geotechnical

(a) **Scope** - This Section covers investigations, analyses, design, and construction of all geotechnical elements associated with Bridge structures, retaining walls culverts, embankments, and slopes.

(b) **Standards and References** - Design-Builder shall perform all geotechnical Work in accordance with the requirements of this Section 141.12.

### (1) Standards

- ODOT *Geotechnical Design Manual* (GDM)
- AASHTO LRFD *Bridge Design Specifications*
- ODOT *Bridge Design and Drafting Manual*
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- AASHTO *Manual on Subsurface Investigations*
- “Standard Practice for Description and Identification of Soils” (Visual-Manual Procedure) ASTM D2488-00
- ODOT *Soil and Rock Classification Manual*
- “Design and Construction of Driven Pile Foundations,” Vols. 1 and 2, FHWA-HI-97-013 and -014, 1998
- “Drilled Shafts: Construction Procedures and Design Methods,” FHWA-IF-99-025, 1999
- “Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines,” FHWA-NHI-00-043, 2001
- “Corrosion/Degradation of Soil Reinforcements for Mechanically Stabilized Earth Walls and Reinforced Soil Slopes,” FHWA NHI-00-044, March 2001
- “Earth Retaining Structures,” FHWA-NHI-99-025, 1999
- “Soil Nail Walls,” FHWA-IF-03-017 (GEC 7), 2003
- “Shallow Foundations,” FHWA-IF-02-054 (GEC 6), 2006
- “Soil Slope & Embankment Designs,” FHWA-NHI-01-026, 2002
- “Geosynthetic Design and Construction Guidelines,” FHWA-HI-95-038 (April, 1998)
- AREMA *Manual for Railroad Engineering*
- “Rockfall Catchment Area Design Guide,” FHWA Final Report, SPR-3 (032) (2001)
- FHWA, *Bridge Technology, Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications*, found at: <http://www.fhwa.dot.gov/bridge/checklist.htm>

- “Geotechnical Instrumentation,” FHWA-HI-98-034, 1998
- AASHTO LRFD Bridge Construction Specification

(Other Standards applicable to report formats and contents and investigations are found in the relevant text.)

**(2) References**

- ODOT *Manual of Field Test Procedures*
- “Training Course in Geotechnical and Foundation Engineering: Subsurface Investigations,” FHWA-HI-97-021, 1997
- “Evaluation of Soil and Rock Properties,” FHWA-IF-02-034 (GEC 5), 2002
- “Geotechnical Earthquake Engineering for Highways,” Vols. 1 & 2, FHWA-SA-97-075 & -076 (GEC 3), 1997
- USGS *Seismic Hazard Maps*, found at <http://eqhazmaps.usgs.gov>
- “Micropiles – Design and Construction Guidelines,” FHWA SA-97-070, 2000
- ODOT Recommended Guidelines for liquefaction Evaluation Using Ground Motions from Probabilistic Seismic Hazard Analysis ODOT Research Report “FHWA Assessment and Mitigation of Liquefaction Hazards to Bridge Approach Embankments in Oregon” SPR 361, 2002

**(c) Requirements** – All geotechnical work shall be in accordance with the applicable requirements of the ODOT GDM. All geotechnical reports shall be prepared in accordance with the criteria set forth in this Subsection by a Design Professional with a minimum of five (5) years of geotechnical engineering experience in the State of Oregon. All geotechnical Work shall be conducted under the direction of this Design Professional. All design calculations and Plans shall be checked, signed and stamped by a Design Professional.

**(1) Geotechnical Investigation Plan** – Design-Builder shall prepare a Geotechnical Investigation Plan and provide it to Agency PM within 45 Calendar Days of NTP. Agency’s Review and Comment will be completed and returned to Design-Builder within 15 Calendar Days. The plan shall include the criteria or rationale used in developing the plan, and shall identify the locations of all field investigation sites, in-situ testing sites, and borings, together with their depths, sampling intervals, and a description of both the field and laboratory testing programs utilized. The plan shall also include a traffic control plan, a safety/hazard analysis plans, and a list of all permits required to perform the geotechnical investigation.

**(2) Subsurface Investigation and Data Analysis**

**a. General** - Design-Builder shall be familiar with available geotechnical, geologic, seismic, hydrogeology, and soils literature, shall be familiar with the existing site conditions, both native and man-made, shall interpret the existing geotechnical data pertaining to the Project Site, and shall perform all additional subsurface

investigations and field and laboratory testing as may be necessary to satisfy itself as to (a) the nature of the Soil, Rock, groundwater, and subsurface conditions across the Project Site and all variations in groundwater and subsurface conditions; (b) the geological formations within, and attributes of, the Project Site; (c) the nature of the Work to be performed; (d) appropriate methods of construction; (e) critical combinations of loading; (f) seismic setting of site, and (g) all other factors impacting evaluation.

Laboratories shall be certified and shall have documentation of calibration within the last year for all Equipment used for testing.

Information obtained using a pocket penetrometer or field torvane shall not be the primary means for development of geotechnical parameters.

**b. Requirements** - Design-Builder must comply with the following in performing field and laboratory investigations:

**1. Supervision** - All boring and in-situ testing and inspection, and all laboratory classification and testing, shall be performed by geologists or geotechnical engineers under the direct supervision of a Design Professional with a minimum of 10 years' experience in the performance and supervision of geotechnical investigations.

**2. Location and Ground Surface Elevation** - Design-Builder shall determine the coordinate location and ground surface elevation for each boring and field investigation site, and shall show the coordinates, station and offset, and elevation for each individual boring log or investigation record. Coordinates and station and offset shall be referenced to the Project survey control. Elevations shall be referenced to the Project datum and horizontal control system. Boring horizontal coordinates shall be accurate to +/-1.0 foot; vertical coordinates shall be accurate to +/- 0.5 foot.

**3. Logs** - Final boring and Rock core logs shall be prepared using geotechnical software by gINT software.

Design-Builder shall classify Rock in accordance with the ODOT *Soil and Rock Classification Manual*.

Design-Builder shall classify Soil in accordance with the "Standard Classification of Soils for Engineering Properties" (Unified Soil Classification System) ASTM D2487-00, and "Standard Practice for Description and Identification of Soils" (Visual-Manual Procedure) ASTM D2488-00.

**(3) Geotechnical Design Report**

**a. Draft Geotechnical Design Report / Draft Geotechnical Data Sheets** - Design-Builder shall document all geotechnical data and findings, including a summary of existing information, results of the field subsurface investigations and mapping, results of the laboratory tests, and geotechnical and foundation analyses and design, in the form of a Draft Geotechnical Design Report (DGDR) and Draft Geotechnical Data Sheets in accordance with the FHWA *Bridge Technology, Checklist and Guidelines for Review of Geotechnical Reports and Preliminary Plans and Specifications*. The DGDR shall follow the requirements provided in the ODOT GDM, Section 21.4.

**b. Final Geotechnical Design Report / Final Geotechnical Data Sheets** - Design-Builder shall document all geotechnical data and findings, including without limitation a summary of existing information, results of the field subsurface investigations and mapping, results from the laboratory tests, and geotechnical and foundation analyses and design. The documentation shall be consolidated in the form of a Final Geotechnical Design Report (FGDR) and Final Geotechnical Data Sheets signed and stamped by a Design Professional. Design-Builder shall prepare the FGDR and Final Geotechnical Data Sheets in accordance with the ODOT GDM, Sections 21.4.2.1 and 21.7, and shall ensure that the recommendations shown in the FGDR meet all Contract requirements. Design-Builder's FGDR shall include the Geotechnical Report Review Checklist, as provided in ODOT GDM, Appendix 21-A.

**c. Geotechnical Recommendations** - Design-Builder shall use the findings and recommendations shown in the FGDR to develop the foundation design for the Structures.

**d. Field Testing Frequency** - Design-Builder shall ensure that the field testing frequency meets the minimum requirements stated in the ODOT *Manual of Field Test Procedures*.

**e. Revised Geotechnical Design Report / Revised Geotechnical Data Sheets** - Where the geotechnical design and geotechnical-related construction differ from the information described in the FGDR, Design-Builder shall revise, in a timely manner, the FGDR and Final Geotechnical Data Sheets to reflect the as-constructed changes. Design-Builder shall ensure that all Revised Geotechnical Data Sheets are included in a Revised Geotechnical Design Report (RGDR). The RGDR shall be signed and stamped by a Design Professional.

**(4) Foundation Design** - Foundation and geotechnical design for Structures shall follow the ODOT GDM.

**a. Wave Equation Analyses** - The constructability of a pile design and the development of pile-driving criteria shall be performed using a Wave Equation

Analysis for Piles (WEAP) computer program in accordance with AASHTO *Standard Specifications for Highway Bridges*.

Results of the drivability analysis and pile-driving criteria shall be submitted at least seven (7) Calendar Days prior to driving piling. Drivability analysis shall be conducted for all hammers and pile types proposed for use, and for each Bridge foundation.

**b. Deep Foundation Testing and Monitoring**

- **Pile Driving Records** - All pile-driving records shall be recorded in the standard ODOT Pile Record Book, Form 734-3485. Design-Builder shall provide all information required in the ODOT Pile Record Book. The hammer stroke and final pile tip elevations must be recorded. Design-Builder shall provide all completed Pile Record Books to Agency PM after pile driving is completed for each Work Location. Design-Builder shall assign one inspector per each pile-driving rig.
- **Pile Driving Analyzer (PDA)** - PDA may be used on large projects or on projects with many long, high-capacity piles, where high driving stresses are anticipated, to test new pile hammers or to verify questionable hammer performance, or where verification of skin friction for uplift capacity is required. A signal matching analysis (CAPWAP) of the dynamic test data must be used to determine the ultimate capacity. A Design Professional shall determine if PDA will be required.

**c. Drilled Shaft Integrity Testing** - Integrity testing consisting of Crosshole Sonic Logging (CSL) shall be performed on all non-redundant drilled shafts, and for redundant drilled shafts, on at least one shaft at each bent or abutment. Steel tubes to allow CSL testing shall be installed in all drilled shafts. The first drilled shaft installed at a location shall be tested so that the method and Equipment can be approved by the supervising Design Professional. If subsurface conditions vary at a Bridge site, the supervising Design Professional may require that additional shafts be tested. All CSL tests shall be reviewed and approved by the supervising Design Professional, as well as any remedial measures or repairs that may be needed.

**(5) Retaining Wall Design** - The following criteria shall apply to permanent wall Structures.

**a. Acceptable and Unacceptable Wall Types**

**1. Acceptable Wall Types** - Acceptable retaining wall types include gravity, cantilever, tangent or secant pile systems, and soldier pile and lagging, Soil nail and shotcrete, and mechanically-stabilized earth (MSE) walls.

- **MSE Walls** - The MSE wall systems listed in the ODOT GDM as “approved,” “conditional,” or “experimental,” may be considered for use for retaining walls up to 30 feet in height.
- **Soil Nail Walls** - Soil nail walls are acceptable to Agency, and shall be designed in accordance with “Soil Nail Walls,” FHWA-IF-03-017 (GEC 7), 2003.
- **Other Wall Systems** - Other acceptable wall systems are conventional cast-in-place concrete retaining walls.

The wall systems identified in this Subsection are acceptable, provided that Design-Builder demonstrates that the wall system selected can accommodate the anticipated total and differential settlements over the required service life of the Structure.

**2. Unacceptable Wall Types** - Metal walls, including bin walls and sheet pile walls, recycled material walls, timber walls, walls utilizing geo-fabrics, unfinished wire fabric walls, concrete crib walls, and wire enclosed riprap (gabions) shall not be allowed for permanent retaining walls.

**b. Design Criteria**

**1. Service Life** - The service life of all retaining walls shall be 75 years.

**2. Seismic Case** - All retaining walls supporting Bridge approach fill or affecting the performance or structural integrity of the Bridge (within 500 feet), shall be designed for the seismic case of the peak horizontal ground acceleration corresponding to a return period of 1,000 years. All other walls shall be designed for the seismic case of earthquake acceleration corresponding to a return period of 500 years.

- 1000-year event (5% exceedance in 50 years): This level of shaking should not result in total collapse of the Bridge. The embankments (approach fills) may undergo large displacements as long as the displacements do not result in total collapse of the Structure.
- 500-year event (10% exceedance in 50 years): This level of shaking should result in the Bridge being accessible to emergency traffic immediately following the event.

**3. Stability and Settlement of Walls** - All retaining wall designs shall address internal, external and global (overall) stability and settlements (total and differential) of the walls in accordance with the requirements of the ODOT GDM.

**4. MSE Walls (including modular block MSE walls)** - Design-Builder shall use the ODOT GDM as required. All retaining walls at a Work Location shall have the same finish and appearance.

**c. Geometry** - Retaining-wall layout shall address slope maintenance above and below the wall. Returns into the retained fill or cut at retaining wall ends shall be provided where possible. Final tolerances shall be 5/8" (0.05 feet) in 10 feet for level and plumb. Where five (5) foot (minimum) of generally level terrain is not available between the wall and ROW line for maintenance, the wall shall be located at the ROW line.

Design-Builder shall provide adequate surface and subsurface drainage in the design and construction of all retaining walls. A system shall be provided to intercept or prevent surface and ground water from entering behind the walls. Drainage shall be provided along the retaining wall and into a drain. A fence or pedestrian railing shall be provided at the top of retaining walls over six (6) feet high where access is open to the public.

**d. Plans and Calculations** - Design-Builder shall provide Plans and design calculations meeting AASHTO LRFD *Bridge Design Specifications*, including a global stability and seismic analysis.

**(6) Fill / Embankment Design**

**a. Slope Stability** - Design-Builder shall design slopes in accordance with the "Soil Slope and Embankment Designs," FHWA-NHI-01-026, 2002. Design-Builder shall design embankment slopes no steeper than 1:2, vertical: horizontal.

Analysis shall consider the effects of deterioration and loss of Soil resistance due to local climatic and construction conditions. All fill slopes shall be designed to minimize, to the extent practicable, erosion by rainfall and runoff and future raveling of the Rock cuts. Adequate surface/subsurface drainage and erosion control provisions shall be incorporated in the design and construction of all fill slopes.

Slope stability analysis shall be conducted using a two-dimensional slope stability computer program such as XSTABL. Analysis of embankment configuration and slope design shall include potential for circular and wedge type failures. Slope stability analysis shall confirm that the embankment slope designs provide global slope stability under static loads as specified herein. The analysis shall include consideration of the effect of potential seepage forces, design flood levels, rapid drawdown and any weak deposits and seams that are adversely impacted by water flow. Permanent fill/embankment slope design and non-permanent slopes shall meet ODOT GDM requirements.

**b. Settlement** - Design-Builder shall conduct an analysis to estimate Soil settlements induced by embankment loads, including immediate settlement in granular soils, and both immediate and consolidation settlements in cohesive soils. Design-Builder shall design embankments in order to limit total long-term settlements to two (2) inches during a period of 50 years after completion of the

Pavement construction for the embankment. Differential settlement across fill/Structure interfaces shall be limited to ½ inch.

**c. Reinforced Soil Slope (RSS) Design** - The design procedures and considerations for reinforced Soil slopes shall conform to the requirements of “Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines,” FHWA-NHI-00-043.

Adequate surface and subsurface drainage provisions, and slope protection and erosion control provisions, shall be incorporated into the RSS designs in accordance with the requirements of “Mechanically Stabilized Earth Walls and Reinforced Soil Slopes Design and Construction Guidelines,” FHWA-NHI-00-043, and as required herein.

**d. Fill / Embankment and Reinforced Soil Slope Construction Considerations** - Alternative methods of embankment construction shall be compared for safety and cost-effectiveness. The main considerations shall be to provide adequate safety factors against external and internal stability and global (overall) stability and bearing capacity failures, and to reduce the settlement to within the allowable range as specified herein. In addition, the design must provide for adequate surface and subsurface drainage, slope protection, and erosion control for the slopes, and prevent the development of long-term maintenance problems for Agency.

**e. Drainage** - The design shall incorporate an adequate system of surface and subsurface drainage and surface protection, with sufficient capacity for the design rainfall run-off, so as to prevent (a) erosion of the slopes that could result in erosion rills and gullies and surface sloughing, and (b) build-up of groundwater that could result in slope instability. In addition, surface drainage systems, consisting of drain rocks, filter fabric, and drain pipes, must be provided at locations where the embankments cross over creeks, streams, or valleys. Notwithstanding the requirements of the relevant Standards, the design shall address the long-term performance of the drainage and erosion control system for each embankment or fill under local conditions.

Where horizontal drains are to be used, a protective measure must be devised to protect the drains from freeze/thaw. A long-term maintenance program must be developed by Design-Builder and presented to Agency to safeguard the long-term functionality of the horizontal drains.

**f. Soil Improvement** - Alternative Soil improvement methods that increase Soil strength and reduce compressibility in order to increase the safety factors for external, internal, and global stability, and reduce settlements to the allowable range specified herein, may be allowed in the design if they are suitable for local conditions and selected fill/embankment installation methods. Techniques such as vertical drains, surcharge, stone columns, vibro-compaction, lime columns, cement columns, deep Soil mixing, grouting, and the use of lightweight fill may be included

in the design in order to expedite the consolidation of areas, where it is required to increase bearing capacity or reduce post-construction settlements. Selection of the type of Soil improvement method shall be restricted to methods which have documented successful results in equivalent Soil conditions for equivalent applications, and shall depend on the engineering properties of the subsoil, Material quality, performance, supply, and installation time. Available expertise shall also be considered.

The performance of all ground improvement techniques shall be verified with a pre-production field testing program developed to demonstrate that the proposed methods and design will provide the ground improvement level required to satisfy the performance requirements specified herein.

**g. Bridge End Panels** - To provide a smooth transition from at-grade section to elevated sections of grade separation Structures, Bridge end panels shall be provided at the abutments.

**(7) Cut Slopes (Soil/Rock)** - Design-Builder shall review the existing conditions of the Soil/ Rock slopes and undertake to:

- Demonstrate that the existing slopes are in stable condition before proceeding with design and construction of permanent Structures
- Verify the structural stability of the Soil/Rock slopes for final site conditions and develop measures to mitigate slope instability

Design-Builder shall be responsible for the correction of all distress (i.e., bulging of shotcrete, shotcrete cracking, slope deflections, slope sloughing off) that may be induced to Structures/properties as a result of construction. Therefore, Design-Builder shall establish a baseline to monitor all distress of the Structures/properties adjacent to the proposed Work. In addition, Design-Builder shall establish trigger criteria and undertake remediation, if such trigger values are exceeded.

The maximum permissible deflections and/or movements shall not exceed 0.5 inch. If such value is exceeded, Design-Builder shall undertake remedial measures to stabilize the slope.

**a. Soil Cut Slopes** - Geotechnical analyses of Soil cut slopes (existing and new) shall be performed to assess Soil slope stability along new and existing Soil cut slopes. The analyses shall include:

- Review of existing geologic and geotechnical data
- Collection of new geologic and geotechnical data
- Evaluation of the potential slope stability problems
- Slope design and stabilization measures

Soil properties for slope stability analyses shall be obtained from existing data provided in the Geotechnical Data Report (if deemed appropriate by Design-Builder) and data generated from the subsurface investigation, field mapping and laboratory testing completed by Design-Builder. The data collected shall include mapping information, boring data and other geotechnical/geologic data. Potential circular and wedge-type failure modes shall be analyzed for each Soil cut and each slope and orientation. Geotechnical analyses of Soil cut slopes shall be performed using Soil mechanics software, such as XSTABL. The analyses shall cover the following:

- Slopes with a variety of slope angles
- Slope face orientation (i.e., slope facing towards north, south, east and west)
- Boundaries between materials to show different types and thicknesses
- Shear strength of the Soil to be defined in terms of Mohr-Coulomb criteria
- Groundwater levels to be applied to show a dry slope and groundwater table within the slope
- Seepage encountered on slope faces
- External loads where applicable
- Shape and position of rupture surface defined as circular and as straight-line segments
- Slope geometry, material boundaries and rupture surface to be plotted
- Factor of safety of 1.3 or greater for static stability, and 1.0 or greater for seismic stability

Slopes that do not meet the required safety factor referenced above shall be reconfigured with a reduced slope angle or shall be supported with a retaining wall or ground supporting systems.

## **b. Rock Cut Slopes**

**1. Rock Slope Stability** - Geotechnical analyses of Rock cut slopes shall be performed to assess Rock slope stability along new and existing Rock cuts. The analyses shall include:

- Review of existing geologic and geotechnical data
- Collection of new geologic and geotechnical data
- Evaluation of the potential slope stability problems
- Slope design and stabilization measures
- Rock fall hazard analyses

Rock properties (if any) for slope stability analyses shall be obtained from existing data provided in the **DB Special Provisions**, Attachment "A" and data generated from the subsurface investigation, field mapping and laboratory testing completed by Design-Builder. The data collected shall include Rock mapping information, boring data and other geotechnical/geologic data. Discontinuity

orientation and strength shall be evaluated, and discontinuity sets shall be established for each Rock cut for use in stability analyses. Rock cuts with well-defined sets of discontinuities shall be evaluated for stability (potential planar, wedge and toppling failure modes) using Rock mechanics analytical methods as described and defined in “Corrosion/Degradation of Soil Reinforcements for Mechanically Stabilized Earth Walls and Reinforced Soil Slopes,” FHWA NHI-00-044, 2001, and Rock mechanics software (DIPS or SWEDGE). Planar, wedge and toppling failures shall be analyzed for potential occurrence for each Rock cut and each slope and orientation. Groundwater shall be considered in the planar and wedge slope stability analysis. A dry slope condition shall be analyzed, and a partially-saturated slope shall be analyzed. The factor of safety for Rock slope stability shall be 1.3 or greater for static stability, and 1.0 or greater for seismic stability.

For Rock cuts which do not exhibit well-defined sets of discontinuities, slope stability analyses shall be performed using Soil mechanics methods. These analyses shall use a computer program, such as XSTABL. The analyses shall cover the same factors as listed in Subsection (c)(7)-a above, “Soil Cut Slopes.”

**2. Rock Fall Modeling** - Rock fall modeling or Rock fall simulation analyses shall be performed to predict Rock fall behavior and to design Rock fall catchment widths and depths for each Rock cut. The Colorado Rock Fall Simulation Program (CRSP) shall be used. Rock fall paths shall be plotted and histograms of bounce height, Rock velocity, and energy shall be obtained and plotted for various Rock block sizes. The number of Rock blocks landing on Roadways shall be stated. The maximum energy at an analysis point shall be used to design Rock fall catchment barriers. The program shall complete a minimum of 500 iterations for each cut and block size modeled. A minimum of two (2) block sizes (average and maximum) shall be modeled for each slope configuration. Block size shall be established based on Rock mapping and Rock fall hazard-mapping data determined by Design-Builder during Design-Builder’s investigation program. Rock cut slope roughness factor and tangential and normal coefficients shall be based on field data and suggested values from the verified software program. A basis for value selection shall be provided as part of the analysis documentation. Existing cuts and new cuts shall be modeled as stated above. Existing cuts shall model existing conditions (slope, ditch width and depth) to verify if existing slope conditions/configuration are adequate to contain rockfalls as defined below. All cuts shall be modeled to determine optimal ditch width and depth.

**3. Stabilization Measures** - For all Rock cut slopes that do not meet the design criteria referenced above for stability, Design-Builder shall implement the following measures:

- Reduce the Slope angle to produce a stable slope

- Provide Rock reinforcement, such as Rock bolts/dowels, high-strength Rock anchors, tied-back walls, or buttresses, in accordance with the guidelines included in Subsection (b)(1) “Standards,” above

For all Rock cut slopes that do not meet the design criteria referenced above for Rock fall potential, Design-Builder shall implement the following measures:

- Reconfigure the Rock slope or increase the Rock fall catchment ditch width and depth to provide an adequate catchment area.
- Provide Rock fall catchment barriers, such as concrete or gabion walls, Rock fall catchment fences (woven wire-rope nets), or wire mesh drapery hung on the Rock face/slope. Rock fall catchment barriers shall be designed to resist the maximum energy obtained in the Rock fall simulation analyses.

**(8) Erosion Control and Drainage** - Erosion control and drainage measures shall be evaluated, and designed for all new and existing slopes. Erosion of slopes presents a significant maintenance issue and stability problem on slopes. Rock and Soil strata that are susceptible to erosion and/or freeze/thaw shall be mapped and delineated for all existing and new fills and cuts. Slope protection measures shall be evaluated based upon site-specific conditions, such as surface and subsurface conditions, cut geometry, and susceptibility to erosion or deterioration. Each cut and fill slope that requires erosion control and drainage measures shall be evaluated for the following:

**a. Reduction of Water Flow Across Slope** - Where slope revegetation cannot be sufficiently established, Design-Builder shall reduce the quantity of water flowing over the slope from upland areas by means of drainage or interceptor ditches across the top of the slope and down the ends of the slope. At the base of the slope, water shall be directed to a discharge point. Design-Builder shall coordinate discharge point drainage with the at-grade drainage system for the Highway.

Drainage or interceptor ditches shall be lined and capable of carrying water generated from upland areas based on the 100-year storm event. Lining Materials shall be cast-in-place concrete, pre-cast concrete, reinforced shotcrete, or asphalt. Rock check dams to slow flows shall be designed and installed based on flow calculations.

**b. Slope Revegetation** - Where the slope can be made to support vegetation, local plantings shall be used to establish root systems to stabilize the surface of the slope and prevent deterioration of the slope. Design-Builder shall design and provide systems of degradable woven blankets to temporarily hold plantings in place and minimize erosion to the extent practicable until vegetation has established a stable root system.

**c. Slope Armor** - Where slopes will not support vegetation, slope cover/protection or permanent facing shall be used to protect the slope. Such measures as mattress-shaped steel wire mesh containers, gabions, articulated concrete blocks, fabric

formed concrete, shotcrete, geosynthetic cells filled with gravel, and rip-rap (crushed stone) placed on a graded filter shall be evaluated, designed and installed. Stone sizes shall be designed base on design water flows.

**d. Subsurface Water Control** - Design of subsurface water drainage features shall be evaluated as water control measures. Design shall address the use of horizontal drains, blanket drains, trench drains and geocomposites for both cut and fill slopes. Design shall address outlet design and long-term performance and maintenance requirements for the drainage system.

**e. Springs and Water Seepage** - Any springs and water seepage identified in the field must be contained by means of drainage systems. Design shall address long-term performance and maintenance requirements for the drainage system.

**(9) Miscellaneous Construction Considerations**

**a. Temporary Excavation Support** - Temporary excavation support required during construction shall be designed to withstand short-term loading due to earth pressures, groundwater pressures, surcharge pressures, and construction Equipment loading. Working Plans for temporary decking, sheeting, and bracing shall be signed and stamped by a Design Professional.

Surcharge pressures due to construction Materials and Equipment, Structures, and point, line and area loads, shall be included in lateral earth pressure diagrams. Construction Materials and Equipment loads shall be estimated using a minimum 600 psf distributed area load.

Design-Builder shall indicate on the Working Plans special requirements for the installation and removal of temporary bracing systems that relate to the designs of underpinning and protection walls, such as levels of bracing tiers, the maximum distances of excavation below an installed brace, and the amount of preloading.

**b. Dewatering and Groundwater Control** - Excavations that are left open to precipitation, that extend below groundwater levels, that encounter water seepage, or that are made in existing bodies of water, will require some form of dewatering or groundwater control. Design-Builder shall evaluate the potential need for dewatering and groundwater control when designing a Structure. Examples are constructing Bridge pier, abutment, and culvert foundations near or over existing streams and creeks.

**c. Rock Excavation** - Design-Builder shall protect the Rock surfaces to preserve their strength and character.

Rock excavation may be done either by mechanical Equipment; by using explosives in drill-and-blast operations, or both. Blasting of Rock shall be undertaken by controlled blasting techniques (cushion (trim), pre-splitting, smooth-wall blasting,

and line drilling). Design-Builder shall select the Rock excavation method that minimizes, to the extent practicable, vibration, over-breaks, fly Rock and airblast. Design-Builder shall repair all blast and vibration-induced damage at no cost to Agency.

**d. Quality Assurance During Blasting Operations** - Design-Builder is required to do the following:

1. Obtain copies of all applicable codes, Standards, regulations, and ordinances, and keep readily-accessible copies at the Project field office at all times.
2. Retain a blasting specialist with a minimum of 15 years of blasting experience and 10 years of experience in responsible charge of blasting operations to supervise all field blasting operations and personnel. Such blasting specialist shall possess all required federal, State and local licenses and permits.
3. Submit to Agency a Blasting Plan for the areas to be excavated by means of controlled blasting not less than 14 Calendar Days before commencing any blasting operations in that area, or at any time a proposal to change the drilling and blasting methods is made. The plan shall describe everything necessary to excavate the Rock using the controlled blasting techniques selected by Design-Builder. The plan shall be prepared and signed by the blasting specialist.

**e. Damage Repair** - Damage to existing Structures or property caused by the blasting shall be repaired by Design-Builder at no cost to Agency.

Design-Builder shall notify Agency immediately of any blasting-induced damage.

**f. Fly Rock Control** - Design-Builder shall control fly Rock at no cost to Agency.

**g. Notification** - Design-Builder shall notify each adjoining property owner, Agency, and local Authorities, in writing, prior to each blast. The notice shall indicate the date and time of the proposed blast and include any safety precautions required of the adjoining property owner.

**h. Mapping** - All Rock excavation surfaces shall be mapped under the supervision of a Design Professional to ensure that the final excavation surfaces are examined, and to aid in the discovery of unanticipated adverse geologic conditions. The mapping shall serve as documentation of the geologic conditions encountered on the site mapped during construction.

**i. Photography** - Photographs shall be taken of all excavated surfaces and construction operations. All photographs must be properly labeled with date, subject, direction of view, vantage point, and photographer.

**(10) Substructures and Culverts** - All culverts and substructures shall have a 50-year service life with respect to corrosion. Corrosion potential shall be based on pH and electrical resistivity tests conducted on Soil, Rock, and groundwater samples derived from the Project Site.

**(11) Construction Instrumentation Monitoring Program** - Design-Builder shall prepare programs for using instrumentation to monitor the vibration, noise, acceleration, vertical settlement and lateral movement of temporary support Structures and adjacent ground, and permanent Structures during and after construction, according to accepted industry standards and the Standards set forth in Subsection (b)(1) "Standards," above. Design-Builder shall prepare a Working Plan detailing the proposed program of instrumentation and monitoring, establishing threshold values of the monitored parameters, and describing the response plans that will be implemented when threshold parameters are exceeded. Design-Builder shall provide, install and monitor the instrumentation during and after construction, and shall interpret the data. Construction instrumentation monitoring reports shall be provided to Agency PM on a weekly basis. Corrective action shall be taken where the instrumentation data so warrant.

**a. Monitoring of Existing Structures and Utilities** - Adjacent Structures and Utilities are to be protected against damage due to the construction of the permanent Structures. Limiting values of movement (horizontal and vertical) and distortion on each Structure and Utility within the Project Site shall be established. To establish these limiting values, Design-Builder shall consider the nature of the Structures and Utilities within the Project Site, including their use, foundation systems, structural design and current condition. Records of Structures and Utilities, where available, shall be examined during the design stage, and where no record exists; pre-construction assessments shall be made of existing Structures and Utilities and clearly documented. These assessments shall be the subject of verification at the commencement of the construction phase and prior to commencement of any adjacent construction activity. Monitoring of each Structure and Utility shall be required during construction.

In order to determine the performance of the permanent Structures, a system of construction monitoring shall be established to include the following:

- Measurement of groundwater levels
- Measurement of blast-induced and pile-driving-induced vibrations and displacement
- Monitoring of settlement and tilt of the permanent Structures and adjacent area both during and after construction. In all cases, monitoring shall be initiated well in advance of construction to establish baseline readings
- Measurement of lateral movement of excavation support walls and permanent Structures
- Measurement of noise level induced by construction activities

The extent of the monitoring program will depend on the size and type of the Structures. A detailed monitoring program shall be prepared for each Structure affected by the construction.

Where adjacent properties may be affected by the construction, the monitoring program shall allow for readings on fixed points on the Structures to permit both total and differential settlements to be assessed and lateral movements to be determined.

**b. Instrumentation** - The instrumentation utilized in carrying out the monitoring program shall include appropriate types and quantities of monitoring instruments capable of measuring horizontal and vertical movement, tilt of adjacent Structures, Soil pore pressure, vibration, and noise, as applicable.

Instrumentation to be used in the monitoring program to control and assist design and construction may include:

- Piezometers and observation well
- Inclinometers
- Survey stations on Structures and at ground level locations
- Tiltmeters
- Seismographs
- Noise/sound level sensors/meters
- Deep and shallow settlement points and extensometers
- Crack gauges
- Strain and load-measuring devices

The types and numbers of instruments will depend on factors including the size, type and location of proposed Work.

**(12) Preconstruction Survey** - Design-Builder and Agency shall conduct a joint pre-construction survey of the Project Site for purposes of generating photographic and video documentation of existing damage, leaks and cracks. This pre-construction survey shall form the basis against which all new cracks, existing progressive cracks, or damage will be measured. Design-Builder shall submit to Agency at the beginning of construction the records and photo/video documentation of the pre-construction survey, which have been signed and stamped by a Design Professional.

**(13) Submittals** - Design-Builder shall prepare design calculations and Plans of all geotechnical elements associated with Rock and Soil slopes, fill / embankments, retaining walls, Bridges, and culverts, as specified in this Section. The design calculations and Plans shall be signed and stamped by a Design Professional and submitted along with the following submittals to Agency PM for Review and Comment:

- **Geotechnical Investigation Plan** - within 45 Calendar Days of NTP

- **Draft Geotechnical Design Report (DGDR) and Draft Geotechnical Data Sheets** - at Definitive Design
- **Final Geotechnical Design Report (FGDR) and Final Geotechnical Data Sheets** - at Readiness-for-Construction
- **Revised Geotechnical Design Report (RGDR) and Revised Geotechnical Data Sheets** - as required, following construction and as part of the Project Records
- **Preconstruction Survey** - at Readiness-for-Construction
- **Results of the wave equation analysis** - at least seven (7) Calendar Days prior to pile driving
- **Pile Record Books** - upon completion of pile installation
- **Instrumentation Plan** - at least 14 Calendar Days prior to installation of instrumentation
- **Weekly Construction Instrumentation and Monitoring Report** - weekly
- **Blasting Plan** - not less than 14 Calendar Days before commencing blasting operations, or at any time a proposal to change drilling and blasting methods is made
- **Drilled Shaft Integrity Testing Report** - within seven (7) Calendar Days following completion of crosshole sonic logging testing on first shaft, and prior to start of construction on subsequent shafts at each Bridge

### **DB Section 141.13 - Hydraulics**

**(a) Scope** – This Section covers hydraulic analysis and design required for Bridges over waterways and culverts.

**(b) Standards and References** – Design-Builder shall perform hydraulic analyses, and design and construct bank protection and culverts in accordance with the requirements of this Section 141.13.

#### **(1) Standards**

- City of Portland “2014 Stormwater Management Manual”
- Programmatic or individual environmental permit Performance Standards (as applicable to this project)
- Local Agency Design Standards (if applicable)
- The appropriate ODOT/APWA Oregon Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>
- **DB Standard Specifications**
- ASHTO LRFD Bridge Design Specification
- AASHTO LRFD Bridge Construction Specification

**(2) References**

- ODFW “Guidelines and Criteria for Stream-Road Crossings”
- FHWA Hydraulic Design Series (HDS)
- FHWA Hydraulic Engineering Circulars (HEC)
- ODOT Qualified Products List (QPL) at the following site:  
<http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>
- ODOT *Non-Field Tested Materials Acceptance Guide*

**(c) Requirements**

**(1) Bridges**

**a. Hydraulic Study** - Design-Builder shall perform a hydraulic study and provide documentation as outlined in the City of Portland “2014 Stormwater Management Manual”. At a minimum, the study shall include the following:

- Hydrologic analysis
- Hydraulic analysis to determine minimum low chord elevation and hydraulic opening
- Scour analysis including the revetments
- Ice and debris passage analysis
- Fluvial analysis, as applicable (see below)

**b. Fluvial Standard** - Programmatic or individual environmental permits, as applicable to the Project, may require fluvial performance standards that surpass other hydraulic engineering design criteria. Refer to **DB General Provisions**, Section 141.51 – Environmental Compliance, for additional information. It does not take the place of a hydraulic design or analysis method.

**c. Bank and Revetment Protection** – Bank protection shall be designed in accordance with the City of Portland “2014 Stormwater Management Manual” and, if under OTIA III programmatic permits, guidance from the OTIA III Statewide Bridge Delivery Program Environmental Performance Standard. In the case of conflicting requirements between City of Portland “2014 Stormwater Management Manual” and the Environmental Performance Standard with regard to protection of the approach roadway fills (i.e. revetment protection), Design-Builder shall submit to Agency PM documentation explaining the basis of the conclusion of the Design-Builder as to which of the conflicting requirements applies. The documentation will be included in the Environmental Compliance Plan.

**d. Hydraulic Design** – Design-Builder shall prepare Design Documents which shall include at a minimum the following:

- Bank protection Plans

- Scour protection Plans
- Special Details
- **Design-Builder Specifications**
- Revetment Protection Plans

## (2) Culverts

**a. Hydraulic Study** – Design-Builder shall perform a hydraulic study as outlined in the *City of Portland “2014 Stormwater Management Manual”*. At a minimum, the study shall include the following:

- Hydrologic analysis
- Hydraulic analysis
- Fish passage requirements
- Ice and debris passage analysis
- Scour Analysis

**b. Culvert Design** – Design-Builder shall prepare Design Documents, which shall include at a minimum the following:

- Culvert Plan and profile
- Special details
- **Design-Builder Specifications**
- Bank and stream channel protection and habitat

**c. Maintenance Accessibility** – Design-Builder shall provide permanent access to culvert structures for inspection and maintenance within the Project ROW. Maintenance access roads shall be designed in accordance with AASHTO *Guidelines for Geometric Design of Very Low-Volume Local Roads* for “Rural Minor Access Road” classification. Culvert Structure openings shall be sized to provide for maintenance access to clean out debris. Design-Builder shall coordinate the design with Agency regarding any specific maintenance concerns or design needs.

## (3) Submittals

**a. Definitive Design** – At a minimum, Design-Builder shall include the following in its Definitive Design submittal:

- Draft Hydraulics Report
- Plan sheets including location of scour protection devices for piers, abutments, and approach roadways

**b. Readiness-for-Construction** – At a minimum, Design-Builder shall include the following in its Readiness-for-Construction submittal:

- Final Hydraulics Report (stamped and signed)

- Plan sheets
- Detail sheets
- Hydraulic Data Table
- **Design-Builder Specifications**

### **DB Section 141.21 - Roadway Geometrics**

**(a) Introduction** - This Section covers the basic geometric elements (horizontal alignments, vertical alignments, super elevation, typical sections, etc.) applicable to the Project.

**(b) Standards and References** - Design-Builder shall design Roadway geometrics in accordance with the requirements of this Section 141.21.

#### **(1) Standards**

- “Public Works Standards”, City of Milwaukie
- NACTO, “Urban Street Design Guide”
- The appropriate ODOT/APWA Oregon Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>
- *Manual of Uniform Traffic Control Devices* and Oregon Supplements
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- ODOT Bicycle and Pedestrian Plan

#### **(c) Requirements**

**(1) General** - Design-Builder shall design all Roadway geometrics (horizontal alignments, vertical alignments, super elevation, typical sections, etc.) in accordance with the Standards listed in Subsection (b)(1) “Standards,” above.

#### **(d) Required Submittals**

**(1) Definitive Design** – At a minimum, Design-Builder shall include the following in its Definitive Design submittal:

##### **a. Title sheet**

**b. Plan and profile sheets** - These sheets must be completed to a level that the alternative concept can be evaluated based on items of particular interest, such as proposed large drainage Structures, horizontal and vertical alignments, cut/fill lines, and intersections. The Plans will be limited to the concept portrayal and potential obstacles, such as:

- Existing Utilities

- Existing Right of Way
- Fences
- Known or suspected environmental features
- Utilities
- Structures
- Irrigation ditches
- Typical Sections
- Roadway detour Typical Sections
- Roadway detour Plan and profiles
- Staging Plans
- Temporary barrier locations

**(2) Readiness-for-Construction** – At a minimum, Design-Builder shall include the following in its Readiness-for-Construction submittal:

**a. Plans**

1. Title sheet.
2. Index of standard drawings.
3. Typical Sections.
4. General construction sheet(s).
5. Items of particular interest including:
  - Major construction callouts
  - Cut/fill lines
  - Large drainage structures
  - Vertical and horizontal alignment
  - Pipe data
  - Special details
  - Intersection layout and details
  - Existing utilities and relocations
  - Existing right of way and anticipated acquisitions
  - Fencing
  - Environmental features and detailed mitigation sites
  - Utility Relocations
  - Irrigation ditches

- b. Roadway detour Typical Sections**
- c. Roadway detour Plan and profiles**
- d. Staging Plans**
- e. Temporary barrier locations**

**(3) Design-Builder Specifications** - Design-Builder shall complete and submit to Agency PM **Design-Builder Specifications**.

**(4) As-Constructed Plans and Design-Builder Specifications** - Refer to **DB General Provisions**, Section 155, for specific requirements.

**(5) Submittals Identified in the DB Special Provisions** - Design-Builder shall submit the following to Agency PM for Review and Comment by the deadlines established herein or in **DB Special Provisions**, SP 141.21(d):

- Definitive Design submittal as specified above
- Readiness-for-Construction submittal as specified above
- As-Constructed Plans and **Design-Builder Specifications**

### **DB Section 141.22 - Drainage**

**(a) Scope** - This Section covers the documentation, design, and construction of storm drainage systems to collect, convey, treat, store and discharge the stormwater runoff and surface water.

**(b) Standards and References** - Design-Builder shall design and construct drainage Structures and appurtenances and water quality/quantity facilities in accordance with the requirements of this Section 141.22.

#### **(1) Standards**

- City of Portland “2014 Stormwater Management Manual”
- "Public Works Standards", City of Milwaukie
- *AASHTO Roadside Design Guide*
- Programmatic or individual environmental permit performance Standards
- Local agency design Standards (if applicable)
- NOAA Fisheries “HCD Stormwater Online Guidance”
- The appropriate ODOT/APWA Oregon Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>

- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)

**(2) References**

- Oregon DEQ NPDES Stormwater Regulations
- ODFW “Guidelines and Criteria For Stream-Road Crossings”
- FHWA Hydraulic Design Series (HDS)
- FHWA Hydraulic Engineering Circulars (HEC)
- AASHTO *Highway Drainage Guidelines*
- AASHTO “A Policy on Geometric Design of Highways and Streets” (Green Book), 5th Edition (2004)
- OSHA
- ODOT Qualified Products List (QPL) at the following site:  
<http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>
- ODOT *Non-Field Tested Materials Acceptance Guide*, 2006

**(c) Requirements**

**(1) General** - Design-Builder shall evaluate all existing storm drainage and sewer systems, and if found to be inadequate, shall upgrade the systems to meet the Standards stipulated in this Section. Design-Builder shall adequately address functionality, durability, environmental impact, ease of maintenance, accessibility, safety and aesthetics in the design and construction of all drainage Structures, appurtenances and water quality/quantity facilities. Design-Builder shall prepare a Stormwater Technical Memorandum in accordance with the City of Portland “2014 Stormwater Management Manual”.

**(2) Hydrology** - Peak flow rates and runoff volumes used for designing conveyance, treatment, and detention/retention facilities shall be calculated in accordance with methods described in the City of Portland “2014 Stormwater Management Manual” and any Permitting or Local Agency Standards that may be applicable to this project.

**(3) Roadway Pavement Drainage** - Design-Builder shall evaluate the existing Roadway drainage system and identify drainage problems. In general, Roadside ditches or curbs shall be used to collect and convey stormwater runoff from Roadway Pavement. Design-Builder shall upgrade the existing Roadway storm drainage system to avoid concentrations of sheet flow across Roadways, including all super elevation transition points. Design-Builder shall use a two (2) percent minimum Roadway cross slope (excluding transitions), and wherever possible shall use a 0.5 percent minimum longitudinal grade for curbed Roadway sections. The absolute minimum grade is 0.3 percent. Design-Builder shall carefully review the potential for hydroplaning at locations where the longitudinal grade or cross slope is less than the minimum, or anywhere along the Roadway where there is a tendency for water to accumulate. Using

the results, Design-Builder shall limit the maximum spread on curbed Roadways to Shoulder width plus two (2) feet encroachment into the outside Traffic Lane.

**(4) Bridge Deck Drainage** - Design-Builder shall provide a deck drainage system such that the spread limits due to the design storm as described in the City of Portland “2014 Stormwater Management Manual” are not exceeded. The deck drainage system shall intercept stormwater flowing toward the Bridge prior to the approach slab. Design-Builder shall provide a proper deck drainage system to avoid erosion of embankments and corrosion of structural members, and to prevent deck drainage from discharging directly into a stream. Runoff shall be collected and conveyed to a stormwater treatment facility prior to discharge into a receiving body of water or existing storm drainage system.

**(5) Storm Drainage System** - Design-Builder shall evaluate the capacity of the existing storm sewer system, gather information about the past hydraulic performance, and identify drainage problem areas. Design-Builder shall use Manning’s equation for hydraulic evaluation and design of common geometric channel shapes. Stormwater or surface water within the Project ROW or presently draining onto the Project Site shall be collected and conveyed to a storm drainage system designed in accordance with the requirements established herein. Design-Builder shall upgrade, clean or rehabilitate the existing storm drainage system to convey the design storm and meet the Standards set forth herein. Design-Builder shall design storm sewers to convey the Roadway runoff for the recurrence intervals described in the City of Portland “2014 Stormwater Management Manual”. Storm sewers shall consider future planned improvements to the Highway and any planned local master drainage system in the Project area. If applicable, review any local agency drainage master plan and coordinate the design with the local agency. Design-Builder shall submit draft and final Stormwater Reports, as described in the City of Portland “2014 Stormwater Management Manual”.

**a. Connections to Existing Systems** - Design-Builder shall develop Plans and **Design-Builder Specifications** for connections to existing storm drainage systems, and shall ensure that the receiving system has sufficient capacity to convey the additional flow.

**b. Stormwater Treatment Facility** - Design-Builder shall coordinate with the proper Authorities to identify the appropriate stormwater facility for each Work Location, to determine the water quality and quantity requirements, and to provide the necessary treatment and detention. Design-Builder shall design water quality and quantity facilities, and develop Plans and **Design-Builder Specifications** in accordance with the City of Portland “2014 Stormwater Management Manual” and any permitting or local agency Standards that may be applicable to the Project.

Design-Builder shall develop facility maintenance and performance monitoring procedures, and shall develop and submit to Agency an Agency “Operation and Maintenance Manual” for each stormwater treatment facility designed and constructed under the Contract.

**c. Inlets** - Design-Builder shall evaluate the performance of the existing inlets, and upgrade as necessary to meet the Standards listed in Subsection (b)(1) “Standards,” above. Design-Builder shall provide inlets at low points on sag vertical curves, at upgrade of Bridge approaches, at super elevation transition points, at cut-to-fill transitions on Roadside ditches, at entrance/exit ramp gores and low points, and at areas where there is a possibility of accumulation of runoff under normal operation. Inlet capacity, spacing and type shall be based on the stipulated Standards.

**d. Circular Culverts and Pipes** - Design-Builder shall design culverts to have a capacity in accordance with the City of Portland “2014 Stormwater Management Manual”. Design-Builder shall evaluate the performance of all culverts within the Project Site, including mainlines and approach roads, for hydraulic adequacy, structural integrity and outlet protection, and shall upgrade or rehabilitate existing pipes and culverts as necessary to meet the Standards listed in Subsection(b)(1) “Standards,” above. Design-Builder shall base the selection of Material for pipes and culverts on the criteria specified in the City of Portland “2014 Stormwater Management Manual”.

**e. Roadside Ditches** - Roadside ditches shall be designed to carry the runoff in accordance with the City of Portland “2014 Stormwater Management Manual”. The water surface in ditches must not be higher than the bottom of the base Material to prevent saturation of the Roadbed. Channel location and geometric configuration shall comply with the AASHTO *Roadside Design Guide*. Design-Builder shall evaluate all the contributing flows to the existing ditches and provide improvements consistent with the requirements of this Section.

**f. Outlet Protection** - Design-Builder shall provide outlet protection at each concentrated discharge point to minimize scour and reduce the exit velocity/energy at the outfall. Design-Builder shall design and construct the outlet protection such that the riparian habitat disturbances and other environmental impacts are minimized. Design-Builder shall locate any new outfalls so that the outlet elevation is above the Ordinary High Water Elevation of the receiving body of water. Design-Builder shall use energy dissipaters as appropriate.

**(6) Temporary Erosion and Sediment Control** - Design-Builder is responsible for the design, Plan preparation, construction, monitoring, maintenance and removal of all required temporary erosion and sediment-control measures. For each Work Location, Design-Builder shall develop an Erosion and Sediment Control Plan that complies with all erosion prevention and sediment-control requirements of Oregon DEQ, Agency, DSL, and other federal, State and local regulatory Authorities, and identifies and protects special areas, such as Wetlands, riparian habitat, existing watercourses, and other environmentally-sensitive areas. Design-Builder shall update the Erosion and Sediment Control Plan as needed to meet the changing conditions of the Project Site. Design-Builder shall install all erosion and sediment-control measures prior to beginning clearing activities, and shall maintain and upgrade the erosion and sediment-control

measures until final stabilization of the site. Design-Builder shall keep and maintain records of all erosion-control monitoring and maintenance using the standard Agency form (referred to as Erosion Control Monitoring Reports herein). Design-Builder shall obtain all necessary construction NPDES Permits. For Permanent Erosion Control requirements, see **DB General Provisions**, Section 141.12 – Geotechnical.

**(7) Submittals** - Design-Builder shall submit the following to Agency PM for Review and Comment:

- **Drainage Plans** – at Definitive Design
- **Stormwater Technical Memorandum** – at Definitive Design
- **Draft Stormwater Report** – 30 Calendar Days following Definitive Design
- **Final Stormwater Report** – at Readiness-for-Construction
- **Pipe data sheet** – at Readiness-for-Construction
- **Drainage Plans** – at Readiness-for-Construction
- **Drainage profiles (as applicable)** – at Readiness-for-Construction
- **Drainage Details** – at Readiness-for-Construction
- **Design-Builder Specifications** – at Readiness-for-Construction
- **Stormwater Management Plan, if required by programmatic or individual environmental permits** – at least 30 Calendar Days prior to commencing clearing activities or construction of Project elements affecting the drainage system
- **Erosion and Sediment Control Plan** – at least 30 Calendar Days prior to commencing clearing activities or construction of Project elements affecting the drainage system
- **Erosion Control Monitoring Reports** – as requested by Agency and as part of the Project Records
- Operation and Maintenance Manual for each stormwater facility to Agency PM prior to Final Inspection

### **DB Section 141.23 - Guardrails and Barriers**

**(a) Scope** - This Section contains the performance requirements for metal guardrail and concrete Roadside and median barriers.

**(b) Standards** - Design-Builder shall design and construct all guardrails and barriers on Roadsides and in medians in accordance with the requirements of this Section 141.23.

- AASHTO Roadside Design Guide
- The appropriate ODOT/APWA Oregon Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>
- AASHTO, “A Policy on Geometric Design of Highways and Streets” (Green Book)

- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- ODOT Qualified Products List (QPL) at the following site:  
<http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>

**(c) Requirements**

**(1) General** - New and replacement metal guardrails and concrete barriers shall be designed in accordance with, and constructed at locations within the Project Site determined by application of, the AASHTO *Roadside Design Guide*. Design-Builder shall provide backup calculations that document the length of guardrail required at each Work Location. Design-Builder shall install all guardrails and barriers in accordance with the requirements of the **DB Standard Specifications**, and shall allow for e-distance to be added in guardrail runs according to the applicable design Standards.

Any existing concrete barrier (median or Roadside) that must be temporarily removed during construction shall be replaced with Tall Type “F” barrier and appropriate rail transition segments.

**(2) Median Barrier – RESERVED**

**(3) Roadside Barrier** - Any Roadside barrier selected to be used by Design-Builder must have been successfully tested to NCHRP-350 requirements for the anticipated site conditions. If the use of metal guardrail as a Roadside barrier is included in the Accepted Definitive Design, Design-Builder shall use Materials and applicable terminal sections complying with the requirements of the **DB Standard Specifications**.

**(4) Submittals** – Design-Builder shall submit the following to Agency PM for Review and Comment:

- **Backup calculations that document length of need required at each guardrail installation** – at Readiness-for-Construction
- **Product manuals** - upon installation of the product or Material or upon Agency PM’s request

**DB Section 141.25 - Permanent Traffic Control**

**(a) Scope** - This Section covers the design and installation of permanent traffic-control devices, including signs, Pavement markings and signals along the Project corridor.

**(b) Standards** - Design-Builder shall design and install all signing, traffic signals, Pavement markings, and related Equipment in accordance with the requirements of this Section 141.25.

- Oregon Supplements to the *Manual on Uniform Traffic Control Devices*

- *Manual of Uniform Traffic Control Devices*
- AASHTO, “A Policy on Geometric Design of Highways and Streets” (Green Book), 5th Edition, 2004
- *AASHTO Roadside Design Guide*
- National Electric Code (NEC) and National Electric Safety Code (NESC)
- *ODOT Traffic Manual*
- *ODOT Traffic Sign Design Manual*
- *ODOT Traffic Signal Design Manual*
- **DB Standard Special Provisions**
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)
- The appropriate ODOT/APWA Standard Construction Drawings from the following site: <http://www.odot.state.or.us/tsroadway/std-dwg-02.htm>
- ODOT submittals for Field Qualification Equipment and Materials (Blue Sheets) from the following site:  
<http://egov.oregon.gov/ODOT/HWY/TRAFFIC/Signals.shtml>
- ODOT submittals for Conditional Qualification Controller Equipment (Green Sheets) from the following site:  
<http://egov.oregon.gov/ODOT/HWY/TRAFFIC/Signals.shtml>
- ODOT Qualified Products List (QPL) at the following site:  
<http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>
- ODOT Bicycle and Pedestrian Plan

## (c) Requirements

### (1) Materials

**a. Signs** - For new signs, Design-Builder shall use all new sign Materials at the time of installation with the exception of Adopt-A-Highway and logo (business identification symbols) panels and frames. For signs that are removed and reset, new sign Materials are not required if the existing signs meet reflectivity requirements and good condition standards. Design-Builder shall use Materials from the Qualified Products List (QPL) that meet or exceed the requirements set in the **DB Standard Specifications**.

Design-Builder shall salvage and deliver all existing galvanized steel tube sign Structures and associated sign frames to Agency. Design-Builder shall dispose of all other removed signing materials and Structures.

**b. Pavement Markings** - Design-Builder shall use Materials from the ODOT Qualified Products List (QPL).

All Project-specific Materials that are required will be identified in the **DB Special Provisions**.

**c. Traffic Signals** - Design-Builder shall use all new Materials, as Identified on the ODOT Blue and Green Sheets.

**(2) Design and Construction**

**a. Signs** – Design-Builder shall develop a Sign Plan for each Work Location and wherever else within the Project corridor that it is necessary to correct signs that have been rendered inaccurate due to Project modifications. Signs shall be installed according to the plan and in compliance with the Standards listed in Subsection (b) above.

**b. Pavement Markings** – Design-Builder shall develop a Pavement Marking Plan for each Work Location, and shall apply Pavement markings according to the plan and in compliance with the Standards listed in Subsection (b) above.

**c. Traffic Signals** – Design-Builder shall develop a Traffic Signal Plan for each Work Location requiring signals, and shall design and install traffic signals in accordance with the plan and in compliance with the Standards listed in Subsection (b) above.

**(3) Submittals** – Design-Builder shall submit the following to Agency PM for Review and Comment:

- **Sign Plans** – at Readiness-for-Construction
- **Pavement Marking Plans** – at Readiness-for-Construction
- **Traffic Signal Plans** – at Readiness-for-Construction

**DB Section 141.26 - Pavement**

**(a) Scope** - This Section covers the design and construction of new and existing Pavement sections and sampling and testing for Pavement investigations. Design-Builder shall design and construct Pavement sections in accordance with the criteria established in this Section such that the Pavement will perform under the given conditions (climate and loading), for the specified periods. These criteria shall apply to mainline, frontage and access roads, detours, ramps and connections.

**(b) Standards and References** - Design-Builder shall design and construct all Pavement in accordance with the requirements of this Section 141.26.

**(1) Standards**

- Asphalt Pavement Association of Oregon “Asphalt Paving Design Guide”
- ODOT *Contractor Mix Design Guidelines for Asphalt Concrete*

- ODOT *Standard Specifications for Asphalt Materials*
- AASHTO *Guide for the Design of Pavement Structures*
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)

**(2) References**

- ODOT Standard Serials and Drawings
- Distress Manual for the Long-Term Pavement Performance Project, SHRP P-338, SHRP Program, NRC, Washington D.C.

**(c) Requirements** - All design work shall be conducted in accordance with the AASHTO *Guide for the Design of Pavement Structures* and the guidelines set forth in the Asphalt Pavement Association of Oregon “Asphalt Paving Design Guide”

**(1) Pavement Design Report** - Prior to commencement of paving Work, Design-Builder shall submit to Agency PM for Review and Acceptance a Pavement Design Report. The report shall be prepared by a Design Professional in accordance with the criteria set forth in this Section and the requirements and the Asphalt Pavement Association of Oregon “Asphalt Paving Design Guide”. The report shall address Pavement performance and maintenance issues related to potential settlement and slide activity, and shall include a detailed statement describing the general approach for sampling and testing, design, construction, and the rationale for selection of the proposed construction and engineered design methods. The report shall incorporate all finalized scope and design information obtained by Design-Builder, and any comments provided by Agency.

**(2) Design** - All Pavement sections shall be designed and constructed to perform as specified herein for periods of not less than those specified herein. Design-Builder shall provide designs for Pavement sections that meet the following minimum service life requirements:

- New or reconstruction sections using asphalt concrete Pavement – 20 years
- New or reconstruction sections using Portland cement concrete Pavement – 30 years
- Bridge end panels – 30 years
- Pavement rehabilitation – 15 years

Pavement design sections for Bridge end panels shall be constructed for a minimum distance of 200 feet from each end of the Bridge, and wearing surface of the rebuilt Pavement shall match the existing asphalt concrete Pavement (ACP) surface. When the surface is continuously reinforced concrete Pavement (CRCP), the rebuilt section shall be a minimum of 40 feet and match the existing Pavement. Chapter 8 of the ODOT Pavement Design Guide provides minimum acceptable Bridge end panel design sections for various traffic levels. Design-Builder may, in its discretion, use information regarding subsurface conditions and existing Pavement sections as provided by Agency.

Design-Builder shall provide Pavement sections that accommodate surface and subsurface drainage, giving due consideration to frost and elimination of trapped water.

Design-Builder shall utilize the existing Pavement to the maximum extent possible, provided that in doing so, safety, maintainability, durability, structural adequacy, and driver comfort and safety are not compromised.

Design-Builder shall investigate and design Pavement sections at a minimum in accordance with the requirements set forth in the ODOT Pavement Design Guide for the following conditions:

- Rehabilitation of existing Pavement sections
- Required field investigations – in accordance with Chapter 4 of the ODOT *Pavement Design Guide*
- Anticipated Work Zone traffic volumes (identified by Agency in **DB Special Provisions**, SP 141.31)
- Effects of moisture on overall performance of the Pavement

**a. Design Input Parameters** - The following input parameters shall be used in developing all Pavement designs associated with the Project.

**1. Material Properties**

- Asphalt Concrete layer coefficient = 0.42
- Aggregate Base layer coefficient = 0.10
- Aggregate Base resilient modulus = 20,000 psi

**2. Subgrade Soil Properties** - The Pavement Design Report shall provide for a Subgrade with a minimum resilient modulus value of 5,000 psi. Acceptable methods may include, but are not limited to:

- Provide quality embankment materials
- Subgrade stabilization

In addition, a Subgrade geotextile shall be incorporated into all new or reconstructed Pavement sections.

**3. AASHTO Specific Input Parameters:**

- Initial serviceability for flexible Pavement = 4.2
- Initial serviceability for rigid Pavement = 4.5
- Terminal serviceability = 2.5

A minimum reliability of 85 shall be used. This is consistent with Table 5.3.1 of the ODOT *Pavement Design Guide*.

Design-Builder shall select the overall standard deviation value based on recommendations found in the AASHTO *Guide for the Design of Pavement Structures*.

**b. Materials** - The selection of Materials shall be based on the requirements of the APAO *Asphalt Pavement Design Guide*, and shall meet or exceed the requirements of this Section and the Standard Drawings.

Design-Builder shall submit all mix designs to Agency PM for review and Acceptance.

**c. Ride Quality** – The smoothness Specification portion of **DB Standard Special Provisions**, Section 00745 (00745.70, 00745.72, 00745.73, 00745.75, and 00745.96) must be complied with for the Project and will be used to evaluate ride quality.

**(3) Submittals** - Design-Builder shall submit the following to Agency PM. All submittals shall be prepared in accordance with the requirements of this Section and the APAO *Asphalt Pavement Design Guide*.

- **Pavement Design Report** – at Readiness-for-Construction
- **Pavement Plans (cross-sections) and Design-Builder Specifications** – at Readiness-for-Construction
- **Pavement mix designs** - at least 30 Calendar Days prior to the scheduled date of installation for each affected Pavement section

### **DB Section 141.27 - Landscaping**

**(a) Scope** - This Section covers the requirements for development and implementation of a Project Landscaping Plan that includes:

- Aesthetic slope treatments
- Reforestation (i.e. tree replacement)
- Revegetation Plans
- Noxious Weed Control Plan
- Seeding and plant Establishment Period
- Mitigation Plans

**(b) Standards** – Design-Builder shall design and construct landscaping in accordance with the requirements of this Section 141.27.

- *AASHTO Roadside Design Guide*
- **DB Standard Specifications** (Parts 00200 through 03000 of the *Oregon Standard Specifications for Construction*)

**(c) Requirements**

**(1) Landscaping Plan** – Design-Builder shall design and incorporate aesthetic treatments on slopes, replace Mature Trees (defined below), and provide for the reforestation and revegetation of disturbed areas in accordance with a Landscaping Plan. The final product shall provide the means to mitigate potential visual impacts, while minimizing maintenance and providing a long service life. The Landscaping Plan shall provide for trees, plants and vegetation that match the natural environment of the Project Site. For the purposes of this Section 141.27, a “Mature Tree” is a tree that has reached 75% of its full canopy growth.

Design-Builder shall develop and implement the Landscaping Plan under the direction of a Landscape Architect licensed by the State Landscape Contractors Board with experience in either urban or rural Highway projects, whichever is relevant to the Project.

**a. General** - At a minimum the landscape design shall provide:

- Continuity of overall visual quality along the Project corridor
- Visibility of plantings from ROW, adjacent frontage roads and the surrounding area
- Extended service life of plantings
- Ease and cost-effectiveness of plant maintenance and repair

**b. Slope Retention Systems** - Design-Builder shall revegetate new cut and fill slopes where the Soil conditions and slope grade make revegetation feasible, and shall use planting methods that facilitate root development on Slopes steeper than 2:1 (horizontal: vertical).

**c. Tree Replacement and Revegetation Requirements** - Design-Builder shall limit the removal of existing vegetation (including trees) to the area within the construction slope limits and the adjacent area within the Project Site or Work Location needed for the operation of construction vehicles (a maximum of 10 feet outside of the constructed slope).

Prior to the start of Project construction activities, Design-Builder shall clearly mark trees and other vegetation to be saved, as well as those to be removed.

Design-Builder shall develop and implement a Tree Replacement Plan with input from State and federal regulatory Authorities. Design-Builder shall identify the planting locations, the replacement quantities, tree size and type, and planting technique that will be used to replace trees removed during Project construction.

Prior to commencement of construction activities, Design-Builder shall resurvey the Project Site and each Work Location to determine the extent of noxious weed populations and develop a Noxious Weed Control Plan.

**(2) Seeding and Plant Establishment Periods** - Design-Builder shall comply with **DB Standard Specifications**, Sections 01030 - Seeding, and 01040 - Planting.

**(3) Submittals** - Design-Builder shall submit the following to Agency PM:

- **Landscaping Plan** - at Readiness-for-Construction and prior to start of construction of Project elements impacted by or impacting the Landscaping Plan
- **Noxious Weed Control Plan** - included as part of the Landscaping Plan
- **Tree Replacement Plan** - included as part of the Landscaping Plan
- **Mitigation Plan** – included as part of the Landscaping Plan

### **DB Section 141.31 - Temporary Traffic Control**

**(a) Scope** - This Section covers the design and implementation of temporary traffic control measures, and the contents of the Temporary Traffic Control Plan that Design-Builder is required to develop. Design-Builder shall provide for temporary traffic control throughout the Project Site to maximize the safe and efficient movement of traffic while minimizing construction impacts to residents, commuters, and business. The traffic-control measures shall also provide for the safety of Design-Builder's forces and others engaged in performing Work or other activities on the Project Site.

**(b) Standards and References** – Design-Builder shall plan, design, construct and implement traffic-control measures (TCM) in accordance with the requirements of this Section 141.31.

#### **(1) Standards**

- *Manual on Uniform Traffic Control Devices (MUTCD) and Oregon Supplements*
- *ODOT Traffic Control Plans Design Manual and appropriate Technical Bulletins: [www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/traffic\\_control.shtml](http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/traffic_control.shtml)*
- *AASHTO Roadside Design Guide*
- *ODOT Traffic Line Manual*
- *ODOT Sign Policy and Guidelines for the State Highway System*
- *ODOT Policy on the Use and Operation of Portable Changeable Message Signs*
- *ODOT Qualified Product List (QPL) at the following site: <http://egov.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/Docs/QPL.pdf>*
- *MUTCD Standard Highway Signs Policy*
- *ODOT Traffic Manual*

- ODOT/APWA Oregon Standard Construction Drawings available online at: [www.oregon.gov/ODOT/HWY/ENGSERVICES/standard\\_drawings\\_home.shtml](http://www.oregon.gov/ODOT/HWY/ENGSERVICES/standard_drawings_home.shtml)
- **DB Standard Special Provisions**
- **DB Standard Specifications**
- All appropriate **Unique Special Provisions**, under Sections 00220 and 00225 available on-line: [www.oregon.gov/ODOT/HWY/SPECS/unique.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/unique.shtml)
- “Guidelines for the Operation of Variable Message Signs on State Highways, Supplement B: Use of Portable Variable Message Signs. Available at: [www.oregon.gov/ODOT/HWY/TRAFFIC/TEOS\\_Publications/PDF/Guidelines\\_for\\_FMS\\_on\\_State\\_Highway.pdf](http://www.oregon.gov/ODOT/HWY/TRAFFIC/TEOS_Publications/PDF/Guidelines_for_FMS_on_State_Highway.pdf)

**(2) References**

- National Cooperative Highway Research Board (NCHRP) Report 350
- Corridor Level Traffic Management Plan (TMP)

**(c) Requirements** - Design-Builder shall prepare, submit and maintain a Project-level Transportation Management Plan (TMP) over the course of the Project. A TMP is a comprehensive collection of Traffic Control Plans (TCP) and staging design decisions, implementation strategies, and other documentation relating to how Design-Builder plans on handling traffic operations during the life of the Contract. The TMP shall include any documentation pertaining to Public Information (PI) campaigns that provide advance and active notification to the public about all traffic management strategies. The TMP shall include documentation pertaining to all Traffic Operation (TO) strategies discussed and implemented to help mitigate traffic volumes through the Work Zone during the Project. The TMP shall also be coordinated with the Agency’s Corridor Management Plan.

Design for the TCP for each Work Zone shall be developed by an experienced Designer with exposure to the following:

- Temporary traffic-control features and devices
- Traffic safety and operations
- Construction staging and practices

and who has completed the following courses provided by ODOT:

- Traffic Control Plan Design Workshop
- Work Zone Traffic Analysis

The design for the TCPs must comply with the following elements at a minimum:

- Project-level TMP
- **DB Standard Special Provisions**
- **DB Standard Specifications**
- ODOT Standard Drawings applicable to the Project

- **Design-Builder Specifications**
- List of appropriate Traffic Control Devices (TCDs) to be used on the Project
- Protection and adequate guidance for traffic control during all phases of construction

Construction support for the management of the TCP shall include the following elements at a minimum:

- Management, Inspection, maintenance and protection of traffic control activities and devices
- Safe and efficient traffic control within the Project Site during construction and periods of suspension of Work, particularly at intersections with State or local Highways
- TCMs relating to access to private and public property within the Project Site, as well as adequate protection and mobility for bicycles and pedestrians, while meeting current ADA requirements.

Engineering for the TMP and the associated TCPs must be performed under the direction of the Traffic Control Design Engineer (TCDE).

If required in the **DB Special Provisions**, the TMP, TCMs, and the Work Zone TCPs shall be based on the Passenger Car Equivalent (PCE) capacity charts provided by Agency. Design-Builder shall be responsible for developing the traffic-control system that best meets these requirements and the construction activities. Traffic analysis and lane closure charts are all bi-products and tools used by Design-Builder to develop comprehensive TCPs. Each TCP must go through Agency review and Acceptance prior to commencement of construction activities on the applicable Work Zone.

**(1) Key Personnel for Design, Management and Inspection** - Design-Builder shall provide the following Key Personnel for traffic control development and maintenance for the duration of the Project.

**a. Traffic Control Design Engineer (TCDE)** - Design-Builder shall provide a TCDE to implement and manage the development of the Project-level TMP, the design of the TCPs, and any modifications throughout the management and Inspection of temporary traffic control.

**1. Duties** - The TCDE shall:

- Serve as Design-Builder's point of contact with Agency for all TCP traffic management related issues and design coordination
- Lead the development of the Project-level TMP
- Lead and approve the design of the TCP for the appropriate construction sequence
- Confirm TCP requirements and details with Agency PM
- Be present in the field at the time of implementation to certify that the temporary traffic-control measures are in compliance with the TCP

- Identify deficiencies in the TCP and report findings to Design-Builder's Project Manager and Agency PM
- Lead in making necessary corrections to the TCP prior to implementation
- Attend all Project meetings where traffic control measures and construction staging are discussed
- Work with the Traffic Control Supervisor (TCS) to coordinate traffic-control operations of contractors, Subcontractors, Utility owners, and other Entities to ensure that their operations satisfy the following:
  - ◇ Their individual traffic-control needs and activities have been addressed
  - ◇ Their TCPs are coordinated with other measures in place within the Project Site
  - ◇ The same design Standards are used in the design of the individual TCPs

**2. Certifications** – The TCDE must be a Professional Engineer (PE) registered in the state of Oregon. The TCDE who provided the direct supervision of the Work shall stamp all TCP plan sheets, reports, maps, drawings and calculations.

**b. Traffic Control Supervisor (TCS)** - Design-Builder's TCS shall provide traffic-control management in the field.

**1. Duties** - The TCS must have readily available at all times the most current version of the:

- TCP
- **DB General Provisions**
- All applicable **DB Special Provisions**
- Applicable **DB Standard Special Provisions**
- **Plans and Design-Builder Specifications**
- *Oregon Standard Specifications for Construction*
- ODOT/APWA Oregon Standard Construction Drawings
- *MUTCD*, including Part VI

The TCS shall:

- Manage and supervise the implementation of the Traffic Control Plan
- Manage and supervise the installation, moving, inspection, maintenance, replacement and removal of all temporary traffic control devices on the Project according to the TCP
- Serve as Design-Builder's point of contact with Agency for all TCP field coordination
- Implement and revise the TCP when directed by the TCDE

- Confirm TCP requirements and details with the TCDE
- As necessary, appoint a certified Traffic Control Technician to perform TCS duties in the temporary absence of the TCS
- Conduct routine inspections to identify deficiencies in the TCP and report findings to the TCDE for correction
- Work with the TCDE to coordinate traffic-control operations of contractors, Subcontractors, Utility owners, and other Entities for adherence to Contract requirements and Standards
- Notify Agency PM of all traffic flow problems and crashes within the Project Site within 24-hours of occurrence; record crash details, time and date of notification, and provide to Agency PM
- Attend all Project meetings where traffic-control measures and construction staging are discussed

**2. Availability** - Maintain a 24-hour telephone number at which the TCS can be contacted. Make arrangements so that a TCS can be available for every work shift, on call at all times, and available upon Agency’s request at other than normal working hours. During non-work periods a TCS shall report to the Project Site within 45 minutes after notification. The TCS shall have appropriate manpower, Equipment, and Materials available at all times to expeditiously correct any deficiency found in the TCP.

If Design-Builder provides multiple TCS for TCP management, Design-Builder shall provide a weekly schedule to Agency PM or designee identifying who will be providing TCP management each day (or shift if multiple shifts are scheduled) of the coming week at each Work Location and Work Zone.

**3. Certification** - Any TCS utilized by Design-Builder shall possess a current official ODOT TCS card. A TCS with a current card from another State Department of Transportation or from the American Traffic Safety Services Association may obtain an ODOT TCS card upon completion of ODOT’s one-day Recertification Class. The TCS shall have at least three (3) years of Work Zone safety supervision experience.

**c. TCP Diary** - Design-Builder shall maintain a Project TCP Diary for each Work Zone and Work Location in a format acceptable to Agency PM, and shall ensure that they are kept current on a daily basis and are signed each day by the TCS. Photographs may be included to supplement the written text. Design-Builder shall make TCP Diaries available upon request by Agency PM.

**d. TCP Inspection Details** - Design-Builder shall inspect traffic control devices as necessary, but at a minimum, according to the following schedule:

Traffic Control Device	Inspection Frequency
Pavement Markings	Weekly

Traffic Control Device	Inspection Frequency
Temporary Signs (fixed)	Weekly
Signs on Temporary Supports	Daily
Drums, Tubular Markers, Cones and Barricades	Beginning and end of each shift and as necessary dictated by weather and site conditions
Temporary Traffic Signals	Daily
Temporary Concrete Barriers, Guardrail	Weekly
Temporary Impact Attenuators	Daily
Temporary Roadway Lighting	Nightly
Electrical Signs (PCMS and Sequential Arrows)	Daily

Design-Builder shall immediately repair or replace damaged or malfunctioning traffic-control devices.

**(2) Project-Level TMP Organization** - Design-Builder shall prepare and submit a Project-level Transportation Management Plan (TMP). The TMP will serve as a stand-alone document, but shall reference the TCPs, where appropriate, who can clarify information on Project phasing and construction sequences. Design-Builder shall deliver the draft TMP to Agency PM for Review and Comment followed by finalization of the TMP prior to any construction commencing. Design-Builder shall work with Agency in the development of the TMP as it relates to the Corridor Management Plan and overall mobility policy.

**a. TMP Structure** - The supporting documentation for the TMP shall consist of all correspondence, meeting minutes, calculations, models, and agreements. The supporting documentation shall demonstrate how the TCP will provide the best solution for mobility within the Project Site and corridor. A TMP Guidance Document, including additional explanation and document structure information, is available at: [http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/traffic\\_control.shtml](http://www.oregon.gov/ODOT/HWY/TRAFFIC-ROADWAY/traffic_control.shtml)

**b. Stakeholder Identification and Input** - Stakeholders may provide input by identifying other projects, events, or mobility concerns. Design-Builder shall evaluate such information in the TMP. Those concerns that may impact mobility shall be identified and mitigation measures described.

**(3) TCP Organization** - Design-Builder shall prepare and provide to Agency PM for review and acceptance a Work Zone TCP prior to commencement of construction activities and before installing temporary traffic control devices. The TCP shall identify stages and phases for the Work Zone and each Work Location, and provide appropriate operating procedures. Design-Builder shall update the TCP, as necessary throughout the construction activities. Design-Builder shall use the TCP to identify the location,

quantity, and type of temporary traffic-control devices to be used in the Work Zone and in each Work Location. Plan sheets shall demonstrate the sequencing of construction. The TCP shall identify detours or diversions required for each construction stage. Designating a stage as “construct under traffic” shall not be used.

The TCP shall address, but not be limited to:

- Lane geometry, including alignment and super elevation compatible with the design speed
- Posted speed(s)
- Signing (information, guidance, warning, regulatory)
- Channelization
- Bicycle, Pedestrian and ADA accommodations
- Worker safety
- Motorist safety
- Construction vehicle and equipment traffic ingress and egress

The TCP will be measured against the TMP. No TDC may be installed or utilized, or element of the TCP implemented, without the concurrence of Agency PM.

The Plan shall identify the sequence for mobilization, construction staging, and diversion of traffic (if necessary) for the Work Zone and each Work Location, and shall include contingency plans for working with utility companies, railroad, and other third parties that have potential to disrupt the traffic flow.

Fourteen Calendar Days prior to commencing construction, Design-Builder shall notify all affected property owners, tenants, and public and emergency service providers in writing. Design-Builder shall make adjustments to the TCP necessary to address specific access issues.

Design-Builder shall maintain access at all times to all businesses, residences, institutions, and properties adjacent or in close proximity to the Work Zone. If short-term closures of driveways or approaches are necessary for construction, those affected shall be identified in **Design-Builder Specifications**. The TCP shall include a maximum closure duration for each.

Design-Builder shall include in the TCP any special access needs of property owners and tenants, such as business hours, delivery schedules, circulation patterns and residential access. Design-Builder shall maintain a record of all negotiations between Design-Builder and the affected businesses and residences, and shall submit to Agency PM prior to Acceptance of Definitive Design any written documentation that supports residents’ or business owners’ approval to temporarily or permanently close a current driveway.

Driveways and Access Roads requirements / limitations:

Item	Requirement / Limitation
Roadway surface	Pavement
Grade	Not to exceed Design Vehicle
Alignment	Not to be more restrictive than Design Vehicle
Temporary combined access	Acceptable with concurrence of affected parties
Gates and fences	Maintain existing features or replace-in-kind
Access width	Not less than 14 feet unless otherwise agreed upon by affected parties
Drainage	Maintain existing drainage
Notice of Change in access	At least 24-hours by personal contact with affected party
Maintenance of access road surface	Required to the limits of Agency ROW
Design vehicle	Largest vehicle likely to use access including emergency vehicles

Design-Builder shall maintain access for essential non-emergency services, such as trash collection, mail delivery, and school bus stops. Design-Builder shall provide and implement a Sign Plan for temporary traffic control identifying access with a Type “B” “BUSINESS ACCESS” (CG20-11-610) sign. Locate and install these signs as required.

**(4) TCP Processes** - Design-Builder shall prepare and submit to Agency PM for Agency review and Acceptance a TCP for each Work Location and Work Zone prior to commencement of construction activities, so as to maintain safe and efficient traffic operations during construction activities. The TCP, including any plan sheets, the applicable **DB General Provisions, DB Special Provisions, DB Standard Special Provisions, DB Standard Specifications,** and a list of applicable Standard Drawings, shall be submitted in accordance with the submittal schedule set out in Subsection (d), below. Design-Builder shall coordinate the review of the TCP with the review of applicable designs. Design-Builder shall use the TCP to identify the appropriate location, quantity, and type of temporary traffic-control devices to be used in the Work Zone. TCP plan sheets shall be used to describe the construction staging sequence. The TCP shall also be used to identify on-site diversions and/or detours required for each stage of construction.

Design-Builder shall update the TCP as necessary throughout the construction activities. Unless emergency circumstances exist or unforeseen conditions develop, if revisions to the TCP are necessary, Design-Builder shall provide proposed TCP revisions to Agency PM for Review and Comment at least 14 Calendar Days in advance of implementing the revisions. In the case of emergency circumstances, Design-Builder shall provide as quickly as possible to Agency PM for review and Acceptance changes to the TCP necessitated by the circumstances.

Design-Builder shall have all appropriate signs in place advising the public of scheduled detours, closures and alternate routes, and their durations, prior to implementing the provisions of the TCP. Design-Builder shall provide sufficient signing for each detour, closure, and/or alternate route. The TCDE shall inspect all signs and sign placement before the signs are uncovered for the public. The TCDE shall review in the field, with the installer and TCS, all temporary Pavement marking locations immediately prior to installation.

**(5) TMP and TCP Compliance** - Design-Builder shall be responsible for TMP and TCP compliance and implementation. Agency PM may suspend all or part of Design-Builder's operations for failure to implement and comply with the TMP or any TCP. Agency PM may also suspend all or part of Design-Builder's operations for failure to immediately initiate corrective measures for unsafe traffic conditions and complete their implementation in the shortest practicable time. If Design-Builder does not promptly take appropriate action to bring the deficient condition(s) into compliance or to correct unsafe traffic conditions, Agency PM may proceed with corrective action, using Agency forces or other forces, and deduct such costs from monies due or to become due Design-Builder under the Contract.

**(6) Specific Technical Requirements / Limitations** – See Section **SP141.31(c)(6) Specific Technical Requirements/Limitations of the DB Special Provisions** for unique and specific requirements that must be considered when developing both the Project-level TMP and the TCP for each Work Zone and Work Location.

**(7) Submittals** - Design-Builder shall submit the following to Agency PM for Review and Comment or as otherwise specified:

- Draft TMP that provides an overall plan of general traffic operations during construction – within 75 Calendar Days of NTP or 15 Calendar Days prior to Definitive Design, whichever occurs first
- **Final TMP incorporating Agency comments, if any** – prior to commencing construction
- **Conceptual TCP** – at Definitive Design
- **Final TCP** – at Readiness-for-Construction
- **Proposed revisions to the TCP** – at least 14 Calendar Days in advance of implementation of revisions
- Weekly schedule identifying who, other than the TCS identified in the DB Agreement, will be providing TCP management each shift of the coming week
- Weekly Traffic Volume and Speed Measurements Report
- **Updated Emergency Vehicle Access Plans** – at least seven (7) Calendar Days prior to starting construction activities in any Work Zone after consulting with emergency service providers, and updated plans immediately upon plan revision
- Temporary Traffic Control Sign Plans for non-emergency services
- **Updated property access information** - at least seven (7) Calendar Days prior to commencement of construction activities

- Business and residence written documentation for temporary and permanent access closures – prior to acceptance of Readiness-for-Construction plans
- **Project TCP Diaries** – available upon request by Agency PM and as part of the final Project Records

### **DB Section 141.51 - Environmental Compliance**

**(a) Scope** - This Section covers requirements applicable to environmental Work, including requirements for preparing or obtaining studies, for mitigating impacts, for obtaining permits, clearances, and approvals, and for monitoring activities. It also covers the required content of the Environmental Compliance Plan that Design-Builder is required to develop and implement.

**(b) Standards; Environmental Permits, Programmatic Agreements, Orders, Opinions, Clearances, Authorizations and Studies** - Design-Builder shall perform all environmental Work in accordance with the requirements of this Section 141.51.

#### **(c) Requirements**

**(1) Regulatory Authority Communications** - All substantive contact with regulatory Authorities by Design-Builder shall be conducted by the appropriate, qualified environmental task lead or the Environmental Manager. Design-Builder shall fully review guidance material available on the regulatory Authorities' internet sites before contacting the Authorities. Design-Builder shall not contact the regulatory Authorities before Agency Acceptance of the Environmental Compliance Plan without prior approval of Agency PM.

**(2) Protocols for Communicating with Regulatory Authority Liaisons** - Agency is making the liaisons available to Design-Builder for the Project if the following protocols are followed:

- Communication is conducted in a professional, respectful manner
- Discussions with any level of the regulatory Authority organization above the liaison occur only with prior authorization from Agency
- Only technically-proficient staff that are experienced with that regulatory Authority communicate with the liaisons
- Adequate review and response time is provided

**(3) Regulatory Authority Contacts** - Contact personnel for each of the following regulatory Authorities will be provided upon Acceptance of the Environmental Compliance Plan.

**(4) Regulatory Authority Internet Sites** - The following is a list of regulatory Authority internet sites which may be helpful:

- DSL: <http://www.oregon.gov/DSL/index.shtml>
- USFWS: <http://www.fws.gov/> or <http://www.fws.gov/pacific/>
- DEQ: <http://www.deq.state.or.us/>
- NMFS: <http://www.nwr.noaa.gov/>
- USACE: <http://www.nwp.usace.army.mil/home.asp>
- SHPO: <http://egov.oregon.gov/OPRD/HCD/>
- ODFW: <http://www.dfw.state.or.us/>
- DLCD: <http://www.lcd.state.or.us/>
- APHIS: <http://www.aphis.usda.gov/>
- EPA: <http://www.epa.gov/>

**(5) Permit Agreements** - The following permit agreements may be applicable to the Project:

- Department of the Army Permit – US Corps of Engineers
- 401 Water Quality Certification Permit –Department of Environmental Quality
- Removal/Fill Permit – Department of State Lands
- Piling Permit – Department of State Lands
- Fish Passage Permit (if needed) – Oregon Department of Fish and Wildlife

**(6) Environmental Performance Standards** - These permits and agreements shall be utilized and complied with, in the performance of the Work. If Design-Builder concludes that the permits and agreements are not feasible for the Project, Design-Builder shall submit documentation explaining the basis of that conclusion to Agency PM. The documentation shall address impacts to Project scope, schedule, budget and the ability to meet the Project goals. The documentation will be included in the Environmental Compliance Plan.

**(7) Studies** - Agency may have conducted certain environmental studies pertaining to the Project, as indicated in the DB Project Special Provisions.

**(8) Permits** - Design-Builder shall apply for and obtain all necessary environmental permits not previously obtained by Agency. Design-Builder shall prepare the design and conduct construction activities such that no action or inaction on the part of Design-Builder shall result in non-compliance with the requirements of Laws applicable to the project.

**(9) Environmental Compliance Plan** - Design-Builder shall prepare and implement an Environmental Compliance Plan by the date required in Subsection (13), and shall update the plan as needed, as new fieldwork is completed, and as new or modified mitigation or environmental compliance strategies are developed throughout the term of the Contract.

The Environmental Compliance Plan is part of the Quality Plan and shall be formally Accepted by Agency. New information or modified information, mitigation plans, and compliance strategies developed throughout the term of the Contract and added to the Environmental Compliance Plan shall also be formally Accepted by Agency through the submission of an updated Quality Plan. (See DB General Provisions, Section 154.) All permits, clearances, and approvals shall be incorporated into the Environmental Compliance Plan as they are issued by the regulatory Authorities, and therefore shall also become part of the Quality Plan.

The Environmental Compliance Plan shall (a) identify all applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations and their requirements; (b) identify key environmental compliance personnel roles and responsibilities; (c) identify procedures for achieving and documenting environmental compliance; (d) establish procedures for identifying and resolving non-compliance; and (e) establish procedures for emergency response. In addition, the Environmental Compliance Plan shall address the process and procedures Design-Builder's environmental team will employ to ensure 100 percent compliance with environmental permits, programmatic agreements (if using), orders, opinions, clearances and authorizations, and protection of the environment. The Environmental Compliance Plan shall also include a schedule for accomplishment of each activity. In addition to the foregoing, the Plan shall include:

- a.** Environmental inspections and investigations to determine the direct and indirect effects of the Project (design elements and construction activities) on terrestrial and aquatic biological resources, cultural resources, visual and aesthetic conditions, water quality, and other issues present in the Project area.
- b.** Environmental constraints maps, including location and extent of Wetlands, waterways, habitats, cultural resources and other sensitive environmental resources.
- c.** Strategy for coordinating with Agency on cultural resources documentation for archaeological/historic clearances at each Work Location, and preparation of the necessary documentation for submittal to the SHPO for clearances, and final receipt of SHPO clearance.
- d.** Strategy for coordinating with Agency to consult and coordinate with Native American tribes and address tribal issues.
- e.** Completion of applications for all required environmental permits, and accumulation of all documentation required for environmental clearances and authorizations. Design-Builder shall deliver a copy of all permit applications to Agency PM for Review and Comment at least seven (7) Business Days prior to submittal to the permitting Authority. In addition, Design-Builder shall deliver to Agency PM copies of all permits, orders, clearances, and authorizations obtained from regulatory Authorities upon receipt.

- f.** Plan for implementation of all actions required under environmental permits, orders, clearances, and authorizations obtained by Agency.
- g.** Plans for mitigating and remediating impacts on Wetlands, wildlife and wildlife habitat, water quality, visual and aesthetic resources, cultural resources, threatened and endangered species, storm water, and other resources.
- h.** Environmental compliance team roles, responsibilities and authority, and communication protocols for environmental matters, including communications with regulatory Authorities.
- i.** Identification of all required environmental permits and approvals. Include:
  - 1.** List of all environmental permits and approvals obtained (including those obtained by Agency), identifying the issuing regulatory Authority and Authority contact information.
  - 2.** List of all environmental permits and approvals to be obtained, and dates of anticipated issuance by regulatory Authorities.
  - 3.** Date and duration of approval, and any conditions stipulated in each environmental permit and approval obtained.
  - 4.** Key restrictions or limitations (e.g., limit of Wetland fill, dates of in-water Work activities, mitigation requirements).
  - 5.** Programmatic agreements, if any, which are not anticipated to be used and the rationale for not using them.
  - 6.** Variances, if any, anticipated to be needed from programmatic permits (if using), and the rationale for why they are necessary.
- j.** Procedures for plan implementation. Include:
  - 1.** Implementation schedule, including key construction dates.
  - 2.** Estimated dates and length of construction activities in or near environmental features.
  - 3.** Procedures to avoid or minimize adverse effects during temporary water management activities (dewatering, flow diversion, etc.).
- k.** Level of anticipated regulatory Authority participation in Project activities. Include:

1. Description of required regulatory Authority involvement, if any, including attendance at Project meetings.
  2. List of regulatory Authorities to receive monitoring reports, newsletters, or Project updates.
  3. Identification of the technical lead responsible for substantive contacts with regulatory Authorities.
- l.** Levels of responsibility and authority of:
1. On-site staff (e.g., Project Manager, Project Quality Manager, Construction Manager).
  2. Other local office staff.
  3. Environmental Manager.
  4. Environmental Team.
- m.** Environmental controls and mitigation methods such as, but not limited to:
1. Sediment/erosion control and water quality.
  2. Dust control and air quality.
  3. Wetland and wildlife protection.
  4. Waterway and fish protection.
  5. Cultural resources protection.
  6. Noise control.
  7. Hazardous Material/waste management.
- n.** Procedures for inspection, monitoring, and corrective and preventive actions. Include:
1. A compliance monitoring and reporting program that identifies frequency of monitoring, reporting format (provided by Agency, or an equivalent), and personnel responsible for monitoring.
  2. Procedures for reporting and record-keeping, including an Environmental Logbook that shall contain copies of the monitoring reports, a photographic record (photograph files shall be maintained in .jpg or .tiff format), and all

applicable environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations.

- 3.** Procedures for reporting and handling noncompliance, including the names of regulatory Authority contacts to be notified, the means by which notification is to be accomplished, and the timeframe for notification (note that if non-compliance with Tribe and SHPO requirements arise, Design-Builder shall promptly alert Agency PM and assist Agency in consultation.).
  - 4.** Names of Key Personnel responsible for implementing corrective or preventive action.
  - 5.** Follow-up procedures and documentation of implementation of corrective action.
- o.** Procedures for final monitoring inspections to assess compliance with permit requirements and the long-term beneficial effects of achieving the goals of the applicable environmental performance Standards. Final monitoring reports shall be completed within 30 Calendar Days of the final inspection and shall include:
- 1.** Summary of the construction history at each Work Location, including significant deficiencies or incidents that may have occurred during the life of the Project and the corrective actions taken.
  - 2.** General assessment of the overall compliance of each Work Location with the Environmental Performance Standards and the requirements of the various environmental permits, programmatic agreements, orders, opinions, clearances, and authorizations for the Project.
  - 3.** Successes, failures, and remedial actions for site restoration and compensatory mitigation sites.
- p.** Procedures for emergency response. Procedures shall include:
- 1.** The names of Design-Builder and regulatory Authority emergency response contacts, and office, 24-hour and mobile telephone numbers, e-mail address, and work address for each contact.
  - 2.** Emergency Response Plan.
- q.** Environmental training program (Employee Awareness Training) processes. Program processes shall include:
- 1.** A description of any special training needs.

2. A schedule for orientation and field meetings required to inform key staff of the environmental compliance issues associated with the Project.

3. Process to track training efforts, including dates, topics, and staff trained.

**(10) Basis of Compliance** – Refer to the DB Special Provisions for a discussion of assumptions related to the environmental basis of compliance. If during the term of the Contract design activities change the validity of those assumptions, or Design-Builder wishes to put forth a Cost-Reduction Proposal, Design-Builder shall review and revise the Basis of Compliance pursuant to ODOT, FHWA, FEMA, and NEPA guidance, and shall submit it to Agency PM upon completion. Agency will not approve any change that would result in a change in the NEPA classification. Design-Builder shall bear any schedule or cost risk associated with the proposed design change.

**(11) Status Reports and Meetings** - Design-Builder shall provide weekly environmental status and compliance reports to Agency PM. In addition, Design-Builder shall arrange and schedule weekly or bi-weekly meetings, depending on the level of permitting and construction activity in or adjacent to environmentally sensitive areas with Agency PM to review Project compliance with permits and approvals. Meeting minutes shall be prepared and distributed within five (5) Business Days of the meeting.

**(12) Compliance Coordination Meetings** - Design-Builder shall coordinate with Agency and regulatory Authorities to ensure adequacy of environmental compliance submittal materials. Coordination efforts shall include a mandatory Environmental Compliance Plan review meeting and pre-application submittal meetings, as necessary.

**a. Environmental Compliance Plan Review Meeting** - Design-Builder shall schedule a meeting with Agency PM for the purpose of presenting the overall environmental compliance strategy contained within the draft ECP. The meeting shall be held within five (5) Business Days of draft ECP submittal. Design-Builder shall ensure that the following team members participate in the meeting:

- Project Manager
- Design Manager
- Construction Manager
- Environmental Manager
- Project Quality Manager

**b. Permit Pre-Application Submittal Meetings** - Design-Builder shall schedule a meeting with the appropriate regulatory Authority personnel and Agency PM for the purpose of ensuring that application submittal materials will meet necessary requirements. Design-Builder shall record regulatory Authority comments at the meeting and include a log describing how each comment was resolved in the

submitted application materials. Design-Builder shall ensure the following team members participate in the meeting:

- Environmental Manager
- Relevant Environmental Technical Lead, if different than the Environmental Manager

**(13) Submittals** - Design-Builder shall submit the following to Agency PM and appropriate regulatory agencies as needed:

- **Draft Environmental Compliance Plan (part of the draft Project Quality Plan)** - within 30 Calendar Days after NTP, and prior to start of any Work
- **Final Environmental Compliance Plan (part of the final Project Quality Plan)** - must be Accepted by Agency within 60 Calendar Days of NTP or Work shall be stopped
- **Permit applications** – at least seven (7) Business Days prior to submittal to permitting Authority
- **Environmental permits and authorizations, by Work Location** - incorporated into Environmental Compliance Plan upon receipt
- **Weekly Status/Compliance Reports** - weekly
- **Construction Monitoring Report(s)** - frequency and content as determined in the Environmental Compliance Plan
- **Post-Construction Monitoring Report, by Work Location** - within 30 Calendar Days of the final inspection

Agency PM shall have at least 10 Business Days to complete review of all submittals.

## **DB Section 150 – Control of Work**

**DB150.00 Authority of Agency** - Agency has full authority over the Work and its suspension. Design-Builder shall perform all Work to the complete satisfaction of Agency PM. Agency's determination shall be final on all matters, including, but not limited to the following:

- Quality and acceptability of Materials and workmanship
- Measurement of unit price Work
- Timely and proper prosecution of the Work
- Interpretation of Plans and Specifications
- Payments due under the Contract

Agency's decision is final and, except as provided in **DB General Provisions**, Subsection 180.80 for adjustments of Contract Time, and **DB General Provisions**, Section 199 for claims for additional compensation, may be challenged only through litigation.

Work performed under the Contract will not be considered complete until it has passed Final Inspection by Agency and has been accepted by Agency.

Interim approvals issued by Agency, including but not limited to Third Notification, will not discharge Design-Builder from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with all Contract requirements, or for other deficiencies, the nature of which are within Design-Builder's control.

**DB150.01 Responsibility of Agency** - Agency will develop, direct, manage, and monitor performance of any clean-up/remediation or mitigations plans required for previously-unknown hazardous conditions, or unknown or unanticipated archeological sites, endangered species habitats, cultural artifacts, or biological/environmental conditions encountered on the Project Site, according to **DB General Provisions**, Section 141, and **DB Standard Specifications**, Section 00290.

**DB150.02 Agency Project Manager's Authority and Duties** - Agency has designated a Project Manager as its representative on the Project, with authority to enforce the provisions of the Contract.

Design-Builder shall direct all requests for clarification or interpretation of the Contract, in writing, to Agency PM. Agency PM will respond in writing within a reasonable time.

Contract clarification obtained from persons other than Agency PM will not be binding on Agency.

Agency PM shall have the authority to appoint Inspectors and other personnel as required to assist in the administration of the Contract.

**DB150.03 Responsibility of Design-Builder** - The Contract intent is to provide for design, Quality Management, construction, and completion of the described Work, which requires Design-Builder to do the following without limitation:

(a) Provide all required Design Services, as set out in the Contract Documents, to complete the Project according to the terms of the Contract.

(b) Perform all construction Work required to complete the Project according to the terms of the Contract.

(c) Perform such other Work, including, but not limited to Quality Management, as may be determined by Design-Builder's Design Professionals to be necessary to complete the Project according to the terms of the Contract.

(d) Prepare and provide Readiness-for-Construction Plans and Specifications necessary to complete the Project as developed, in accordance with all Contract requirements.

(e) Cooperate with Agency, Utilities and Railroads, and coordinate all Work involving Utilities and Railroads with Agency PM.

(f) Contact Agency PM for clarification of the Contract. Reduce oral clarification to writing and deliver it promptly to Agency PM for signature confirmation.

(g) Reduce all oral orders to writing and deliver them promptly to Agency PM for signature confirmation.

(h) Perform all survey Work under the direction of an appropriate Design Professional and in accordance with **DB Standard Special Provision** 00305. Design Builder shall review data provided by Agency and provide complete field surveys suitable for use in documents prepared for the Contract and meeting applicable requirements of the State Board of Technical Registration.

(i) Maintain a diary of all Work performed by the survey party. The survey diary shall constitute a Project Record. The survey diary shall contain the date, survey party names, type and location of Work, and Work accomplished. Design Builder shall furnish the originals of the survey diary to Agency PM at the end of the Project in accordance with **DB General Provisions**, Subsection 156.50.

**DB150.20 Inspection** – Design-Builder shall be responsible for Inspection of all Work through its Project Quality Manager and staff in accordance with the procedures set forth in the Quality Plan and **DB General Provisions**, Sections 154, 155, and 156. Project Quality Manager and staff are not authorized to alter or waive any provisions of the Contract.

(a) **Inspection by Agency** – Agency may inspect all Work and Materials, including Material production, fabrication, and manufacture. Inspection may include Design-Builder's

compliance with applicable safety requirements. Notify the Agency 72 hours in advance for inspections of work.

Agency's Inspections and tests are for the sole benefit of Agency and do not constitute any of the following:

- Relief of Design-Builder's responsibility for providing adequate Quality Management
- Relief of Design-Builder's responsibility for damage to the Work or damage to or loss of the Materials before Final Acceptance
- Interim or Final Acceptance of the Work or Materials
- Waiver of any Contract obligation or relief from performance of the Contract in accordance with its terms

If the Design-Builder performs work without the Agency's inspection or uses materials that the Agency has not approved, the Agency may order the affected portions of the work to be removed at the Design-Builder's expense.

**(b) Access; Uncovering of Work** - All Materials and each part or detail of the Work shall be subject to Inspection by Agency representatives. Agency PM and staff shall be allowed full access and shall be furnished with necessary information and assistance by Design-Builder to make a complete and detailed Inspection.

If Agency PM requests it, Design-Builder, at any time before Final Acceptance, shall remove or uncover such portions of the finished Work as may be directed. After examination, Design-Builder shall restore said portions of the Work to the standard required by **Design-Builder Specifications**. If the Work thus exposed or examined proves to be in compliance with all Contract requirements, the uncovering or removing and the replacing of the covering or making good of the parts removed may be paid for as Extra Work. But, if the Work so exposed or examined proves not to be in compliance with all Contract requirements, or if Design-Builder failed to document its Work or complete and/or document its Quality Management activities related to the Work, the uncovering or removing and the replacing of the covering or making good of the parts removed will be at Design-Builder's expense. Design-Builder shall remove and replace concrete foundation for Pavement or cement concrete Pavement rejected as a result of core tests at Design-Builder's sole expense.

Design-Builder shall provide at least a 72-hours' notice, or such other notice to which the Parties have agreed, before beginning Work on any item and before resumption of Work on an item after an extended break in the Work.

When a unit of government, political subdivision, Utility, or Railroad is to pay a portion of the cost of the Work covered by this Contract, Design-Builder shall provide reasonable access to such Entities for purposes of inspecting the Work. Such inspection shall in no sense make the unit of government, political subdivision, Utility, or Railroad a party to this Contract, and shall in no way interfere with the rights of either Party hereunder.

**(c) Removal of Unacceptable or Unauthorized Work** - All Work that does not conform to all Contract requirements shall be considered unacceptable unless otherwise determined Accepted by Agency.

Unacceptable Work, whether caused by poor workmanship, defective Materials, damage through carelessness, or any other cause found to exist prior to Final Acceptance, shall be removed immediately and replaced at Design-Builder's expense in an acceptable manner irrespective of the presence of, or lack of, an Agency representative at the time the Work was originally completed. This clause shall have full effect regardless of the fact that the defective Work may have been done or the defective Materials used with the full knowledge of Agency's representative. The fact that Agency representative, including Agency PM, may have previously overlooked such defective Work shall not constitute Final Acceptance of any part of it.

For Work that does not conform to the requirements of the Contract, but is Accepted by Agency, Agency will Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid to account for diminished cost to Design-Builder or diminished value to Agency, document the adjustment, and provide written documentation to Design-Builder regarding the basis of the adjustment.

**(d) Inspection Facilities** – Design-Builder shall furnish walkways, railings, ladders, tunnels, platforms and other facilities necessary to permit Agency to have safe access to the Work to be inspected. Design-Builder shall require producers and fabricators to provide safe inspection access as requested by Agency.

**(e) Sampling** – When directed, the Design-Builder shall furnish Agency with samples of Materials that Agency will test. All of Design-Builder's costs related to this required sampling are incidental.

**(f) Inspection by Third Parties** – Where third parties have the right to inspect the Work, Design-Builder shall coordinate with Agency and shall provide safe inspection access.

#### **DB150.40 Cooperation, Management, and Superintendence by Design-Builder**

**(a) Design-Build Management Personnel** - Design-Builder shall furnish all required management personnel, as specified in the Contract Documents.

**(b) Replacement of Design-Build Management Personnel** - If Agency discovers information that leads Agency to reasonably believe a person selected by Design-Builder is unqualified, does not perform satisfactory Work, or whose conduct interferes with the progress of the Work, Design-Builder shall replace such person upon the request of Agency. Design-Builder shall provide Agency at least 15 Calendar Days prior written notice of the proposed replacement and request Agency's authorization, which shall not be unreasonably withheld by Agency.

**(c) Cooperation with Agency** - Design-Builder shall cooperate with Agency personnel in prosecution of the Project as follows:

- (1) Design-Builder shall keep at a central location available within the Project Site one (1) complete set of Contract Documents at all times. At each Work Location when Work is being performed, Design-Builder's Construction Manager, or a delegated subordinate, shall possess one (1) complete set of Contract Documents.
- (2) Design-Builder shall cooperate in good faith with Agency, Inspectors, and other contractors in performance of the Work.
- (3) Design-Builder shall provide access, facilities and assistance to Agency in establishing such lines, grades and points as Agency requires.
- (4) Design-Builder shall carefully protect and preserve Agency's marks and stakes.
- (5) Design-Builder shall provide all assistance reasonably required by Agency to obtain information regarding the nature, quantity, and quality of any part of the Work.
- (6) Design-Builder shall allow Agency reasonable access to the Project Records at all times. To the extent permitted by public records laws, Agency will make reasonable efforts to honor Design-Builder's request for protection of confidential information.
- (7) Design-Builder shall furnish Agency all data necessary to determine the actual cost of all, or any part, of the Work.
- (8) Design-Builder shall diligently pursue progress of the Work according to the Baseline Progress Schedule requirements.
- (9) Design-Builder shall coordinate and control all Work required under the Contract, including without limitation the Work performed by Subcontractors.

**(d) Replacement of Design-Builder's Consultants and Subcontractors** - If Agency discovers information that leads Agency to reasonably believe a consultant, Subcontractor or Major Subcontractor is unqualified to perform the Work; Design-Builder shall replace such Major Subcontractor, Subcontractor, or consultant upon the request of Agency.

Design-Builder shall provide Agency at least 15 Calendar Days' prior written notice of the proposed replacement and request Agency's authorization, which shall not be unreasonably withheld by Agency.

**(e) Use of Consultants** – When indicated by Special Provision, Design-Builder is advised that the availability of Agency personnel on a Project is limited and Agency may hire consultants to perform some of its responsibilities for Material testing, Material weighing and checking, and/or surveying. Design-Builder shall provide Agency with a written notification that such personnel are needed a minimum of 72 hours before performing Work

requiring Material testing, Material weighing and checking, and/or surveying. If Design-Builder suspends Work for more than three (3) days on Work items requiring Material testing, Material weighing and checking, and/or surveying by Agency, Design-Builder shall again provide notice as set forth above.

Agency will not be responsible for delays occasioned by Design-Builder's failure to provide the written notice. Design-Builder shall provide such notice whether or not the Agency hires a consultant to perform the required services.

**DB150.55 Cooperation with Other Contractors** - Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of Design-Builder. If such work takes place within or next to the Project Site, Design-Builder shall have the following obligations:

- (a) Design-Builder shall coordinate Work with all other contractors or forces.
- (b) Design-Builder shall cooperate in good faith with all other contractors or forces.
- (c) Design-Builder shall perform the Work set forth in the Contract in a way that will minimize interference and delay for all forces involved.
- (d) Design-Builder shall place and dispose of the Materials being used so as not to interfere with the operations of other forces.
- (e) Design-Builder shall join the Work with that of other forces in a manner acceptable to Agency, and shall perform it in the accepted sequence with the work of the other forces.

Agency will resolve any disagreements that may arise among Design-Builder and other work forces, or between Design-Builder and Agency. Agency's decision in these matters is final.

When the schedules for the Work of Design-Builder and the work of other forces overlap, Agency will require that each contractor involved submit a current, realistic Baseline Progress Schedule to Agency. Before Agency accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, Agency will determine acceptable schedules.

Design-Builder waives any right it may have to make claims against Agency for any damages or claims that may arise because of inconvenience, delay, or loss due solely to the presence of other contractors working on the Project Site.

If the Contract gives notice of work to be performed by other forces that may affect Design-Builder's Work under the Contract, Design-Builder shall include any costs associated with coordination of the Work in the appropriate Price Item or as a portion of a Price Item.

In an emergency, contractor most immediately able to respond may repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

**DB150.60 Construction Equipment Restrictions**

**(a) Load and Speed Restrictions for Construction Vehicles and Equipment** – Design-Builder shall comply with legal mass (weight) and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

Design-Builder shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions, unless applicable Laws or Agency-Supplied Specifications provide otherwise:

- (1) Design-Builder shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on subgrades and aggregate bases.
- (2) Design-Builder shall restrict masses (weights) to legal loads, and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated bases, pavement, or wearing Courses.
- (3) Design-Builder shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of Agency. Design-Builder shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure. Design-Builder shall comply with any restrictions or conditions included in Agency's written permission.
- (4) No existing weight restrictions applicable to Work Locations at the time construction Work begins thereon can be changed, suspended, or disregarded without the express written authorization of the Agency.

**(b) Protection of Buried Items** - Design-Builder shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items and Structures that are covered, or to be covered, by fill or backfill.

**(c) Responsibility for Damages** - Design-Builder shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. Agency's permission to cross Bridges and other Structures according to Subsection 150.60(a) will not relieve Design-Builder from responsibility for load-caused damages.

**DB150.70 Detrimental Operations** - Design-Builder shall avoid operations whose methods, conditions, or timing may injure people or damage property or the Work. Damage may include without limitation, staining surfaces with mud or asphalt. When damage to Agency-owned or controlled property occurs, Agency will determine if it is to be corrected

by repair, replacement, or compensatory payment by Design-Builder. If compensatory payment is required, Agency will determine the amount. Compensatory payment may be deducted from monies due or to become due to Design-Builder under the Contract.

**DB150.75 Protection and Maintenance of Work During Construction** - Design-Builder shall protect and maintain the Work during construction and until Third Notification has been issued. For the purposes of this Subsection, “maintenance” shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. Design-Builder shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously-constructed Course or Subgrade, Design-Builder shall maintain the previous Course or Subgrade during all construction operations.

Design-Builder shall include costs of protecting and maintaining the Work during construction in the Price Items for the various Price Centers. Design-Builder will not be paid an additional amount for this Work, unless otherwise specified.

Agency will immediately notify Design-Builder of Design-Builder’s noncompliance with this Subsection 150.75. If Design-Builder fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, Agency may proceed immediately to remedy the deficiency, and deduct the entire cost from monies due or to become due Design-Builder under the Contract.

**DB150.80 Removal of Unacceptable and Unauthorized Work** - Design-Builder shall correct or remove unacceptable or unauthorized work, as directed by Agency in writing, at Design-Builder’s sole expense. Design-Builder shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, “unauthorized work” shall include without limitation the following:

- Work that extends beyond lines shown on the Plans or otherwise authorized by Agency
- Work that is contrary to Agency’s instructions
- Work that is conducted without Agency’s written authorization

Agency will not pay Design-Builder for unauthorized or unacceptable work. Agency may issue a written order for the correction or removal of such work at Design-Builder’s expense.

If, when ordered by Agency, Design-Builder fails to correct or remove unacceptable or unauthorized work, Agency may have the correction, or removal and replacement, done by other forces and deduct the entire cost from monies due or to become due Design-Builder under the Contract.

**DB150.90 Final Inspection**

**(a) On-Site Work** - Agency will inspect each Work Location and the construction Work performed therein at a time close to the completion of On-Site Work.

When all On-Site Work at any Work Location has been completed, including but not limited to Change Order Work and Extra Work, except plant establishment and Punch-List Items, Agency will issue Interim Second Notification for that Work.

Within 15 Calendar Days after Agency receives Design-Builder's written notification that all Punch-List Items related to On-Site Work at a Work Location have been completed, Agency will review the Project and notify Design-Builder that all Punch-List Items for that Work Location are complete or give written instruction regarding incomplete or unsatisfactory Punch-List Items.

**(b) All Contract Work Except Plant Establishment and Punch-List Items** - Agency will issue Final Second Notification when Design-Builder has satisfactorily completed all Work, including the submittal of all Design Documents, except plant establishment and Punch-List Items.

Within 15 Calendar Days after Agency receives Design-Builder's written notification that all Punch-List Items related to all Work for the Project have been completed, Agency will review the Punch-List Items and notify Design-Builder that all Punch-List Items are complete or give written instruction regarding incomplete or unsatisfactory Punch-List Items.

**(c) All Contract Work** - Agency will issue the Third Notification when Design-Builder has satisfactorily accomplished all of the following:

- (1) Design-Builder has completed all On-Site Work required under the Contract;
- (2) Design-Builder has submitted all required Design Documents, certifications, bills, forms, warranties, and other documents, including all Quality Management documentation; and
- (3) Design-Builder has delivered to Agency a complete listing of all required warranties, if any.

**DB150.91 Post-Construction Review** - Design-Builder shall attend a post-construction review meeting, to be held by Agency no sooner than 15 Calendar Days after issuance of Final Second Notification. The time and place of this meeting will be announced by Agency at least 15 Calendar Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects. Design-Builder's attendance at the post-construction review meeting is mandatory.

**DB150.95 Final Acceptance** - After Agency issues Third Notification to Design-Builder, Agency will issue final payment. The Agency will issue Final Acceptance after completion of the Design-Builder's warranty period.

**DB150.96 Maintenance Warranties and Guarantees** - Prior to Third Notification, Design-Builder shall transfer to Agency all unexpired manufacturers' warranties and guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees shall recite that they are enforceable by Agency.

### **DB150.97 Responsibility for Materials and Workmanship**

(a) Design-Builder shall perform the Work according to Readiness-for-Construction Plans and Specifications and other Contract requirements.

(b) Whether before or after Final Acceptance, Design-Builder shall, at no additional expense to the Agency, be responsible for each of the following:

(1) Correcting or repairing any defects in, or damage to, the Work that results from the use of improper materials or workmanship;

(2) Replacing, in its entirety, the Work affected by the use of improper materials or workmanship; and

(3) Correcting or repairing any Work, Materials, Structures, existing surfacing, pavement, Utilities, or sites, including, without limitation, Wetlands, damaged or disturbed in that correction, repair, or replacement.

### **DB Section 154 – Quality Plan Requirements**

**DB154.10 General Requirements** - Design-Builder shall develop a Quality Plan. Design-Builder's Quality Plan shall detail how Design-Builder will establish and operate its Quality Control and Assurance management structure independent from design and construction production, and document its procedures pertaining to all aspects of the Work. The Quality Plan shall be established and maintained by Design-Builder such that it provides an Agency-auditable system that assures that Design-Builder's organization complies with Contract requirements pertaining to, at a minimum, the following general areas of the Work:

- Project Administration
- Tracking of estimated (planned) and completed-to-date quantities of Work
- Design requirements
- Construction Inspection
- Materials quality
- Project progress (scheduling)
- Contract payments (monthly Pay Requests)
- Environmental issues
- Utility relocation requirements

- Proposed Quality Plan staffing and communications organization chart and personnel identification
- Work Zone safety issues

The Quality Plan shall establish the organization of the Project Quality Manager's staff and the implementation of all Quality Management activities applicable to the above areas of Work, as well as independent auditing by Design-Builder's Quality Management staff to assess and assure performance compliant with Contract requirements.

Agency will review Design-Builder's Quality Plan to evaluate whether it meets the guidelines and minimum requirements established by Agency. However, Agency's review of the Quality Plan will not constitute Agency's agreement that it meets these criteria, or relieve Design-Builder of its sole responsibility for the quality and workmanship of the Work performed.

Agency has the right to perform quality Inspections and audits of Design-Builder's management, design, construction, and maintenance activities; Design-Builder's Quality Management activities; the quality of Materials and fabricated products; and the quality of workmanship of the completed Project.

The construction portion of the Quality Plan shall require, among other things, a level of review, inspection, documentation and oversight consistent with those indicated in ODOT's *Construction Manual* and *Inspector's Manual*. Quality Inspectors shall be certified in accordance with Agency Inspection Certification Program. The Quality Plan shall also require Material quality and documentation consistent with the requirements in Agency's *Manual of Field Test Procedures (MFTP)*, the Quality Control Compliance Specialist (QCCS) Manual, the *Non-Field Tested Materials Acceptance Guide (NFTMAG)*, the Qualified Products List (QPL), and **Agency-Supplied Specifications**.

**(a) Quality Plan Submittal** - Design-Builder shall submit to Agency for review and Acceptance Design-Builder's complete Quality Plan prior to the start of any Work. The Plan shall be acceptable to Agency within 30 Calendar Days of submittal or the Work shall be stopped.

Agency PM will be available to meet with Design-Builder immediately following NTP to discuss the requirements of the Quality Plan and help facilitate the smooth creation, review and Acceptance of the Quality Plan.

**(b) Partial Quality Plan Submittal** - If Design-Builder desires to begin any items of Work prior to submittal of the complete Quality Plan, it must submit a partial Quality Plan covering those items of Work. The partial Quality Plan shall be submitted prior to starting the Work for those items covered and shall be acceptable to Agency within 30 Calendar Days after the Work covered by the partial Quality Plan begins or the Work shall be stopped. The complete Quality Plan shall be submitted within 90 Calendar Days of the submittal of the first partial Quality Plan submitted.

**(c) Quality Plan Reviews and Updates** - Design-Builder shall conduct ongoing management reviews of its Quality Plan during the term of the Contract.

As Work progresses, Design-Builder shall update the Quality Plan to reflect current conditions, and shall make such revisions as are necessary to meet the quality Standards established in the Contract Documents. Additionally, Agency PM may identify the need for revisions to the Quality Plan and will notify Design-Builder of them.

Design-Builder shall submit a conformed copy of each updated Quality Plan, with revisions highlighted, to Agency PM for Acceptance within 30 Calendar Days of identification of the need for an update or revision.

**DB154.20 Quality Team** - The Project Quality Manager shall manage all functions required under the Quality Plan through its staff. Project Quality Manager's staff shall operate as a distinct and separate quality unit reporting directly to the Project Quality Manager, and may be comprised of suppliers, Design-Builder, or independent Quality Management personnel. The Project Quality Manager is separate and independent from the Design-Build Project Manager, and shall report directly to members of Design-Builder's senior management (either at the officer or board of director level) not directly responsible for design or construction functions.

**(a) Organizational Requirements** - Design-Builder's Project Quality Manager shall be responsible for overseeing the Quality Plan

The Project Quality Manager shall visit the Project Site on a regular basis and be available for consultation with Agency PM and other Agency staff on an on-call basis throughout the term of the Contract. The Project Quality Manager shall attend all progress meetings as detailed in the Quality Plan or as required by Agency, and such other meetings as Agency PM may request, including individual meetings between the Project Quality Manager and Agency staff.

The Project Quality Manager shall be the primary point of contact to Agency for all issues relating to Design-Builder's Quality Plan (preparation, review, implementation, revision and updating).

**(b) Independent Authority and Responsibilities** - The Project Quality Manager shall have and exercise authority over the Work production necessary to assure quality and compliance with Contract requirements. The Project Quality Manager and its staff perform many of the quality functions performed by Agency on traditional design-bid-build (DBB) projects. Therefore, the Project Quality Manager and its staff shall have and shall exercise authority to stop Work until the Work is brought into conformance with Contract requirements.

**(c) Reporting** – The Project Quality Manager shall provide verbal and written reports to both Agency PM and Design-Builder. The Project Quality Manager is required to:

- Provide a written monthly report to both Agency PM and Design-Builder senior management.

- Meet at least monthly with Agency PM, separate from any other Design-Builder personnel, to discuss:
  - The Quality Plan
  - Corrective actions in progress
  - Monthly written reports
  - Monthly certification pay request
  - Other appropriate topics

**DB154.30 Quality Plan Requirements** - Design-Builder's Quality Plan shall provide complete information and documented procedures and protocols on all relevant Work aspects including, but not limited to, the following topics:

**(a) General** - Design-Builder's Quality Plan shall be organized in accordance with, and shall include the topics set out in, the following outline:

**(1) Organization**

- Employee lists and contact information
- Certifications, qualifications
- Authority and reporting structures
- Organization chart

**(2) Communications**

- Tools and procedures (internal and external):

**(3) Manuals, References and Standards**

**(4) Audits and Documentation Reviews**

- Internal
- External (Agency, FHWA, Secretary of State, etc.)

**(5) Environmental**

**(6) Utility Obligations**

**(b) Design – See DB Section 155 Design Management and Design Quality Management**

**(c) Contract Administration**

**(1) Quality and Quantity**

- Obtaining and reporting of actual quantities of Materials incorporated
- Document control and maintenance

**(2) Payments**

- Determining / justifying Monthly Pay Requests
- Certification / verification of quality and quantity of Work
- Document control / flowchart

**(3) Labor Compliance**

- Certified payroll compliance

**(4) Subcontracting**

- Documentation protocols, control and maintenance
- Prompt payment assurance process

**(5) Contract Change Orders**

- Responsibilities, authorities, and procedures, for negotiation, preparation and processing
- Documentation protocols, control and maintenance

**(6) Force Account / Extra Work**

- Responsibilities, authorities, and procedures, for negotiation, preparation and processing
- Documentation protocols, control and maintenance

**(d) Construction Inspection**

**(1) Personnel**

- Resources / staffing
- Certifications
- Experience
- Authority, responsibilities, duties, protocols

**(2) Material Receiving, Work In-Process and Final Inspection**

- Coordination with Agency (on-site, off-site, fabrication, commercial source, etc.)
- Fabrication testing and Inspection processes
- Establishment of quality requirements
- Inspection checklists
- Pre-established checkpoints
- Reports, forms
- Non-conformance process
- Documentation protocols, control and maintenance

**(e) Quality Management**

**(1) Task Identification and Responsibility**

- Coordination with Agency (Verification and Independent Assurance (I/A) testing)
- Statistical analysis of Materials
- Material quantity tracking (estimated and actual)
- Mix design preparation and review
- Review and validation of testing documentation
- Process control, source compliance requirements and tracking
- Documentation protocols, control and maintenance

**(2) Testing**

**(3) Certified Laboratories**

- Requirements / tracking processes

**(4) Equipment**

- Certifications
- Control procedures

**(5) Statistical Techniques**

- Procedures
- Documentation protocols

**(f) Non-Conformance**

- Review, reporting and disposition of non-conforming design, procedures, workmanship, Materials, or products
- Quality price adjustments
- Corrective / preventative actions

**(g) Project Closeout** - Identify responsibility and process for final Project closeout including, but not limited to:

- Project Records
- Final joint Agency Project review
- Final documentation transfer

**DB Section 155 - Design Management and Design Quality Management**

## **DB155.01 General and Design-Builder Responsibilities –**

**(a) General** - Per **DB General Provisions**, Section 154, Design-Builder shall develop and implement a Quality Plan for all phases of the Work. Design-Builder, through its Quality Plan, shall be responsible to assure the quality of Work, both design and construction, complies with the requirements and standards set forth in the Contract, including the workmanship and products of Subcontractors, fabricators, suppliers, and vendors both on-site and off-site. Agency reserves the right to conduct verification oversight Inspections, audits, sampling and testing, and Independent Assurance.

**(b) Design-Builder Responsibilities** - It shall be Design-Builder's sole responsibility to provide Plans, Working Plans, and **Design-Builder Specifications** of such a nature to deliver the finished construction Work in accordance with all Contract requirements. Neither Agency's Review and Comment pertaining to design documents nor its Acceptance of Definitive Design or Readiness-for-Construction Plans and Specifications shall relieve Design-Builder of that responsibility.

Design-Builder shall not begin construction Work until the Readiness-for-Construction Plans and Specifications and Working Plans covering such Work have been Accepted by Agency. Such Plans and Specifications and Working Plans shall not thereafter be amended or altered without the prior approval of Design-Builder's Designer, completion of the necessary Design Review processes set out herein, and Acceptance by Agency.

Design-Builder shall perform each of the following:

- Coordinate with and obtain necessary approvals from Authorities regarding temporary road diversions and detours, shutdowns, temporary traffic diversions, Utility relocations, temporary sidewalk closures, pedestrian detours and all other matters for which authorization may be required
- Ensure that the Designer and Design Manager complete the necessary reviews, evaluations and design checks in accordance with the procedures set out herein, and provide the appropriate documentation and certifications
- Ensure that the Design Quality Manager certifies that quality procedures have been followed in accordance with all Contract requirements

The procedures for the checking of design of permanent components of the Project also apply to design of major temporary components and construction sequences of the Work that affect the permanent components.

References in this Section 155 to performance of Contract obligations by the "Designer," "Design Manager," "Responsible Engineer," "Design Quality Manager," or other designee of Design-Builder shall mean performance by Design-Builder by and through the specified designee.

## **DB155.02 Design-Builder's Design Organization and Functions**

**(a) Location of Design-Builder's Design and Design Quality Personnel** - Design-Builder shall require the Designer to maintain adequate staffing throughout the term of the Contract to enable Design-Builder to meet Baseline Progress Schedule performance deadlines. The Design Manager shall manage the Design Services and thereafter as necessary to manage design support during construction, design changes, and completion of As-Constructed Plans. Each Responsible Engineer shall coordinate the Work on the assigned Design Unit and attend all Design Reviews of the assigned Design Unit.

The Design Quality Manager shall manage design quality related to design support during construction, design changes, and completion of As-Constructed Plans.

**(b) Responsible Engineer** - The Designer shall designate and assign a Responsible Engineer for each Design Unit. Each Responsible Engineer shall sign and stamp design reports, Plans, Working Plans, and **Design-Builder Specifications** for the assigned Design Unit.

**(c) Designer** - Design-Builder shall appoint a suitably qualified and experienced Designer to undertake the design of the permanent components and the major temporary components of the Project. The Designer shall determine and certify completeness of design.

**(d) Design Manager** - Design-Builder shall designate a Design Manager to manage all Work performed by the Designer.

**(1) Design Manager Responsibilities** - The Design Manager shall be responsible for the supervision and quality of all design Work and design processes, including but not limited to each of the following:

- Accuracy
- Adequacy
- Conformance to professional standards of practice
- Compliance with all Legal Requirements and contractually-mandated Standards and other Contract requirements
- Cost effectiveness
- Quality
- Fitness for purpose and function as specified or implied in the Contract

**(2) Scope of Review** - The Design Manager shall, at a minimum, review each of the following:

- Design reports
- Analytical approach
- Drawing details for conformity with all Contract requirements
- **Design-Builder Specifications** for conformity with all Contract requirements

- Contract Baseline Concepts, Definitive Design, Readiness-for-Construction Plans, and Working Plans for conformity with all Contract requirements
- Major temporary components' effect on permanent components
- Field-proposed design changes
- Design approvals for Materials, Equipment, and procedures
- As-Constructed Plans for conformity with Readiness-for-Construction Plans and Specifications and Working Plans

**(e) Design Quality Manager** - Design-Builder shall assign a Design Quality Manager, who shall report to the Project Quality Manager. The Design Quality Manager shall be responsible for independently reviewing Design Documents received from the Design Manager prior to requesting Acceptance from Agency. The Design Quality Manager shall evaluate design development processes and procedures and Design Documents in accordance with the Quality Plan, and shall certify to Design-Builder and to Agency that the design complies with all Contract requirements. The Design Quality Manager shall modify the Quality Plan as necessary to assure that the plan is effective.

**(1) Scope of Design Quality Management Review** - The Design Quality Manager shall have independent quality review and internal Design-Builder acceptance responsibilities for each of the following:

- Design of permanent and major temporary components
- Changes in design of permanent components
- Definitive Design
- Interim Design Documents
- Readiness-for-Construction Plans and Specifications
- Working Plans
- As-Constructed Plans and Specifications
- Design reports and calculations

The Design Quality Manager shall also:

- Identify and report non-conformity/non-compliance
- Track, monitor, and report on status of outstanding design-related non-conformance reports
- Supply monthly Design Quality Management status reports
- Assure presence of and review quality of specified certificates (permanent components and major temporary components)

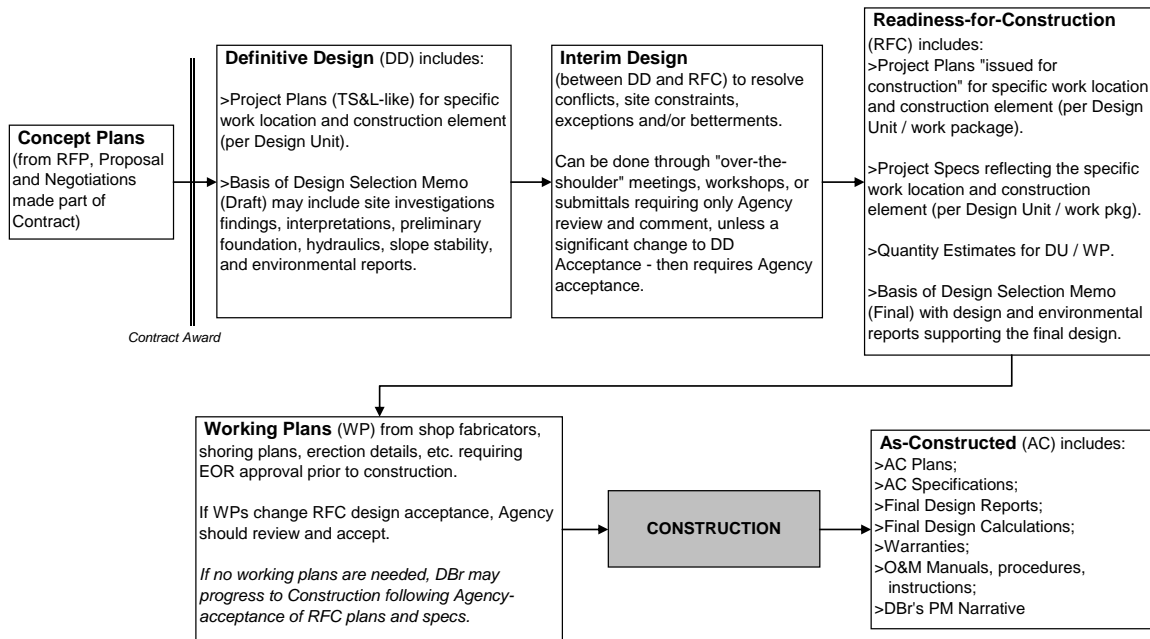
**(2) Design Quality Manager Certification of Readiness-for-Construction Plans and Specifications** - The Design Quality Manager shall receive from the Design Manager, independently review, and when acceptable, issue a written certification to Agency that each of the following conditions have been met before Readiness-for-Construction Plans

and Specifications and Working Plans are released for construction or any construction Work represented therein is commenced:

- Design checks have been completed
- The design conforms to all Legal Requirements and other Contract requirements
- Design Quality Management procedures have been complied with in accordance with all Contract requirements and the Quality Plan
- All outstanding issues and comments from the Design Review have been resolved

**DB155.03 Design Development Process** – Prior to the commencement of design, Design-Builder shall schedule a design mobilization meeting with Agency PM to finalize the Design Unit breakdown, content, and submittal schedule in support of the Baseline Progress Schedule. The design development process will move from Notice to Proceed to Construction as depicted in Figure 1 below:

**Figure 1  
Design Development Process**



**DB155.04 Design Review Plan** - As part of the Quality Plan, Design-Builder shall prepare and submit to Agency PM a written Design Review Plan within 30 Calendar Days of NTP, and prior to the design mobilization meeting, for Review and Comment. The Design Review Plan shall include both the quality responsibilities of the Design Manager and the independent responsibilities of the Design Quality Manager. The Design Review Plan shall describe the level of design completion that the Designer shall accomplish for each of the planned stages of design development, and shall include a description and/or checklist for each Design Unit, clearly identifying the design package that will be reviewed. Statements

of percent complete shall not be acceptable. Refer to **DB General Provisions**, Section 141, for delineation by design discipline of the Work Products to be submitted with each design development Milestone (Definitive Design, Readiness-for-Construction, and As-Constructed) for Agency review and Acceptance.

**DB155.05 Stages of Design Development** - Design-Builder shall make a single comprehensive design check and Design Review for each Design Unit at the following five (5) stages of design development:

- Definitive Design
- Interim designs
- Readiness-for-Construction Plans, Specifications, and quantity estimates
- Working Plans
- As-Constructed Plans

The general purpose of each stage of design development and Design Review is to:

- Verify that the design complies with all Contract requirements
- Allow components of Design Units for which the component Readiness-for-Construction Plans and Specifications have been Accepted to be constructed prior to completion of the complete set of Readiness-for-Construction Plans and Specifications for the entire Design Unit
- In the case of reviews of Working Plans, enable construction to continue

The Design-Builder may propose an alternative Stages of Design Development process for Agency consideration.

**DB155.06 Design Units** - Design-Builder shall package all Contract Baseline Concepts, Definitive Design, Plans and **Design-Builder Specifications** for the Work into separate Design Units. Design Units shall not exceed individual Work Locations. Within 30 Calendar Days of NTP, Design-Builder shall provide to Agency PM a written report identifying each Design Unit and including each of the following:

- Design Unit description, including scope of design Work within each Design Unit, including limits and interface points
- Planned Design Unit review schedule, including specific information to be reviewed and percent complete represented by each review
- Responsible Engineer
- Locations where design Work will be performed

Design-Builder shall submit any proposed revisions in writing to Agency PM concurrent with the Monthly Progress Report.

**DB155.08 Revisions to Design** - If the design is amended subsequent to the Definitive Design Review, Design-Builder shall re-check and re-certify the design as an additional

Definitive Design Review. Changes to Plans initiated by Design-Builder and already checked by the Designer and certified by the Design Quality Manager shall be subjected to the Design Review process as an entirely new design. Design-Builder shall not be entitled to any increase in Contract Amount or additional Contract Time for the re-check and re-certification except when the amended design results from a Change Order initiated by Agency for reasons other than design non-compliance.

All design changes requiring alteration of Readiness-for-Construction Plans and Specifications subsequent to their release for construction shall undergo all review procedures required in Design-Builder's Quality Plan and herein for original Design Documents, including re-check and re-certification.

#### **DB155.10 Schedule for Design Checks and Design Reviews**

**(a) Schedule** - Design-Builder shall include the Design Review schedule for all Design Units (including their components and elements) in the Baseline Progress Schedule, which shall be reviewed monthly until the design Work is complete. The Design Review schedule shall indicate all independent Design Reviews required to be performed by the Design Quality Manager prior to Design Reviews with Agency.

**(b) Design Review Notices** - Design-Builder shall give written notice of scheduled Design Reviews to Agency PM at least one (1) week prior to any Design Review, and shall not schedule more than two (2) concurrent Design Reviews.

#### **DB155.11 Design Reviews**

**(a) Meeting Location and Participants** - Design Reviews shall be conducted by the Design Manager. Design Review meetings shall be held in the offices of the Designer or Design-Builder in the Project vicinity. The Design Quality Manager, the Responsible Engineer, and any specialists having significant input into the design or review shall be present. Design-Builder shall notify and invite Agency to participate in all Design Reviews conducted by the Design Manager. Agency may also invite Stakeholders to attend.

**(b) Documentation to be Provided** - Design-Builder shall make available to participants all Design Documents (e.g., drawings, copies of calculations, reports and other information) pertinent to the Design Review, including all prior comments and actions resulting therefrom, as set out herein.

**(c) Design-Builder Action Required** - Design-Builder shall address and attempt to resolve Agency's comments in consultation with Agency. Stakeholder comments, if any, will be forwarded to Design-Builder by Agency and addressed by Design-Builder. Design-Builder shall resolve all comments to Agency's satisfaction and correct all non-conformances and resubmit the document to Agency PM in accordance with the comment resolution procedures stipulated herein.

**(d) Time and Cost Impacts Borne by Design-Builder** - Design-Builder's time and cost impacts of revisions arising from Agency's participation in Design Reviews and Review and Comment, or required due to Design-Builder's non-compliance with Contract requirements, shall be borne by Design-Builder.

**(e) Design-Builder Continuing Responsibility** – Agency's participation in Design Reviews shall not relieve Design-Builder of its responsibility for the satisfactory completion of the Work in accordance with all Contract requirements.

**(f) Stages of Design Review** – Design Reviews shall be conducted for the following:

**(1) Definitive Design Review** - The Definitive Design Review shall be the first Design Review requiring participation of Agency, and is intended to verify that the Contract Baseline Concepts proposed by Design-Builder meet all Contract requirements. The Design Quality Manager shall verify prior to the Definitive Design Review that:

- All Contract requirements applicable to the proposed Contract Baseline Concepts, including all applicable Standards and Legal Requirements, have been identified, and the proposed Contract Baseline Concepts are in compliance
- The Contract Baseline Concepts are substantiated and justified by adequate site investigation and analysis
- The proposed Contract Baseline Concepts are constructible
- Required Materials and Equipment are available
- The Contract Baseline Concepts meet all quality requirements, and all required design quality procedures have been followed

**(2) Interim Design Review** - Design development occurring after Definitive Design Acceptance and prior to Readiness-for-Construction submittal may call for Interim Designs to remedy conflicts, account for exceptions, and incorporate betterments. Design-Builder shall notify Agency if Interim Design Reviews are necessary for particular Design Units, and shall schedule the necessary Design Reviews following independent review by the Design Quality Manager, which may be presented at a design workshop or meeting with Agency.

Design-Builder shall also use Interim Design Reviews to verify that the concepts and parameters established and represented by Definitive Design are being followed, and that all Contract requirements continue to be met. Design-Builder shall specifically highlight, check, and bring to the attention of Agency any information differing from or supplemental to that presented at the Definitive Design Review. Significant changes to the Definitive Design will require a re-submittal and Agency review and Acceptance prior to the submittal of the Readiness-for-Construction Plans and Specifications.

**(3) Readiness-for-Construction Design Review** - Design-Builder shall use the Readiness-for-Construction Design Review to verify that the concepts and parameters established and represented by Definitive Design are being followed and that all Contract requirements continue to be met. Design-Builder shall specifically highlight,

check, and bring to the attention of Agency any information differing from or supplemental to that presented at the Definitive Design Review. Prior to scheduling the Readiness-for-Construction Design Review with Agency, the Design Quality Manager's independent review shall have been completed.

**(4) Design-Builder Specifications** - Design-Builder shall be responsible for demonstrating that any proposed Specifications meet or exceed the minimum Contract requirements, as determined by Agency in its sole discretion, and are suitable and appropriate to control the Work. Agency will determine, in its sole discretion, if **Design-Builder Specifications** meet all Contract requirements and are otherwise suitable and appropriate.

**(5) Working Plans Design Review** - It shall be solely Design-Builder's responsibility to provide Working Plans of such a nature as to develop a finished Project in accordance with the Readiness-for-Construction Plans and Specifications, and all Contract requirements. Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Plans Design Review. Design-Builder shall invite Agency to participate in a Review and Comment of Working Plans. Agency may invite Stakeholders to attend reviews of Working Plans. Design-Builder shall check, review, and certify Working Plans as specified herein, prior to their being issued for or used in construction. This includes Designer, Design Manager, and Design Quality Manager reviews, approvals, and certifications. Subsequent modifications must be processed through Design-Builder's design review and approval/certification process and Agency Review and Comment prior to being utilized.

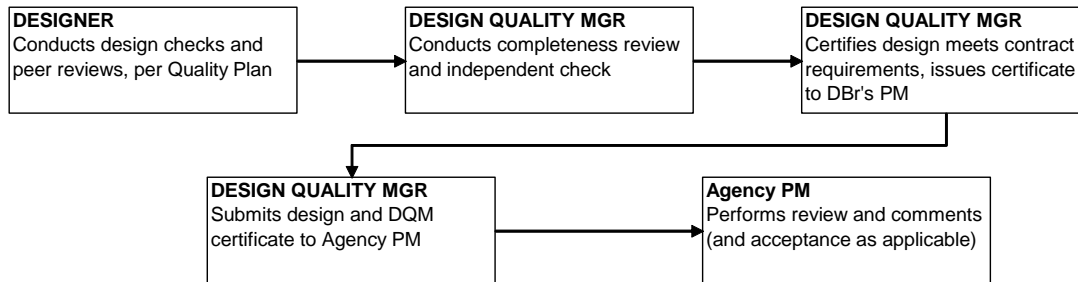
**(6) Design Review of Major Temporary Components** - The Design Manager shall conduct a Design Review of Design Documents for major temporary components that represent complex Structures, or that potentially can affect the safety, quality, and durability of the permanent Project components. The review shall include the effect of the major temporary components as designed on the permanent Project components.

**(7) Additional Design Reviews** - Agency PM (with Stakeholder involvement, if invited by Agency) may require such additional "over-the shoulder" reviews as Agency considers necessary to monitor continued and uniform consistency in the quality and effective incorporation into Design Documents of design revisions. Design-Builder may also conduct additional reviews it deems necessary to facilitate release of Readiness-for-Construction Plans and Specifications.

**(8) As-Constructed Design Review** - Design-Builder shall submit the As-Constructed Plans and **Design-Builder Specifications** for each Design Unit to Agency for review and Acceptance within 30 Calendar Days of completion of the construction Work. As-Constructed Plans and **Design-Builder Specifications** shall thoroughly describe and identify every aspect of the Project as constructed. Design-Builder shall make all corrections noted in Agency comments, if any, resulting from Agency's review, and shall resubmit the corrected version to Agency PM for review and Acceptance.

(g) **Design Review Process Flow Chart** - In its Quality Plan, Design-Builder shall expand upon the sequences shown in Figure 2 for Design Reviews to fully describe its internal design review processes, and the interface between both Design-Builder's design and design quality organizations and Design-Builder's design quality organization and Agency during the development of Design Documents.

**Figure 2  
Design Review Flow Chart**



**DB155.12 Design Documentation**

(a) **Progress Tracking** - Design-Builder shall include engineering and design progress and changes in its Baseline Progress Schedule (including Work on any design change) in the Monthly Progress Report. Design-Builder's progress tracking for design shall reflect the Design Units proposed and a mutually agreed-upon percent complete for Milestones achieved.

(b) **Design Quality Records** - Design-Builder shall maintain an auditable record of all Quality Plan procedures. An independent auditor must be able to determine by reviewing the documentation if all procedures included in the Quality Plan and required herein have been followed. Design-Builder shall submit all monitoring reports and records of checks and reviews within seven (7) Calendar Days of the completion of the applicable review.

(1) The Design Manager shall be responsible for preparing and maintaining the following design quality records.

- a. Monitoring reports of all design issues and review comments resulting from the scheduled and additional checks and reviews, and final resolution of those issues and comments.
- b. A log of design Non-Conformance Reports and/or notices indicating date issued, reasons, status or resolution, and date of resolution.
- c. Daily records of design activities, using forms acceptable to Agency.

(2) The Design Quality Manager shall be responsible for preparing and maintaining the following design quality records:

a. Monthly Report to Agency PM by the third Business Day of the following reporting month that includes each of the following:

1. Summary of Design Reviews conducted;
2. Nonconforming Work and current status and disposition (based on design non-conformance log); and
3. Submissions from Design-Builder and status.

b. Final Design Report - Upon completion of the Readiness-for-Construction Plans and Specifications for each Design Unit, including all its components and elements, the Design Quality Manager shall notify Design-Builder, with a copy to Agency PM, of any outstanding monitoring report issues or unresolved review comments or non-conformances.

**DB155.13 Comment and Non-Conformance Resolution** - All Design Reviews shall include a comment and non-conformance report resolution process, whereby unresolved comments and instances of non-conformance are discussed and a written action plan and schedule for resolution is developed. The Design Manager will lead the process.

(a) **Comments** - Agency and Stakeholder comments from Design Reviews will be transmitted to Design-Builder. Design-Builder shall record its proposed disposition and response to each comment and meet with Agency to resolve outstanding comments and dispositions. Design-Builder shall document final disposition and resolution of all Agency and Stakeholder comments.

(b) **Non-Conformances** - If a Design Review reveals non-conformance with Contract requirements, Agency will prepare a Design Non-Conformance Report and submit it to Design-Builder for action. Design-Builder shall make all required corrections and return to Agency PM documentation of the corrective action taken.

**DB155.14 Design Review Submittals** - Design-Builder shall deliver with the written notice of scheduled Design Review a copy of the Design Documents to be reviewed. Design-Builder shall also make available in its Designer's office sufficient copies to accommodate all participants in the Design Review. Design-Builder may combine submittals for multiple Design Units upon Agency's written authorization.

(a) **Definitive Design** - For Definitive Design, Design-Builder shall submit two (2) hard copies and one (1) electronic copy of the Definitive Design and the draft Basis of Design Memorandum (BDM). Definitive Design submittals shall consist of preliminary plans sufficient to depict the design concepts and the spatial setting (including site-specific characteristics) for major Design Unit components. The draft Basis of Design Memorandum (BDM) shall identify and describe the design alternatives considered, as well as Materials, means and methods evaluated and selected for the Definitive Design. The BDM may

include preliminary reports on additional site investigations, a foundation report, hydraulic report, slope stability report, environmental findings, etc., applicable to the Design Unit and in support of the design decisions made.

**(b) Interim Design** - For Interim Design Reviews, Design-Builder shall submit two (2) hard copies and one (1) electronic copy of the Interim Plans.

**(c) Working Plans** - Working Plans shall contain necessary fabrication details, shop drawings, erection diagrams and shoring plans associated with the particular stage of construction and Design Unit.

**(d) Readiness-for-Construction** - For Readiness-for-Construction Design Reviews, Design-Builder shall submit two (2) hard copies and one (1) electronic copy of the Readiness-for-Construction Plans and Specifications, a copy of the quantity estimates, the final Basis of Design Memorandum, and any other supporting data required by Agency for the Design Unit or portion of the Work covered by the Readiness-for-Construction Plans and Specifications. The final Basis of Design Memorandum shall include foundation reports, hydraulics reports, slope stability reports, and all other technical reports and memoranda prepared in support of the Readiness-for-Construction Plans and Specifications.

**(e) As-Constructed Plans and Design-Builder Specifications** - As-Constructed Plans and **Design-Builder Specifications** are submitted, in native file format complying with CADD standards, following construction completion, and shall incorporate any changes to the Readiness-for-Construction Plans and Specifications. This submittal shall also include all final design reports, design calculations, Operation & Maintenance manuals, special instructions, and Design-Builder's PM Narrative.

**(1) PM Narrative** - The PM Narrative shall consist, at a minimum, of the following:

- General discussion of Project progress
- Highlight of problems and solutions that were implemented
- Discussion of each of the significant Change Orders issued for the Project
- Discussion of new or innovative methods employed and the results achieved, whether or not successful
- Discussion of the results of the post-Project joint review/debrief

**(2) Construction Manual** - Refer to Agency's Construction Manual, Section 37, page 37-3 and -4 for additional instructions.

### **DB155.15 Design-Builder's Design and Design Quality Checks and Certifications**

**(a) Design Checks** - Design-Builder shall require its Designer to check all Design Documents (Working Plans, Plans, **Design-Builder Specifications**, calculations, memoranda, and reports) as they are produced, to confirm compliance with all Contract requirements. The Design Manager shall conduct such independent reviews and evaluations

as may be necessary to enable him/her to certify that the Design Documents have been checked per Contract requirements and Design-Builder's Quality Plan.

**(b) Independent Design Checks** - Design-Builder's Design Review shall include independent design checks on specific project components as identified in **DB Special Provisions**, SP155.15. Design-Builder shall carry out independent design checks of Plans and **Design-Builder Specifications** for permanent components and major temporary components, and for effects of temporary components on the permanent components. Such checks shall be performed by senior engineers employed or retained by Design-Builder who are not involved in the production of the design documents being reviewed, and who have qualifications and experience equal to or greater than the Responsible Engineer for the design or the Design Unit being checked.

Independent design checks shall comprise design assessment and analytical checks, as specified herein.

**(1) Design Assessment** - Design assessment constitutes a review of the Design Document for general compliance with all Contract requirements, taking into consideration the proposed method of construction, and shall cover each of the following areas:

- Loads
- Legal Requirements and Standards
- Methods of analysis
- Computer software and its validation
- Interface requirements
- Maintenance requirements
- Materials and Material properties
- Durability requirements
- Fatigue performance
- Hydrology
- Design flows

**(2) Analytical Check** - Independent design checks shall include an independent analytical check using independently-derived calculations (without reference to Designer's calculations) to evaluate the structural adequacy and integrity of critical structural members as designed. This shall include, but is not limited to the following:

- The structural geometry and modeling
- Material properties
- Member properties
- Loading intensities
- Structural boundary conditions

**(c) Design Quality Manager Certifications** - The Design Quality Manager shall conduct all necessary reviews to enable him/her to issue written certification in accordance with the requirements specified herein.

**DB155.16 Conditions to be Met Prior to Commencement of Construction** - Construction on any Design Unit or portion thereof may begin at any time after Agency's Acceptance of the Quality Plan or those portions of the Plan covering the Work to be performed, and after the applicable Readiness-for-Construction Design Review has been completed and Agency has issued its Acceptance. Design-Builder shall not commence construction of any permanent components or major temporary components until the applicable design checks, Design Reviews, and Design Manager and Design Quality Manager's certifications have been completed, design-related Non-Conformance Reports have been addressed and resolved to the satisfaction of Agency, Agency comments have been resolved, and Agency's Acceptance has been delivered to Design-Builder. All the following must also have occurred.

**(a)** The Readiness-for-Construction Plans and Specifications have been signed and stamped by the Responsible Engineer. For those drawings and documents other Design Documents included in the submittal that are prepared by a manufacturer or supplier or other persons not under his/her direct supervision, the Responsible Engineer shall affix a stamp that indicates the design shown on the sheet or document conforms to the overall design and all Contract requirements.

**(b)** The Design Manager has completed his/her checks and reviews in accordance with the requirements stated herein, and has issued a written certification that each of the following conditions have been met:

**(1)** The design has undergone constructability review and is constructible as represented in the Readiness-for-Construction Plans and Specifications;

**(2)** Working Plans and Readiness-for-Construction Plans and Specifications for the portion of the Project to be constructed are complete and checked in accordance with this Subsection;

**(3)** The design and drawings for the Traffic Control Plan and temporary erosion control and environmental measures applicable to the Work have been properly completed; and

**(4)** Adequate stakes, lines, and/or monuments necessary to control the Work have been established on the Project Site.

**(c)** The Design Quality Manager has conducted his/her independent design quality review and has issued a written certification that each of the following conditions have been met:

**(1)** Design checks have been completed;

**(2)** The design conforms to all Legal Requirements and other requirements;

- (3) Any Design Exceptions have been approved in writing by Agency;
- (4) Design quality activities are following Design-Builder's Quality Plan; and
- (5) All outstanding issues and comments from the Design Review have been resolved.

(d) Agency has provided Review and Comment regarding the Readiness-for-Construction Plans and Specifications and applicable Traffic Control Plan, temporary erosion control measures, and environmental requirements.

(e) All Design Non-Conformance Reports issued by the Design Quality Manager or Agency have been addressed and resolved by Design-Builder to the satisfaction of Agency.

**DB155.17 Design Support During Construction** - The Designer and Design Quality Manager shall verify during construction that the site conditions are accounted for in, and the construction Work performed is consistent with, the relevant Working Plans and Readiness-for-Construction Plans and Specifications. The Designer shall prepare any necessary adjustments in such Plans, Working Plans, and Specifications, and Design-Builder shall conduct the appropriate checks, certifications, and reviews in accordance with the requirements stated herein pertaining to design changes. Design-Builder shall also be responsible for obtaining any permits or authorizations, if any, that may be required as a result of the changes.

**DB155.18 Quantity Estimates** - To facilitate progress measurement, determine sampling and testing requirements, and to provide quantities for determining the price adjustment calculations described in **DB General Provisions**, Subsections 195.10 and 195.11, as well as the Pavement Materials and smoothness price adjustments, Design-Builder shall develop and maintain quantity estimates and actuals for the Work. The quantity estimates shall be in units that facilitate sampling and testing, i.e. the units shall be consistent with the units used to determine frequency of sampling and testing. For example, if "X" numbers of compaction tests are specified to be taken for every "Y" cubic yards of embankment, the quantity estimate would need to be in cubic yards of embankment. Construction progress shall be measured as defined in Design-Builder's Quality Plan and be able to facilitate the Project Quality Manager's certification that percent complete claimed on the Pay Request is reflected in the Quantity Tracking System (QTS). The QTS shall be developed and maintained by Design-Builder and made available for Agency review upon request.

**DB155.19 Survey Standards** - Survey standards shall reflect those established in Agency's *Highway Design Manual (HDM)*.

**DB155.20 Specifications** - Design-Builder shall assemble the **Readiness-for-Construction Specifications** from among the existing **Agency-Supplied Specifications**. In the event available **Agency-Supplied Specifications** do not cover or adequately address an aspect of the design, Design-Builder shall submit all additional necessary Specifications to Agency

with the Readiness-for-Construction Plans prior to the applicable Design Review for Agency Review and Comment, in accordance with the Design Review process set out herein.

**DB155.21 CADD Standards** - CADD formatting for Design Documents, including Definitive Design, Readiness-for-Construction Plans, and As-Constructed Plans, shall conform to Agency's *Contract Plans Development Guide*.

## **DB Section 156 - Construction Workmanship and Materials Quality Management**

**DB156.10 General** - Per **DB General Provisions**, Section 154, Design-Builder shall develop and implement a Quality Plan for all phases of the Work. Design-Builder, through its Quality Plan, shall be responsible to assure the quality of work, both design and construction, complies with the requirements and standards set forth in the Contract, including the workmanship and products of Subcontractors, fabricators, suppliers, and vendors both on-site and off-site. Agency reserves the right to conduct verification oversight Inspections, audits, sampling and testing, and Independent Assurance.

### **DB156.20 Construction Quality Organization**

**(a) Construction Quality Manager** - Design-Builder shall provide a Construction Quality Manager to oversee, manage, certify and perform construction Quality Management activities as specified herein and in other Contract Documents and Design-Builder's Quality Plan. The Construction Quality Manager and staff shall report directly to Design-Builder's Project Quality Manager.

The CQM shall either be certified in all areas of Materials testing, as outlined in ODOT's Quality Assurance Program, to perform the role of a Quality Control Compliance Specialist as outlined in the ODOT Quality Control Compliance Specialist (QCCS) Manual, or have a supporting staff that is certified and capable of fulfilling this role. The supporting staff may consist of one or more individuals who collectively hold the required certifications. Design-Builder's Quality Plan shall clearly outline the organization, certifications, authority levels, and responsibilities for the CQM and supporting staff.

**(b) Construction Quality and Construction Quality Control (QC) Inspectors** - All construction processes, procedures, and workmanship shall be inspected by Design-Builder's Construction Quality Inspectors. Inspection shall include the observations, measurements, and documentation specified in Design-Builder's Quality Plan and the Contract Documents. Inspection, observations, verification of conformance to specified requirements, measurements, results, non-conformances, and required corrective actions shall be documented on the forms provided by Agency or on Design-Builder's forms acceptable to Agency. Inspection, observation and documentation shall include descriptions of construction activity and location. Design-Builder's inspection staff must collectively hold the required ODOT certifications for inspection as outlined in ODOT's Inspection Certification Program.

Construction quality Inspection, testing, and documentation procedures shall at a minimum, be consistent with the ODOT *Construction Manual*, *Manual of Field Test Procedures (MFTP)* and *Inspector's Manual*. Quality Inspectors shall be certified in accordance with Agency Inspection Certification Program. Program information, including requirements and training schedules is found on the following website:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/Cert/InspCert.shtml>

**(c) Quality Control (QC) Testing Staff** - Design-Builder's QC testers shall perform sampling and testing of field-tested Materials in accordance with the *MFTP*. QC testers shall be certified in accordance with Agency Technician Training and Certification Program (identified in the *MFTP*), to the level appropriate for the Work being sampled/tested, and shall test only those Materials for which they are certified. Design-Builder Project Quality Manager shall maintain a list of QC testers that identifies the test certifications each tester currently holds, and shall provide Agency PM the names, telephone numbers, and copies of certifications for all personnel performing field testing. This list shall be updated on a regular basis and any time a new technician performs testing on the Project. It is Design-Builder's responsibility to ensure that all technicians have the proper certifications at the time testing is performed.

The frequency of QC sampling and testing shall, at a minimum, be consistent with the *MFTP* and the Contract Specifications.

References in the Contract to an Oregon test method or test designation of the American Association of State Highway and Transportation Officials (AASHTO), the American Society for Testing and Materials (ASTM), or any other recognized national organization, shall mean the latest version of that test method or Contract Specification for the Work in effect on the day the testing is performed, unless otherwise directed by Agency in writing. Unless authorized by Agency, Design-Builder shall comply with the published version of the *MFTP* in effect on the proposal due date.

**(d) Certified Testing Laboratory** - Quality Control (QC) laboratory testing of field-tested Materials shall be conducted by testing laboratories that are certified by Agency for the applicable tests. This certification shall be valid for one (1) year from date of issue. Laboratories performing QC testing may be Design-Builder's own, the Material supplier's, or an independent testing laboratory.

Agency Quality Assurance (QA) testing laboratories will perform Independent Assurance (I/A) or Verification tests of field-tested Materials in coordination with the QC testing laboratories performing QC tests of Materials on behalf of Design-Builder. This provides Agency with an independent analysis of the QC tests to ensure that the test results are valid. QA laboratories will usually be Agency Region laboratories, but may also be Agency's Central Laboratory or an Agency-contracted independent testing laboratory. Agency's Central Laboratory will certify all QA laboratories for those test methods necessary to perform QA tests of Materials.

(e) **Independent Referee Laboratory** - Agency's Central Laboratory will act as a "referee" laboratory for resolution of disputes regarding Agency's verification sampling and testing results and Design-Builder's QC test results unless a potential for conflict of interest exists. In the event that the dispute is between the QC testing laboratory and Agency's Central Laboratory, the dispute will be resolved by test results obtained from a certified laboratory agreed upon by the Parties. The services of the "referee" laboratory may be requested by either Agency or Design-Builder. The sampling and testing results determined by the "referee" laboratory shall be final and binding on both Parties and not subject to dispute resolution under **DB General Provisions**, Section 199. The Party whose sampling and testing results are not confirmed or supported by the "referee" laboratory (i.e., the unsuccessful Party) shall be responsible for payment for the "referee" services. If Design-Builder is the unsuccessful Party, the cost of the "referee" laboratory services will be deducted from monies due or to become due Design-Builder under the Contract.

### **DB156.30 Materials Quality Management**

(a) **Field-Tested Materials** - Design-Builder is responsible for providing Quality Control (QC) sampling and testing, furnishing Materials of the quality specified, and furnishing Quality Level Analysis during production when required by the *MFTP*. Design-Builder's Construction QC testers shall perform sampling and testing for process control and QC consistent with the *MFTP* and the Contract Specifications. Any requested deviations from the sampling and testing methods and frequencies indicated in the *MFTP* or the Contract Specifications will require Agency concurrence prior to the start of the Work. If there is a discrepancy between one of the Contract Specifications and the *MFTP*, the more stringent requirements shall apply unless otherwise agreed in writing by Agency.

### **MAKE THE FOLLOWING CHANGES TO THE MFTP.**

#### **Section 2: *Quality Assurance Program.***

**General.** The purpose of verification testing performed by the Engineer will be to verify whether materials meet specifications. At the Engineer's discretion, verification testing by the Engineer may be performed on samples collected by the Engineer or by the Contractor. Samples collected by the Engineer will be collected at times and locations as determined by the Engineer. The Contractor is not required to perform tests on splits of verification samples, however, splits of verification samples collected by the Engineer may be made available to the Contractor if requested by the Contractor two working days in advance of the collection of each verification sample which is collected by the Engineer. Verification testing will be performed at the discretion of the Engineer and at times and locations determined by the Engineer.

Independent Assurance testing will not be performed.

## II. ROLES AND RESPONSIBILITIES

### **Contractor**

Modify the bulleted language as shown below. For all bullets, replace the term “ODOT” with “Agency”.

### **Project Manager (PM)**

Delete all bullets in this section except the first bullet.

Delete the sections entitled “Region Quality Assurance Team” and “Construction Section”. These sections do not apply to Agency projects.

## III. LAB CERTIFICATION PROGRAM

This section does not apply to Agency projects for the Contractor’s QC requirements.

## IV. TECHNICIAN CERTIFICATION PROGRAM

This section does not apply to Agency projects for the Contractor’s QC requirements.

## APPENDICES TO THE ODOT QA PROGRAM.

**General.** References in the Appendices to the ODOT Central Materials Laboratory do not apply to Agency projects.

### **APPENDIX D - EARTHWORK, AGGREGATE BASE, SUBBASE, AND SHOULDERS**

The Engineer will perform verification testing. The Engineer will also establish maximum densities and optimum moisture contents for use in verification testing.

### **SECTION 4(D) Field Tested Materials Guide**

This section applies to Agency projects, except that testing frequency and location by the Project Manager will be at the discretion of the Project Manager, and the columns for Region Quality Assurance and Materials Laboratory in the Field Tested Materials Acceptance Guide table do not apply. The frequency of Quality Control testing shown in this table is a recommended minimum, and more testing by the Contractor may be necessary to ensure materials and work of acceptable quality.

**(b) Nonfield-Tested Materials** - Nonfield-tested Materials will be accepted according to the ODOT Nonfield Tested Materials Acceptance Guide (NTMAG), unless otherwise specified in the Contract. The NTMAG is available at the ODOT Procurement Office – Construction, Contractor Plans.

### **MFTP SECTION 4(A) Source Compliance**

**Modify Section 4(A) as follows:** References to ODOT testing in this section do not apply to Agency projects. The Agency will not retain QC testing for source/compliance tests or non-field tested items; QC testing is the responsibility of the Contractor.

**(b) Non-Field Tested Materials** - Design-Builder shall provide Materials meeting all Contract requirements, along with all Materials conformance and quality compliance documents. Quality compliance documents shall be in the form of test results certificates, quality compliance certificates, and Equipment lists and drawings. Non-field tested Materials will be accepted for use according to the ODOT *Non-Field Tested Materials Acceptance Guide (NFTMAG)*, unless otherwise specified in the Contract. The most current version of the *NFTMAG* at the time the Materials are incorporated into the Project shall be used.

Design-Builder shall have documentation that Materials and Equipment conform to all Contract requirements available at the Project Site no less than 24 hours prior to installation or use of such Materials or Equipment. This documentation shall be retained at the Project Site.

**(c) Quality Assurance** - Agency's QA Program defines the responsibilities and roles of both Design-Builder and Agency. The QA Program is contained in the *MFTP*.

Design-Builder is responsible for providing QC sampling and testing, and furnishing Materials of the quality specified. Agency will perform such QA of field-tested Materials through Verification and Independent Assurance as it may deem appropriate. Design-Builder's QC test results will be used for acceptance of Material quality only if verified by tests performed by Agency.

If Agency's QA test results verify Design-Builder's results, the Materials will be analyzed for acceptance according to one of the methods defined in **DB General Provisions**, Subsection 165.40. If such testing reveals that Design-Builder's data is incorrect, Agency will perform additional testing to determine whether the Material meets Contract Specifications. If the Materials do not meet the required Specifications, Design-Builder shall reimburse Agency for the cost of the additional testing, which may be deducted from monies due to or become due Design-Builder under the Contract.

**(1) Verification** - Verification is defined as: "Sampling and testing performed to validate the quality of the product, Material, or Work."

Verification samples are taken randomly (minimum ten-percent of the specified QC frequency) and tested by Agency to verify that products, Materials, and the Work meet Contract Specifications. Quality Control samples shall not be used for verification.

**(2) Independent Assurance** - Design-Builder shall notify Agency in writing by Friday noon of each week of planned construction activities, including fabrication, for the following two (2) weeks. For activities occurring out of the immediate Project area (beyond 100 miles of the Project Site), Design-Builder shall give Agency at least 21 Calendar Days' notice of planned Work. Any change to the schedule requires a minimum 48-hour advance notification to Agency.

Design-Builder shall notify Agency a minimum of 48 hours in advance of the time scheduled for Agency to perform Verification and Independent Assurance tests.

**(d) Agency Quality Control (QC) Testing** - Agency will perform QC testing for all source/compliance tests and those non-field tested items associated with construction products produced in outside facilities where Agency has QC Inspectors (e.g. asphalt, emulsion, tack oil, water, cement, lime, etc.).

**DB156.50 Documentation** - Design-Builder shall collect and preserve all required documentation as Project Records, all of which shall be in a form acceptable to Agency.

Daily manpower and Equipment reports for Design-Builder and each Subcontractor for construction-related activities shall be prepared by Design-Builder's construction quality inspectors and maintained by Design-Builder Construction Quality Manager, using the forms provided by Agency or other forms with a format acceptable to Agency PM.

For Utility-related Work such data shall be maintained separately for each Utility facility. For Hazardous Materials remediation Work, such data shall be maintained separately for each remediation site.

Records shall document all daily work on the Project, the Quality Management operations, Inspections, reviews, all internal and external Project Quality Manager audits, monitoring of performance of Work, including the Work of Subcontractors, and tests performed. Design-Builder may use the forms provided by Agency or its own forms providing equivalent information. Such records shall document all delays encountered, and all Work that does not conform to Contract requirements, together with the corrective actions taken regarding such Work. Records shall also document all delays encountered listing what Work activities were delayed, cause of delay, and remedial action taken to mitigate the delay.

The QC records shall identify the inspector, date of testing or inspection, product, Material, or Work tested or Inspected, test method used, testing laboratory used, and the results of each test or Inspection. The records shall also include, for each documented QC activity, the qualifications of the QC and testing personnel and, where applicable, the testing Equipment used.

In the event of a finding of nonconformance, Design-Builder shall note the source of the nonconformance or the Contract provision or Specification with which the product, Material, or Work fails to comply.

## **DB Section 160 - Source of Materials**

### **DB160.01 Notification of Source of Supply and Materials**

**(a) All Materials** - Design-Builder shall notify Agency in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators, within the following time frames:

(1) At least 15 Calendar Days before using or fabricating Materials, if the source is within the State; or

(2) At least 45 Calendar Days before using or fabricating Materials, if the source is outside the State

**(b) Prospective Source Materials** - When given an option to use Prospective Sources of Materials to be incorporated into the Project, Design-Builder shall notify Agency in writing of the option selected within 15 Calendar Days from date of NTP. Otherwise, such Materials sources may become unavailable.

**(c) Review and Comment** - Before allowing production or delivery of Materials to begin from any source, Design-Builder must obtain Agency's Review and Comment. If reviewed sources do not provide Materials that meet all Contract requirements, the Materials will be rejected. Design-Builder will then be responsible for locating other sources and obtaining Agency's review of those sources.

**DB160.05 Qualified Products List** - The Qualified Products List (QPL) is a listing of manufactured products available on the market (shelf items) that Agency has evaluated and found suitable for a specified use in Highway construction. The QPL is updated periodically and is available electronically at Agency's website <http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/QPL/QPIndex.shtml>.

The most current published version of the QPL in effect at the time the Materials are incorporated into the Project shall be used. Agency may approve for use a conditionally-qualified product, or a product qualified for inclusion in a later edition of the QPL, if Agency finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. Design-Builder shall install all products as recommended by the manufacturer. Design-Builder shall replace qualified products not conforming to all Contract requirements or not properly handled or installed at Design-Builder's expense.

### **DB160.20 Preferences for Materials**

**(a) Buy America** – If federal Highway funds are involved on the Project, Design-Builder shall limit the quantity of foreign Materials incorporated into the Project as follows. 23 CFR 635.410 and the Intermodal Surface Transportation Efficiency Act (ISTEA) require that all iron or steel manufacturing processes, including without limitation the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States (US), unless the cost of foreign-origin iron or steel Materials does not exceed 0.1% of the Contract Amount or \$2,500.00, whichever is greater. Design-Builder shall not

incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated into the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at Design-Builder's expense. For purposes of this Subsection, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component.

Design-Builder shall obtain and maintain on file a Certificate of Materials Origin on a form furnished by Agency before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to Agency, the Materials shall be considered of foreign origin.

Design-Builder shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for three (3) years after the date of final payment for the Project and shall furnish to Agency with final documentation.

**(b) Buy Oregon** - Pursuant to ORS 279A.120, Design-Builder shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to contracts financed wholly or in part by federal funds.

**(c) Recycled Materials** - Pursuant to ORS 279A.125, and subject to the approval of Agency, Design-Builder shall use recycled products to the maximum extent economically feasible.

### **DB160.50 Agency-Controlled Land; Limitations and Requirements**

**(a) General** - Design-Builder shall have no property rights in, or right of occupancy on, Agency-Controlled Lands. Nor shall Design-Builder have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Lands, except upon the written authorization of Agency.

Design-Builder shall not disturb any materials within Rights of Way without written authorization from Agency.

Ownership of all materials originating on Agency-Controlled Lands will at all times vest in, and remain the property of, Agency.

**(b) By-Products** - By-Products shall remain Agency property. Unless otherwise ordered by Agency in writing, By-Products shall be placed as follows, as required by the Materials Source Development and Reclamation Plan:

- (1) In stockpiles at designated locations;
- (2) At locations and in shapes that are readily accessible; and
- (3) In such a manner as to avoid fouling areas containing useable materials or interfering with future plant setups to use materials from the property.

Agency will not compensate Design-Builder for handling and stockpiling By-Products in accordance with the Materials Source Development and Reclamation Plan requirements. If by written order Agency directs Design-Builder to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and such Work will be paid for as Extra Work.

#### **DB160.60 Design-Builder-Furnished Materials and Sources**

**(a) General** - Design-Builder shall furnish, at its own expense, all products and Materials required for the Project from sources of its own choosing, unless Prospective or Mandatory Sources have been designated in the **DB Special Provisions**.

**(b) Acquisition of Sources** - Design-Builder shall acquire, at its own expense, the right of access to, and the use of, all sources Design-Builder chooses that are not Agency-controlled and made available by Agency to Design-Builder.

**(c) Additional Requirements** - Except for continuously-operated commercial sources, Material source development Work shall not begin, nor will any Materials be authorized for incorporation into the Project by Agency, until Design-Builder has done the following:

(1) Delivered to Agency PM a copy of permits from, or proof that permits are not required from, any of the following:

- a. The Department of Geology and Mineral Industries;
- b. The Division of State Lands (when removing material from the bed or banks of any waters or from any Wetland); or
- c. Local Authorities.

(2) Delivered to Agency written approval of the property owner, if other than Design-Builder, for Design-Builder's proposed plans of operation in, and reclamation of, the source. Design-Builder shall include in the document containing the property owner's written approval a summary of the requirements of the permits described above, which shall be subject to Agency's Review and Comment.

**DB160.70 Requirements for Plant Operations** - Before operating mixing plants, rock crushers, or other Equipment, Design-Builder shall provide Agency copies of all applicable

discharge permits for noise, air contaminants, and water pollutants from the Oregon Department of Environmental Quality (DEQ) or applicable local Authority, or a letter from the DEQ or local Authority stating that no permits are required for the use of the Equipment and sites.

**DB160.80 Requirements for Sources of Borrow and Aggregate** - Design-Builder shall conduct operations according to all applicable Laws (including without limitation ORS Chapter 517 and OAR Chapter 632, Division 30) when developing, using, and reclaiming all sources of Borrow material and Aggregate. Design-Builder shall provide erosion control at Borrow sources that are not within the Project Site. Design-Builder shall not operate in Wetlands except as allowed by permit. Design-Builder shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System (NPDES), where applicable.

Except for continuously-operated commercial sources, Design-Builder shall also conform to the following:

(a) If a natural growth of trees or shrubs is present, Design-Builder shall preserve a border of such to conceal land scars.

## **DB SECTION 165 - QUALITY OF MATERIALS**

**DB165.00 General** - Design-Builder shall incorporate into the Project only Materials conforming to all Contract requirements. Design-Builder shall incorporate into the Project only manufactured products made of new Materials unless otherwise specified in the Contract.

Materials not meeting Contract Specifications at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed in writing by Agency.

**DB165.01 Rejected Materials** - Design-Builder or Agency may reject any Materials that appear to be defective. Design-Builder may reject damaged or non-Specification Materials regardless of the Materials Conformance Documents furnished. Design-Builder shall not incorporate any rejected Materials into the Project. Rejected Materials whose defects have been corrected may not be incorporated into the Project until Design-Builder and Agency have approved their use. Either Design-Builder or Agency may order the removal and replacement of defective materials by Design-Builder, at Design-Builder's expense.

**DB165.02 Materials Conformance and Quality Compliance Documents** - For purposes of this Subsection, "Materials Conformance Documents" means Design-Builder's Quality Control (QC) test results and identity of the testing facility and technician performing the test. "Quality Compliance Documents" means those documents specified in the ODOT

*Nonfield-Tested Materials Acceptance Guide* (NFTMAG), unless otherwise specified in the Contract.

**DB165.03 Testing by Agency** - Where the Specifications and other contract documents reference testing performed by the Agency, said testing will be performed by an independent third-party hired and paid by the Design-Builder.

**DB165.04 Costs of Testing** - Unless otherwise provided in the Contract, all testing required to be performed by Agency or Design-Builder will be at Design-Builder's expense.

**DB165.10 Materials Acceptance Guides** - Unless otherwise specified elsewhere in the Contract Documents, Materials will be Accepted according to the following guides:

**(a) Field-Tested Materials** - Field-tested Materials will be Accepted according to the ODOT *Manual of Field Test Procedures (MFTP)*, except that verifications and independent assurance testing will be at the discretion and frequency determined by the Agency. The *MFTP* is available at the ODOT Contractor Plans office, 455 Airport Road, S.E., Bldg. K, Salem, Oregon (phone (503) 986-6936).

**(b) Non-Field-Tested Materials** - Nonfield-tested Materials will be Accepted according to the NFTMAG, unless otherwise specified in the Contract. The NFTMAG is available electronically on the ODOT website at:

<http://www.oregon.gov/ODOT/HWY/CONSTRUCTION/docs/NFTMAG.pdf>

**DB165.20 Materials Specifications and Test Method References** - References to Materials Specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, and other Authorities, or other recognized organizations, mean those officially adopted and in current use by the Authority or organization on the date the Proposal is due.

**(a)** If there are conflicting references to Materials Specifications or test methods, Materials must meet the Materials Specifications or test methods required by the first applicable of the following Authorities and organizations:

- (1) ODOT;
- (2) WAQTC;
- (3) AASHTO;
- (4) ASTM;
- (5) Other recognized national organizations, such as ANSI, AWPA, IMSA, and UL; and
- (6) Industry standards in the location where the Work is being performed.

(b) If there are conflicting references in the Contract to required sampling and testing frequencies, Design-Builder shall sample and test the Materials according to the first applicable of the following:

- (1) Applicable **DB Special Provisions**;
- (2) *MFTP*; and
- (3) Applicable **DB Standard Specifications**.

### **DB165.30 Field-Tested Materials**

(a) **Types of Tests** - The types of tests and testing methods generally required by Agency are described in the *MFTP*.

(b) **Acceptance of Field-Tested Materials** - Design-Builder's test results for field-tested Materials will be verified by Agency according to the Quality Assurance Program outlined in the *MFTP*. If Agency's QA test results verify Design-Builder's results, the Materials will be analyzed for Design-Builder's acceptance according to one of the following methods before incorporation into the Work:

- (1) Statistically, according to **DB General Provisions**, Subsection 165.40, to determine "Pay Factors" for produced Aggregate.
- (2) Statistically, according to **DB General Provisions**, Subsection 165.40, to determine "Composite Pay Factors" for mixtures.
- (3) Other methods determined by Design-Builder and authorized by Agency.

If acceptance testing reveals that Design-Builder's data is incorrect, Agency may perform additional testing if requested by the Design-Builder to determine whether the Materials meet Contract Specifications. If the Materials do not meet Contract Specifications, Design-Builder shall reimburse Agency for the cost of the additional testing, which may be deducted from monies due or to become due Design-Builder under the Contract.

**DB165.35 Non-Field-Tested Materials** - Quality compliance documents for non-field-tested Materials shall be in one of the following forms:

(a) **Test Results Certificate** - The certificate from the manufacturer shall:

- (1) Verify that the Material furnished has been sampled and tested, and that it meets Contract Specifications;
- (2) Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL, or other);

- (3) Identify the testing agency and the representative responsible for the test results;
- (4) Permit positive determination that Material delivered to the Project Site is the same Material covered by the test results certificate; and
- (5) Be delivered to Design-Builder with the shipment of the Material.

**(b) Quality Compliance Certificate** - The certificate from the manufacturer shall:

- (1) Verify that the Material meets all Contract requirements, and identify by number the specified test methods used (ODOT, AASHTO, ASTM, UL, or other);
- (2) Permit positive determination that Material delivered to the Project Site is the same Material covered by the certificate; and
- (3) Be delivered to Design-Builder with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.

**(c) Equipment List and Drawings** - These shall consist of lists and documentation such as the following:

- (1) Shop drawings;
- (2) Material lists;
- (3) Equipment lists;
- (4) Equipment and Materials warranty documentation;
- (5) Equipment and Materials catalog description sheets; or
- (6) Equipment and Materials manufacturer's brochures.

**(d) Certificate of Origin of Steel Materials** - Design-Builder shall obtain ODOT Form 734-2126 for federal-aid projects.

**DB165.40 Statistical Analysis** - When **DB General Provisions**, Subsection 165.30(c) or 165.50 applies, Design-Builder shall divide the Materials into lots and sublots, randomly sample and test them as required, and analyze the results statistically to determine whether the Materials conform to Contract Specifications.

As determined by the Agency, all acceptance test results of lots and sublots may be analyzed collectively using the Quality Level Analysis procedure set out in this Subsection. This procedure shall not be used for a lot with less than three (3) sublots. Sampling of Material for a lot that contains two (2) or fewer sublots shall be increased to obtain at least three (3)

sublots. Both Design-Builder and Agency have discretion to either accept or reject lots originating with two (2) or fewer sublots, even after sampling is increased. The Agency has discretion to increase the testing per subplot or decrease the size of the sub lot for verification testing.

**(a) Lot** - A lot is the quantity of Materials produced by a single process or JMF that is sampled, tested, and statistically evaluated as specified in this Subsection.

**(b) Sublot** - A subplot is a portion of a lot for which a sample test value may be normally obtained.

**(c) Quality Level Analysis** - Quality Level Analysis is a statistical procedure to determine, for each lot:

- (1) The percentage of each constituent of the Materials meeting Specifications;
- (2) The Pay Factor for each constituent; and
- (3) The Composite Pay Factor, when specified.

**(d) Pay Factor and Composite Pay Factor Computation** - Procedures for determining the percent meeting Specifications, Pay Factors, and Composite Pay Factor for a lot of Materials are as follows:

(1) Compute lot arithmetic mean ( $\bar{X}$ ) for each constituent:

$$\bar{X} = \frac{\sum X}{n}$$

Where  $\sum X$  = summation of sample test values  
 $n$  = total number of samples

(2) Compute standard deviation (sd) for each constituent:

$$sd = \sqrt{\frac{\sum X^2 - n\bar{X}^2}{n-1}}$$

Where  $\sum X^2$  = summation of the squares of each sample test value  
 $\bar{X}^2$  = square of the lot arithmetic mean

(3) Compute the upper quality index ( $Q_U$ ) for each constituent:

$$Q_U = \frac{USL - \bar{X}}{sd}$$

Where USL (upper Specification limit) is the target value plus allowable tolerance

(4) Compute the lower quality index ( $Q_L$ ) for each constituent:

$$Q_L = \frac{\bar{X} - LSL}{sd}$$

Where LSL (lower Specification limit) is the target value minus allowable tolerance.

(5) From Table DB165-1, for each constituent, determine the percent within the upper Specification limit ( $P_U$ ) which corresponds to a given  $Q_U$ . If USL is 100% or is not specified,  $P_U$  will be 100.

(6) From Table DB165-1, for each constituent, determine the percent within the lower Specification limit ( $P_L$ ) which corresponds to a given  $Q_L$ . If LSL is 0 or not specified,  $P_L$  will be 100.

(7) Compute the quality level, or total percent within Specification limits ( $P_T$ ), for each constituent:

$$P_T = (P_U + P_L) - 100$$

(8) Using the  $P_T$  from Step 7, determine the Pay Factor (PF) from Table DB165-2 for each constituent tested. A minimum PF of 1.00 will be used when all subplot test values are within the upper and lower Specification limits, regardless of the calculated PF.

(9) Compute the Weighted Pay Factor (WPF) for each constituent:

$$WPF = (PF) \times (f_i)$$

Where  $f_i$  = weighting factor listed in the Specifications for each constituent tested.

(10) Compute the Composite Pay Factor (CPF) for the lot and report the results to three decimal places.

$$CPF = \frac{\sum WPF}{\sum f_i}$$

Where  $\sum WPF$  = sum of the weighted pay factors for each constituent

$\sum f_i$  = sum of the weighting factors listed in the Specifications.

Table DB165-1								
QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD								
P <sub>U</sub> or P <sub>L</sub> PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF Q <sub>U</sub> or Q <sub>L</sub>	UPPER QUALITY INDEX Q <sub>U</sub> OR LOWER QUALITY INDEX Q <sub>L</sub>							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to n = 11
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65
99	-	1.47	1.67	1.80	1.89	1.95	2.00	2.04
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86
97	-	1.41	1.54	1.62	1.67	1.70	1.72	1.74
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65
95	-	1.35	1.44	1.49	1.52	1.54	1.55	1.56
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49
93	-	1.29	1.35	1.38	1.40	1.41	1.42	1.43
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21
88	1.07	1.14	1.15	1.16	1.16	1.16	1.16	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.62
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.59
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40

**Table DB165-1**

<b>QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD</b>								
P <sub>U</sub> or P <sub>L</sub> PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF Q <sub>U</sub> or Q <sub>L</sub>	<b>UPPER QUALITY INDEX Q<sub>U</sub> OR LOWER QUALITY INDEX Q<sub>L</sub></b>							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 11
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26
59	0.32	0.27	0.25	0.25	0.25	0.24	0.24	0.24
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16
55	0.18	0.15	0.14	0.14	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.11	0.10	0.10
53	0.11	0.09	0.08	0.08	0.08	0.08	0.08	0.08
52	0.07	0.06	0.06	0.05	0.05	0.05	0.05	0.05
51	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: For negative values of Q<sub>U</sub> or Q<sub>L</sub>, P<sub>U</sub> or P<sub>L</sub> is equal to 100 minus the table value for P<sub>U</sub> or P<sub>L</sub>. If the value of Q<sub>U</sub> or Q<sub>L</sub> does not correspond exactly to a figure in the table, use the next higher figure.

**Table DB165-2**

<b>REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR</b>								
PAY FACTOR	<b>n = 10 to</b>							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 11
1.05	100	100	100	100	100	100	100	100
1.04	90	91	92	93	93	93	94	94
1.03	80	85	87	88	89	90	91	91
1.02	75	80	83	85	86	87	88	88
1.01	71	77	80	82	84	85	85	86
1.00	68	74	78	80	81	82	83	84
0.99	66	72	75	77	79	80	81	82
0.98	64	70	73	75	77	78	79	80
0.97	62	68	71	74	75	77	78	78
0.96	60	66	69	72	73	75	76	77

**Table DB165-2**

<b>REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR</b>								
PAY FACTOR	n = 10 to							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 11
0.95	59	64	68	70	72	73	74	75
0.94	57	63	66	68	70	72	73	74
0.93	56	61	65	67	69	70	71	72
0.92	55	60	63	65	67	69	70	71
0.91	53	58	62	64	66	67	68	69
0.90	52	57	60	63	64	66	67	68
0.89	51	55	59	61	63	64	66	67
0.88	50	54	57	60	62	63	64	65
0.87	48	53	56	58	60	62	63	64
0.86	47	51	55	57	59	60	62	63
0.85	46	50	53	56	58	59	60	61
0.84	45	49	52	55	56	58	59	60
0.83	44	48	51	53	55	57	58	59
0.82	42	46	50	52	54	55	57	58
0.81	41	45	48	51	53	54	56	57
0.80	40	44	47	50	52	53	54	55
0.79	38	43	46	48	50	52	53	54
0.78	37	41	45	47	49	51	52	53
0.77	36	40	43	46	48	50	51	52
0.76	34	39	42	45	47	48	50	51
0.75	33	38	41	44	46	47	49	50
REJECT	QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75							

NOTE: If the computed Quality Level does not correspond exactly to a figure in the table, use the next lower value.

**Table DB165-3**

<b>REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR</b>							
PAY FACTOR	n = 12	n = 15	n = 19	n = 26	n = 38	n = 70	n = 201
	to n = 14	to n = 18	to n = 25	to n = 37	to n = 69	to n = 200	to n = ∞
1.05	100	100	100	100	100	100	100
1.04	95	95	96	96	97	97	99
1.03	92	93	93	94	95	95	97
1.02	89	90	91	92	93	94	95
1.01	87	88	89	90	91	93	94
1.00	85	86	87	89	90	91	93
0.99	83	85	86	87	88	90	92

**Table DB165-3**

PAY FACTOR	REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR						
	n = 12	n = 15	n = 19	n = 26	n = 38	n = 70	n = 201
	to n = 14	to n = 18	to n = 25	to n = 37	to n = 69	to n = 200	to n = ∞
0.98	81	83	84	85	87	88	90
0.97	80	81	83	84	85	87	89
0.96	78	80	81	83	84	86	88
0.95	77	78	80	81	83	85	87
0.94	75	77	78	80	81	83	86
0.93	74	75	77	78	80	82	84
0.92	72	74	75	77	79	81	83
0.91	71	73	74	76	78	80	82
0.90	70	71	73	75	76	79	81
0.89	68	70	72	73	75	77	80
0.88	67	69	70	72	74	76	79
0.87	66	67	69	71	73	75	78
0.86	64	66	68	70	72	74	77
0.85	63	65	67	69	71	73	76
0.84	62	64	65	67	69	72	75
0.83	61	63	64	66	68	71	74
0.82	60	61	63	65	67	70	72
0.81	58	60	62	64	66	69	71
0.80	57	59	61	63	65	67	70
0.79	56	58	60	62	64	66	69
0.78	55	57	59	61	63	65	68
0.77	52	56	57	60	62	64	67
0.76	51	55	56	58	61	63	66
0.75	51	53	55	57	59	62	65
REJECT	QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75						

NOTE: If the computed Quality Level does not correspond exactly to a figure in the table, use the next lower value.

**DB165.50 Statistical Acceptance Sampling and Testing** - Design-Builder shall sample and test Materials for acceptance, as required by the Contract. Agency may statistically evaluate test results for Acceptance purposes, or to calculate a Pay Factor or Composite Pay Factor. The following apply:

**(a) Statistical Acceptance** - Design-Builder shall perform statistical analysis according to **DB General Provisions**, Subsection 165.40 for acceptance and to determine a Pay Factor (PF) or Composite Pay Factor (CPF). Design-Builder’s determination of the PF or CPF shall not be controlling except upon Agency concurrence.

**(b) Pay Adjustments** - As an incentive to produce quality Materials, Agency may make a pay adjustment based upon the following:

**(1) Specification Materials** - Any constituent with a PF of 1.00 or greater, or any Materials with a CPF of 1.0000 or greater, will be considered Specification Materials. A constituent with a PF greater than 1.00 or Materials with a CPF greater than 1.0000 will be considered of superior quality. The maximum PF applied for payment purposes shall be 1.00.

**(2) Non-Specification Materials** - Any constituent with a PF less than 1.00, or any Materials with a CPF less than 1.0000 will be considered non-Specification Materials. When specified, a lot containing non-Specification Materials may be accepted at a reduced price as described in (c) below.

**(c) Non-Specification Materials**

**(1) A Lot-in-Progress** - Design-Builder shall shut down production when any of the following occurs:

- a. The CPF for a lot-in-progress drops below 1.0000, and Design-Builder is taking no corrective action;
- b. The CPF is less than 0.7500; or
- c. Any constituent test is continually out of Specification limits, regardless of whether or not the CPF is below 0.7500.

Design-Builder shall not resume production until Agency has received confirmation that Specification Materials can be produced, and has given authorization to resume.

**(2) An Entire Lot** - Design-Builder or Agency may reject an entire lot of Materials with a CPF between 0.7500 and 1.0000, or may take action in accordance with **DB General Provisions**, Subsection 150.20(c).

For a lot of Material with a CPF below 0.7500, Design-Builder shall take one or more of the following actions:

- a. **Remain in Place** - With Agency concurrence, allow Materials to remain in place with an appropriate price reduction that may range from 25% to 100% (no payment);
- b. **Corrective Work** - With Agency concurrence, require corrective work, at Design-Builder's expense, with an appropriate price reduction that may range from zero (full payment) to 100% (no payment); and/or

**c. Remove and Replace** - Require complete removal and replacement with Specification Materials at Design-Builder's expense (No payment will be made for the rejected Materials, the cost of removal, or for the costs of sampling and testing.).

#### **DB165.70 Use of Materials Without Acceptable Materials Conformance Documents**

**(a) General** - Design-Builder shall not incorporate Materials into the Project prior to receipt of Materials Conformance Documents confirming compliance with all Contract requirements. Agency may waive this requirement temporarily if Materials are necessary for immediate traffic safety.

**(b) Materials Incorporated for Immediate Traffic Safety** - If Materials are incorporated into the Project for immediate traffic safety before acceptable Materials Conformance Documents are available, no payment will be made for the value of the Materials, or the costs of incorporating them, until acceptable Materials Conformance Documents have been received by Design-Builder, or the Materials are otherwise found through testing to comply with Specifications required under the Contract.

**(c) Contractor's Request for Testing Assistance** – If acceptable Materials Conformance Documents are not available, Design-Builder may either have the necessary tests performed at a private laboratory or request in writing that Agency:

- (1) Determine if Agency or its agents can sample and test;
- (2) Estimate the cost to Design-Builder for the testing service; or
- (3) Estimate the time required to obtain the test results.

Agency will provide this information to Design-Builder in writing. If Design-Builder requests Agency, in writing, to proceed, Agency will arrange for the sampling and testing at Design-Builder's expense. If these tests determine the Material complies with Contract Specifications, the Materials may be incorporated into the Project, or, for Materials previously incorporated pursuant to (b) above, payment will be authorized.

**DB165.75 Storage and Handling of Materials** - Design-Builder shall store and handle Materials so as to preserve their quality and fitness for incorporation into the Project. Design-Builder shall restore all storage sites to their original condition according to **DB General Provisions**, Subsection 140.90, or to comply with any applicable permits, orders, or agreements, at Design-Builder's expense. Stored Materials:

- (a)** Shall be readily accessible for Inspection;
- (b)** May be stored on approved parts of the Right-of-Way; or
- (c)** May be stored on private property if written permission of the owner or lessor is obtained.

**DB165.91 Fabrication Inspection Expense** - Fabrication of certain items outside of the State creates additional shop and plant Inspection expense to Agency. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time Inspection by Agency personnel is necessary, Agency will deduct from monies due or to become due to Design-Builder under the Contract an amount computed at the following rates:

<b>Zone</b>	<b>Place of Fabrication</b>	<b>Deduction</b>
1	All of State of Oregon, and those portions of adjacent states within 80 airline km (50 airline miles) of the Oregon border.	\$0
2	Outside of Zone 1, and up to 500 airline km (300 airline miles) from the Oregon border.	\$100 per Calendar Day
3	Outside of Zone 2, up to 5000 airline km (3,000 airline miles) from the Oregon border, and within the continental United States.	Round trip coach airfare from Portland, Oregon plus \$100 per Calendar Day
4	Outside of Zone 3, or outside of the continental United States.	Round trip coach airfare from Portland, Oregon plus \$150 per Calendar Day

Calendar Day charges begin on the first day Agency's inspector begins travel to begin work at the fabrication site, and continue each Calendar Day without interruption through the final day of travel back to the State. Design-Builder will be notified in writing of the beginning and ending dates used in computing amounts deducted from payment pursuant to this Subsection.

This Subsection applies to all fabricated items or manufactured Materials that are Inspected by Agency, including, but are not limited to:

- (a) Structural steel fabrication;
- (b) Prestressed concrete members;
- (c) Precast concrete;
- (d) Signs;

(e) Preservative treatment of wood products;

(f) Epoxy coating of reinforcing steel; and

(g) Other items specifically identified in the Contract Specifications as requiring fabrication site or in-plant inspection by Agency.

## **DB Section 170 - Legal Relations and Responsibilities**

**DB170.00 General** - Design-Builder shall give all required notices and comply with all Laws relating to the Work and to those engaged in the Work.

**DB170.01 Other Agencies Affecting Agency Contracts** - Representatives of regulatory bodies or units of government whose Laws may apply to the Work shall have access to the Work according to **DB General Provisions**, Subsection 150.20(f). These may include, but are not limited to, those in the following (a), (b), (c), and (d).

The following federal, State and local agencies are known to have enacted ordinances and regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

### **(a) Federal Agencies**

- Agriculture, Department of
  - Forest Service
  - Soil Conservation Service
- Army, Department of the
  - Corps of Engineers
- Commerce, Department of
  - National Marine Fisheries Service
- Defense, Department of
- Energy, Department of
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Health and Human Services, Department of
- Housing and Urban Development, Department of
- Interior, Department of
  - Heritage, Conservation, and Recreation Service
  - Bureau of Indian Affairs
  - Bureau of Land Management

Bureau of Mines  
Bureau of Reclamation  
Geological Survey  
Minerals Management Service  
Office of Surface Mining, Reclamation, and Enforcement  
US Fish and Wildlife Service

- Labor, Department of  
Occupational Safety and Health Administration  
Mine Safety and Health Administration
- Transportation, Department of  
Coast Guard  
Federal Highway Administration
- Water Resources Council

**(b) State of Oregon Agencies:**

- Administrative Services, Department of
- Agriculture, Department of  
Natural Resources Division  
Soil and Water Conservation District
- Columbia River Gorge Commission
- Consumer and Business Services, Department of  
Insurance Division  
Oregon Occupational Safety and Health Division
- Energy, Office of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Labor and Industries, Bureau of
- Land Conservation and Development Department
- Parks and Recreation, Department of
- State Lands, Division of
- Water Resources Department

**(c) Local Agencies:**

- Milwaukie City Council
- Clackamas County Courts

- Clackamas County Commissioners, Boards of
- Design Commissions
- Historical Preservation Commissions
- Planning Commissioners
- Port Districts
- Special Districts

**(d) Oregon Tribal Governments**

**DB170.02 Permits, Licenses, and Taxes** - As required to accomplish the Work, Design-Builder shall do the following:

- Obtain all necessary permits and licenses, unless otherwise specified in the **DB Special Provisions**
- Pay all applicable charges, fees, and taxes
- Give all notices required by applicable Laws or under the terms of the Contract
- Comply with ORS 274.530 relating to the lease of stream beds by the Oregon Division of State Lands
- License, in the State of Oregon, all vehicles subject to licensing
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands
- Comply with all orders and permits issued by Authorities

**DB170.03 Furnishing Right of Way and Permits** – Agency will obtain for the following when they are required by applicable Laws, the Plans, or Contract Specifications, unless otherwise specified in **DB Special Provisions**, SP170.03:

- All necessary ROW
- Permits required for crossing or encroaching upon navigable streams
- Permits required for removing materials from or depositing materials in waterways
- Permits required for operating in an Agency-controlled source of materials or disposal area
- System development fees charged by local Authorities
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical
- Cost of referencing and replacing endangered survey monuments
- Electrical permits for signals and illumination items
- Environmental permits including erosion control permits
- Land use permits

Work outside each Work Location requires approval of Agency. Acquisition of permits for Work outside each Work Location is the responsibility of Design-Builder.

**DB170.04 Patents, Copyrights and Trademarks** - Prior to use of designs, devices, Materials, or processes protected by patent, copyright, or trademark, Design-Builder shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right.

Design-Builder shall indemnify, defend (with counsel approved by Agency), and hold harmless Agency and all third parties and Authorities having a possessory or ownership interest or regulatory authority over the Project, a Work Location, or the Project Site from claims of patent, copyright, or trademark infringement, and from costs, expenses, and damages Design-Builder or Agency may be obligated to pay as a result of such infringement during or after completing the Work.

**DB170.05 Assignment of Antitrust Rights** - Design-Builder irrevocably assigns to Agency any claim for relief or cause of action Design-Builder acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of the following:

- Title 15 (Commerce and Trade), United States Code
- ORS 646.725
- ORS 646.730

In connection with this assignment, it is an express obligation of Design-Builder to take no action that would in any way impair or diminish the value of the rights assigned to Agency pursuant to the provisions of this Subsection. Further, it is the express obligation of Design-Builder to take all action necessary to preserve the rights assigned. It is an express obligation of Design-Builder to advise Agency's legal counsel of any of the following occurrences:

- In advance, of its intention to commence any action involving such claims for relief or causes of action
- Immediately upon becoming aware of the fact that an action involving such claims for relief or causes of action has been commenced by some other person or persons
- The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of Design-Builder's assignment to Agency pursuant to the provisions of this Subsection

In the event any payment is made to Design-Builder under any such claims for relief, Design-Builder shall promptly pay the full sum over to Agency. In the event Design-Builder fails to make such payment, Agency may deduct the amount from monies due or to become due to Design-Builder under the Contract.

#### **DB170.07 Ownership of Work Product**

**(a) Work Product** - All Work Product created by Design-Builder for the Project, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire," shall be the exclusive property of Agency. Agency and Design-Builder agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. If for any

reason the original Work Product created for the Project is not “work made for hire,” Design-Builder hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all original Work Product created for the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property Law, doctrine or otherwise. Design-Builder agrees to (a) ensure and confirm to Agency that Design-Builder’s agreements with its Subcontractors, employees and agents conform to the requirements of this Subsection, and (b) execute such further documents and instruments as may be reasonably necessary or as Agency may reasonably request in order to fully vest such rights in Agency. Design-Builder forever waives and shall obtain waivers from its Subcontractors, employees and agents of any and all rights relating to original Work Product created for the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

**(b) Design-Builder Intellectual Property** - In the event that any Work Product is Design-Builder Intellectual Property or in the event any Design-Builder Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Design-Builder hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Design-Builder Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency’s behalf. At the request of Design-Builder, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Design-Builder in any Design-Builder Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

**(c) Third Party Works** - In the event that Work Product is Third Party Intellectual Property or in the event any Third Party Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Design-Builder shall secure on Agency’s behalf and in the name of Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency’s behalf.

**(d) Design-Builder Intellectual Property-Derivative Work** - In the event that Work Product created by Design-Builder for the Project is a derivative work based on Design-Builder Intellectual Property, or is a compilation that includes Design-Builder Intellectual Property, Design-Builder hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Design-Builder Intellectual Property employed in the Work Product, including the right of Agency to authorize others to do the same on Agency’s behalf.

**(e) Third Party Works-Derivative Work** - In the event that Work Product created by Design-Builder for the Project is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Design-Builder

shall secure on Agency's behalf and in the name of Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Agency's behalf.

**(f) Limited Agency Indemnity** - If Agency reuses or modifies the Work Product without Design-Builder's involvement or prior written consent, to the extent permitted by Article XI, Section 7, of the Oregon Constitution, and subject to the protections afforded by the Oregon Tort Claims Act, Agency shall indemnify Design-Builder, within the limits of the Tort Claims Act and any other protections afforded the City of Milwaukie, against liability for damage to life or property arising from the State's reuse or modification of the Work Product; provided however, Agency shall not be required to indemnify Design-Builder for any such liability arising out of or related to defective Plans and **Design-Builder Specifications**, or Design-Builder's breach of the Contract, professional negligence, or the negligent or wrongful acts of Design-Builder's Subcontractors, employees, or agents in preparing the Plans and **Design-Builder Specifications** or testing and Inspection conducted for the Project.

**(g) Design-Builder Use of Work Product** - Design-Builder, despite other conditions of this provision, shall have the right to utilize such Work Products on its brochures or other literature that it may disseminate for its sales promotions, and in addition, unless specifically otherwise prohibited elsewhere in the Contract Documents, Design-Builder may use its standard line drawings, **Design-Builder Specifications**, and calculations on other, unrelated projects.

**DB170.10 Required Payments by Design-Builder** - Design-Builder shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

**(a) Prompt Payment by Design-Builder for Labor and Materials** - As required by ORS 279C.505, Design-Builder shall comply with each of the following requirements:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract
- Pay all contributions or amounts due the Industrial Accident Fund, whether from Design-Builder or a Subcontractor, incurred in the performance of the Contract
- Not permit any lien or claim to be filed against the State or any political subdivision thereof on account of any labor or Materials furnished in performance of the Contract
- Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167

**(b) Prompt Payment by Design-Builder to First-Tier Subcontractors** - After Design-Builder has determined and certified to Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, Design-Builder may request payment from

Agency for the Work, and shall pay the Subcontractors within 10 Calendar Days out of such amounts as Agency has paid to Design-Builder for the subcontracted Work.

**(c) Interest on Unpaid Amount** - If Design-Builder or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Calendar Days after Design-Builder's receipt of payment, Design-Builder or first-tier Subcontractor shall owe the Entity the amount due, plus interest charges commencing on the date payment was due and ending upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

The rate of interest charged to Design-Builder or first-tier Subcontractor on the amount due shall equal three (3) 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 Calendar Days after the date when the payment was received from Agency or from Design-Builder. The amount of interest due may not be waived, but the rate of interest shall not exceed 30 percent.

**(d) Agency's Payment of Design-Builder's Prompt Payment Obligations** - If Design-Builder fails, neglects, or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to Design-Builder or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due to Design-Builder under the Contract. (Agency has no obligation to pay these Entities, and ODOT will not normally do so, but will refer them to Design-Builder and Design-Builder's Surety.)

The payment of a claim by Agency in the manner authorized in this Subsection shall not relieve Design-Builder or Design-Builder's Surety from obligations with respect to any such claims.

**(e) Right to Complain to the Construction Contractors Board** - If Design-Builder or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

**(f) Notice of Claim Against Bond** - An Entity claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action, first on Design-Builder's Public Works Bond and then, for any amount of a claim not satisfied by the Public Works Bond, on Design-Builder's bond, cashier's check, or certified check as provided in ORS 279C.600 and ORS 279C.605.

## **DB170.20 Contract Bonds**

**(a) Performance and Payment Bonds** - The Performance and Payment Bonds shall be updated promptly as necessary to reflect the Contract Amount, scope of Work, and Contract

terms and conditions as they may be amended from time to time by Change Order during the term of the Contract.

**(b) Public Works Bond** - Before beginning performance of any Work, Design-Builder and its Subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect for the duration of their respective contracts, a Public Works Bond in the amount of \$30,000, that meets the requirements of ORS 279C.800 to ORS 279C.870 and OAR 839-025-0015. Design-Builder shall include this requirement in each of its subcontracts. Prior to authorizing any Subcontractor to begin performance of Work, Design-Builder shall verify that a Public Works Bond is on file with the Construction Contractors Board.

All bonds required under the terms of the Contract must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact shall be attached to the bonds, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Payment and Performance Bonds shall not be canceled without Agency's consent, nor will Agency normally release them prior to Contract completion. Public Works Bonds shall not be cancelled prior to completion of the Work for which the bond is required.

**DB170.30 Hazardous Materials Reporting and Clean-Up of Spills** - Design-Builder shall be responsible for reporting and cleaning up spills associated with construction of the Project, and shall report and respond to spills of Hazardous Materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other materials that are a threat to public health or the environment. Design-Builder shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Unreported spills identified after construction and associated with construction of the Project shall be cleaned up or remediated by Design-Builder. Failure to report or respond to a spill shall result in Design-Builder bearing the full cost of remediation or clean-up of such unreported spills.

Agency shall be responsible for any delay costs and expenses due to it or Design-Builder making a new discovery of Hazardous Materials that are not identified in the RFP or the Contract Documents. Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the RFP or the Contract Documents or that are caused by Design-Builder or any of its Subcontractors, employees, or agents.

All reporting required under this Subsection shall be made to the appropriate Authorities. Reports shall also be made immediately to Agency PM if on State ROW or to the property owner if outside-of-State ROW.

Agency shall be responsible for any delay costs and expenses due to it or Design-Builder making a new discovery of Hazardous Materials that are not identified in the RFP or the Contract Documents. Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the RFP or

the Contract Documents or that are caused by Design-Builder or any of its Subcontractors, employees, or agents.

**DB170.32 Protection of Navigable Waters** - Design-Builder shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899, and its amendments.

Design-Builder shall not interfere with waterway navigation or impair navigable depths or clearances, except as US Coast Guard or Army Corps of Engineers permits allow.

**DB170.60 Safety and Health Provisions** - Design-Builder shall perform all Work in a skillful manner with due regard to the safety and health of its employees and the public. Design-Builder shall comply with all Laws concerning safety, health, and sanitation standards. Design-Builder shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

**(a) Occupational Safety and Health** - In accordance with OR-OSHA and the United States Occupational Safety and Health Administration (OSHA) regulations, Design-Builder's employees shall be required to wear protective helmets (hard hats) when there is a possible danger of head injury from impact, from falling or flying objects, or from electrical shock and burns. Additionally, all employees working within an active Highway Right of Way must wear protective helmets and reflective safety vests at all times. Helmets are not required for employees within a completely enclosed cab constructed of steel frame and glass or inside an automobile. Helmets must meet current ANSI Standards for impact, electrical shock, and burn protection. For purposes of this Subsection, Design-Builder's employees shall be considered to include everyone on its payroll, as well as Subcontractors, Materials suppliers, and other personnel on the Project Site under the direction of Design-Builder.

It shall be the responsibility of Design-Builder to perform all necessary planning, supervision, safety committee, and training activities to ensure that all of the requirements of OR-OSHA and OSHA are fully met for all workers employed in the construction of the Project. Design-Builder shall provide to Agency prior to the start of Work satisfactory evidence that all current requirements of OR-OSHA and OSHA will be adequately addressed.

**(b) Safety and Protection** - During the term of the Contract Design-Builder shall be solely responsible for the means and methods for maintaining a safe work place for the workers and general public, and shall be solely responsible for conditions on the Project Site, including safety and security of all persons and property on Work Locations. This responsibility shall not be limited to normal business hours or other time constraints, or be reduced or diminished in any way because Design-Builder is not given sole possession of the Project Site. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to, the following:

(1) All workers engaged on the Project, all persons working at or visiting the Project Site, and all other persons in the vicinity who may be affected, including the traveling public.

(2) The Project and all Equipment and Materials to be incorporated therein, whether in storage on or off the Project Site.

(3) Other property on Work Locations or adjacent thereto, including trees, shrubs, lawns, walks, pavements, Roadways, Structures, and Utilities, except as designated for relocation, removal, or replacement as part of the Work.

Design-Builder shall require its Safety Manager to verify by inspection that the requirements of this Subsection and Design-Builder's Safety Plan and safety procedures are being strictly complied with.

(c) **Emergencies** - In emergencies affecting the safety of persons, the Work, or property at the Project Site or adjacent thereto, Design-Builder, without special instruction or authorization from Agency, shall act at its discretion to prevent threatened damage, injury, or loss. Design-Builder shall give Agency prompt written notice of any such emergencies and Design-Builder actions taken in response thereto, as well as any significant changes in the prosecution of the Work or deviations from the Contract requirements caused thereby.

(d) **Corrective Action** - Design-Builder shall take Immediate action after an accident or incident to correct the Work methods and conditions that are the cause or contributing factors.

(e) **Design-Builder's Project-Specific Safety Plan** - Prior to commencement of any construction activities, Design-Builder shall submit to Agency PM a written Project-specific Safety Plan that documents Design-Builder's safety policy and identifies and addresses specific health and safety concerns to be encountered on the Project Site and in performance of the Contract. Prior to commencement of any construction activities, and periodically thereafter, but not less than quarterly throughout the Project, Design-Builder's Project supervision staff shall meet with Agency PM to review and discuss the status of safety issues on the Project.

Design-Builder shall implement, review, and update the Safety Plan and introduce a program for assuring that the Project-specific Safety Plan is followed by all workers at all times. Design-Builder shall coordinate with all Authorities and relevant Entities as necessary to ensure compliance with the Safety Plan.

Agency may monitor and audit Design-Builder's safety performance.

Design-Builder's Safety Plan shall provide for the following:

- Planning, management, and design to avoid hazards
- Subcontractor safety management
- Detection of potential hazards

- Timely correction of hazards
- Dedication to the protection of the public and the workers
- Active participation of all persons involved with the Contract
- Dedicated safety staff
- Liaison with Agency's monitoring staff
- Site safety orientation, training, and safety meetings, including a plan for indicating attendance at safety orientation

Design-Builder shall ensure that all its employees and those of the subcontractors at all tiers (including labor-only) fully conform at all times to the provisions of the Safety Plan. In the event that Design-Builder's employees or its Subcontractors fail to conform to the provisions of the Safety Plan, Design-Builder shall take appropriate disciplinary measures. Such measures shall include suspension, removal of offending employees from the Project Site, and dismissal. The obligations and requirements of this Subsection shall be included in the terms and conditions of employment of all employees of Design-Builder and in all subcontracts at all tiers, including labor-only subcontractors.

**(f) Content of the Project-Specific Safety Plan** - The Safety Plan shall be comprehensive and include all required actions, activities, rules, and mitigation measures relative to the safety of persons and the Work. It shall include the following items:

- Policy statement indicating Design-Builder's commitment to safety, goals stated as maximum lost hours, and no-loss-of-life goals
- Identification of Agency and Design-Builder safety officers, including responsibility definitions, an organization chart, phone numbers, reporting procedures, safety inspection procedures, and audit programs
- References to all applicable Laws
- An education and training plan for required training of all workers, including a separate program and Hazardous Materials Communications Plan for workers involved with Hazardous Materials remediation, required toolbox meetings, and required posting of information
- Documentation of worker training, maintained at the Project Site
- Procedures to address Project health and safety concerns, including housekeeping, Materials handling and storage, personal protective Equipment, wall and floor/deck openings, scaffolds, ladders, welding, flame cutting, electrical Equipment, lock-out or tag-out, motor vehicles, heavy Equipment, small tools, concrete forms, steel erection, cranes and hoisting, Work platforms, fire prevention and protection, sanitation, confined space entry, blasting and explosives, proper shoring, work in trenches, and other items
- Industrial hygiene, including respiratory protection, noise, Hazardous Materials, MSDS, and lists of hazardous chemicals present
- Fire protection and prevention

- Emergency and rescue procedures, including detailed procedures for all types of emergencies, such as fall rescue, medical, fire, chemical spill, property damage, bomb threat, severe weather, flooding, explosion, and earthquakes
- Incident investigation, reporting, and record keeping
- Policy on substance abuse
- Security provisions
- Safety requirements and procedures for Design Professionals conducting site investigations and Verification Sampling and Testing
- Procedures for compelling worker compliance with health and safety requirements
- Identification of the safety organization, together with the reporting structure, channels of communications (including direct communication between Design-Builder's Safety Manager and Design-Builder's Project Manager), each member's responsibilities, and task subdivision clearly described

Those portions of the foregoing that are not Project-specific may be submitted as part of Design-Builder's health and safety program. Project-specific aspects shall be included in the Safety Plan.

The Safety Plan shall contain a list of the detailed safety procedures to be followed. Safety procedures shall be prepared separately for individual activities and included in appendices to the Safety Plan.

Design-Builder shall be responsible for ensuring that each Subcontractor employed on the Project complies with this requirement, and Design-Builder shall provide to Agency PM a Project-specific Safety Plan covering all Work to be done by each Subcontractor prior to the Subcontractor's starting Work. As an alternate, Design-Builder may provide a certification that all activities performed by, and workers employed by, Subcontractors will be subject to Design-Builder's Safety Plan. Submission of the required Safety Plan by Design-Builder and Review and Comment by Agency shall not be construed to imply approval of any particular method or sequence for addressing health and safety concerns, or to relieve Design-Builder from the responsibility for adequately protecting the health and safety of all workers involved in the Project, as well as members of the public affected by the Project.

**(g) Submittal of the Safety Plan** - Thirty Calendar Days prior to the start of any On-or Off-Site Work or other construction activities, Design-Builder shall submit its Safety Plan to Agency PM for Review and Comment. Upon receipt of Review and Comment, Design-Builder shall issue the complete Safety Plan, which shall be based on Design-Builder's Safety Plan information contained in its Proposal and shall incorporate Agency comments and any other required updating. The Safety Plan is a living document and revisions and updates are expected. The Safety Plan shall be a controlled document, to be issued by Design-Builder to, at a minimum, the following:

- Agency PM
- Design-Builder's Project Manager
- Design-Builder's Safety Manager

- Subcontractors of all tiers, including labor-only subcontractors

Other controlled copies shall be distributed as determined by Design-Builder and Agency PM. Uncontrolled copies shall be issued as considered necessary by Design-Builder.

Design-Builder shall maintain a traceable record of the issuance of the controlled copies, including copy number and acknowledgement of receipt. Revisions of the Safety Plan shall be issued to all recipients of the controlled copies and managed in the same way as the controlled copies.

**(h) Revisions to the Safety Plan and Procedures** - Agency PM may require a revision to the Safety Plan or any safety procedure in order to ensure compliance with the Law or Contract requirements. Design-Builder shall, following discussion with Agency PM, issue such revision as soon as reasonably possible, but in no event later than two (2) Business Days after receipt of the instruction.

Design-Builder shall revise the Safety Plan and safety procedures in order to enhance the standards of safety being implemented on site, and to address changes in activities and experiences on the Project Site.

Every 12 months on or near the anniversary of NTP Design-Builder shall review its Safety Plan, and shall consider all sources of information relevant to safety planning and implementation, including accident reports, inspections, audits, suggestions from meetings, and other sources, such as Agency PM and hazard analysis reviews. Within seven (7) Calendar Days of finishing this review, Design-Builder shall issue a review report to Agency PM, giving the conclusions of its review and identifying any revisions to be made to the Safety Plan.

Within 30 Calendar Days of issuance of the review report, Design-Builder shall submit the revised Safety Plan to Agency PM for Review and Comment.

**(i) Safety Plan to be Kept On Site** – A copy of the current version of the Safety Plan shall be kept on site at each Work Location while Work is being performed, and an appropriate notice shall be posted at each Work Location notifying workers that the Safety Plan is available for examination.

**(j) Design-Builder's Safety Organization** - Design-Builder shall designate a member of its senior management, either a board member or managing partner, or a principal of the organization, who shall be responsible and directly accountable in all matters concerning safety. Design-Builder's Project Manager shall also be responsible and directly accountable to this designated board member, managing partner, or principal in all matters concerning construction safety.

Design-Builder's Safety Manager shall be responsible solely for the safety aspects of the Project, and shall report directly to the designated board member, managing partner, or principal. The Safety Manager shall implement, maintain, and monitor compliance with the

Safety Plan and all safety procedures, and shall be present full-time on the Project Site. Design-Builder shall not commence any Work until the Safety Manager has been appointed. No Work shall be performed at a Work Location unless Design-Builder's Safety Manager or designated deputy is on site.

Design-Builder shall provide and maintain an organizational structure that shall ensure the effective performance of safety assurance functions by Design-Builder's safety staff. Design-Builder shall provide adequate numbers of supporting staff for the Safety Manager, including a deputy to act in his/her absence. Such staff shall be engaged solely in safety assurance, and shall be suitably qualified and experienced. Design-Builder shall also provide sufficient licensed Emergency Medical Technicians (EMTs) to provide adequate emergency medical care to personnel working at each Work Location and comply with OR-OSHA emergency response times.

Design-Builder shall ensure that all subcontractors at all tiers, including labor-only subcontractors, have adequate safety staffs. Each shall have a safety supervisor who shall have appropriate experience and training. Each subcontractor safety supervisor shall be responsible for implementing and maintaining its respective safety plan, which shall comply with Design-Builder's Safety Plan. Subcontractor safety supervisors shall devote a substantial amount of their time to such duties.

The Safety Manager and safety staff shall have authority to issue stop-work orders in the event of a perceived safety issue, concern, or observation, suspending Work until appropriate corrective action has been taken or the situation has been rectified. If Design-Builder considers the safety issue, concern, or observation to be of a minor nature, and the Safety Manager concurs, implementation of corrective action may be delayed up to 24 hours, and Work resumed.

Breaches of Design-Builder's Safety Plan or other conduct prejudicial to safety may be cause for Agency PM to issue a stop-work order or require the removal of any worker, including Design-Builder's Project Manager or Safety Manager, from the Project Site. Design-Builder shall not remove the appointed Safety Manager except as provided in **DB General Provisions**, Subsection 180.35(c).

**(k) Safety Considerations in Design** - Design-Builder shall identify and analyze the hazards and risks associated with the Work, including during construction, and the Project's ultimate use, and shall plan the Work and design the Project so as to eliminate, mitigate, or control such hazards. Such hazards shall be identified and logged in a database during the design process so that the Safety Manager can adequately prepare the Safety Plan. The log shall be provided during the Design Review process to Agency so that it can adequately prepare its staff for the Project.

**(l) Inspections** - In accordance with applicable Law, Design-Builder shall allow OR-OSHA and OSHA access to the Project Site for the purpose of conducting inspections. Design-Builder shall notify Agency PM of any inspections to be conducted by OR-OSHA, OSHA, or other health and safety Authorities, and of any resulting closing conference, and shall

provide Agency PM with the opportunity to be present at such inspections and closing conferences. Design-Builder shall notify Agency in writing of the results of any health and safety inspections within one (1) Business Day of the completion of the closing conference resulting from such inspections. If any citations, warning letters, or recommendations are issued for alleged violations, a copy shall be provided to Agency PM within one (1) Business Day of receipt by Design-Builder, and a copy of the final disposition of such citations shall also be provided to Agency PM within one (1) Business Day of receipt by Design-Builder. Agency will provide Design-Builder with any observations it may make regarding potential safety issues. Design-Builder's Safety Manager shall document the actions taken to prevent recurrence of the potential safety violation.

**(m) Reporting of Industrial Accidents** - Design-Builder shall provide Agency in writing, within 24 hours of the event, details of any accident or incident occurring wholly on the Project Site involving any worker performing Work or delivering Materials, Equipment, or supplies to the Project, provided that one of the following criteria is met:

- The accident or incident results in the death of a worker, or requires that a worker be hospitalized overnight for treatment of the injury
- The accident otherwise meets the notification requirements of OR-OSHA or OSHA

**(n) Safety Reports** - Design-Builder shall submit a monthly safety report with the monthly progress report and request for periodic payment.

**(o) Asbestos Abatement** - Pursuant to ORS 468A.720, Design-Builder or a Subcontractor that performs Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

**(p) Emergency Contact Person** - Design-Builder shall designate someone to be available to respond to emergency calls. The name of the person and the telephone number at which he/she can be reached at any time shall be given to Agency PM and all police agencies in the area. Such person shall have full authority and capability to mobilize forces promptly as required to respond to an emergency and protect the public.

#### **DB170.61 Industrial Accident Protection**

**(a) Workers' Compensation** - Design-Builder shall provide workers' compensation coverage for on-the-job injuries.

**(b) Longshoremen's and Harbor Workers' Compensation** - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act (Chapter 18, Title 33 of the USC) may apply, and Design-Builder shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

**DB170.62 Labor Nondiscrimination** - Design-Builder shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination on the basis of race, religion, color, sex, disability, or national origin.

**DB170.63 Payment for Medical Care** - Design-Builder shall comply with ORS 279C.530 concerning payment for medical care and providing workers' compensation. Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or other needed care and attention, incident to sickness or injury, to its employees, of all sums that Design-Builder agrees to pay for the services, and all moneys and sums that Design-Builder collected or deducted from the wages of employees under any Law, contract, or agreement for the purpose of providing or paying for the services. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

**DB170.65 Minimum Wage and Overtime Rates for Public Works Projects**

(a) **General** - Design-Builder shall be responsible for investigating local labor conditions. Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the Contract Amount will be made if wage rates paid are more than those listed.

For all other Work, Design-Builder shall comply with the provisions of ORS 279C.800 through 279C.870 with regard to minimum and overtime wage rates, and shall require that each subcontract at every tier contain a clause requiring the subcontractor to so comply.

Design-Builder, or Design-Builder's Surety, shall file (and shall require each subcontractor or subcontractor's surety to file) with Agency certified statements in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each of its workers performing Work on the Project, and further certifying that none of its workers performing Work on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries for the Project. The certified statement shall be verified by the oath of Design-Builder or Design-Builder's Surety, or the subcontractor or subcontractor's surety for subcontracts, that Design-Builder or subcontractor has read such certified statement and knows the contents thereof, and the same is true, to Design-Builder's or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which Design-Builder or subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth Business Day of the month. Design-Builder and subcontractors shall preserve the certified statements as Project Records for a period of six (6) years from the date of completion of the Contract.

Agency will retain 25% of any amount earned by Design-Builder on the Contract until Design-Builder has filed the certified statements required by ORS 279C.845. Agency will pay to Design-Builder the amount retained within 30 Calendar Days after Design-Builder

files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

Design-Builder shall retain 25% of any amount earned by a first-tier Subcontractor until the first-tier Subcontractor has filed the certified statements required by ORS 279C.845 or FHWA Form 1273. Before paying any amount retained, Design-Builder shall verify that the first-tier Subcontractor has filed the required certified statement. Within 30 Calendar Days after the first-tier Subcontractor files the required certified statement Design-Builder shall pay the first-tier Subcontractor the amount retained.

Design-Builder shall comply with the pertinent provisions of ORS 279C.520 concerning hours of labor.

**(b) When Federal Funds Are Involved** - Design-Builder shall comply with the requirements of the publication, “Prevailing Wage Rates for Public Works Contracts in Oregon,” which are incorporated herein by reference, and can be accessed at: [http://www.oregon.gov/BOLI/WHD/PWR/pwr\\_book.shtml](http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml)

Unless subject to the Federal Contract Work Hours and Safety Standards Act, as described in DB170.65(a), Design-Builder shall comply with the overtime requirements of ORS 279C.520, ORS 279C.540 and ORS 279C.845.

**(c) Time Limitation on Claim for Overtime** - Pursuant to ORS 279C.545:

(1) Design-Builder shall cause a circular, clearly printed in blackface pica type and containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper’s office or in a similar place which is readily available on each Work Location and freely visible to any or all workers employed to perform Work.

(2) Design-Builder shall maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**(d) Owner/Operator Data** – Upon request, Design-Builder shall furnish data for each owner/operator providing trucking services. The data must be provided before the time the services are provided and must include the following information without limitation for each owner/operator:

- Driver’s name
- Copy of driver’s license
- Vehicle identification number
- Copy of vehicle registration
- Motor vehicle license plate number
- Motor carrier plate number
- Copy of ODOT Motor Carrier 1-A Permit

- Name of owner/operator from the side of the truck

**DB170.67 BOLI Fee** - In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Agency to the Commissioner at the time the Agency enters into the Contract.

**DB170.70 Insurance**

Each policy required by these provisions shall be written as a primary policy, not contributing with or in excess of any coverage which the Agency may carry. A copy of each policy or a certificate satisfactory to the Agency shall be delivered to the Agency prior to commencement of the Work. Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon and shall contain an endorsement entitling the Agency to not less than 30 days prior written notice of any material change, nonrenewal or cancellation. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, the Agency shall have the right to require Contractor to increase the Contractor's coverages by the amount of the statutory limit increase for such claims and to increase the aggregate coverage by an amount that is twice as large as the statutory increase. The adequacy of all insurance required by these provisions shall be subject to approval by the Agency's Risk Manager. Failure to maintain any insurance coverage required by this contract shall be cause for immediate termination of this contract by the Agency.

**(a) Insurance Coverages** - Design-Builder shall obtain, at its expense, and keep in effect during the term of the Contract, the insurance coverages listed below. Design-Builder may, however, contractually obligate an appropriate Subcontractor to obtain, at the Subcontractor's expense or at Design-Builder's expense, and keep in effect during the term of the Contract, pollution liability coverage, asbestos liability, lead liability, or automobile liability with pollution coverages, or such other types of insurance coverage that Agency approves as types of insurance coverage that may be obtained by appropriate Subcontractors. If both Design-Builder and an appropriate Subcontractor will perform pollution-related Work or other Work that would be covered by the other above-described types of insurance permitted to be obtained by an appropriate Subcontractor, the insurance coverages listed below that correspond to such Work shall be obtained, at Design-Builder's or Subcontractor's expense, and shall cover the liability of Design-Builder and the Subcontractor, either under the same or separate insurance policies.

- **Commercial General Liability** - Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to Agency. This insurance shall include personal and advertising injury liability and products and completed operations coverage. Coverage may be written in combination with Commercial Automobile Liability Insurance, with separate limits for Commercial General Liability and Commercial Automobile Liability. Coverage shall be written on an occurrence basis. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70.

The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provision. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract. If Design-Builder's Commercial General Liability Insurance limits are less than the required limits stated above, Design-Builder shall obtain Excess or Umbrella Liability Insurance with sufficient limits that when added to Design-Builder's Commercial General Liability Insurance limits the total combined limits of Commercial General Liability Insurance and Excess or Umbrella Liability Insurance equal or exceed the above-stated Commercial General Liability Insurance limits required for this Project. The above-stated combined single limit per occurrence and the above-stated annual aggregate limit must each be met. Excess or Umbrella Liability Insurance coverage shall extend to the same perils, terms, and conditions as the underlying Commercial General Liability Insurance coverage.

- **Pollution Liability** - If indicated in **DB Special Provisions**, SP170.70, Pollution Liability Insurance covering Design-Builder's liability, or the liability of an appropriate Subcontractor if the coverage is obtained by the Subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental pollution, gradual pollution, and related clean-up costs incurred by Design-Builder, or by the Subcontractor if the coverage is obtained by the Subcontractor, while performing Work required by the Contract. If the coverage is obtained by Design-Builder, the coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70. The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provision. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Asbestos Liability** - If indicated in **DB Special Provisions**, SP170.70, Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, Design-Builder or Subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance, with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Lead Liability** - If indicated in **DB Special Provisions**, SP170.70, Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, Design-Builder or Subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance, with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Commercial Automobile Liability** - Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.
- **Commercial Automobile Liability with Pollution Coverage** - If indicated in **DB Special Provisions**, SP170.70(a), Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering Design-Builder's liability, or the liability of an appropriate Subcontractor if the coverage is obtained by the Subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by Design-Builder, the coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70 or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution-related Work. If Design-Builder will be performing pollution-related Work, this coverage covering Design-Builder must be provided. If an appropriate Subcontractor, but not Design-Builder, will perform the pollution-related Work, Commercial Automobile Liability with Pollution Coverage covering the Subcontractor, but not Design-Builder, must be provided. However, Design-Builder shall provide Commercial Automobile Liability insurance coverage covering Design-Builder as provided in the Commercial Automobile Liability bullet above. If both Design-Builder and an appropriate Subcontractor will be performing pollution-related Work, Commercial Automobile Liability with Pollution Coverage covering both Design-Builder and the Subcontractor shall be provided, and Design-Builder may provide the coverage covering both Design-Builder and the Subcontractor, or Design-Builder and the Subcontractor may provide their own, separate, Commercial Automobile Liability with Pollution coverages.

- **Professional Liability** - If Design-Builder self-performs or provides in-house Design Services for this Project, Design-Builder shall obtain and maintain at its own expense during the term of this Contract, Professional Liability Insurance covering any damages caused by any error, omission or negligent acts of Design-

Builder, its Subcontractors, agents, officers, or employees performing Design Services for the Project, in the dollar amount indicated in **DB Special Provisions, SP170.70**.

If Design-Builder subcontracts Design Services for the Project, Design-Builder shall obtain and maintain at its own expense during the term of this Contract, Professional Liability Insurance covering any damages caused by any error, omission or any negligent acts of Design-Builder, its Subcontractors, agents, officers, or employees performing Design Services for the Project, in the dollar amount indicated in **DB Special Provisions, SP170.70**. Design-Builder shall require its Subcontractors that provide Design Services for the Project to obtain and maintain during the term of this Contract, at Design-Builder's expense or its Subcontractor's expense, Professional Liability Insurance covering any damages caused by any error, omission or any negligent acts of the Subcontractors, their subcontractors, agents, officers, or employees performing Design Services for the Project.

**(b) Tail Coverage** - If any of the liability insurance coverages of **DB General Provisions, Subsection 170.70** are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Design-Builder shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of the Contract. If continuous "claims made" coverage is used, Design-Builder shall keep the coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition to the Agency issuance of Third Notification.

**(c) Additional Insureds** - The required liability insurance coverages shall include Agency, Agency's governing body, board, or Commission and its members, and Agency's officers and employees as Additional Insureds, but only with respect to Design-Builder's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of **DB General Provisions, Subsection 170.70** that are permitted by Agency to be obtained by an appropriate Subcontractor shall include all of the foregoing as Additional Insureds, and shall also include Design-Builder and its officers and employees as Additional Insureds.

**(d) Workers' Compensation** - All employers, including Design-Builder and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State 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. Design-Builder shall certify in the Contract that Design-Builder is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

Design-Builder shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

**(e) Notice of Cancellation or Change** - Design-Builder shall not cancel, change materially, or take any action showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from Design-Builder or its insurer(s) to Agency. Design-Builder shall be responsible for ensuring that insurance coverage(s) obtained by an appropriate Subcontractor, as permitted by Agency under **DB General Provisions**, Subsection 170.70(a), are not cancelled, changed materially, or have any action taken by the Subcontractor showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from Design-Builder or the insurer(s) to Agency. Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to Agency, county, city, or other applicable political jurisdiction, or to Agency's governing body, board, or commission and its members, and Agency's officers and employees.

**(f) Certificate(s) of Insurance** - As evidence of the insurance coverages required by this Contract, including those permitted by Agency under **DB General Provisions**, Subsection 170.70 to be obtained by an appropriate Subcontractor, Design-Builder shall furnish certificate(s) of insurance to Agency no later than the effective date of the Contract. As evidence of insurance coverages required by this Contract but permitted by Agency under **DB General Provisions**, Subsection 170.70 to be obtained by an appropriate Subcontractor, Design-Builder shall furnish certificate(s) of insurance to Agency for Review and Comment prior to the commencement of Work by Subcontractor. Agency will review the certificate(s) for compliance with the Contract requirements and respond within 28 Calendar Days after receipt. The Certificate(s) shall specify all of the parties who are Additional Insureds. Design-Builder shall obtain, or ensure that the appropriate Subcontractors obtain, insurance coverages required under this Contract from insurance companies or entities acceptable to Agency and authorized to issue insurance in the State. Design-Builder, or the appropriate Subcontractor, but not Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

**(g) Builders' Risk** - If indicated in **DB Special Provisions**, SP170.70, Design-Builder shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provision. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include Agency as loss payee.

**DB170.71 Independent Contractor Status** - The service or services to be rendered under the Contract are those of an independent contractor. Design-Builder is not an officer, employee, or agent of the State as those terms are used in ORS 30.265.

**DB170.72 Indemnity / Hold Harmless** - To the fullest extent permitted by Law, and except to the extent otherwise void under ORS 30.140, Design-Builder shall indemnify, defend (with counsel approved by Agency), and hold harmless Agency, Agency's authorized representatives, Agency's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders, and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorneys' fees), demands, and actions of any nature whatsoever which arise out of, result from, or are related to (a) any damage, injury, loss, expense, inconvenience, or delay described in this Subsection; (b) any accident or occurrence which happens or is alleged to have happened in or about a Work Location or any other place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of Design-Builder to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by Design-Builder, or any breach of any agreement, representation, or warranty of Design-Builder contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of Design-Builder, a Subcontractor, or anyone directly or indirectly employed by them or any one of them, or anyone for whose acts they may be liable, for such portion of the claim, damage, loss, or expense not caused by a party indemnified hereunder; and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party, Entity, or person described in this Subsection.

Design-Builder shall indemnify, defend (with counsel approved by Agency), and hold harmless Agency and its representatives from liability arising from or related to the violation of Laws by those engaged in any phase of the Work. This provision does not apply to Work performed by Agency employees.

In claims against any person or Entity indemnified under this Subsection by an employee of Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**DB170.74 Employee Drug-Testing Program** - As required by ORS 279C.505(2), Design-Builder shall have in place, and maintain for the duration of the Contract, an employee drug-testing program. Agency retains the right to audit and/or monitor the program. Upon request, Design-Builder shall furnish to Agency a copy of the employee drug-testing program.

**DB170.78 Conflict of Interest** - Design-Builder shall not give or offer any gift, loan, or other thing of value to any member of Agency's governing body or employee of Agency in connection with the award or performance of any Contract.

Design-Builder shall not rent, lease, or purchase Materials, supplies, or Equipment from or through any Agency employee or member of Agency's governing body.

Design-Builder and its Subcontractors, along with their officers, employees, and agents, are prohibited from acquiring any interest, including purchase options, in property within or adjacent to Work Locations that is reasonably anticipated to be impacted by the Project. Design-Builder and its Subcontractors, along with their officers, employees, and agents, are also prohibited from receiving any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person in connection with any real estate acquisition activity related to this Project. Design-Builder shall include in all of its subcontracts these prohibitions. Any such acquisition of a property interest or receipt of fees, compensation, or benefit shall constitute a material breach of contract, and may result in the termination of the Contract by Agency.

Under Agency's Code of Conduct Policy regarding former employees, when an Agency employee has performed functions for Agency in any phase or stage of a procurement, including but not limited to drafting specifications, reviewing or scoring bids or Proposals, authorizing services or assigning work, or awarding a contract, and the employee leaves Agency and is employed by an Entity (including Design-Builder) that has a contract with Agency, or is a bidder or Proposer on a procurement with the intent of signing a contract with Agency, Entity shall be subject to specific restrictions described below for a one-year period from the date Agency employee last performed the functions cited above. This one-year prohibition applies to work performed under any such contract and failure to disclose such relationship or to remedy such potential violation shall result in the rejection of Entity's bid or Proposal or cancellation of the contract (including the Contract) with Agency at any time. It would also constitute grounds for cancellation of an Entity's prequalification with Agency and for a determination of Entity not being a responsible contractor for future procurements.

Entity (including Design-Builder) shall declare if a former Agency employee works for Entity, the job the employee previously performed for Agency, and the role the employee now serves for Entity. Use of the former Agency employee by Entity in any role relating to the same or substantially similar Agency procurement or contract for which the employee participated while employed by Agency is prohibited. This prohibition applies to an employee for only the one-year period immediately following the date the employee left Agency employment. Each such declaration by an Entity shall include a signed statement by the former Agency employee describing the proposed role of the employee in the particular procurement or contract.

**DB170.79 Third Party Beneficiary** - There are no third-party beneficiaries of the Contract.

**DB170.80 Responsibility for Damage to Work**

**(a) Responsibility for Damage in General** - Except as otherwise provided in this Subsection, Design-Builder shall perform Work, and furnish Materials and Equipment for incorporation into the Project, at Design-Builder's own risk, until the entire Project has been completed and Accepted by Agency. Design-Builder shall repair all damages to Work

performed, Materials supplied, and Equipment incorporated into the Project, except as otherwise provided in this Subsection.

**(b) Repair of Damage to Work** - Design-Builder shall be responsible for promptly rebuilding, repairing, restoring, and making good damages to any portion of the permanent or temporary Work, regardless of whether Design-Builder has been relieved of responsibility pursuant to the provisions of this Subsection, unless Agency directs otherwise. Where Design-Builder has been relieved of responsibility for the damage, Work required to repair damage to the Work shall be considered Extra or Changed Work. Agency may elect to have such Extra or Changed Work performed by Agency forces or other means.

Where Design-Builder has not been relieved of responsibility for the damage pursuant to a provision of this Subsection, Design-Builder shall be responsible for promptly rebuilding, repairing, restoring, and making good damage to any portion of the permanent or temporary Work occurring before issuance of Third Notification with no additional compensation, except for repairs necessitated by damage caused by the following:

- Acts of God or Nature
- Actions of Authorities

**(c) Partial Relief of Responsibility for Damage to Work Caused by Public Traffic** - Once a portion of the Work is completed and opened to unrestricted public traffic, Design-Builder may request in writing to be relieved of responsibility for the cost of repair of damage caused by public traffic. If approved, Agency will issue written partial relief stipulating the scope and duration of Design-Builder's relief from responsibility for damage to Work caused by public traffic. Provided, that such damage was not caused or contributed to, in whole or in part, by Design-Builder's faulty design, substandard workmanship, inappropriate traffic control measures, or any other failure to comply with Contract requirements.

Nothing in the foregoing provision shall be construed to relieve Design Builder of its responsibility to make such repairs as may be necessary, or to protect and maintain the Work in accordance with all Contract requirements. The foregoing provision shall not be construed as interim or partial acceptance of Work performed.

**(d) Vandalism** - Design-Builder shall provide protection of the Work from vandalism until Third Notification. Design-Builder shall be solely responsible for replacement and repair costs associated with damage to the work and/or the Project Site resulting from vandalism and theft.

## **DB170.82 Responsibility for Damage to Property and Facilities**

**(a) In General** - As used in this Subsection, the term "Design-Builder" shall include Design-Builder's agents, Subcontractors, and all workers performing Work under the Contract, and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

Design-Builder shall be solely responsible for damages arising from the following:

- Design-Builder's operations
- Design-Builder's negligence, gross negligence, or intentional wrongful acts
- Design-Builder's failure to comply with any Contract provision, Standard, or the Law

Agency may withhold funds due to Design-Builder or Design-Builder's Surety until all lawsuits, actions, and claims for injuries or damages are resolved and satisfactory evidence of resolution is furnished to Agency.

**(b) Protection and Restoration of Agency Property and Facilities** - The following requirements apply to Highways, Structures, and other improvements that are existing, under construction, or completed:

- Design-Builder shall provide adequate protection to avoid damaging Agency property and Structures
- Design-Builder shall be responsible for damage to Agency property and Structures caused by or resulting from Design-Builder's operations
- Design-Builder shall clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by Agency

**(c) Protection and Restoration of Non-Agency Property and Facilities** - Design-Builder shall determine the location of non-Agency properties and facilities that could be damaged by Design-Builder's operations associated with performing the Contract and shall protect them from damage. Design-Builder shall protect monuments and property marks until Agency has referenced their location and authorized their removal. Design-Builder shall restore non-Agency property and facilities damaged by its operations to the condition that existed before the damage at no additional compensation.

Design-Builder shall provide temporary facilities when needed (e.g., to maintain normal service or as directed by Agency) until the required repair, rebuilding, or replacement has been accomplished.

Design-Builder shall protect specific service signs (e.g., business logos and tourist-oriented directional signs) from damage, whether the signs are to remain in place or be placed on temporary supports. Design-Builder shall repair or replace damaged signs at no cost to Agency. Liquidated damages will be assessed against Design-Builder in the amount of \$200.00 per Calendar Day for each sign out of service for more than five (5) Calendar Days because of Design-Builder's operations.

**DB170.85 Responsibility for Defective Work** - Design-Builder shall make good any defective Work.

**(a) Latent Defects** - Design-Builder shall remain liable for all latent defects resulting from causes other than fraud, reckless misrepresentations, or gross mistakes until the expiration of the Performance Bond, Warranty Bond, or warranty period, whichever expires last. Design-

Builder shall remain liable for all latent defects resulting from fraud, reckless misrepresentations, or gross mistakes regardless of when those latent defects may be discovered and regardless of whether such discovery occurs outside any applicable Performance Bond, Warranty Bond, or warranty period.

**(b) Warranties** - Design-Builder warrants that all Work shall meet all Contract requirements, including applicable technical and Performance Specifications, from the date and for the period of time identified in each applicable Specification or elsewhere in the Contract Documents and that all Design Services shall be performed in accordance with the standard of care specified in Subsection 2.1.2 of the Design-Build Agreement. Design-Builder shall be responsible for making good the Work and for all repairs of damage to other improvements, natural and artificial structures, systems, Equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship. Design-Builder shall be responsible for all costs associated with site clean-up and remediation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship. This warranty provision shall survive expiration or termination of the Contract.

The Design-Builder shall warrant all Work and workmanship, including Changed Work, Additional Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated in the Work, for 1 year from the date of Third Notification, except that warranties according to 00170.85(b-1) and manufacturers' warranties and extended warranties according to 00170.85(c) shall not be abridged.

The Design-Builder shall be responsible for meeting the technical and performance Specifications required, making good the Work, and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, equipment, and vegetation caused by, or resulting in whole or in part from occurrences beginning during the warranty period and are the result of defects in Materials, Equipment, and workmanship. The Design-Builder shall be responsible for all costs associated with completing the repair of the defects and for associated Work including but not limited to permitting, mobilization, traffic control, erosion control, surface restoration, site cleanup and remediation caused by, or resulting in whole or in part from, defects in Materials, Equipment, or workmanship, and other Work determined by the Agency to be necessary to complete the repair of the defects.

Within 10 Calendar Days of the Agency's written notice of defects, the Design-Builder, or the Design-Builder's Surety, shall vigorously and continuously correct and repair the defects and all related damage. If the Design-Builder or the Design-Builder's Surety fails to correct and repair the defects, the Agency may have the correction and repair done by others. The Design-Builder or Design-Builder's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

In the event of an emergency, where delay could result in serious loss or damage, the Agency may make emergency corrections and repairs, without written notice. The Design-Builder or Design-Builder's Surety shall promptly reimburse the Agency for all expenses incurred to correct and repair the defects.

Corrections, repairs, replacements or changes shall be warranted for an additional 1-year period beginning on the date of the Agency's acceptance of the corrections, repairs, replacements or changes.

Without limiting the general applicability of other survival clauses under the Contract, this warranty provision shall survive expiration or termination of the Contract.

**(c) Manufacturer Warranties and Guarantees:**

**(1) Manufacturer Warranties** - For those Specification Sections referencing this 00170.85(c-1) Subsection, the Design-Builder shall furnish Warranties from the Manufacturer and signed by a Manufacturer's Representative.

The warranty period will be specified in the applicable Specification Section for which it applies.

The warranty period will begin on the date the Agency issues Third Notification unless otherwise specified in the Contract.

When the Agency makes written notification to the Manufacturer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

Warranty work shall be performed when weather permits. If, in the opinion of the Agency, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent Contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

**(2) Trade Practice Guarantees** - For those Items installed on the Project that have customary trade practice guarantees, the Design-Builder shall furnish the guarantees to the Agency at the completion of the Contract.

**DB170.89 Protection of Utility, Fire-Control, and Railroad Property and Services; Repair, Roadway Restoration**

**(a) Protection of Utility, Fire Control, and Railroad Property and Services** - Design-Builder shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control Authorities during performance of the Work. Design-Builder shall cooperate with and

facilitate the relocation or repair of all Utilities and Utility services, and of Railroad and fire control property and railways.

Design-Builder shall conduct no activities of any kind around fire hydrants until the local fire-control Authority has approved provisions for continued service.

Design-Builder shall immediately notify any Utility, Railroad, or fire control Authority whose facilities have been damaged.

If an Entity has a valid permit from the proper Authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, Design-Builder shall allow the permit holder to perform the work.

**(b) Restoration of Roadway After Repair Work** - Design-Builder shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by Agency. Restoration which constitutes Extra Work will be paid as Extra Work.

**DB170.92 Fencing, Protecting Stock, and Safeguarding Excavations** - Design-Builder shall be responsible for loss, injury, or damage which results from its failure to restrain stock and persons. Design-Builder shall restrain stock to lands on which they are confined using temporary fences or other adequate means. Design-Builder shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

Design-Builder shall repair, at Design-Builder's expense and to Agency's satisfaction, fences damaged by Design-Builder's operations and the operations of Design-Builder's agents, employees, and Subcontractors.

**DB170.93 Trespass** - Design-Builder shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

**DB170.94 Use of Explosives** - Design-Builder shall comply with all Laws pertaining to the use of explosives. Design-Builder shall notify anyone having facilities near Design-Builder's operations of Design-Builder's intended use or storage of explosives. Design-Builder shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (See **DB Standard Specifications**, Sections 00330.41(e) and 00335.)

## **DB Section 174 – Utilities, Railroads, and Right of Way (ROW)**

*If not otherwise defined in DB General Provisions, Section 110 or in this Section 174, defined terms in this Section 174 will have the definition provided in the ODOT Right of Way Manual.*

### **DB174.10 Utilities**

**(a) Introduction** - This Subsection provides information on Design-Builder’s overall responsibilities as they relate to existing and/or new Utilities, the manner in which Utilities are to be protected, relocated, upgraded, constructed, or incorporated into the construction, and who will be responsible for the Work.

Design-Builder shall comply with OAR 734-055, OAR 952-001-0010 through 952-001-0100, and the *Bridge Design and Drafting Manual (BDDM)* as it relates to Utilities.

Design-Builder shall comply with all requirements of this Subsection. Design-Builder shall also comply with and fulfill the requirements related to Utility facilities or systems included in other Contract Documents.

**(b) General** - Unless otherwise set forth in the **DB Special Provisions** or on the Plans, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. “Adjustment of Utilities” shall mean the alteration, abandonment, protection in place, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in a temporary or permanent manner.

Design-Builder shall be aware that during the term of this Contract the owners and operators of Utilities may make changes in ownership and to their facilities. Changes made to the Utility facilities may be made by the Utility employees or by contract within or adjacent to the Project Site, and may be both temporary and permanent.

### **(c) Agency Responsibilities**

**(1)** Agency will make a preliminary assessment for the Adjustment of Utilities. Agency will provide the following information, for use as reference only, in the **DB Special Provisions**:

- Agency identified Utility owners within the Project limits
- Contact name and telephone number for each Utility owner
- A description of Utility facilities with potential conflict and information on prior Agency contact with the Utility
- Responsible party for cost of Adjustment of Utilities

**(2)** Agency will also be responsible for approval of Design-Builder’s Utility Adjustment Master Plan.

#### **(d) Design-Builder Responsibilities**

**(1) Design-Builder Contact Person** - Design-Builder shall assign an individual whose responsibility is to coordinate Project activities with each Utility owner affected by the Project. This individual shall be readily available by telephone, a telephone number which shall be provided to Agency, throughout the life of the Project.

**(2) Financial Responsibility** - Design-Builder shall be responsible for the cost of all Utility coordination tasks defined in this Subsection. Unless otherwise specified in the **DB Special Provisions**, Agency shall be responsible for all costs associated with Adjustments of Utilities. Adjustment of Utilities costs include, but are not limited to, engineering costs, relocation costs, and replacement ROW costs of the Utility.

**(3) Coordination** - Design-Builder shall have the responsibility of coordinating the Project design and construction with all Utilities that may be affected. Design-Builder shall be responsible for identifying, verifying the existence of, determining if conflicts exist, and resolving all Utility conflicts on the Project. Activities include, but are not limited to, the following:

- Identifying the full extent of Utilities in the Project Site
- Verifying Utility owners and locations of Utilities
- Locating Utilities and identifying potential conflicts not previously identified
- Providing information to Agency to assist in acquiring additional ROW or easements, if necessary
- Coordinating and/or designing/constructing the Adjustment of Utilities and/or new Utilities in accordance with this Subsection

**(4) Design-Builder Certification and Utility Owner Sign-off** - Design-Builder shall obtain, or together with the Utility owner, prepare a sketch for each Utility that requires adjustment in the preparation of the Utility Adjustment Master Plan. Design-Builder must review the proposed Adjustment of Utilities sketch and certify in a written statement to Agency PM that the proposed Adjustment of Utilities will not conflict with the proposed Highway improvement and will not conflict with another Utility's relocation plan. If a party other than the Utility owner or its agent prepares the relocation sketch, there shall be a concurrence box on the plans where the Utility owner signs and accepts the relocation sketch as shown.

**(5) Utility Adjustment Master Plan** - Design-Builder shall assemble all the information that may have a bearing on the final Utility locations for the Project. The plan shall contain the following:

- Existing location of each Utility, based on survey
- Proposed location of each Utility (for those Utilities that require relocation). Initially this could be based on relocation maps prepared by the Utilities. However, if the proposed relocation does not fit with other proposed Utility

relocations, Design-Builder may need to work with the Utilities to refine/change the proposed new locations so they will work within the context of the Project

- Specifically show and identify any additional ROW or Utility easements planned
- A description of any timing and sequencing requirements in relation to the relocations
- Coordinated process and end results that considers all Utilities
- Relocation schedule as agreed to in the Agreement with Utilities

**(6) Agreement with Utilities** - Design-Builder shall obtain written agreement with all Utility owners where Adjustment of Utilities is required. The agreement shall clearly state the agreed-upon scope of work, responsibility for the work, cost of the work, schedule, and cost impacts for delays. Design-Builder shall not enter into any agreement with a Utility owner that purports to bind Agency in any way, unless Agency has executed such agreement as a party thereto.

**(e) Coordination Requirements** - Design-Builder shall invite affected Utility owners to participate in all of Design-Builder's and Agency's Design Reviews (*see DB General Provisions*, Section 155).

Design-Builder shall allow, in its Baseline Progress Schedule and monthly updates, the time defined in the Utility agreement required for Utility owners to accomplish the tasks and activities for which they are responsible.

**(f) Accommodation of Utilities on Bridges** - Design-Builder shall provide the minimum Utility accommodations, at the cost of Design-Builder, per the *BDDM*, Section 1.4.7.3, for each of the following situations:

- Existing Utility facilities located on the existing Structure that intend to relocate to the new Structure
- Any Utility owner that requests accommodation and is approved by Agency

Design-Builder shall provide reasonable access to Utility owners before, during, and after construction to install their facilities.

**(g) Prior Authorization for Adjustment of Utilities** - Design-Builder shall, at each Work Location, obtain Agency approval of the Utility Adjustment Master Plan prior to any Adjustment of Utilities, and before submittal of the RFC Plans.

Agency review will not exceed 14 Calendar Days.

**(h) Design** - Design-Builder shall design the Project to avoid conflicts with Utilities where possible, and minimize impacts where conflicts cannot be avoided.

**(j) Abandoned Utilities** - Unless specifically noted otherwise in the **DB Special Provisions**, or directed otherwise in writing by Agency, Design-Builder will not be required to remove abandoned underground Utilities or pipes.

**(k) Protection of Utilities** - Design-Builder is responsible for protecting any and all Utilities that Design-Builder has concluded are not affected in constructing the Project (*see DB General Provisions*, Subsection 170.89).

**(l) Damage to Utilities** - If Design-Builder causes or observes damage to any Utility facilities; Design-Builder shall notify the Utility owner immediately. If the damage causes an emergency, Design-Builder shall also notify all appropriate local public safety agencies immediately by calling 911, and shall take reasonable steps to ensure the public safety. Design-Builder shall not bury damaged underground facilities without the consent of the Utility owner of the damaged facility. If the damaged facility is repaired by the Utility owner and Design-Builder is determined to be at fault for the damage, Design-Builder shall reimburse the Utility owner within 45 Calendar Days of receipt of the Utility owners invoice. If Design-Builder fails to make any required payment within 45 Calendar Days after receipt of the Utility owner's invoice, Agency will have the right to pay the Utility owner from Agency's funds and deduct an amount sufficient to cover the cost from any monies due or that may become due Design-Builder under the Contract.

**(m) Utility Caused Delays** - If Design-Builder complies with the Utility agreement, and if Adjustment of Utilities are completed later than agreed upon, thus causing Contract completion to be delayed, additional Contract Time will be considered under **DB General Provisions**, Subsection 180.80, and additional compensation, if applicable, will be considered under **DB General Provisions**, Subsection 195.40. Otherwise, no additional compensation will be allowed for any delays, inconvenience or damage sustained by Design-Builder or its Subcontractors due to interference from Utilities or the operation of relocating Utilities.

Design-Builder shall provide Agency with a copy of a fully-executed agreement with the Utility owner prior to Agency's consideration of a Utility-caused delay.

**(n) As-Constructed Plans** - Design-Builder shall accurately show the final location of all Utilities on the As-Constructed Plans for the Project.

**(o) Utility Payments** - For Adjustment of Utility costs that are the responsibility of Design-Builder, Design-Builder shall reimburse the Utility owner within 45 Calendar Days of receipt of the Utility owners invoice. If Design-Builder fails to make any required payment within 45 Calendar Days after receipt of the Utility owner's invoice, Agency will have the right to pay the Utility owner from Agency's funds and deduct an amount sufficient to cover the cost from any monies due or that may become due Design-Builder under the Contract.

### **DB Section 180 - Prosecution and Progress**

**DB180.00 Scope** - This section consists of requirements for assignment of the Contract, subcontracting, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

**DB180.05 Assignment / Delegation of the Contract** - Unless Agency gives prior written consent, Design-Builder shall not assign, delegate, sell, or transfer to any Entity, or otherwise dispose of any Contract rights or obligations, including, without limitation, the following:

- The power to execute or perform the Contract
- Any of Design-Builder's right, title, or interest in the Contract
- Any of Design-Builder's Contract duties or obligations

Any attempted assignment, delegation, or disposition without prior Agency consent shall be void. Such Agency consent will not normally be given except for the assignment of funds due under the Contract. If written Agency consent is given to assign, delegate, or otherwise dispose of any Contract rights or obligations, such assignment, delegation or disposition shall not relieve Design-Builder or its Surety of any part of their responsibility under the Contract, and Design-Builder shall remain jointly and severally liable under the Contract.

**DB180.06 Assignment of Funds Due Under the Contract** - Assignment of funds due or to become due under the Contract to Design-Builder shall not be permitted unless all of the following conditions are met:

- The assignment request is made on a form acceptable to the Agency
- Design-Builder secures the written consent of Design-Builder's Surety to the assignment
- Agency consents to the assignment

**DB180.10 Responsibility for the Contract** - Design-Builder shall direct and coordinate the operations of its employees, Subcontractors, and agents performing Work and see that Agency's orders are carried out promptly. Design-Builder's failure to direct, supervise, and control its employees, Subcontractors, and agents performing Work will result in one or more of the following actions, as Agency deems appropriate:

- Suspension of the Work
- Withholding of Contract payments, as necessary to protect Agency
- Ordering removal of individuals from the Project Site
- Termination of the Contract

Action by the Agency under this provision will not prejudice any other remedy it may have.

**DB180.15 Agency's Right to do Work at Design-Builder's Expense** - If Design-Builder neglects to prosecute the Work properly or fails to perform any provision of the Contract in a timely manner, Agency may, after two (2) Calendar Days' written notice, correct the deficiencies or perform the Work at Design-Builder's expense. In situations where Agency reasonably believes there is danger to life or property, Agency may immediately and without notice correct the deficiencies or perform the Work at Design-Builder's expense. Any amounts expended in accordance with this Subsection may be withheld from monies due or to become due to Design-Builder under the Contract.

Action by Agency under this provision will not prejudice any other remedy it may have.

## **DB180.20 Subcontracting Limitations**

**(a) Design-Builder's Organization** - Design-Builder shall perform with its own organization Work amounting to at least 30% of the original Contract Amount. The value of subcontracted Work is the full compensation to be paid to the Subcontractor(s) for all pay items in the Subcontract(s).

**(b) Own Organization** - For purposes of this Subsection, the term "own organization" includes only employees of Design-Builder, Equipment owned or rented by Design-Builder, incidental rental of operated Equipment, and Materials and Equipment to be incorporated into the Project purchased or produced by Design-Builder.

**(c) Rental of Operated Equipment** - Agency will not permit a Disadvantaged Business Enterprise (DBE) firm to provide services without a subcontract covering all Work to be performed by the DBE firm. For non-DBE firms, the use of Equipment rented with operators will be permitted without a subcontract only when the following requirements are met.

**(1) Written Request** - Design-Builder has submitted to Agency a written request describing the service to be provided, its estimated cost, and the estimated duration.

**(2) Limitations** - The use of Equipment rented with operators is limited to the following services:

- Truck hauling of Materials (if the trucking is by an owner/operator, in addition to the requirements of **DB General Provisions**, Subsection 170.65(e), each truck shall have the name of the owner/operator clearly displayed on the side of the truck).
- Performance of minor, Incidental, short-duration work, if performed under the direct supervision of Design-Builder or a Subcontractor, with Equipment not customarily owned, leased, or operated by a contractor, or with Equipment that is temporarily unavailable to Design-Builder.

**(3) Submittals** - Design-Builder shall provide Agency with a copy of the rental agreement or purchase order covering the service to be provided, together with copies of the data required under **DB General Provisions**, Subsection 170.65(e). Design-Builder shall make certain that the provider of services submits payrolls required under **DB General Provisions**, Section 170, and complies with applicable Contract provisions. The service provider will not be considered a Subcontractor under the Contract, but will be considered an agent of Design-Builder in the performance of the Work.

**(4) Revocation of Consent** - Agency may revoke its approval of services provided through rented, operated Equipment at any time Agency determines that the work is outside that authorized under Subsection 180.20(c)(2). Unless Design-Builder promptly

submits to Agency a subcontract agreement as required under DB180.21, the service provider shall be immediately removed from the Project Site.

### **DB180.21 Subcontracting**

**(a) Submittal of Subcontracts** - Design-Builder shall submit to Agency a duplicate original of each subcontract entered into during the term of the Contract, including any amendments or modifications to those subcontracts, prior to performance of any of the Work covered by the subcontract. When required by Agency PM, the submittal shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. Agency will review Design-Builder's submission to verify compliance with all Contract requirements and confirm the percentage of Work subcontracted.

If the Subcontractor is providing any of the insurance coverages as permitted under **DB General Provisions**, Subsection 170.70(a), a copy of the insurance certificate(s) must be included with the subcontract for Agency for Review and Comment, prior to commencement of Work by Subcontractor. Agency will review the insurance certificate(s) for compliance with the Contract requirements and will respond within 28 Calendar Days after receipt of the certificate(s).

A written request for consent to subcontract any portion of the Contract at any tier utilizing a DBE firm shall be submitted to Agency PM for approval prior to the Subcontractor beginning work on the Project. If a DBE Subcontractor is providing any of the insurance coverages as permitted under **DB General Provisions**, Subsection 170.70(a), a copy of the insurance certificate(s) must be included with subcontract submitted to Agency for approval prior to commencement of Work by Subcontractor. Agency will review the insurance certificate(s) for compliance with the Contract requirements and will respond within 35 Calendar Days after receipt of the request to subcontract (28 Calendar Days to review and approve the certificate(s) of insurance, plus seven (7) Calendar Days to review and approve the subcontract request).

**(b) Submittal of Requests** - Design-Builder must submit Report on Subcontracting forms for each subcontract for any portion of the Contract, at any tier, on Agency's form, available from Agency PM. Design-Builder shall attach a duplicate original subcontract agreement along with any applicable certificate(s) of insurance. Design-Builder must also submit in writing any amendments or modifications proposed to subcontract agreements, at any tier, before the affected Work begins.

**(c) Substitution of Major Subcontractors** - See Subsection 180.35.

**(d) Terms of Subcontracts** - Subcontracts shall provide that Work performed under the subcontract shall be conducted and performed according to the terms of the Contract. All subcontracts, including Design-Builder's with its first-tier Subcontractors and those of the Subcontractors with their subcontractors, and any other lower-tier subcontracts, shall contain a clause or condition that if Design-Builder or a Subcontractor fails, neglects, or refuses to

make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Subcontracts shall include the following terms:

(1) A payment clause that obligates Design-Builder to pay its first-tier Subcontractors for satisfactory performance under their subcontracts within 10 Calendar Days of Design-Builder's receipt of payment from Agency for the subcontracted Work.

(2) An interest clause that obligates Design-Builder, if payment is not made within 30 Calendar Days after receipt of payment from Agency, to pay to the first-tier Subcontractor interest on amounts due in the case of each payment not made in accordance with the payment clause. Design-Builder or first-tier Subcontractor shall not be obligated to pay interest if the only reason that Design-Builder or first-tier Subcontractor did not make payment when payment was due is that Design-Builder or first-tier Subcontractor did not receive payment from Agency when payment was due.

The interest shall be for the period beginning on the Calendar Day after the required payment date and ending on the date on which payment of the amount due is made, and shall be computed at the rate specified in ORS 279C.515(2).

(3) A provision requiring the first-tier Subcontractor to include a payment clause and an interest clause conforming to the standards of ORS 279C.580(3) in each of its subcontracts and to require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or Materials supplier. This payment clause shall require Design-Builder to return all retainage withheld from the Subcontractor, whether held by Design-Builder or Agency, as specified in **DB General Provisions**, Subsection 195.50(d).

(4) A provision requiring the Subcontractor to have a Public Works Bond filed with the Construction Contractors Board before entering onto the Project Site or moving Materials, Equipment, or workers onto the Project Site, or performing any Work, unless exempt under the terms of ORS 279C.836.

(5) A provision requiring that the Subcontractor's workers shall be paid not less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries in accordance with ORS 279C.838.

(6) A provision that the Subcontractor shall file or cause its Surety to file certified statements with Agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each of its workers performing Work on the Project, and further certifying that none of its workers performing Work on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries for the Project in accordance with the requirements of ORS 279C.815(2)(b) and ORS 279C.845.

**(e) Design-Builder's Responsibilities** - Design-Builder shall remain solely responsible for administration of the subcontracts, including, but not limited to, the following:

- Performance of subcontracted Work
- Progress of subcontracted Work
- Payments for accepted subcontracted Work
- Disputes and claims for additional compensation regarding subcontracted Work

The subcontract shall not create a contract between Agency and the Subcontractor, shall not convey to the Subcontractor any rights against Agency, and shall not relieve Design-Builder or Design-Builder's Surety of any of their responsibilities under the Contract.

**(f) Failure to Comply** - Failure to comply with this Subsection will be cause for Agency to take action reasonably necessary to obtain compliance. This action may include, but is not limited to, the following:

- Suspension of the Work
- Withholding of Contract payments as necessary to protect Agency
- Termination of the Contract

**DB180.22 Payments to Subcontractors and Agents of Design-Builder** - In making payment to Subcontractors and to its other agents performing Work and furnishing Materials and Equipment to be incorporated into the Project, Design-Builder shall assume all losses resulting from overpayment.

If requested in writing by a first-tier Subcontractor, Design-Builder shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to Agency, or pay document provided by Agency to Design-Builder, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

**DB180.30 Materials, Equipment, and Work Force** - Design-Builder shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute the Work. Design-Builder shall use only Equipment of adequate size and condition to meet the requirements of the Work and Contract Specifications, and to produce a satisfactory quality of Work. Upon receipt of Agency's written order, Design-Builder shall immediately remove, and not use again on the Project without Agency's prior written consent, Equipment that, in Agency's opinion, fails to meet Contract Specifications or produce a satisfactory product or result.

The workforce shall be trained and experienced. Upon receipt of Agency's written order, Design-Builder shall immediately remove from the Project Site, and shall not employ again on the Project without Agency's prior written consent, any supervisor or employee of Design-Builder or its Subcontractors who, in Agency's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If Design-Builder fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment, and personnel for the proper prosecution of the Work, Agency may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or Agency may terminate the Contract for default.

### **DB180.31 Required Materials, Equipment, and Methods**

**(a) General** - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, Design-Builder shall use the Equipment or methods specified unless otherwise authorized by Agency in writing.

**(b) Substitution of Materials and Equipment to be Incorporated into the Project** - After execution of the Contract, Agency will consent to substitution of Materials and Equipment to be incorporated into the Project as follows:

**(1) Reasons for Substitution** - Agency will consider substitution only under one of the following circumstances:

- In the judgement of the Agency the proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency, and utility
- Due to reasons beyond the control of Design-Builder, the specified Materials or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence

**(2) Submittal of Request** - Design-Builder shall submit requests for substitution to Agency, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

**(c) Substitution of Equipment Specified to Perform Work** - Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, Design-Builder may submit a request to Agency to use Equipment of a different size or type. Provided, such requests shall not constitute Cost-Reduction Proposals under **DB General Provisions**, Subsection 140.70. The request shall conform to all of the following requirements:

- Be in writing and include a full description of the Equipment proposed and its intended use
- Include the reasons for requesting the substitution
- Include evidence, obtained at Design-Builder's expense and satisfactory to Agency, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment

Agency will consider Design-Builder's request and will provide a written response to Design-Builder, either permitting or denying use of the proposed Equipment. Agency's decision is final.

Permission may be granted on a trial basis to test the quality of Work actually produced, subject to all of the following:

- There will be no cost to Agency, either in Contract Amount or in Contract Time
- The permission may be withdrawn by Agency at any time if, in Agency's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract
- If permission is withdrawn, Design-Builder shall perform the remaining Work with the originally-specified Equipment
- Design-Builder shall remove and replace noncompliant Work resulting from the use of Design-Builder's proposed Equipment, or otherwise correct it as Agency directs, at no additional compensation or Contract Time

**(d) Substitution of Methods** - Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, Design-Builder may submit a request for a change by following the provisions of **DB General Provisions**, Subsection 140.70.

**DB180.32 Alternative Materials, Equipment, and Methods** - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for Design-Builder's use to perform portions of the Work, and leaves the selection to Design-Builder, Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

Design-Builder shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by Design-Builder's use of an inappropriate alternative.

**DB180.35 Key Personnel and Major Subcontractors**

**(a) Key Personnel** - Design-Builder represents that the Key Personnel identified in the Design-Build Agreement meet the applicable minimum qualifications specified in this Subsection. Design-Builder commits to assign the Key Personnel to perform in the capacities identified therein, and represents that the identified Key Personnel shall be available to the extent within Design-Builder's control for the duration of the Contract. Design-Builder commits to undertake all reasonable efforts to provide the Key Personnel on a full time basis for all periods necessary to fulfill Design-Builder's Contract obligations.

**(1) Key Personnel Qualifications**

**a. Project Principal** - Shall have demonstrated experience in construction and management of construction on Highway projects with similar size, type of work,

complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**b. Project Manager** – Shall be Design-Builder’s representative and single point of contact for the duration of the Contract. Shall have demonstrated experience in construction and management of construction on Highway projects and on projects with similar size; complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**c. Project Quality Manager** - Shall be an Oregon-registered professional engineer and have demonstrated experience in Highway design and/or construction with at least five (5) years’ experience in Quality Management, including Quality Assurance/Quality Control activities, including preparation and implementation of Quality Plans and procedures for design and/or construction. Should have experience with Agency’s Quality Assurance system and documentation, Bridge construction, and Highway paving.

**d. Construction Manager** - Shall have demonstrated experience in construction and management of construction on Highway projects and on projects with similar size, complexity, and challenges as this Project. Should have Design-Build experience and extensive project management experience.

**e. Design Manager** - Shall be an Oregon-registered professional engineer who is an employee of the Designer. Shall have demonstrated experience in managing design for multi-disciplinary Highway projects with similar scope and complexity as this Project. Should have experience with Bridge replacement of Bridges of similar size and type as those involved in this Project.

**f. Design Quality Manager** - Shall be an Oregon-registered professional engineer with a minimum of five (5) years’ experience in Quality Management, including Quality Control/Quality Assurance activities, on large Highway design projects with similar scope and complexity as this Project.

**g. Construction Quality Manager** - Shall have a minimum of five (5) years’ experience in Quality Management, activities (including management of construction Quality Control programs) on large Highway construction projects that have incorporated the type of construction that is included in this Project.

**h. Safety Manager** - Shall be a Work Zone Safety Supervisor as certified by the American Traffic Safety Service Association or any agency or firm certification program approved by Agency. Shall have a minimum of five (5) years’ experience in a Work Zone safety technician or supervisor capacity on large Highway construction projects.

**i. Environmental Manager** - Shall have at least a B.S. or B.A. degree and demonstrated experience in environmental compliance on large Highway

construction projects. Shall have experience in managing others in environmental compliance activities. Should have experience with Highway engineering drawings and concepts and working cooperatively and effectively with design engineers and construction staff.

**j. RESERVED**

**k. Paving Manager** - Shall have demonstrated experience in paving and management of paving work on Highway projects similar to this Project, involving the same or similar environmental/weather conditions as are anticipated on this Project, and involving construction staging and phasing.

**l. Lead Traffic-Control Design Engineer (TCDE)** - Shall be registered in Oregon and shall have demonstrated experience in traffic management on projects of similar scope, nature and complexity as this Project. The TCDE shall be familiar with the MUTCD and with Oregon Laws and Standards. The TCDE must complete the required training and certification related to the development of TMPs and TCPs.

**m. Traffic Control Supervisor (TCS)** - Shall possess a current, valid certificate verifying training as a TCS by one of the following:

- American Traffic Safety Services Association (ATSSA) - requires proof of completion of second day of Oregon State TCS Certification Class
- Oregon State TCS Certification Class
- Other training course approved by ODOT

The TCS shall have completed the above certification within three (3) years of commencement of the Work.

**n. Other Key Personnel** - Agency PM may designate other positions as Key Personnel or change the designation of some of the positions as needed at any time during the term of the Contract.

The Project Manager, the Design Manager, the Lead Bridge Design Engineer, the Construction Manager, and the Lead Traffic Control Design Engineer shall be capable of reading and thoroughly understanding all Plans and Specifications, and shall be thoroughly experienced in performing and supervising the type of Work depicted in the Plans and Specifications.

**(2) RESERVED**

**(3) Temporary Absence of Key Personnel** - If any of the Key Personnel shall have a scheduled absence from the Project Site for more than 48 hours, Design-Builder shall inform Agency PM in writing seven (7) Calendar Days in advance of an “acting” to represent the absent Key Personnel.

**(4) Directory of Key Personnel** - Within 15 Calendar Days after NTP, Design-Builder shall submit to Agency PM a directory and organizational chart showing all of its Key Personnel. The directory shall be updated throughout the Contract as changes occur. The directory shall include the names, titles, areas of responsibility, office address and location, office telephone and facsimile numbers, and cellular and/or pager numbers of Key Personnel. Design-Builder shall provide information sufficient for Agency to contact any of the Key Personnel on a 24-hour basis for the duration of the Contract.

Agency PM shall provide a directory of Agency's Project staff to Design-Builder.

**(b) Major Subcontractors** - Design-Builder represents that the Major Subcontractors identified in the Design-Build Agreement are duly qualified, available, and have committed the necessary workforce, Equipment, and capital to properly and timely perform the Work for which they have been contracted.

**(c) Substitution of Key Personnel and Major Subcontractors** - Design-Builder shall not substitute Key Personnel and Major Subcontractors. Notwithstanding the procedures set out herein, Agency will have no obligation to consider or approve a request to substitute, but may, in its sole discretion, do so.

**(1) Proposed Replacements** - To seek to add, delete, or substitute any Key Personnel or a Major Subcontractor, Design-Builder must submit to Agency PM a request at least 30 Calendar Days in advance of any desired replacement.

**(2) Required Information** - Design-Builder shall submit with any request for substitution (a) the name and qualifications of the proposed replacement Key Personnel or Major Subcontractor; (b) the same selection evaluation information as was specified for inclusion in the SOQ and Proposal; and (c) the reason for the proposed change. If Agency elects to consider the request, Agency, in its sole discretion, will determine whether the proposed substitute is appropriately qualified or otherwise acceptable, and will notify Design-Builder of its determination whether or not to allow the substitution within fourteen (14) Calendar Days of the original request. Failure of Agency to respond within the response period shall indicate Agency's election to not consider the request.

**(3) Agency Written Consent Required** - Agency, in its sole discretion, will determine whether or not to consider or authorize the replacement of any Key Personnel or Major Subcontractors, which decision shall be final. Any authorization will be in writing, and Design-Builder shall not change Key Personnel or Major Subcontractors except upon receipt of such written consent from Agency PM. Agency PM may require additional explanation from Design-Builder as to the reason for the replacement.

#### **DB180.40 Limitation of Operations**

**(a) In General** - Design-Builder shall comply with all Contract provisions and shall perform its Work in accordance with the following:

- Conduct the Work at all times so as to cause the least interference with traffic
- Not begin Work that may allow damage to Work already started

**(b) On-Site Work** - Design-Builder shall not begin On-Site Work until Design-Builder has completed the following:

- Submittal of the Safety Plan
- Received Notice to Proceed
- Received Review and Comment on the Baseline Progress Schedule
- Received Acceptance of the Quality Plan or Acceptance of a partial Quality Plan covering the portion of the Work to be performed
- Received Review and Comment on the Traffic Control Plan
- Received Review and Comment on the Pollution Control Plan
- Received Review and Comment on the Erosion and Sediment Control Plan
- Met with Agency at the required pre-construction conference
- Safety Manager has been appointed and has commenced duties
- Confirmed that all Subcontractors have the required Public Works Bonds on file with the Construction Contractors Board

**DB180.41 Monthly Progress Submittals** - Design-Builder shall submit each of the following to Agency PM with Design-Builder's Pay Request.

**(a) Baseline Progress Schedule**

**(1)** Design-Builder shall prepare and submit to Agency PM for Review and Comment an updated Baseline Progress Schedule in both hard copy and electronic format acceptable to Agency. The Baseline Progress Schedule shall show the order in which Design-Builder proposes to carry on the Work, the date on which it will start the major items of Work (including, but not limited to, excavation, drainage, paving, Structures, mobilization, soil erosion, and sediment control) and the critical features of such Work (including procurement of Materials, plant, and Equipment), and the contemplated dates for completing the same. The schedule shall be in a suitable scale to indicate graphically the total percentage of Work scheduled to be completed at any time. The Baseline Progress Schedule shall include, at a minimum, the following items:

- Major Work items and activities to be performed
- Seasonal weather limitations
- Phase duration or milestone events, as applicable

When preparing the Baseline Progress Schedule, identifying Price Centers, and preparing related documents, Design-Builder may make minor adjustments to the Work Location limits to more accurately represent its approach to designing and constructing the Project, subject to Agency's Review and Comment. Once Work has commenced, Design-Builder may not make adjustments to the Work Location limits.

(2) Design-Builder's Project Manager shall submit the updated Baseline Progress Schedule to the Project Quality Manager. The Project Quality Manager shall independently review the updated Baseline Progress Schedule for Agency, and upon completion shall certify to Agency that the actual progress to date shown on the updated Baseline Progress Schedule accurately represents completed quantities of Work, and that the planned Work complies with all Contract requirements and restrictions. Further, the Project Quality Manager shall disclose and discuss all excessive leads, lags, assigned constraints, retained logic, and all other schedule aspects of interest. The Project Quality Manager shall submit the updated Baseline Progress Schedule to Agency PM, along with its certification and disclosure reports. The Project Quality Manager shall facilitate resolution of all questions and comments on the updated Baseline Progress Schedule from Agency.

(3) The purpose of this scheduling requirement is to ensure adequate planning and execution of the Work and to evaluate the progress of the Work. Review and Comment by Agency shall not be construed to imply approval of any particular method or sequence of construction or to relieve Design-Builder of providing sufficient Materials, Equipment, and labor to guarantee completion of the Project in accordance with all Contract requirements. Review and Comment shall not be construed to modify or amend the Contract, Interim Completion Dates, or the Contract Completion Date. The updated Baseline Progress Schedule may be utilized to facilitate Agency's QA activities.

(4) Design-Builder shall perform ongoing review of the updated Baseline Progress Schedule and progress of the Work. At the end of each progress estimate period, but not less often than once a month, Design-Builder shall prepare an updated Baseline Progress Schedule and submit it to the Project Quality Manager. The Project Quality Manager shall independently review the updated Baseline Progress Schedule for Agency, and upon completion shall certify to Agency that the actual progress to date shown on the updated Baseline Progress Schedule accurately represents completed quantities of Work, and that the planned Work complies with all Contract requirements and restrictions. Further, the Project Quality Manager shall disclose and discuss all excessive leads, lags, assigned constraints, retained logic and all other schedule aspects of interest. The Project Quality Manager shall submit the updated Baseline Progress Schedule in both hard copy and electronic format acceptable to Agency PM, along with its certification and disclosure reports. The Project Quality Manager shall facilitate resolution of all questions and comments on the updated Baseline Progress Schedule from Agency.

(5) If, in the opinion of Agency, the specified Work falls behind the Baseline Progress Schedule, Design-Builder shall take such actions as are necessary to improve its progress. If Design-Builder is behind schedule any month, it shall indicate what measures it will take in the next 30 Calendar Days to put the Work back on schedule so as to meet Interim Completion Dates and the Contract Completion Date. Design-Builder shall not be entitled to any additional compensation on account of the requirement to put the Work back on schedule unless provided for in other provisions of the Contract. In preparing the revised Baseline Progress Schedule, Design-Builder shall consider

increasing its workforce, construction plant and Equipment, or number of work shifts. If Agency finds the proposed Baseline Progress Schedule revision not acceptable, Agency PM may require Design-Builder to submit a new revision.

(6) The Baseline Progress Schedule and updates will be reviewed by Agency and Design-Builder at least monthly.

(7) Design-Builder shall employ and supply a sufficient force of workers, Materials, and Equipment and shall prosecute the Work with such diligence so as to (a) maintain the rate of progress indicated on the Baseline Progress Schedule, (b) prevent Work stoppage, and (c) ensure completion of the Project within the Contract Time. Any additional or unanticipated costs or expense required to maintain the schedule shall be solely Design-Builder's obligation and shall not be charged to Agency unless provided for in other provisions of the Contract.

(8) Design-Builder shall furnish weekly Work schedules indicating the number of personnel, kind of Equipment, and location and nature of the Work to be performed.

(9) If Design-Builder fails to submit a Baseline Progress Schedule or any revision or update when required, Agency may suspend payment.

**(b) Monthly Progress Reports** - Design-Builder shall submit a Monthly Progress Report, consisting of the following:

- A progress narrative
- Quality certifications
- A safety report
- A monthly Baseline Progress Schedule update
- A Change Order status report
- A monthly subcontract report
- An updated Contract Submittals List
- A summary of planned or unplanned Hazardous Materials and contaminated substance activities

**(c) Progress Narrative** - Design-Builder shall prepare and submit a monthly progress narrative. The progress narrative shall summarize all of the following information:

- Activity and progress for the Contract, including design and construction, and identification of the start and completion dates of Work on any Price Centers
- Achievement of any Milestones
- Quality Management efforts, including results of any Design Reviews and/or quality audits
- Problems/issues that arose during the period and remaining problems/issues to be resolved

- Resolution of problems/issues raised in previous progress reports or resolved during the period
- Critical schedule issues and proposed resolutions, proposal of actions planned to correct any negative float and explanation of potential delays and/or problems and their estimated impact on performance
- Issues which may need Agency's attention or action for the next month, including Design Reviews

**(d) Change Order Status Report** - Design-Builder shall submit a report of outstanding Change Order requests containing all of the following:

- Design-Builder's and Agency's Change Order identification numbers and/or coding
- The issue title
- A brief description of the change
- Any outstanding issues to be resolved
- The estimated cost and time implications
- The projected resolution date

**(e) Subcontract Report** - As part of the Monthly Progress Report, Design-Builder shall submit a Subcontractor Paid Summary Report (subcontract report) providing Agency with an updated list of Subcontractors (design and construction, at all tiers, including labor only). Design-Builder shall specifically identify DBEs in the report. The location where each Subcontractor worked shall also be shown.

Design-Builder shall also report the results of all procurements completed in the previous month, including those procured competitively and by other means. Design-Builder shall indicate for each the type of Work or product procured, and size of the procurement (in dollars), the names of firms competing for the subcontract, and the name of the successful Subcontractor.

The report shall indicate the total number of Subcontractors and the total dollar value of all subcontracts awarded to date. The report shall show the total number of subcontracts, regardless of tier, and all of the following:

- The original subcontract amount
- The value of any modification to date
- Payments made to date
- Tier of the subcontractor
- Appropriate signatures

**(f) Contract Submittals List** - Within 30 Calendar Days of NTP, Design-Builder shall prepare and submit a Contract Submittals List covering all submittals required during the first six (6) months of the Contract. Thereafter, Design-Builder shall submit monthly updates with the Monthly Progress Report. The updated list shall show the record of submittals made to date and shall show the submittals due over the next three-month period.

**(g) Summary of Hazardous Materials Activity** - Design-Builder shall submit a monthly summary of planned or unplanned activities related to Hazardous Materials.

**(h) Quality Certifications** - The Project Quality Manager shall independently review the submittals for Agency, and upon completion shall certify to Agency that the information is accurate and complete. Additionally, the Project Quality Manager shall certify that all Work shown as complete for the previous progress estimate period, including that of the Design Professionals, subcontractors at all tiers, suppliers, and fabricators, has been checked and/or inspected by the Project Quality Managers' quality staff, and that all Work complies with all Contract requirements.

The Project Quality Manager shall also certify to Agency that the Quality Plan and all measures, protocols, and procedures provided therein, are functioning properly and are being followed, and that Quality Management is functioning independently from the Work production.

#### **DB180.42 Meetings and Conferences**

**(a) Design Mobilization Meeting** - Design-Builder's Project Manager shall consult with Agency PM and shall arrange and lead a design mobilization prior to Design-Builder's initiating Design Services.

The agenda shall be developed in consultation between Agency PM and Design-Builder and prepared by Design-Builder, and shall include, at a minimum, all of the following:

- Design development and Design Review process
- Description and breakdown of Design Units
- Design development and Design Review schedules
- Design Quality Management

**(b) Pre-Design Meeting** - A maximum of 15 Calendar Days prior to beginning Design Services, unless otherwise authorized in writing by Agency, Design-Builder shall meet with Agency at a time mutually agreed upon. Among other matters, the purpose of the meeting will be to establish the level of detail to be required for measuring progress with regard to those design Price Items referenced in **DB General Provisions**, Subsection 190.10(a).

**(c) Pre-Construction Conference** - A maximum of 15 Calendar Days prior to beginning construction, unless otherwise authorized in writing by Agency, Design-Builder shall meet with Agency for a pre-construction conference at a time mutually agreed upon. Among other matters, the purpose of the meeting will be to establish the level of detail to be required for measuring progress with regard to construction Price Items, in accordance with the provisions of **DB General Provisions**, Section 190.

Before meeting with Agency for the pre-construction conference, Design-Builder shall hold a group Utility scheduling meeting with representatives from the Utility companies involved

with the Project. Design-Builder shall incorporate the Utilities' time needs into Design-Builder's Baseline Progress Schedule submitted at the pre-construction conference.

**(d) Other Meetings** - Other meetings shall include, but not be limited to, those referenced in **DB General Provisions**, Subsection 190.10.

**DB180.43 Commencement and Performance of Work** - From the time of commencement of the Work to the end of Contract Time, Design-Builder shall perform its Work in the following manner:

- Provide adequate Materials, Equipment, labor, and supervision to perform the Work
- Perform the Work as vigorously and as continuously as conditions permit and according to a Baseline Progress Schedule that ensures completion within the Contract Time or the adjusted Contract Time
- Not voluntarily suspend or slow down operations without prior written authorization from Agency

**DB180.44 Notice to Proceed (NTP)** - Notice to Proceed (NTP) will be issued within five (5) Calendar Days of the date the Contract is executed by Agency.

Should Agency fail to issue the NTP within such five (5) Calendar Day period, Design-Builder may apply for an adjustment of Contract Time according to **DB General Provisions**, Subsection 180.80(c). Agency will issue a First Notification acknowledging the date Work commenced on the Project.

#### **DB180.50 Contract Time to Complete Work**

**(a) Completion Dates** - Interim Completion Dates (if any) and the Contract Completion Date are specified in **DB Special Provisions**, SP180.50(f). If an earlier Interim Completion Date or Contract Completion Date is proposed by the selected Design-Builder, and accepted by Agency, then the earlier Interim Completion Date or Contract Completion Date, as applicable, shall become the baseline completion date(s) and shall be incorporated into the **DB Agreement**, Article 4.2.

**(b) Recording Contract Time** - All Contract Time will be recorded and charged to the nearest one-half day.

For Calendar Day completion times, Agency will furnish Design-Builder a weekly statement of Contract Time charges. The statement will show the number of Calendar Days counted for the preceding week and the number of Calendar Days remaining prior to the established completion date.

For Contracts with fixed completion dates, Agency will furnish Design-Builder a weekly statement of Contract Time charges only after expiration of the Contract Time. The statement will show the number of days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

**(c) Exclusions from Contract Time** - Regardless of the way Contract Time is expressed in the Contract, and subject to the conditions stated in Subsection 180.80(d), certain days will not be charged against Contract Time. These exclusions will be allowed when Design-Builder is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature
- Acts of sabotage or terrorism
- Court orders enjoining prosecution of the Work for reasons other than Design-Builder's failure or neglect
- Strikes, labor disputes, or freight embargoes that, despite Design-Builder's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations ("strikes" and "labor disputes" may include union action against Design-Builder, a Subcontractor, a Materials supplier, or Agency)
- Suspension of the Work by written order of Agency for reasons other than Design-Builder's failure or neglect

**(d) End of Contract Time** - When Design-Builder believes that all Work except for plant establishment and Punch-List Items have been completed, Design-Builder may request in writing that Agency conduct an inspection to determine whether the Work is complete. Upon determining that all Work, except for plant establishment and Punch-List Items, has been completed, Agency will issue Final Second Notification.

The Second Notification will list the following:

- The date the time charges stopped
- Final Trimming and Clean-Up tasks
- Minor corrective Work not involving additional payment to be completed
- Submittals, including without limitation all required Design Documents, certifications, bills, forms, warranties, certificates of insurance, and other documents required to be provided to Agency before Third Notification will be issued

Design-Builder shall complete all tasks listed in the Second Notification in an expeditious manner within the time frame proposed by Design-Builder and authorized by Agency.

**(e) Time Calculation Protest** - In the event Design-Builder disputes the accuracy of the statement of Contract Time charges, it shall immediately contact Agency and attempt to resolve the dispute. If the dispute cannot be resolved informally, Design-Builder shall submit a formal written protest to Agency within seven (7) Calendar Days of the date Agency mailed or delivered the statement. Failure to submit a formal written protest within the seven (7) Calendar Day period constitutes Design-Builder's approval of the time charges or adjusted time charges itemized in the statement, and its waiver of any right to thereafter dispute the accuracy of the statement.

**DB180.60 Notice of Delay** - Design-Builder shall notify Agency of any delay that will likely prevent completion of any On-Site Work by the applicable Interim Completion Date(s) or of all Work by the Contract Completion Date specified in the **DB Agreement**, Article 4.2. The notice shall be in writing and is required to be submitted within seven (7) Calendar Days of when Design-Builder knew or should have known of the delay. The notice shall include, to the extent available, all of the following:

- The reasons or causes for the delay
- The estimated duration of the delay and the estimated resulting cumulative delay in completion of all On-Site Work
- Except for Subsection 180.50(c) and Subsection 180.65 delays, whether or not Design-Builder expects to request an adjustment of Contract Time due to the delay
- Whether or not Design-Builder expects to request additional compensation due to the delay (Except for Subsection 180.50(c) and Subsection 180.65 delays, failure to include this information shall constitute waiver of Design-Builder's right to later make such a request.)

Agency is not required to respond to a notice of delay.

**DB180.65 Right of Way and Access Delays** - Right of Way and Access delays will be taken into consideration in adjusting Contract Time and in authorizing additional compensation if the performance of the Work is delayed because of Agency's failure to make any of the following available to Design-Builder:

- Necessary Rights-of-Way
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for Design-Builder's use
- Access to, or rights of occupancy of, buildings and other properties Design-Builder is required to enter or to disturb pursuant to Contract requirements

If the ending date of an anticipated delay is stated in the **DB Special Provisions**, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

### **DB180.70 Suspension of Work**

**(a) General** - Agency may suspend the Work, or any part of the Work, for any of the following causes:

- Failure of Design-Builder to correct unsafe conditions
- Failure of Design-Builder to carry out any provision of the Contract
- Failure of Design-Builder to carry out orders issued by Agency or any regulatory Authority
- Existence of conditions unsuitable to proper or safe performance of the Work

- Lapse or failure to file the necessary Bonds or lapse or failure to provide or maintain the required insurance coverages
- Any reason considered by Agency to be in the public interest

**(b) Design-Builder's Responsibilities During and After Suspension** - During periods of suspension of the Work, Design-Builder shall continue to be responsible for protecting and maintaining the Work.

**(c) Resumption of Work** - When Work has been suspended by Agency for any reason or discontinued by Design-Builder for any reason, Design-Builder shall not resume Work without Agency's written authorization. If the prosecution of the Work has been discontinued, Design-Builder shall notify Agency PM, in writing, at least 48 hours in advance of anticipated resumption of Work.

When Work is resumed after suspension or discontinuance, unless otherwise specified in the Contract, Design-Builder shall perform the following at no additional compensation:

- Replace or repair Work, and Materials and Equipment to be incorporated into the Project, that were lost or damaged because of the temporary use of the Project Site by the public
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by Agency

**(d) Compensation and Allowances for Suspension** - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than Design-Builder's failure or neglect.

#### **DB180.80 Adjustment of Contract Time**

**(a) General** - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of Design-Builder, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time." Except as provided in Subsection DB 180.80(c) **DB General Provisions**, Subsection 195.40, an adjustment of Contract Time shall be Design-Builder's only remedy for any delay arising from causes beyond the control of Design-Builder.

**(b) Design-Builder's Request Not Required** - Agency may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. Agency may also increase Contract Time in the event of ROW and Access delays and those delays due to causes beyond Design-Builder's control specified in Subsection 180.50(c). Agency will promptly inform Design-Builder of adjustments made to Contract Time pursuant to this Subsection and will include the reasons for adjustment.

If Agency anticipates delay during performance of the Contract, and specifies its expected duration in the **DB Special Provisions**, Agency will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

**(c) Design-Builder's Request Required** - In the event Design-Builder believes that additional Contract Time is due, Design-Builder shall submit to Agency a timely request for adjustment of Contract Time. Agency will not consider untimely requests. Agency regards as timely only those requests for adjustment of Contract Time that comply with the following requirements:

- The required Notice of Delay was timely submitted
- The request includes an updated Baseline Progress Schedule
- The request is not otherwise deemed waived and is submitted within 21 Calendar Days after the date of Final Second Notification, if Final Second Notification has been issued

Agency will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Baseline Progress Schedule. Agency will not authorize, nor will Agency pay, acceleration costs incurred by Design-Builder prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

Design-Builder's request for adjustment of Contract Time shall be submitted to Agency on a form provided by, or in a format acceptable to, Agency, and shall include a copy of the written notice of delay. The request shall include the following, without limitation:

- Consent of Design-Builder's Surety if the request totals more than 30 Calendar Days of additional Contract Time
- Sufficient detail for Agency to evaluate the asserted justification for the amount of additional Contract Time requested
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days
- A schedule analysis based on the current Baseline Progress Schedule for each cause of delay, indicating which activities are involved and their impact on Contract completion

**(d) Bases for Adjustment of Contract Time**

**(1)** In the adjustment of Contract Time, Agency will consider causes that include, but are not limited to, the following:

- Delay in execution of the Contract due to Agency's fault

- Delay in commencement of the Work due to Agency's failure to issue NTP within the required time
- Errors in information provided by Agency upon which Design-Builder was entitled to rely under the terms of the Contract
- Performance of Extra Work
- Failure of Agency or Entities acting for Agency to act promptly in carrying out Contract duties and obligations
- Acts or omissions of Agency or Entities acting for Agency that result in unreasonable delay referenced in **DB General Provisions**, Section 195
- Causes excluded from Contract Time under this Section
- Right of Way and Access delays referenced in this Section

(2) Agency will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract
- Delays that do not affect any Interim Completion Date or the Contract Completion Date
- Delays that affect Design-Builder's planned early completion, but that do not affect the specified or adjusted Contract Time
- Shortage or inadequacy of Materials, Equipment, or labor
- Late delivery of Materials and Equipment to be incorporated into the Project, except under those conditions referenced in Subsection 180.50(a)
- Reasonably predictable weather conditions
- Other matters within Design-Builder's control or Contract responsibility

**(e) Consideration and Response by Agency** - Agency will only consider a Design-Builder's request for adjustment of Contract Time submitted in accordance with the requirements of this Subsection. Agency may elect not to consider claimed delays that do not affect the specified or adjusted Contract Time required to complete the Work.

Agency may adjust Contract Time for causes not specifically identified by Design-Builder in its request.

Agency will review a properly-submitted request for Contract Time adjustment and within a reasonable time will advise Design-Builder of Agency's findings. Unless Design-Builder submits a timely written request to Agency for a meeting to review the findings, the findings shall become Agency's final decision 10 Calendar Days after they are mailed to Design-Builder. If a review meeting is requested, Agency's final decision on Contract Time adjustment will be issued promptly following the meeting.

The dispute resolution provisions of **DB General Provisions**, Section 199, do not apply to adjustment of Contract Time unless additional compensation, other than return of liquidated damages, is also requested for the same reasons or causes.

### **DB180.85 Failure to Complete on Time; Liquidated Damages**

**(a) Time is of the Essence** - Time is of the essence in Design-Builder's performance of the Contract. Delays in Design-Builder's performance of the Work may inconvenience the traveling public, interfere with business and commerce, and increase cost to Agency. It is essential and in the public interest that Design-Builder prosecute the Work vigorously to Contract completion.

Agency does not waive any rights under the Contract by permitting Design-Builder to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

**(b) Liquidated Damages** - Agency will sustain damage if the Work required to be completed by the Interim Completion Date(s) or the Contract Completion Date is not completed by the specified dates. However, the Parties agree that it is unduly burdensome and difficult for Agency to demonstrate the exact dollar value of such damages. Therefore Agency has identified in **DB Special Provisions**, SP180.85(b), an amount that Design-Builder acknowledges represents a reasonable approximation of the actual damages Agency will suffer for each Calendar Day Design-Builder expends performing any portions of the specified Work, except plant establishment or Punch-List Items, after the associated Interim Completion Date, or Design-Builder expends performing any portions of the specified Work, except plant establishment or Punch-List Items, after the Contract Completion Date. Design-Builder agrees to pay to Agency, not as a penalty, but as liquidated damages, the amount(s) specified.

Payment by Design-Builder of liquidated damages does not release Design-Builder from its obligation to fully and timely perform the Contract according to its terms. Nor does acceptance of liquidated damages by Agency constitute a waiver of Agency's right to collect any additional damages it may sustain by reason of Design-Builder's failure to fully perform the Contract according to its terms. The liquidated damages shall constitute payment in full only of damages incurred by Agency due to Design-Builder's failure to complete the Work on time.

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

## **DB180.90 Termination of Contract and Substituted Performance**

**(a) Termination for Default** - Termination of the Contract for default may result if Design-Builder does any of the following:

- Violates any material provision of the Contract
- Disregards applicable Laws or Agency's instructions
- Refuses or fails to supply enough Materials, Equipment, or skilled workers for prosecution of the Work in compliance with the Contract
- Fails to make prompt payment to Subcontractors
- Makes an unauthorized general assignment for the benefit of Design-Builder's creditors
- Has a receiver appointed because of Design-Builder's insolvency
- Is adjudged bankrupt and the court consents to the Contract termination
- Otherwise fails or refuses to faithfully perform the Contract according to its terms and conditions

If the Contract is terminated by Agency, upon demand Design-Builder and Design-Builder's Surety shall provide Agency with immediate and peaceful possession of the Project Site and of all Materials and Equipment to be incorporated into the Project, whether located on and off the Project Site, for which Design-Builder received progress payments.

If the Contract is terminated for default, neither Design-Builder nor its Surety shall be relieved of or entitled to the following:

- Relieved of liability for damages or losses suffered by Agency because of Design-Builder's breach of Contract.
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made in accordance with the terms of **DB General Provisions**, Section 195, except that Agency will be entitled to withhold sufficient funds to cover costs incurred by Agency as a result of the termination. Final payment to Design-Builder will be made in accordance with the provisions of **DB General Provisions**, Section 195.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination shall be deemed a termination for public convenience.

**(b) Substituted Performance** - In accordance with Agency's procedures, and upon Agency's determination that sufficient cause exists, Agency, without prejudice to any of its other rights or remedies and after giving Design-Builder and Design-Builder's Surety 10 Calendar Days' written notice, may take any of the following actions:

- Terminate the Contract
- Substitute Design-Builder with another Entity to complete the Contract
- Take possession of the Project Site

- Take possession of Materials on the Project Site
- Take possession of Materials not on the Project Site, for which Design-Builder received payment
- Take possession of Equipment on the Project Site that is to be incorporated into the Project
- Take possession of Equipment not on the Project Site that is to be incorporated into the Project and for which Design-Builder received payment
- Finish the Work by whatever method Agency deems expedient

If, within the 10-Calendar Day notice period provided above, Design-Builder and/or its Surety corrects the basis for declaration of default to the satisfaction of Agency, or if Design-Builder's Surety submits a proposal for correction that is acceptable to Agency, the Contract will not be terminated.

**(c) Termination for Public Convenience** - Agency may terminate the Contract in whole or in part whenever Agency determines that termination of the Contract is in the best interest of the public.

Agency will provide Design-Builder and Design-Builder's Surety seven (7) Calendar Days' written notice of termination for public convenience. After such notice, Design-Builder and Design-Builder's Surety shall provide Agency with immediate and peaceful possession of the Project Site and of Materials and Equipment to be incorporated into the Project, whether located on and off the Project Site, for which Design-Builder received payment.

## **DB Section 190 – Pricing and Measurement of Pay Quantities**

**DB190.00 Pricing and Payment Terms** - This Section 190 describes the pricing and payment terms and specifies the means of determining the value of Work performed (Work progress). The Parties, upon mutual agreement, may modify individual Price Item Values shown in the Schedule of Prices (Form SP) without modifying the Contract Amount. The Parties shall use a detailed breakdown of pricing and measurement of pay quantities to determine the value of Work performed. This detailed breakdown shall be determined prior to first Pay Request processing for design-related Price Items, and prior to the first Pay Request processing for construction-related Price Items, and shall be used throughout the term of the Contract as the basis for payment. The detailed breakdown must be reconciled to the Contract's Schedule of Prices for each month's payment cycle.

**(a) Pricing Concept** - The pricing concept is summarized as follows:

- Price Centers (PCs) are established by Agency for major Work activities, representing either an entire Work Location or a grouping of inter-related Work within a Work Location
- Price Items are identified by Agency to reflect particular groupings of tasks (e.g., Design Units or construction Work packages) within each Price Center

- Price Item Values are assigned by Design-Builder to each Price Item to facilitate the determination of the value of Work performed (Work progress)

**(b) Breakdown of Price Centers, Price Items; Price Item Values**

**(1) Identification of Price Centers** - Form PCD identifies each Price Center and Price Item by title, description, and identification number.

If Design-Builder plans to request payment as advance allowance for Materials on hand, it must show delivery of the Material as a separate Price Item in the associated PC. Payment shall be subject to the terms and conditions of **DB General Provisions**, Subsection 195.60.

**(2) Identification of Price Items** - Price Centers are divided into the following Price Items (*breakdown shown for Price Center "A"*):

- Price Item A1: Design
- Price Item A2: Quality Management
- Price Item A3: Safety (including temporary traffic control)
- Price Item A4: Environmental mitigation and monitoring
- Price Item A5: Mobilization
- Price Items A6 and beyond are identified in Forms SP and PCD

For each Price Item, Design-Builder shall describe on Form PCD, in bulleted or narrative form, all of the Work encompassed within the Price Item, and shall cross-reference items of a similar nature that are included in other Price Items. Design-Builder may include a list of the key components shown on Form SP in each Price Item description.

**(3) Assignment of Price Item Breakdown** - Design-Builder shall assign Price Item breakdowns for each Price Item as a means to quantify the value of Work performed, per Subsection 190.10.

**DB190.10 Measurement / Determining Progress**

**(a) Fixed-Price Work** - For all fixed-price Work, the Parties will conduct a pre-design meeting for the purpose of establishing the level of detail to be required for measuring progress with regard to Price Items 1 through 4.

The Parties will conduct a pre-construction meeting for the purpose of establishing the level of detail to be required for measuring progress with regard to Price Items 6 and beyond. In the event the Parties cannot agree on the level of detail to be required, Agency shall establish the requirements, which decision shall be final. Price Item 5 progress measurement is established in Subsection 190.10(a)(3) below.

Design-Builder shall include the basis for progress measurement and Price Item breakdown in the Quality Plan, which must be Accepted by Agency prior Agency’s processing of Design-Builder’s first Pay Request.

For all Work paid on a fixed-price basis, progress and payment shall be determined as follows:

**(1) Price Item 1** - Progress shall be determined on a cumulative percent of Work complete basis, consistent with the measurement established in the written Design Unit report required pursuant to **DB General Provisions**, Subsection 155.06.

The breakdown of Design Price Items for each PC is based on the Design Units identified in Form DU, in relation to the three (3) major Milestones associated with design: Definitive Design, Readiness-for-Construction, and As-Constructed Plans and Specifications. The breakdown consists of the following:

<b>Design Milestone/Event for each Design Unit</b>	<b>Earns</b>
Start Design	<b>15%</b> of the value of Price Item “1” for a particular PC
Submit Definitive Design	<b>25%</b> of the value of Price Item “1” for a particular PC
Submit Readiness-for-Construction	<b>50%</b> of the value of Price Item “1” for a particular PC*
Submit As-Constructed	<b>10%</b> of the value of Price Item “1” for a particular PC
Total	<b>100%</b> of the value of Price Item “1” for a particular PC

\*Readiness-for-Construction (RFC) submittals may be further broken down into component construction Work packages, such as:

Traffic staging and detour	equivalent to 5% of the RFC Price Item
Demolition (Bridge removal)	equivalent to 10% of the RFC Price Item
Substructure construction	equivalent to 25% of the RFC Price Item
Superstructure construction	equivalent to 25% of the RFC Price item
Earthwork construction	equivalent to 15% of the RFC Price Item
Roadway construction	equivalent to 20% of the RFC Price Item

Alternatively, Design-Builder may elect to measure progress of RFC Work in relation to the percent of the associated construction Work (Price Items F and beyond). RFC Work progress will then be calculated for payment as the Price Item Value multiplied by the percentage of associated Construction Work planned.

**(2) Price Items 2 through 4** - Progress shall be measured as follows:

- Price Item 2, Quality Management, will earn:

- 5% of all Quality Management Price Items on Project at Acceptance of the Partial Quality Plan
- 15% of all Quality Management Price Items on Project at Acceptance of the Complete Quality Plan
- 80% of the PC value will be pro-rated each month based on construction progress of the specific PC (e.g., Work Location)
- Price Item 3, Safety, will earn:
  - 10% of all Safety Price Items on Project at submittal of Safety Plan
  - 15% or an amount agreed upon by Agency and Design-Builder of all Safety Price Items on Project upon confirmed delivery of safety Materials and Equipment on-site or at designated Project storage yard
  - 75% or the balance of the amount agreed upon above of the PC value will be pro-rated each month based on construction progress of the specific PC (e.g., Work Location)
- Price Item 4, Environmental, will earn:
  - 10% of all Environmental Price Items on Project at submittal of Environmental Compliance Plan (part of the Quality Plan)
  - 15% or an amount agreed upon by Agency and Design-Builder of all Environmental Price Items on Project upon confirmed delivery of environmental Materials and Equipment on-site or at designated Project storage yard
  - 75% or the balance of the amount agreed upon above of the PC value will be pro-rated each month on construction progress of the specific PC (e.g., Work Location)

**(3) Price Item 5** - Mobilization is divided into two (2) separate payment values; design mobilization and construction mobilization as follows:

- Design Mobilization shall include cost of bonds, insurance and design mobilization. It is limited to 10% of all Design Price Items on Project, earned at Contract Award, and paid as part of the first pay request.
- Construction Mobilization shall be measured and paid pursuant to **DB Standard Specifications**, Part 00210.90 for sum of all construction components of a PC (i.e. Work Location), not including advances on Materials, as follows:
  - When 5% is earned, 50% of the amount for construction mobilization is paid for the PC
  - When 10% is earned, 100% of the amount for construction mobilization is paid for the PC
  - When all Work is completed, the amount of construction mobilization exceeding 10% of the original sum of all construction components of a PC (i.e. Work Location) is paid.

**(4) Price Centers Associated with Construction** - Progress shall be determined on a cumulative percent of Work complete basis. Price Items 5 and beyond shall be

measured based on completed actual quantities against the estimated quantities provided with the Readiness-for-Construction submittal. Design-Builder shall provide the pay estimate breakdown by measurable quantities prior to construction commencing on the first Work Location. In addition to the other remedies provided in the Contract, and regardless of the actual Work completed, Design-Builder will not be considered to have progressed the Work for any Price Center under any of the following circumstances:

- The Quality Plan has not been followed or documentation has not been provided
- The Baseline Project Schedule is not being followed
- The Safety Plan is not being followed
- The Traffic Control Plans are not being followed
- Environmental requirements have not been met

**(b) Unit Priced Work** - In computing amounts of Work done under Unit Prices, all Pay Requests, including the final, will be made for actual quantities of Work performed and Material placed in accordance with Contract requirements (except as provided under **DB General Provisions**, Subsection 195.60), as determined per **DB General Provisions**, Subsection 195.55. The resulting quantities involved in the Contract shall be accepted as final, conclusive, and binding upon Design-Builder.

#### **DB190.20 Design-Builder to Provide Vehicle Weigh Scales**

**(a) General** – If the Contract requires measurement by weighing on vehicle weigh scales, Design-Builder shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to Agency’s approval, masses (weights) may be determined by plant or hopper scales according to Subsection 190.30.

Design-Builder provided scales shall be furnished, installed and maintained by the Design-Builder or its supplier, or, subject to Agency’s approval, may use commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Materials to be measured by mass (weight) shall include all Design-Builder costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; and for transporting Materials to the scales or to check weighing.

**(b) Requirements** - The scales shall conform to ORS Chapter 618, or the laws of the state in which they are located, and NIST Handbook 44, and shall be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State
- Technically suitable for weighing the Materials
- Properly installed and maintained
- Accurate to the required tolerances

The Project Quality Manager and/or the Construction Quality Manager shall perform check weighing on the mass (weight) of any Materials weighed by Design-Builder. Agency PM may require additional check weighing.

**(c) Approaches** – Vehicle scale approaches shall be:

- At each end of the scale platform
- Straight and in line with the platform
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing

**(d) Inspections** – Design-Builder shall have all scales certified, that is, inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site
- 60 Calendar Days after initial inspection
- Every six (6) months thereafter
- When Project Quality Manager, Construction Quality Manager, or Agency PM directs additional inspections

No Materials weighed on scales without current certifications in accordance with this Subsection will be accepted. Design-Builder shall provide a copy of all required certifications to Agency PM.

Testing by a scale service company within the State of Oregon shall comply with ORS Chapter 618.

If additional inspections directed by Agency PM confirm that the scale accuracy is within the required tolerances, Agency will pay the cost for inspecting and testing the scales. If the scale accuracy is not within these tolerances, Design-Builder shall pay the cost for inspecting and testing the scales.

**(e) Inspection Results** – If an inspection indicates the scales have been under-weighing (indicating less than the true mass (weight)), Design-Builder shall notify Agency PM in writing of such discrepancy. Agency will make no additional payment to Design-Builder for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true mass (weight)), the masses (weights) will be reduced for Materials received after the time Agency determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

**(f) Design-Builder provided Weigh Technician** – Design-Builder shall provide a technician to operate Design-Builder provided weigh scales. Agency PM may observe

procedures and may require check weighing. Construction Quality Manager shall observe procedures and require check weighing in accordance with the following:

**(1) Scale with Automatic Printer** – If the scales have an automatic weigh memo printer that does not require manual entry of gross mass (weight) information, Construction Quality Manager and/or Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, Construction Quality Manager and/or Agency may periodically check the mass (weight) for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified in accordance with Subsections 190.20(b) and 190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route, Agency will allow check weighing on an approved alternate basis. Check masses (weights) within 0.4% of the Design-Builder provided mass (weight) are acceptable.

Agency will resolve discrepancies found by check weighing. Agency employee costs for check weighing will be paid by Agency. Design-Builder shall pay all other costs resulting from the check weighing ordered by Agency PM, Project Quality Manager, or Construction Quality Manager, including, without limitation, the use of other scales.

If more than 50 tons per day of all types of Materials are received from a scale, Design-Builder shall make random check weighing's at least every tenth day on which more than 50 tons is received or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by Agency. Design-Builder shall make at least one (1) check weighing on projects where more than 2,000 tons of all types of Materials are received from a scale. Design-Builder shall provide Agency PM and Construction Quality Manager with the results of the check weighing.

**(2) Scale without Automatic Printer** – If the scales require manual entry of gross mass (weight) information, Construction Quality Manager and Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. Design-Builder shall inform both Construction Quality Manager and Agency PM of his intent to use a scale without an automatic printer at least three (3) working days before weighing begins or before Design-Builder changes to a scale that does not have an automatic printer. Design-Builder shall pay costs for the weigh witness from either the Construction Quality Manager or Agency. The hourly cost of an Agency weigh witness will be as stated in the **DB Special Provisions, SP190.20(f)**. In addition, Construction Quality Manager and Agency may periodically check the mass (weight) for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified in accordance with Subsections 190.20(b) and 190.20(d).

If a different scale is not available within a 30 mile round trip from the regular haul route, Agency will allow the check weighing on an approved alternate basis. Check masses (weights) within 0.4% of the Design-Builder-provided mass (weight) are acceptable.

Agency will resolve discrepancies found by check weighing. Agency employee costs for check weighing will be paid by Agency. Design-Builder shall pay all other costs resulting from the check weighing ordered by Agency PM, Project Quality Manager, or Construction Quality Manager, including, without limitation, the use of other scales.

If more than 50 tons per day of all types of Materials are received from a scale, Design-Builder shall make random check weighing's at least every tenth day on which more than 50 tons is received, or at each interval that 10,000 tons has been weighed, whichever occurs first, or as directed by Construction Quality Manager or Agency. Design-Builder shall make at least one (1) check weighing on all projects where Materials are received from a scale without an automatic printer. Design-Builder shall provide Construction Quality Manager and Agency PM with the results of the check weighing.

**(3) Duties of Weigh Technician** – Design-Builder's weigh technician shall:

- Determine twice a day, or as otherwise directed by Agency, the empty haul masses (weights) (tare masses (weights)) of hauling vehicles, unless vehicles are tared each load
- Furnish daily a listing of tare masses (weights) if ten or more loads are hauled during that day
- Furnish a note listing the net masses (weight) for each consecutive ten loads with the following load
- Furnish a daily listing of net masses (weights) and total mass (weight) for each type of Material hauled during that day
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Materials receiver at the point of delivery, or as directed by Agency. The memo shall identify the Project, the Materials, the date, net mass (weight) (gross and tare as appropriate), and identification of the vehicle, driver and weigh technician.

**(g) Agency-provided Weigh Technician** – If the Design-Builder provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, Agency will provide a weigh technician at Design-Builder's expense. The hourly cost for the weigh technician will be as stated in the **DB Special Provisions**, SP190.20(g). Design-Builder shall provide a weigh house for the weigh technician in accordance with DB Standard Specification, Section 00205. Agency's weigh technician will:

- Determine tare masses (weights)
- Prepare weigh memos for each load
- Compile the weigh records
- Not participate in the production of Materials or the loading of haul vehicles

**DB190.30 Plant Scales** – Design-Builder may weigh plant-mixed Materials on scales that have either:

- An automatic mass (weight) batching and mixing control printer system, or
- A weigh hopper printer system

Any additional costs resulting from the use of these scales shall be borne by Design-Builder. Check weighing will be done in accordance with Subsection 190.20(f).

Except for Subsection 190.20(c) regarding approaches, Design-Builder's use of plant scales shall comply with all provisions of Subsection 190.20.

Agency's approval for Design-Builder's use of plant scales to determine pay masses (weights) will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine masses (weights) within the tolerances allowed by state law.

## **DB Section 195 - Payment**

### **DB195.00 Scope and Limit**

**(a) General** - Agency will pay only for Price Centers incorporated into the Project or performed in accordance with the terms of the Contract. Price Centers listed in the Schedule of Prices do not govern payment.

Payment constitutes full compensation to Design-Builder for furnishing all Materials, Equipment, tools, labor, and Incidentals necessary to complete the Work; and for risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of **DB General Provisions**, Subsection 170.80. Design-Builder shall include the costs of bonds and insurance for the Project in the Unit Price for each Price Item of Work to be performed.

**(b) Essential or Incidental Materials or Work** - When the Contract Specifications state that the Price Center Value (PCV) is compensation for certain Materials or Work essential or Incidental to the Price Center, the same Materials or Work will not be measured or paid under any other Price Center.

### **DB195.20 Changes to Plans or Character of Work**

**(a) Insignificant Changed Work** - If Agency-required changes in the Work do not significantly change the character or cost of the Work to be performed under the Contract, Agency will pay for such Work at the Schedule of Prices price.

If the Work involved in the change is measured on a unit price basis and its character is not significantly changed, payment for the Changed Work will be determined:

- As described in the applicable section of **Agency-Supplied Specifications**

- If not described there, on a theoretical unit price determined by dividing Design-Builder's fixed-price for the affected Price Center by the estimated quantity of the item listed
- If neither of the above apply, Agency will make an equitable adjustment

**(b) Significant Changed Work** - If Agency-required changes in the Work significantly alter the character or fixed-price cost of the Work, Agency will adjust the Contract. The Design-Builder shall not be entitled to compensation for any loss in profits resulting from elimination of, reduction of, or other change to a part of the work. The Parties shall agree upon the basis for payment and the amount of adjustment prior to Design-Builder commencing the Changed Work. If the basis and amount cannot be agreed upon, Agency will make an equitable adjustment, which may increase or decrease the Contract Amount and/or Contract Time.

Any adjustments shall not be more than the amount justified by Agency on the basis of the established procedures set out in **DB General Provisions**, Section 199 for determining rates for Extra Work, but those procedures shall account for the decrease or elimination of work as well as for increases in the work. Significant is defined as:

- (1) An increase or decrease of more than 25 percent of the total cost of the Work calculated from the original proposal quantities and the unit contract prices; or,
- (2) An increase or decrease of more than 25 percent in the quantity of any one major contract item.

For condition (2) above, a major item is defined as any item that amounts to 10 percent or more of the original total contract price.

The term "Significant Changed Work" shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or cost from that involved or included in the original Scope of Work.

**DB195.30 Differing Site Conditions** - Upon written notification, Agency will investigate the identified conditions. If Agency determines that the conditions are differing project site conditions under DB 00140.40 and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. Agency PM will notify Design-Builder as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits Design-Builder will be allowed unless Design-Builder has provided the required written notice.

**DB195.40 Unreasonable Delay by Agency** - If Design-Builder believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of Agency or persons acting for Agency, and that

additional compensation, Contract Time, or both, are due Design-Builder because of the suspension, delay or interruption, Design-Builder shall immediately file a written notice of delay in accordance with **DB General Provisions**, Subsection 180.60. Design-Builder shall then promptly submit a properly supported request for additional compensation, Contract Time, or both, in accordance with the applicable provisions in **DB General Provisions**, Subsections 180.60 through 180.80.

Agency will promptly evaluate a properly submitted request for additional compensation. If Agency determines that the delay was unreasonable, and that the cost required for Design-Builder to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, Agency will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. Agency will notify Design-Builder of the determination and whether an adjustment to the Contract Amount is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless Design-Builder has provided the written notice required by **DB General Provisions**, Subsection 180.60
- For costs incurred more than 10 Calendar Days before Agency receives Design-Builder's properly-submitted written request
- For any portion of a delay that Agency deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms of the Contract
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection

### **DB195.50 Progress Payments and Retained Amounts**

**(a) Progress Payments** – Agency's payment of progress payments shall not be construed as acceptance or approval of any part of the Work, and shall not relieve Design-Builder of responsibility for defective Materials or workmanship.

The estimates upon which progress payments are based are not represented to be accurate estimates. All estimated quantities are subject to correction in the final estimate. If Design-Builder uses these estimates as a basis for making payments to Subcontractors, Design-Builder assumes all risk and bears any losses that result.

Agency will make progress payments only in accordance with the provisions of this Subsection and only if the following have occurred:

- Progress Estimate conforming to Contract requirements has been submitted to Agency PM and approved by Agency.
- A Pay Request conforming to Contract requirements, and all required accompanying submittals, prepared in accordance with Contract requirements, have been submitted to Agency PM.

**(1) Submittal of Progress Estimates** – At the same time each month, the Project Quality Manager shall submit to Agency PM for review an estimate of the amount and

value of Work completed through the previous month, calculated based on the Baseline Progress Schedule and the Schedule of Prices price allocation for each activity. Sufficiently-detailed information shall be provided to support partial payment of fixed-price Price Centers. The Project Quality Manager shall verify and certify satisfactory completion of all Work being submitted for payment and that the Work complies with all quality requirements of the Contract.

Notwithstanding the foregoing, the amount of each progress payment will not exceed the reasonable value of the Work performed, as determined by Agency. If Work is not performed per Contract requirements, payment will be suspended at the previous month's level until Work is brought into compliance.

**(2) Value of Materials on Hand** – Subject to the provisions of Subsection 195.60, Agency will also make an estimate of the amount and value of acceptable Materials on hand (i.e., already delivered and stored in accordance with the requirements of this Subsection to be incorporated into the Project.

**(3) Value of Work Accomplished** – The sum of the values in (1) and (2) above will be collectively referred to in this Subsection as the “value of Work accomplished,” subject to (4) below.

**(4) Limitations on Value of Work Accomplished** – In determining the value of Work accomplished, Agency's estimate will be based on the Schedule of Prices provided and the Work completed.

**(5) Reductions to Progress Payments** - With each progress payment, Design-Builder will receive a Contract payment voucher and summary setting forth the value of Work accomplished, reduced by the following:

- Amounts previously paid
- Amounts deductible or owed to Agency for any cause specified in the Contract
- Additional amounts retained to protect Agency's interests pursuant to Subsection (e) below

**(b) Retainage** – The amount to be retained from progress payments shall be 5.0% of the value of Work accomplished, and shall be retained in one of the forms specified in Subsection (c) below. If Agency determines that satisfactory progress is not being made on the Work, Agency may withhold up to 5% of the value of Work accomplished from subsequent progress payments. No retainage will be withheld from Work performed as Force Account Work, escalation/de-escalation, bonuses (or other items decided by Agency).

**(c) Forms of Retainage** - Forms of acceptable retainage are set forth below. “Cash,” is Agency-preferred form of retainage. If Agency incurs additional costs as a result of Design-Builder's election to use a form of retainage other than Cash, Agency may recover such costs from Design-Builder by a reduction of the final payment.

**(1) Cash** - Retainage will be deducted from progress payments and held by Agency until final payment is made, unless otherwise specified in the Contract.

Any retainage held on Work performed by a Subcontractor shall be released to Design-Builder as provided in Subsection 195.50(d).

**(2) Cash and Retainage Surety Bond - RESERVED**

**(3) Bonds and Securities** - Design-Builder may deposit bonds or securities with Agency or with any bank or trust company, to be held instead of cash retainage for the benefit of Agency.

Bonds and securities deposited instead of cash retainage shall be assigned or made payable to Agency (ORS 279C.560). In such event, Agency will reduce the retainage by an amount equal to the value of the bonds and securities. Interest on the bonds and securities shall accrue to Design-Builder.

Bonds and securities deposited instead of cash retainage shall be assigned to or made payable to Agency, and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

- Bills, certificates, notes or bonds of the United States
- Other obligations of the United States or its agencies
- Obligations of any corporation wholly owned by the federal government
- Indebtedness of the Federal National Mortgage Association

Design-Builder shall execute and provide such documentation respecting the bonds and securities as Agency may require to protect its interests. When Agency determines that all requirements for the protection of Agency's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to Design-Builder.

**(d) Reduction of Retainage** – As the Work progresses, the amounts to be retained are subject to reduction in Agency's sole discretion. Retainage reductions will be considered only as follows:

- When the Work is 97.5% or more completed, Agency may, without application by Design-Builder, reduce the retained amount to 100% of the value of the Work remaining.
- When a Subcontractor has satisfactorily completed all of its work, it may request release of retainage for that work from Design-Builder. Design-Builder shall request reduction of retainage in the amount withheld for the Subcontractor's work after certifying to Agency that the Subcontractor's work is complete, and that all contractual requirements pertaining to the Subcontractor's work have been satisfied. Within 60 Calendar Days of the end of the month in which Agency receives Design-Builder's certification regarding the Subcontractor's work, Agency will either notify Design-Builder of any deficiencies which require completion before release of

retainage, or verify that the Subcontractor's work complies with the Contract and release all retainage for that work with the next scheduled progress payment. Within 10 Calendar Days of receipt of retainage, Design-Builder shall pay to the Subcontractor all such retainage released.

- Agency will only release retainage for satisfactorily-completed portions of the Work represented by Price Centers in the Schedule of Prices, or Price Centers or unit-priced Work added by Change Order. Work not represented by a Price Center, but which constitutes part of an uncompleted Price Center, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

If retainage has been reduced or eliminated, Agency reserves the right to protect its interests by retaining amounts from further progress payments at the rates provided in Subsection 195.50(b).

**(e) Withholding Payments** – In addition to any other rights the agency may have to withhold payments under other provisions of the contract, the Agency may withhold such amounts from progress payments or final payment as may reasonably protect Agency's interests until Design-Builder has:

- Complied with all orders issued by Agency PM
- Satisfied all legal actions filed against Agency, Agency's governing body and its members, and Agency employees that Design-Builder is obliged to defend

Notwithstanding ORS 279C.555 or 279C.570, if Design-Builder is required to file certified statements confirming payment of prevailing rates of wage but fails to do so, Agency will retain 25% of any amount earned as required in **DB General Provisions** Subsection 170.65.

**(f) Prompt Payment Policy** – Payments shall be made promptly in accordance with ORS 279C.570.

**DB195.55 Unit Price Work** - Design-Builder shall submit a summary table of quantities with each Progress Estimate indicating Work Location; item number; and description, quantity, Unit Price, and total amount due for the period covered by the Progress Estimate. Design-Builder shall attach copies of quantity measurement notes or field book entries stamped and signed by an Oregon-licensed professional engineer or surveyor assigned to Design-Builder's construction Quality Management organization. Design-Builder's Project Manager and the Project Quality Manager must sign and date the summary table.

**DB195.70 Payment under Terminated Contract** - Payment for Work performed under a Contract that is terminated pursuant to the provisions of **DB General Provisions**, Subsection 180.90, will be determined under (a) or (b) of this Subsection.

**(a) Termination for Default** - Upon termination of the Contract for Design-Builder's default, Agency will make no further payment until the Project has been completed. Agency will make progress payments to the Entity to whom the Contract is assigned, but may withhold an amount sufficient to cover anticipated Agency costs, as determined by Agency, to complete the Project.

Upon completion of the Project, Agency will determine the total amount that the defaulting Design-Builder would have been entitled to receive for the Work under the terms of the Contract, had Design-Builder completed the Work (the “Cost of the Work”).

If the Cost of the Work, less the sum of all amounts previously paid to Design-Builder, exceeds the expense incurred by Agency in completing the Work, including without limitation expenses for additional managerial and administrative services, Agency will pay the excess to Design-Builder, subject to the consent of Design-Builder’s Surety, but only to the extent that such excess is applied to work performed by Design-Builder prior to the date of termination or to reimburse payment made by the Design-Builder or its Surety to complete the Work.

If the expense incurred by Agency in completing the Work, including without limitation expense for additional management and administrative costs, exceeds the cost of the work less the sum of all amounts previously paid to the Design-Builder, Design-Builder or Design-Builder’s Surety shall pay to Agency the amount of the excess expense.

Agency will determine the expense incurred by Agency and the total amount of Agency damage resulting from Design-Builder’s default. The determination will be final as provided in **DB General Provisions**, Section 150.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to Design-Builder will be made as provided below.

**(b) Termination for Public Convenience**

**(1) General** - Full or partial termination of the Contract shall not relieve Design-Builder of responsibility for completed portions of the Work, or relieve Design-Builder’s Surety of the obligation for any just claims arising from the completed Work.

**(2) Mobilization** - If mobilization is not included as an activity within a separate Price Center, and is not otherwise allowable as a reimbursable item under the Contract, Agency may pay Design-Builder for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by Design-Builder to Agency PM.

**(3) All Other Work** - Agency will pay Design-Builder at the price stipulated in the Contract for the number of Price Centers of completed, accepted Work. For Price Centers partially completed, payment will be as mutually agreed, or, if not agreed, as Agency determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. Agency will purchase Materials left on hand in accordance with 195.80 below.

**DB195.80 Allowance for Materials Left on Hand**

(a) **Purchase of Unused Materials** – If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of Agency, but not incorporated into the Work due to complete or partial elimination of Work, Agency required changes in Plans, or termination of the Contract for public convenience pursuant to **DB General Provisions**, Subsection 180.90 will become property of the Design-Builder.

**DB195.90 Final Payment**

(a) **Final Estimate** - As soon as practicable after Final Inspection of the Project, Agency PM will prepare a final estimate of the Price Centers performed. With this estimate as a base, the total amount due Design-Builder will be determined according to the terms of the Contract, including without limitation any amounts due for Extra Work performed.

(b) **Final Payment** - The amount of final payment will be the difference between the total amount due Design-Builder and the sum of all payments previously made. All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

After computation of the final amount due, and after Third Notification of the Project, final payment will be mailed to Design-Builder’s last known address, as shown in the records of Agency.

(c) **No Waiver of Right to Make Adjustment** - The fact that Agency has made any measurement, estimate, or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, or payment for any part of the Work, shall not prevent either Party from:

- Showing the true amount and character of the Work
- Showing that any measurement, estimate or certification is incorrect
- Recovering from the other Party damages that may have been suffered because the other Party failed to comply with the Contract

**DB195.95 Error in Final Quantities and Amounts**

(a) **Request for Correction of Compensation** – If Design-Builder believes the amounts detailed in the final Contract payment voucher prepared by Agency to be incorrect, Design-Builder shall submit an itemized statement to Agency PM detailing all proposed corrections.

This statement must be submitted to Agency PM within 90 Calendar Days from the date the voucher was mailed to Design-Builder in accordance with Subsection 195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by Agency. This does not limit the application of **DB General Provisions**, Section 199.

(b) **Acceptance or Rejection of Request**

**(1) Consideration of Request** –Agency will consider and investigate Design-Builder’s request for correction of compensation submitted in accordance with Subsection 195.95(a), and will promptly advise Design-Builder of acceptance or rejection of the request in full or in part.

**(2) Acceptance of Request** - If Agency accepts Design-Builder’s request(s) in full or in part, Agency will prepare a post-final Contract payment voucher including all accepted corrections, and will forward it to Design-Builder.

**(3) Rejection of Request** - If Agency rejects the request(s) in full; Agency will issue a written notice of rejection and mail it to Design-Builder.

**(4) Design-Builder Objection to Revised Voucher or Notice of Rejection** - If Design-Builder disagrees with the revised voucher or notice of rejection, Design-Builder may request review pursuant to the procedure set forth in **DB General Provisions**, Subsection 199.40. If Design-Builder fails to submit a request for **DB General Provisions**, Section 199 review within 30 Calendar Days after Agency mails a post-final Contract payment voucher or notice of rejection, Design-Builder waives all rights to a claim based on errors in quantities and amounts.

### **DB Section 196 – Payment for Extra Work**

**DB196.00 General** - Only Work not included in the Contract as awarded, but deemed by Agency to be necessary to complete the Project, will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made in accordance with **DB General Provisions**, Subsection 195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by Agency and performed as specified. Work performed before issuance of Agency’s written authorization shall be at Design-Builder’s risk. Extra Work will be paid as determined by Agency in accordance with Subsections 196.10 or 196.20.

**DB196.10 Negotiated Price** - If Agency can reasonably determine a price estimate for Extra Work, Agency may then give written authorization to Design Builder to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, Design-Builder shall respond in writing to Agency’s Extra Work price estimate by submitting to Agency an Extra Work price quote. The price quote shall detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit

- Other costs associated with the proposed Extra Work

Pending approval of the price quote, Agency will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, Agency will review the price quote and advise Design-Builder if it is accepted or rejected. Agency will not accept a price quote that cannot be justified on a force account basis. If Design-Builder's price is accepted, Agency will issue a Change Order, and the Extra Work will be paid at the accepted price.

**DB196.20 Force Account** - If Agency and Design-Builder cannot agree on a price for the Extra Work, Agency may issue a Force Account Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be governed by **DB General Provisions**, Section 197.

### **DB Section 197 – Payment for Force Account Work**

**DB197.00 Scope** - The Materials, Equipment, and labor rates established in this Section apply only to Extra Work ordered by Agency to be performed as Force Account Work. These rates do not apply to any other Work performed under the Contract.

**DB197.01 General** - Before ordering Force Account Work, Agency will discuss the proposed work with Design-Builder, and will seek Design-Builder's comments and advice concerning the formulation of Force Account Work Specifications. Agency is not bound by Design-Builder's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment, and labor to be used on the approved Force Account Work
- Determine the time of Design-Builder's performance of the ordered Force Account Work

Force Account Work performed by subcontractors will be measured and paid for on the same basis and in the same manner as force account work performed directly by the Design-Builder.

If Agency orders the performance of Extra Work as Force Account Work, Agency will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that day. Agency and Design-Builder shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by Agency, except those furnished and paid under rental rates for use of Equipment
- Equipment that Agency considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour.

- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work
- Special Services
- Agency and Design-Builder's signatures confirming its accuracy

Failure to present documentation for Force Account Work in proper form within thirty (30) days after the close of the month in which the work covered was performed shall constitute a waiver on the part of the Contractor of Contractor's right to present such claim thereafter or to receive payment thereof.

The Contractor shall submit a proposed operation plan for performance of the Force Account Work that includes materials, equipment and labor. The Contractor shall obtain approval for Subcontractors used on Force Account Work.

### **DB197.10 Materials**

**(a) General** - Design-Builder will be paid for Materials actually used in the Force Account Work as directed by Agency, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the supplier to the purchaser, whether the purchaser is Design-Builder, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

**(b) Trade Discount** - If a commercial trade discount is offered or available to the purchaser, it shall be credited to Agency, even though the discount may not have actually been taken. Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

**(c) Not Directly Purchased from Supplier** - If Materials cannot be obtained by direct purchase from and direct billing by the supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by Agency, but not more than the purchaser paid for the Materials. No markup other than actual handling costs shall be permitted.

**(d) Purchaser-Owned Source** - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost shall not exceed the price paid by the purchaser for similar Materials furnished from that source under the Contract, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

### **DB197.20 Equipment**

**(a) General** - Equipment approved by Agency to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated, or on standby if so ordered by Agency. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by Agency will be paid at the rental rates given in the most current edition of the *Rental Rate Blue Books for Construction Equipment* (“Blue Book”), Volumes 1, 2, and 3, published by Primedia Information, Inc., 1735 Technology Drive, Suite 410, San Jose, CA 95110-1313 [telephone 800-NOW-DATA (800-669-3282)].

**(b) Equipment Description** - On the billing form for Equipment costs, Design-Builder shall submit to Agency sufficient information for each piece of Equipment and its attachments to enable Agency to determine the proper rental rate from the Blue Book.

**(c) Rental Rates (without Operator)**

**(1) Rental Rate Formula** - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate} \times \text{Rate Adjustment Factor}}{176 \text{ hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered “standard Equipment” and are already included in the monthly base rate for the Equipment. That information can be obtained from Primedia Information, Inc.

**(2) Monthly Base Rate** - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

**(3) Rate Adjustment Factor** - The rate adjustment factor used above will be determined as per page iii of each section of the Blue Book.

**(4) Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

**(5) Limitations** - The Blue Book “Regional Adjustment Factor” shall not apply.

If multiple attachments are included with the rental Equipment and are not considered “standard Equipment,” only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by Agency as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than \$5.00, or for unlisted Equipment that has a fair market value of \$400.00 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the Work, may be rejected by Agency or approved and paid for at reduced rates.

**(d) Moving Equipment** - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, the Work Location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on other Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with Design-Builder's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment without attachments, plus the Equipment operator's wage.

**(e) Standby Time** – If ordered by Agency, standby time will be paid at 40% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than \$1.00 per hour will not be paid. Payment will be limited to not more than eight (8) hours in a 24-hour period or 40 hours in a one-week period.

**(f) Blue Book Omissions** - If a rental rate has not been established in the Blue Book, Design-Builder may:

- If approved by Agency, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type
- Request Primedia Information, Inc. to furnish a written response for a rental rate on the Equipment, which shall be presented to Agency for approval
- Request that Agency establish a rental rate

**(g) Outside Rental Equipment** - If Design-Builder or Subcontractor-owned Equipment is not available and Equipment is rented from outside sources, payment will be based on the actual paid invoice. Approval of the Agency to rent from outside sources must be obtained prior to renting the equipment.

If the invoice specifies that the rental rate does not include fuel, lubricants, field repairs, or servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

(Refer to **DB General Provisions**, Subsection 180.20(c), for owner-operated Equipment.)

**DB197.30 Labor** - Design-Builder will be paid for all labor engaged directly on Force Account Work, including Equipment operators and supervisors in direct charge of the specific force account operations.

**(a) Standard Calculation** – Payment for force account labor will be calculated as follows:

The amount paid to Design-Builder shall be full compensation for all costs associated with labor on Force Account Work, including wages, fringe benefits, vacation, insurance, markup, and other direct and indirect costs, except for per diem costs. If per diem is paid to workers for similar Work, per diem costs will be paid on an actual-cost basis for the Force Account Work. The markup described in Subsection 197.80 will not be added, except that the supplemental markup for Force Account Work performed by Subcontractors will be allowed.

**(b) Work Value for Labor over \$10,000.00 or NCCI Rate over 25%** - After the accumulated value of labor performed under a Force Account Work order exceeds the value determined by application of the standard calculations set forth above, payment for Force Account Work labor will be calculated as follows:

**(1) Wages** - The actual wages paid to laborers and supervisors, if those wages are paid at rates not more than those for comparable labor currently employed on the Project, or at the recognized, current prevailing rates in the locality of the Project.

**(2) Required Contributions** - The actual cost of industrial accident insurance, and unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required by Law. The actual cost of industrial accident insurance is the NCCI rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for Design-Builder.

**(3) Required Benefits** - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, and other benefits, when such amounts are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

The cost of labor calculated under this Subsection will also be subject to the applicable markups in Subsection 197.80.

No overtime will be compensated unless authorized in advance of performing the work.

**DB197.40 Invoices for Special Services** - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and

labor costs if the itemization is impractical or not customary. The invoice for Special Services shall show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in Subsection 197.80.

**DB197.80 Percentage Allowances** - To Design-Builder's actual costs incurred, as limited in this Section 197, amounts equal to a percentage markup of such costs will be allowed and paid to Design-Builder as follows:

<b>Subsection</b>	<b>Percent</b>
DB 197.10 Materials	17%
DB 197.20 Equipment	17%
DB 197.30(b) Labor	22%
DB 197.40 Special Services	17%

When a Subcontractor performs ordered Force Account Work, Design-Builder will be allowed a supplemental markup of eight (8) percent on each Force Account Work order.

These allowances made to Design-Builder will constitute complete compensation for overhead, general and administrative expenses, profit, and all other Force Account Work costs that were incurred by Design-Builder, or by other forces Design-Builder furnished. No other reimbursement, compensation, or payment will be made.

**DB197.90 Billings** – Billings for Force Account Work shall be submitted for Agency's approval on forms provided by or approved by Agency. Billings for Materials (other than Incidental items out of the inventory of Design-Builder or Subcontractors), rental Equipment from sources other than Design-Builder or Subcontractors, and Special Services shall be accompanied by copies of invoices for the goods and/or services provided. The invoices shall be fully itemized, showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of \$10.00 or less per invoice are not required unless requested by Agency.

Costs included on the billings shall comply with the guidelines of Subsections 197.10 through 197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount DB 199.20(b) \$10.00.

## **DB Section 199 - Disagreements, Protests, and Claims**

**DB199.00 General** - This Section details the process through which the Parties agree to resolve any disagreement concerning additional compensation or concerning a combination

of compensation and Contract Time. These provisions do not apply to disagreements concerning only Contract Time or return of liquidated damages. Agency will not consider direct disagreements, protests, or claims from Subcontractors, Materials suppliers, or any other Entity not a party to the Contract.

**DB199.10 Procedure for Resolving Disagreements** - When disagreements occur, Design-Builder shall first pursue resolution through Agency of all issues in the protest, including, without limitation, the items to be included in the written notice required herein. If the discussion fails to provide satisfactory resolution of the disagreement, Design-Builder shall follow the protest procedures outlined in below. If Agency denies all or part of Design-Builder's protest, and Design-Builder desires to further pursue the issues, Design-Builder must submit a claim for processing according to the claims procedures set out below.

**DB199.15 Inappropriate Protest or Claim as Breach of Contract** - It shall be presumed that the Contractor submits a protest or claim for additional compensation in good faith, based upon facts which reasonably support the Contractor's position and with full knowledge and understanding of the injury done to the Agency when notice of differing Project Site conditions or claims for additional compensation are not submitted in a timely manner as required under the Contract. Accordingly, the submission of a protest or claim without the concurrent submission of evidence that reasonably supports the protest or claim, or the submission of a protest or claim in an untimely manner shall constitute a breach of the Contract.

**DB199.20 Protest Procedure** - If Design-Builder disagrees with anything required in a Change Order or other written or oral order from Agency, including any direction, instruction, interpretation, or determination that, in Design-Builder's opinion, entitles or would entitle Design-Builder to additional compensation, Design-Builder shall do all of the following in order to pursue a protest and preserve its claim:

**(a) Oral Notice** - Design-Builder shall give oral notice of protest to Agency and outline the areas of disagreement before starting or continuing the protested Work.

**(b) Written Confirmation of Oral Notice** – Not later than the end of the next business day following the day that oral notice of protest is given, deliver written documentation to the Engineer of the oral notice that includes the notice of protest and the areas of disagreement.

**(c) Written Notice** - Design-Builder shall file a proper written notice of protest with Agency within seven (7) Calendar Days after receiving the protested order. In the notice, Design-Builder shall:

- Describe the acts or omissions of Agency or its agents that allegedly caused, or may cause, damage to Design-Builder, citing specific facts, persons, dates, and Work involved.
- Describe the nature of the damages.
- Cite the specific Contract provision(s) that support the protest.

- Include the estimated dollar cost, if any, of the protested Work, together with a list of estimated Materials, Equipment, and labor for which Design-Builder might request additional compensation.
- If additional compensation is estimated to be due, the estimated amount of additional Contract Time required, if any.

Failure to timely file written notice or to include in the notice all of the required information renders the notice improper, and Agency will have no responsibility for evaluating the protest.

**(d) Engineer's Record and Response** – The Engineer will file a copy of each written notice of protest in the Project records and will issue a written response to the protest within seven (7) business days of receipt of a timely filed written notice of protest. The Engineer has no responsibility to evaluate the protest unless the Contractor has timely filed a proper notice submitting all of the above information.

**(e) Final Documentation of Claim** - Within 60 Calendar Days following completion of the protested work, Contractor shall provide the Engineer with complete documentation of protested work, listing exact materials, equipment and labor used for the work and the dollar amount requested for each. If the claim is accepted, no additional compensation will be awarded based on documentation submitted after this deadline. If the claim is denied or if the Contractor is not satisfied with the decision by the Engineer, the amount claimed by the Contractor in any subsequent Step or proceeding may not exceed the dollar amount requested under this subsection.

**(f) Records** - Design-Builder shall keep complete records of all costs and time incurred throughout the protested Work, and allow Agency access to those and other supporting records. Design-Builder shall provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with Agency.

**(g) Comparison of Records** - Design-Builder shall provide Agency adequate facilities for keeping cost and time records of the protested Work. Design-Builder and Agency will compare records and either bring them into agreement at the end of each day, or record and attempt to explain any differences.

**(h) Work to Proceed** - In spite of any protest, Design-Builder shall proceed promptly with the Work ordered by Agency.

**(i) Evaluation of Protest** - Agency has no responsibility for evaluating a protest that is not timely filed, or for which adequate supporting documentation has not been kept. Provided the procedures above are followed, Agency will promptly evaluate all protests and, if the protest is denied, advise Design-Builder in writing of the reasons for full or partial denial. If a protest is found to be valid, Agency will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of Contract Time will be evaluated according to **DB General Provisions**, Subsection 180.80.

### **DB199.30 Claims Procedures**

**(a) General** - If Design-Builder believes that additional compensation is due, and has complied with, pursued, and exhausted all the foregoing procedures to resolve a disagreement and protest, Design-Builder may file a claim.

Agency's Contract is with Design-Builder. There is no contractual relationship between Agency and any Subcontractor. It is Design-Builder's responsibility to fully analyze any Subcontractor claim before presenting it to Agency. In addition, when a claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than Design-Builder, Design-Builder remains solely responsible for presenting the claim to Agency.

Claims that include Work done or costs incurred by any Entity other than Design-Builder will not be considered by Agency unless Design-Builder has:

- Completed and provided its own written analysis and evaluation of the claim
- Verified by its own independent review and analysis the amount of compensation sought

**(b) Claims Requirements** - At any time during the progress of the Work, but not later than 15 Calendar Days following the date of Final Second Notification, Design-Builder shall submit to Agency claims for compensation additional to that specified in the Contract. For a claim not submitted within the 15 Calendar-Day limit, that has not met the requirements of Subsection 199.20, or is not filed as provided in Subsection 199.30, Design-Builder waives any claim for additional compensation or for a combination of additional compensation and Contract Time, and Agency may reject the claim.

To be considered, claims for compensation shall be completed according to Subsection 199.30 and shall be submitted with the information and in the format and labeled as required below for each claimed issue:

**(1) Executive Summary** (pages ES-1 through ES-?), e.g. (pages ES-1 through ES-5). In the Executive Summary include a detailed factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim, the dates of when the event arose and when notice was given to Agency. Also include detailed facts supporting Design-Builder's position relative to Agency's decision (see Subsection 199.20(f));

**(2) Copies of the Specifications** that support Design-Builder's claim (pages Spec-1 through Spec-?).

**(3) Theory of entitlement** (pages TOE-1 through TOE-?). Include a narrative of how or why the specific Specifications support the claim and a statement of the reasons why such Specifications support the claim;

(4) Itemized list of claimed amounts (pages CDA-1 through CDA-?). Claimed damages that resulted from the event with a narrative of the theories and documents used to arrive at the value of the damages.

(5) Contract Time Aspect (pages CTA-1 through CTA-?). If Contract Time is included in the claim, submit a copy of the schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed, the following information shall be included:

- The specific days and dates under claim
- Detailed facts about the specific acts or omissions of Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable
- A schedule analysis that accurately describes the impacts of the claimed delay

(6) Copies of actual expense records (pages EXP-1 through EXP-?). Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. The amount may be calculated on the basis of Force Account Work, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75% of those calculated under the provisions of **DB General Provisions**, Subsection 197.20. For each piece of Equipment, Design-Builder shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby
- Direct labor
- Job overhead
- General and administrative overhead
- Other categories specified by Design-Builder, or by Agency

(7) Copies of, or excerpts from, any documents that support the claim, such as manuals standard to the industry and used by Design-Builder, other than Agency documents and documents previously furnished to Agency by Design-Builder;

(8) If the claim includes Work done or costs incurred by a Subcontractor, Materials supplier, or any Entity other than Design-Builder, the following are required:

- All data required by other Subsections of 199.30(b)
- A copy of Design-Builder's separate analysis and evaluation
- A copy of Design-Builder's independent review and analysis of the amount of damages sought

(9) Include any daily reports or diaries related to the event, photographs or other media that help explain the issue or event (optional), or all other information Design-Builder chooses to provide (optional);

(10) A certified statement by Design-Builder, Subcontractor, or Materials supplier, as appropriate, as to the validity of facts and costs, containing the following language:

“Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of \$ \_\_\_\_\_, exclusive of interest) and is fully documented and supported under the Contract between the Parties.

Signature:

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

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

Notary Public

My commission expires \_\_\_\_\_”

A person authorized to execute Change Orders on behalf of Design-Builder must countersign this statement.

Claims shall be made in writing, and shall include all information necessary for Agency to properly and completely analyze the claim. All pages shall have page numbers and be marked with the numbering system shown above. Agency reserves the right at any time to request additional information related to the claim or the Contract either directly or through Agents working toward resolution of the protested or claimed events and issues.

**(c) Records Required** - Design-Builder shall keep full and complete records of the costs incurred for the submitted claim. These records shall include all worksheets used to prepare the claim establishing the cost components for each item of the claim.

**(d) Access to Records** - Design-Builder shall provide Agency access to all Project Records required to determine the facts, contentions, and costs involved in the claim. Agency may perform an audit of these records. Design-Builder shall retain all Project Records for the Record Retention Period stipulated in the Design-Build Agreement or until all disputes, including litigation, if any, are resolved. Agency and/or its agents shall be provided full access to all Project Records during the Record Retention Period.

**(e) Compliance Required** - Full compliance by Design-Builder with the provisions of this Subsection is a condition precedent to the commencement of any lawsuit by Design-Builder to enforce any claim.

**DB199.40 Claim Decision; Review; Exhaustion of Administrative Remedies** - Agency intends to resolve claims at the lowest possible administrative level. If Agency denies the claim, in full or in part, Design-Builder may request review of the denial. The protested claim may then be resolved, in full or in part, at any of the four (4) progressive steps of claim review procedure set forth below. All of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

If, at any step in the claim decision or review process Design-Builder fails to promptly submit requested information or documentation that Agency deems necessary to analyze the claim, Design-Builder is deemed to have waived its right to further review, and the claim will not be considered properly filed and preserved.

**(a) Decision by Agency** - Agency will, as soon as practicable, consider, investigate, and evaluate a Design-Builder's claim for additional compensation, or for additional compensation and Contract Time, if submitted as required by Subsection 199.30.

If Agency determines that additional information or documentation is needed to allow proper analysis of the claim, Design-Builder shall meet with Agency within 14 Calendar Days, or as otherwise agreed by the Parties, to present the additional information or documentation, or make other arrangements with Agency to supply that material.

Agency will advise Design-Builder of the decision to accept or deny the claim, and the reasons for any full or partial denial of the claim, within 30 Calendar Days of receipt of Design-Builder's claim or the receipt of requested additional information or documentation regarding the claim, whichever is later, unless Agency and Design-Builder have agreed upon a longer response time. If Design-Builder does not accept Agency's decision, Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing that Agency arrange a review at Step 1 (See (b) below).

**(b) Step 1: Department Level Review** - Design-Builder shall request a meeting with Agency's Engineering Director to present the claim for final Agency review. The presentation will take place within 21 Calendar Days of Agency's receipt of Design-Builder's written request or as otherwise agreed by the Parties.

If Agency's Engineering Director determines that Design-Builder must furnish additional information or documentation to allow proper analysis of the claim, the Engineering Director will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the Parties, at which Design-Builder shall present the requested information or documentation.

Agency's Administrator will provide a written decision to Design-Builder within 30 Calendar Days of the final Step 2 meeting.

If Design-Builder does not accept the Step 1 decision, Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing through Agency that the claim be advanced to Step 2 (See (c) below).

**(c) Step 2: Agency Level Review** - Design-Builder shall request a meeting with Agency's Contract Administrator to present the claim for final Agency review. The presentation will take place within 21 Calendar Days of Agency's receipt of Design-Builder's written request or as otherwise agreed by the Parties.

If Agency's Contract Administrator determines that Design-Builder must furnish additional information or documentation to allow proper analysis of the claim, the Agency Administrator will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the Parties, at which Design-Builder shall present the requested information or documentation.

Agency's Administrator will provide a written decision to Design-Builder within 30 Calendar Days of the final Step 2 meeting.

If Design-Builder does not accept the Step 1 decision, Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing through Agency that the claim be advanced to Step 3 or 4 (See (d) and (e) below), as applicable.

**(d) Step 3: Arbitration; Claims Review Board**

**(1) Claims Less Than \$25,000.00 (calculated in accordance with Subsection 199.30(b)(7) above)** - At this step, the claim will be resolved by binding arbitration before a single arbitrator according to the Construction Industry Arbitration Rules of the American Arbitration Association or such other arbitration service and rules as agreed by the Parties.

Arbitration filing costs and any arbitrator's fees will be divided equally between Agency and Design-Builder.

**(2) Claims of \$25,000.00 to \$250,000.00 (calculated in accordance with Subsection 199.30(b)(7) above)** - Claims in excess of \$250,000.00 may be reviewed under this step only upon the agreement of Design-Builder and Agency pursuant to Subsection 190.40 (d)(3) below.

At this step, Design-Builder shall present the claim to a Claims Review Board ("Board") for consideration, review, and recommended resolution. The Board will be comprised of three (3) persons. Agency will establish and maintain, in consultation with representatives of the construction industry, a panel of more than 12 qualified individuals available to serve on Boards.

If a claim within the scope of this step is properly referred for Board consideration and review, copies of biographies of all persons on the panel will be sent to Design-Builder. Within 20 Calendar Days after the biographies are mailed, Design-Builder and Agency will each nominate, in writing, three (3) individuals from the panel available to serve on the Board. Each Party shall affirm the availability of its nominees.

Within 10 Calendar Days after receipt of the nominations, Design-Builder and Agency will (a) each appoint to the Board one of the three nominated by the other, (b) inform each other of the appointment, and (c) advise their three nominees, in writing, of the appointments. The two appointees, now Board members, shall select one of the remaining members of the panel to serve as the Board Chair. If the two appointees cannot agree on the selection of the Board Chair, the Circuit Court in the county in which Agency's main office is located will resolve the protest. In that event, Agency will act through Agency's legal counsel to request the Circuit Court to appoint one of the remaining members of the panel to serve as the Board Chair.

The Board may request Agency to designate a person not associated with the Contract to act as the recording secretary for the Board. The recording secretary is not a Board member, and will only assist the Board with administrative tasks related to its consideration and review of the referred claim.

Agency and Design-Builder will equally share the costs of the Board members. Agency will pay the costs of the Board's recording secretary.

Members of the Board are to act impartially and independently in the consideration of facts and conditions surrounding the protest. Board recommendations concerning the protest are considered advisory only, shall not be binding on either Party, and shall not constitute evidence in any legal proceeding for any reason.

The Board will schedule and conduct an informal hearing, at which Design-Builder and Agency will each have an opportunity to present evidence and argument. Design-Builder and Agency will each submit a brief written summary of the claim to each Board member and the other Party at least 10 Calendar Days before the hearing. Unless directed otherwise by the Board Chair, the summary shall include the following for each issue under protest:

- A short statement describing the protested issue
- A short position statement by the Party making the claim on the issue
- A clear and concise explanation of the contractual basis for that position, including specific reference to Contract Documents
- A clear and concise description of the costs claimed for each issue, including, without limitation, specific documents demonstrating productivity, time, and costs
- Exhibits, including, without limitation, copies of plan sheets, extracts from the Contract Specifications, correspondence, photographs, or other evidence to support the position

The proceedings will be conducted in a manner determined by the Chair, in consultation with the other Board members. Unless directed otherwise by the Board Chair, the hearing will be conducted according to the following guidelines:

- The hearing will be informal
- The witnesses will not be sworn
- Design-Builder will present its case first
- Agency will then present its case
- Both Parties will then have opportunity to present rebuttal
- The Board may ask questions and, to promote open discussion of the issues, both Parties may respond or emphasize issues
- The Parties' attorneys may observe the hearing and may respond to direct questions from the Board, but may not make factual presentations or legal arguments
- The Board will conclude the hearing when it appears to the Chair that each Party has had sufficient opportunity to support its case and the Board has no further questions

Within 10 Calendar Days after conclusion of the hearing, the Board will forward to Agency's Contract Administration Engineer and Design-Builder the Board's written recommendation for resolution of the claim. Within 10 Calendar Days of its receipt of the Board's recommendation, Agency will provide to Design-Builder Agency's written decision regarding the claim.

If Design-Builder does not accept Agency's decision regarding the claim, Design-Builder may proceed to litigation as described in Step 4 (See (e) below).

**(3) Claims Over \$250,000.00 (calculated in accordance with Subsection 199.30(b)(7) above)** - If Design-Builder and Agency agree, the Parties may employ the Step 3 Board review process set forth above. If not, Design-Builder may proceed to Step 4 (See (e) below).

**(e) Step 4: Litigation** - This step applies to:

- Claims over \$250,000.00 [calculated in accordance with Subsection 199.30(b)(7)]
- Appeals of arbitration awards issued in Step 3 at Subsection 199.40(d)(1) above, according to ORS 36.600 through ORS 36.740
- Appeals of Agency decisions on claims of \$25,000 to \$250,000 issued under Step 3

Design-Builder must follow each step in order and exhaust all available administrative remedies before resort to litigation. Lawsuits must be properly filed in a court of competent jurisdiction within six (6) months from the date of the final decision that exhausted Design-Builder's available administrative remedies under this Section.

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

The Contract shall not be construed against either Party, regardless of which Party drafted it. Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply. This Contract shall be governed by and construed in accordance with the Laws of the state of Oregon without regard to principles of conflicts of law.

Any dispute between Agency's and Design-Builder that arises from or relates to this Contract and is not resolved under the provisions of Section 199, shall be brought and conducted solely and exclusively within the Circuit Court for the state of Oregon in Marion County where Agency main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the state of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise, from any claim or from the jurisdiction of any court. DESIGN-BUILDER, BY EXECUTION OF THIS AGREEMENT, CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

**DB199.50 Mediation** - Notwithstanding the formal claims procedure set forth above, the Parties may enter into nonbinding mediation by mutual agreement at any time, in which case the Parties may also agree to suspend the time requirements established herein pending the outcome of the mediation process. The rules, time, and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between Design-Builder and Agency. Either Party may terminate mediation at any time upon five (5) Calendar Days notice to the other, after which the time the requirements established herein shall be automatically reinstated.

**REQUEST FOR PROPOSALS (RFP)  
SPECIAL PROVISIONS**

**For The**

***Kellogg Creek Bridge (BR #22142)*  
*Emergency Replacement*  
DESIGN-BUILD PROJECT**

## **Special Provision SP120 – Bidding Requirements and Procedures**

Section 120 is included for this project by Special Provision.

### **SP120.00 Prequalification of Bidders**

Bidders are required to be currently prequalified by the Oregon Department of Transportation (ODOT) to perform contracts for the type of work identified. ODOT prequalification's should be submitted with the Design-Builders Proposal and may be used in determining qualifications of Design-Builder at the sole decision of the Agency.

## **Special Provision SP140 – Scope of Work; Changes in the Work**

Comply with DB General Provisions, DB140, supplemented and/or modified as follows:

### **SP140.05 Project Scope** – Add the following to the end of this section:

The Kellogg Creek Bridge (BR #22142) Emergency Replacement Project is intended to be a complete “turnkey” project. The successful Design-Builder will be responsible for all phases including but not limited to the follow design services (civil, structural, geotechnical, water, sewer, storm, electrical, landscaping (include habitat mitigation, planning and permitting) and the following construction activities (grading, paving, drainage, water, sewer, electrical, illumination, structure (BR #22142), retaining walls, landscaping and mitigation)

Project Work includes:

- Design and Construction of a new structure with abutments outside of the scour influence of Kellogg Creek Bridge including new structure, impact panels, bridge rails, wing walls, etc.
- Design and Reconstruction of approaches to allow new structure elevation to meet requirements of FEMA flood Plain mapping. Approach reconstruction includes: reconstruction of roadway (curbs, asphalt, etc.), drainage, illumination and pedestrian facilities as well as restoration of traffic signal infrastructure, restoration and mitigation for disturbance to natural resources and water quality requirements.
- Widen structure to accommodate wider travel lanes and installation of 8' sidewalk on downstream side connecting both parking lots with overlook.
- Design and construction of a new 10" waterline within the new structure and abandonment of the existing waterline on the old structure.
- Include an architectural allowance to provide for features to have the structure better integrated into the natural park setting.
- Design and Reconstruction of south bank between the existing bridge and the existing soldier pile wall reestablishing the bank around the sanitary sewer manhole and/or providing streambank improvements to prevent future damage.
- Remove old structure and embankments restoring streambanks to natural condition. Provide fish passage protection per ODFW and Endangered Species Act Regulations during construction.
- Construction of protective fencing and installation of required.

- Provide all engineering design, environmental permitting, construction management and inspection.

The Design-Builders schedule must differentiate the design and permitting phase from the actual permanent construction phases(s) a Notice to Proceed on the design and permitting phase immediately upon Receipt of Notice of Award. A second Notice to Proceed will be issued for the permanent construction phase once environmental permitting and construction authorization is approved by FEMA.

**SP140.05(b)(1) Project Limits** - Replace the first sentence in this Subsection with the following:

The Project includes the replacement of one and miscellaneous connection modifications, as identified in the following table:

**TABLE SP140.05(b)(1) – Improvements/Structures Involved; Location**

<b>Hwy or Route #</b>	<b>Bridge Number</b>	<b>Major Components / Bridge / Structure / Interchange Name / Work Location</b>	<b>Milepoints</b>	<b>Repair/ Replace</b>
NA	22142	Kellogg Creek Bridge / Milwaukie Riverfront Park	NA	Replace

**SP140.05(b)(2) Work Locations** – Add the following to the end of this Subsection:

See DB Special Provisions Exhibit A for the Work Location.

**Special Provisions SP 141 – Performance Specifications**

Comply with **DB General Provisions**, DB141, supplemented and/or modified as follows:

**SP141.11(c)(5)(a) Bridge Replacement and New Bridges - General** – Delete the second paragraph in this Subsection and replacement with the following:

All Bridges on this Project shall be designed and constructed for a minimum 75-year service life (without significant, non-routine maintenance required) and shall meet ODOT **3R** design Standards for frontage roads.

Bridge design to accommodate the following design vehicles:

- WB-67, double-cake, truck & pup (Sewer Treatment Plant vehicles) Washington Street Exit Only
- Fire Truck
- Car/Pickup with boat trailer

**SP141.11(c)(5)(d)(3) Bridge Elements – Bridge Railing** - Replace the first bullet in this Subsection with the following bullet:

- All Bridge railing shall be architectural and non-site obscuring in nature to conform to the natural aspects of the setting and pedestrian scale intended.
- Type "F" Bridge Rails will not be permitted.

**SP141.11(c)(7) Culvert Structures** – This Subsection deleted.

Add the following Subsection:

**SP141.11(c)(9) Project-Specific Technical Requirements / Limitations** – The specific technical requirements / limitations for each Work Location are as follows:

- No bents shall be allowed in the channel.
- Bents and/or abutments shall be located outside of the Ordinary High Water Elevation limits.
- Contractor must protect existing fish ladder at all times. Project proposal and plans must address existing fish ladder, how construction activities will be adjusted to avoid disturbance of the existing fish ladder or how the existing fish passage will be altered to accommodate construction. Additional permitting may be required as a result of the proposed construction. All costs associated with the existing fish ladder must be included in Design-Builders proposal.
- Any in-water work must meet the following ODFW fish passage requirements:
  1. In-water work is allowed only within the Oregon Department of Fish and Wildlife preferred time window as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2008, or most current version. Exceptions to the timing window must be reviewed and approved in writing in advance by Oregon Department of Fish and Wildlife and the National Marine Fisheries Service.
  2. Any activity that may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, is prohibited. Unobstructed fish passage must be provided at-all times during any authorized activity. Exceptions must be reviewed and approved in writing in advance by Oregon Department of Fish and Wildlife and the National Marine Fisheries Service.
  3. Work, including grading, trenching and rock placement must occur during low flow periods in the Willamette, preferably during the 6-hour window during a low tide sequence (i.e. 3 hours prior to low tide through a period of 3 hours after low tide to minimize heavy equipment interaction with the water)
  4. Isolation of in-water work areas from the active flowing stream must be accomplished to the maximum extent practicable. Methods of isolation include, but are not limited to: timing work at low water so as to effectively work in the dry; using silt curtains; cofferdams; inflatable bags; geo blocks; sandbags; sheet pilings; or similar materials. The applicant is referred to Appendix D of DEQ's *Oregon Sediment and Erosion Control Manual*, April 2005, for isolation techniques. <http://www.deg.state.or.us/wq/stormwater/docs/escmanual/appxd.pdf>

5. Cease project operations under high flow conditions that may result in inundation of the project area, except for efforts to avoid or minimize turbidity or other resource damage as a result of the exposed project area.
6. The turbidity barrier shall be installed to fully enclose the in-water work area and shall be sufficiently sized for expected flows.
7. The barrier shall be supplemented with netting, as needed, to exclude fish from the work area; fish shall be safely removed from within the isolation area prior to excavation activities and relocated to the adjacent stream using netting.
8. The barrier shall fully contain turbidity resulting from construction activities; turbidity monitoring shall be performed by the contractor to ensure the isolation structure is performing adequately; adjustments shall be made if needed.
9. All practical Best Management Practices (BMPs) on disturbed banks and within the stream must be implemented to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below.
  - A. **Monitoring:** Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur each day during daylight hours when in-water work is being conducted. Visual gauging is acceptable, however, *turbidity that is visible over background is considered an exceedance of the standard.*
    - i. Representative Background Point: a sample or observation must be taken every two hours at a relatively undisturbed area approximately 100 feet up current from in-water disturbance to establish background turbidity levels for each monitoring cycle. Background turbidity, location, date and time must be recorded prior to monitoring down current.
    - ii. Compliance Point: Monitoring must occur every two hours, approximately 100 feet down current from the disturbance, at approximately mid-depth and within any visible plume, and be compared against the background measurement or observation. The turbidity, location, date, and time must be recorded for each sample or observation.
  - B. **Compliance:** Results from the compliance points must be compared to the background levels taken during each monitoring interval. Exceedances are allowed as follows:

MONITORING WITH A TURBIDIMETER		
ALLOWABLE EXCEEDANCE TURBIDITY LEVEL	ACTION REQUIRED AT 1 <sup>ST</sup> MONITORING INTERVAL	ACTION REQUIRED AT 2 <sup>ND</sup> MONITORING INTERVAL
0 to 5 NTU above background	Continue to monitor every 2 hours	Continue to monitor every 2 hours
5 to 29 NTU above background	Modify BMPs & continue to monitor every 2 hours	Stop work after 4 hours at 5- 29 NTU above ground
30 to 49 NTU above	Modify BMPs & continue to	Stop work after 2 confirmed

background	monitor every 2 hours	hours at 30-49 NTU above background
50 NTU or more above background	Stop Work	Stop work
<b>VISUAL MONITORING</b>		
No plume observed	Continue to monitor every 2 hours	Continue to monitor every 2 hours
Plume observed	Modify BMPs & continue to monitor every 4 hours	Stop work after 4 hours with an observed plume

If an exceedance over the background level occurs, the applicant must modify the activity and continue to monitor every two hours. If an exceedance over the background level continues after the second monitoring Interval, the activity must stop. If, however, turbidity levels return to background at or after second monitoring level due to implementation of BMPs or natural attenuation, work may continue with appropriate monitoring as above.

*If an exceedance occurs at: 50 NTU or more over background; 30 NTU over background for 2 hours; or 5-29 NTU over background for 8 hours, the activity must stop immediately for the remainder of that 24-hour period.*

C. **Reporting:** The applicant must make available copies of daily logs for turbidity monitoring to DEQ, USAGE, NMFS, USFWS, and ODFW upon request. The log must include: calibration documentation (if using an instrument); background NTUs or observation; compliance point NTUs or observation; comparison of the points in NTUs or narrative; and location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions.

**D. BMPs to Minimize In-stream Turbidity:**

- i. Sequence/Phasing of work - The applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
- ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as employing an experienced equipment operator, not dumping partial or full buckets of material back into the wetted stream, adjusting the volume, speed, or both of the load, or by using a closed-lipped environmental bucket must be implemented;
- iii. Machinery may not be driven into the flowing channel;
- iv. Excavated material must be placed so that it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled; and;

- v. Containment measures such as silt curtains, geotextile fabric, and silt fence must be implemented and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity
- 10. The barrier shall remain in place until after construction to allow turbidity to settle to background levels.
- 11. Turbidity increases shall be kept to a minimum. Only clean, erosion-resistant rock shall be used as fill.
- 12. Use only clean riprap of appropriate size, placed individually from the bottom up. There shall be no end dumping of riprap or other materials from the bank.
- 13. Any pile, post or sheet shall not be driven by conventional pile driving methods unless ODFW is consulted prior to these actions.

**SP141.21 DB Special Provisions** – Add the following to the end of Subsection (c)(1):

Roadway design to accommodate the following design vehicles:

- WB-67, double-cake, truck & pup (Sewer Treatment Plant vehicles) Washington Street Exit only
- Fire Truck
- Car/Pickup with boat trailer

**SP141.21(c)(2) Design Exceptions** – This Subsection deleted.

**SP141.21(c)(3) Specific Technical Requirements/Limitations** – This Subsection deleted.

**SP141.31(c)(6) Specific Technical Requirements/Limitations** – This Project has unique and specific requirements that must be considered when developing both the Project-level TMP and the PCP for each Work Zone and Work Location. The following table delineates requirements/limitations for this Project:

Item	Requirement / Limitation
Number of Traffic Lanes	Two (2)
Lane Closures	Lane Closure Chart(s) for each Work Location shall be developed by Design-Builder and delivered to Agency PM with the TMP and TCP submittals. Lane Closure restrictions shall be modified to account for any additional restrictions due to events or other activities identified in the TMP and as described in the <b>DB Standard Specifications</b> , Section 00220.40. Approved Lane Closures shall be subject to <b>DB Standard Special Provisions</b> , Section 00220.40(f) “Liquidated damages” and will apply should any closure continue beyond the authorized lane closure period.

Item	Requirement / Limitation
	Liquidated damages of \$100/hour will be assessed for Lane Closures exceeding the durations cited in the Lane Closure Chart(s) accepted by the Agency.
Roadway Surface	Traffic Lanes must have an AC or PCC surface at all times.
On-Site Diversions	“On-Site Diversions” (e.g. alternate access) shall mean temporarily-widened Pavement, and/or additional Pavement and related improvements associated with diverting traffic from the existing roadway lanes to Temporarily widened and/or additional Pavement to facilitate staged construction while the ultimate roadway improvements are constructed. On-Site Diversions include temporary lanes adjacent to the existing Pavement or finished Pavement. On-Site Diversions may be used, provided that other Project requirements from this table are met.
Holidays / Special Events	Design-Builder shall use the standard language included in <b>DB Standard Special Provisions</b> , Section 00220.40(e) Lane Restrictions, to identify these times to avoid construction conflicts.
Traffic Lane Widths	18’ (2-Lane) 14’ (1-Lane)
Off-Site Detours or Alternate Routes	<p>“Off-Site Detours” or “Alternate Routes” are defined as any state, county or local Roadway(s) that is used to divert traffic from the existing roadway for the purpose of facilitating staged construction while the ultimate roadway improvements are constructed as part of the Project. Off-Site Detours or Alternate Routes exclude On-Site Diversions.</p> <p>If Off-Site Detours or Alternate Routes are used, Design-Builder shall notify the Agency PM. The Off-Site Detour or Alternate Route will not be permitted until Agency approves it and the area is adequately signed according to the TCP and <b>DB Standard Specifications</b>, Sections 00220 and 00225.</p>
Construction Activity Over Live Travel Lanes Not Allowed	Construction activity over live travel lanes shall not be allowed. Design-Builder shall consider separate construction access to a Work Location or use of “rolling slowdowns” to facilitate construction adjacent to or over the traveling public. The use of rolling slowdowns must be pre-approved by Agency and in concert with the TMP and TCP. Additional instructions for conducting a Rolling Slowdown are found in Chapter 4 of the TCP Design Manual.
Water Treatment Plant Vehicles	Water Treatment Plant vehicles use the current bridge for ingress/egress. Design-Builder shall maintain access for Water Treatment Plant Vehicles throughout construction except for approved road closures.
Park Use Vehicles	Park Use Vehicles primarily use the boat ramp area, however may need to use the turn-around (staging area) once the old access is removed. Design-Builder shall maintain access for Park Use vehicles throughout construction, except for

Item	Requirement / Limitation
	approved road closures.
Pedestrian Traffic	Design-Builder shall maintain safe access for pedestrians throughout construction.
Design Vehicle	Unless otherwise determined, the TCPs must accommodate the Emergency (Fire Truck) design vehicle. Personal vehicles may not be parked within the Clear Zone or outside the Project ROW.

**Note 1:** No long-term (greater than three (3) consecutive Calendar Days) lane closures shall be allowed unless special circumstances are approved by Agency. Intermediate-term (more than one (1) daylight period up to three (3) consecutive Calendar Days), short-term (daytime work of more than one (1) hour), and short-duration (work in place for less than one (1) hour) lane closures are only allowed if, and to the extent, authorized in the Accepted TCP.

**DB Special Provisions SP141.21** – Add the following to the end of Subsection (c)(1):

Roadway design to accommodate the following design vehicles:

- WB-67, double-cake, truck & pup (Sewer Treatment Plant vehicles) Washington Street Exit only
- Fire Truck
- Car/Pickup with boat trailer

**DB Special Provisions SP141.51** – Add the following to the end of Subsection (c)(7):

Environmental Studies completed by the City are available for download at the following location: <http://www.milwaukieoregon.gov/engineering/kellogg-bridge-replacement>

**SP141.52 Public Information and Involvement** – This Subsection deleted.

**SP141.54 Economic Development** – This Subsection deleted.

**SP141.55 Diversity** – This Subsection deleted.

**SP141.56 Context Sensitive and Sustainable Solutions (CS<sup>3</sup>)** - This Subsection deleted.

**DB Special Provisions SP155 – Design Management and Design Quality Management**

Comply with **DB General Provisions**, Section 155, supplemented and/or modified as follows:

**SP155.15 Design-Builder’s Design and Design Quality Checks and Certifications** – Add the following to the end of Subsection (b):

Design-Builder’s Design Review shall include the following independent design checks:

On major complex structures, steel and post-tensioned bridges, a comprehensive design review covering all aspects of the Project. A Class 1 Independent design check shall include the following:

- Review of location data and correspondence files.

- Review of construction time and seasonal requirements, permit applications, work-in-stream restrictions, and utility installations and conflicts.
- Review of foundation and hydraulic requirements.
- Check for consistency of alignment and details with roadway plans.
- Thorough check of geometry, alignment, grades, clearances and construction details.
- Verification of structure length, roadway width, structure type selection, aesthetic treatment, span arrangement, bent type and configuration, and rail type.
- Complete independent structural analysis of all components according to design specifications and current design practices. Independent design check shall make a quick, long hand check of the most important structural elements before beginning a computer analysis of the design.
- Independent check of final estimate quantities and reconciliation of figures with Designer.

A review of design concepts and construction details, but does not necessarily include a structural analysis. The Class II check shall be done for minor bridges designed by an experienced Designer. A Class II check shall include the following:

- Review of correspondence, job files, and design calculations.
- Confirmation that foundation and hydraulic requirements are met.
- Verification of geometry, alignment, and structure type selection.
- Confirmation with Designer that critical structural items have been analyzed during the final design.
- Certification of completeness of plans.
- Check of construction details and final estimate quantities.

**SP160.30 Agency-Furnished Materials** – This subsection deleted.

**SP160.40 Agency-Furnished Sources** – This subsection deleted.

### **DB Special Provisions SP170 – Legal Relations and Responsibilities**

Comply with **DB General Provisions**, DB170, supplemented and/or modified as follows:

**SP170.02 Agency-Provided Permits, Licenses, and Taxes** – Add the following to the end of this Subsection:

The following permits, licenses, or taxes will be provided by Agency for Design-Builder's use on this Project:

- Department of the Army Permit – US Corps of Engineers

The following permits, but not limited to, shall be provided by the Design-Builder:

- 401 Water Quality Certification Permit –Department of Environmental Quality
- Removal/Fill Permit – Department of State Lands

- Piling Permit – Department of State Lands
- Fish Passage Permit (if necessary)– Oregon Department of Fish and Wildlife
- Other permits required for the use of the project.

**SP170.70(a) Insurance Coverages** – Delete this section and replace with the following:

The following insurance coverages and dollar amounts are required pursuant to this Subsection:

The policy or policies of insurance maintained by the Contractor and its subcontractors shall provide at least the following limits and coverages:

- A. Commercial General Liability Insurance:** Contractor and its subcontractors shall obtain, at contractor's or subcontractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance including all Liability including all major divisions of coverage, including, but not limited to, Premises/Operations, Completed Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability (including coverage for the Contractor's indemnity obligations and other contractual indemnity obligations assumed by the Contractor), Personal Injury, and Broad Form Property Damage (including coverage for Explosion, Collapse, and Underground Hazards). The following insurance will be carried:

Employer's Liability Insurance

- \$ 2,000,000.00 Each Occurrence
- \$ 2,000,000.00 Disease Each Employee
- \$ 2,000,000.00 Disease – Policy

Commercial General Liability insurance

- \$ 2,000,000.00 Each Occurrence Limit
- \$ 3,000,000.00 General Aggregate
- \$ 3,000,000.00 Products/Completed Operations Aggregate
- \$ 3,000,000.00 Personal and Advertising Injury
- \$ 2,000,000.00 Limited Job Site Pollution Occurrence Sub-Limit

Comprehensive Automobile Liability Insurance including coverage for all owned, hired and non-owned vehicles

- \$ 2,000,000.00 Each Occurrence Combined Single Limit
- \$ 3,000,000.00 Aggregate Bodily Injury & Property Damage

Or

- \$ 2,000,000.00 Each Person Bodily Injury
- \$ 2,000,000.00 Each Occurrence Bodily Injury
- \$ 2,000,000.00 Each Occurrence Property Damage

Fire Damage (any one fire) - \$500,000.00

Medical Expense (any one person) - \$5,000.00

“All risk” Builder's Risk Insurance (including earthquake and flood) covering the real and personal property of others in the care, custody, and control of the contractor. Coverage shall include theft and damage to building interiors, exterior, in transit and offsite storage. The minimum amount of coverage to be carried shall be equal to the full amount of the contract. Contractor shall be financially responsible for any deductible applied to loss. This insurance shall include Owner, the contractor and its sub-contractors as their interests may appear and may not be cancelled or terminated until such time as City's final acceptance of the project.

**The policy shall be endorsed to have the General Aggregate apply to this Project Only.**

**B. Professional Liability**

Engineer shall obtain, at Engineer's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent act. Combined single limit per occurrence shall not be less than \$2,000,000, or the equivalent. Annual aggregate limit shall not be less than \$3,000,000 and filed on a “claims-made” form.

**C. Workers' Compensation Insurance**

The Engineer, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide Oregon workers' compensation coverage for their workers that complies with ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident.

**D. Extended Reporting Coverage**

If any of the aforementioned liability insurance is arranged on a “claims made” basis, Extended reporting coverage will be required at the completion of this contract to a duration of 24 months or the maximum time period the Engineer's insurer will provide such if less than 24 months. Engineer will be responsible for furnishing certification of Extended Reporting coverage as described or continuous “claims made” liability coverage for 24 months following contract completion. Continuous “claims made” coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract. Coverage will be endorsed to provide a per project aggregate.

**E. Notice of Cancellation**

There shall be no cancellation, material change, or intent not to renew insurance coverage without 30 days' written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The 30 days' notice of cancellation provision shall be physically endorsed on to the policy.

**F. Additional Insured Provision: The City of Milwaukie, Oregon, its officers, directors, and employees shall be added as additional insureds with respect to this contract. All Liability Insurance policies will be endorsed to show this additional coverage.**

- G. Insurance Carrier Rating: Coverage provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
- H. Certificates of Insurance: As evidence of the insurance coverage required by the contract, the contractor shall furnish a Certificate of Insurance to the City. No contract shall be effective until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.
- Certificates of Insurance should read “Insurance certificate pertaining to contract for Kellogg Creek Bridge (BR #22142) Emergency Replacement. The City of Milwaukie, its officers, directors and employees shall be added as additional insureds with respects to this contract. Insured coverage is primary” in the description portion of certificate.
- I. Primary Coverage Clarification: All parties to this contract hereby agree that the contractor's coverage will be primary in the event of a loss.
- J. Cross-Liability Clause: A cross-liability clause or separation of insureds clause will be included in general liability, policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of Milwaukie  
Attn: Finance  
10722 SE Main Street  
Milwaukie, Oregon 97222

Business Phone: 503-786-7555  
Business Fax: 503-653-2444  
Email Address: [finance@milwaukieoregon.gov](mailto:finance@milwaukieoregon.gov)

Such policies or certificates must be delivered prior to commencement of the work. Ten days cancellation notice shall be provided City by certified mail to the name at the address listed above in event of cancellation or non-renewal of the insurance.

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**SP170.70(g) Builders' Risk** – Provide Builder's Risk insurance for an amount equal to that specified in SP170.70(a). The policy shall include as loss payees, Agency.

### **DB Special Provisions SP171 – Workforce Protection**

Section 171 is included for this project by Special Provision:

**SP171.20 Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms** – The prime contractor must take all necessary

affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. If subcontractors are to be let, the prime contractor is to take the following affirmative steps:

- (a) Placing qualified small and minority business and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**SP171.40 Equal Employment Opportunity** – During the performance of this contract, the contractor agrees as follows:

- (a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting for the provisions of this nondiscrimination clause.
- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives for the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and by rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (f) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contract may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with the procedures authorized in Executive order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor of vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**SP171.50 Compliance with the Contract Work Hours and Safety Act** – During the performance of this contract, the contractor agrees as follows:

- (a) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.
- (c) Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any

moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

- (d) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a) through (d) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (d) of this section.

### **DB Special Provisions SP172 – Required Federal Contract Provisions**

Section 172 is included for this project by Special Provision:

#### **SP172.10 Compliance with the Copeland “Anti-Kickback” Act – Add the following:**

- (a) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (b) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (c) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

#### **SP172.20 Clean Air Act – Add the following:**

- (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (b) The contractor agrees to report each violation to the Oregon Department of Environmental Quality and understands and agrees that the Oregon Department of Environmental Quality will, in turn report each violation as required to assure notification to the City of Milwaukie, Oregon Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

#### **SP172.30 Federal Water Pollution Control Act – Add the following:**

- (a) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (b) The contractor agrees to report each violation to the Oregon Department of Environmental Quality and understands and agrees that the Oregon Department of Environmental Quality will, in turn report each violation as required to assure notification to the City of Milwaukie, Oregon Emergency Management, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- (c) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FEMA.

**SP172.40 Suspension and Debarment** – Add the following:

- (a) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905), are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (b) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (c) This certification is a material representation of fact relied upon by City of Milwaukie. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Oregon Emergency Management and the City of Milwaukie, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (d) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**SP172.50 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)** – Add the following:

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

**SP172.60 DHS Seal, Logo, and Flags** – Add the following:

The contractor shall not use the DHS Seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

**SP172.70 Compliance with Federal Law, Regulations, and Executive Orders** – Add the following:

This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**SP172.80 No Obligation by Federal Government** – Add the following:

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

**SP172.90 Program Fraud and False or Fraudulent Statements or Related Acts** – Add the following:

The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

**DB Special Provisions SP174 – Utilities, Railroads, and Right of Way (ROW)**

Comply with **DB General Provisions**, Section 174, supplemented and/or modified as follows:

**SP174.10 Utilities** – Add the following Subsection:

**SP174.10(c)(3) Utility Information**

The following utilities have been identified as being within the project limits. Contact those Utilities having buried facilities and request that they locate and mark them for their protection prior to construction.

<b>Utility</b>	<b>Contact Person's Name and Phone Number</b>
1. Clackamas Broadband Express Fiber	Duke Dexter, 503-722-6663
2. NW Natural	Jodi Wright, 503-226-4211
3. CenturyLink	Scott Miller, 503-242-4144
4. Portland General Electric	Ross Cichosz, 503-669-5270
5. ODOT Electrical	Johnny Sapp, 971-673-6240
6. City of Milwaukie Water and Sanitary Sewer	Ronelle Sears, 503-786-7615

- 7. Comcast Ken Wills, 971-801-5641
- 8. City of Milwaukie Storm and Streets Kenny Hill, 503-786-7687

This Project is located within the Oregon Utility Notification Center area which is a Utilities notification system for notifying owners of Utilities about Work being performed in the vicinity of their facilities. The Utilities notification system telephone number is 1-800-332-2344.

**DB Special Provisions SP180 - Prosecution and Progress**

Comply with **DB General Provisions**, Section 180, supplemented and/or modified as follows:

**SP180.20 Subcontracting Limitation** – Add the following:

**(d) Disadvantaged Business Enterprises (DBE)** – Every agreement to perform Work, including without limitation subcontracts, trucking services agreements, purchase orders, and rental agreements, shall indicate whether the Work will be performed by a DBE or non-DBE.

**(e) Trucking** – For all truck hauling of materials not performed with trucks owned and operated by the Design-Builder. This section does not apply to delivery of materials by or for or from a supplier.

**(1) Trucking Services Agreement** – The Contractor shall submit at the per-construction meeting one or more proposed trucking services agreements for all trucking services for hauling materials. The proposed agreements shall include:

- Statement specifying whether the services will be provided by a DBE;
- Statement specifying whether the services will be provided by an owner/operator;
- Prompt payment clause (ORS 279C.580);
- Interest penalty clause (ORS 279C.580);
- Lower tier clause (ORS 279C.580);
- Statement about the provider's ability to file a complaint with the Construction Contractors Board (ORS 279C.515);
- Statement that workers shall be paid not less than the specified minimum hourly rate of wage (ORS 279C.830) as applicable;
- Provision requiring the provider to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4) or (9) or has elected to not file a bond under ORS 279C.836 (7) or (8) or is otherwise not applicable;
- Insurance clauses that include Commercial Automobile liability and Workers Compensation (ORS 656.017 unless exempt under ORS 656.126);
- Provision requiring the provider to comply with applicable Contract provisions including without limitation Record Requirements in 00170.07; and
- Construction Contractors Board License Number in applicable.

The agency must review and consent to the proposed trucking services agreements prior to use.

**(2) Limitations** – The approved trucking services agreements shall be used for all trucking services for hauling materials not provided by trucks owned and operated by the Contractor except for committed DBE's that require a subcontract under 00180.21. The Contractor shall execute a trucking services agreement with every trucking services provider for hauling materials prior to the trucking services provider doing any work on the Project Site.

**(3) Submittals** – The Contractor shall provide the Engineer with an executed copy of the trucking services agreement not later than 2 days after the trucking services provider for hauling materials has started work. The Contractor shall make certain that the provider of approved trucking services submits payrolls required under section 00170, complies with

applicable Contract provisions, including without limitation 00170.07, and complies with applicable trucking services agreement provisions. The work or service provider will not be considered a subcontractor under the Contract, but will be considered an agent of the Contractor in the performance of work or service. If the trucking services are provided by an owner/operator:

- Attach a copy of the data required under 00170.56(e) to the trucking services agreement; and
- Each truck shall have the name of the owner/operator clearly displayed on the side of the truck.

**(4) Revocation of Approval** – The Engineer may revoke approval for trucking services provided under the trucking services agreement at any time the Engineer determines that the work or service is outside that authorized under 00180.20(e). Upon revocation of approval, the service provider shall be immediately removed from the Project site.

If the services under Rental of Operated Equipment or Trucking are provided by a committed DBE firm a subcontract is required under 00180.21. For this purpose, a committed DBE firm is one that was identified by the Contractor to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of contract award.

**SP180.35(a)(1)(j) Public Information Officer** – This Subsection deleted.

**SP180.35(a)(1)(n)(2) Key Personnel to be Located in the Project Vicinity** – This Subsection deleted.

**SP180.40(c) Specific Limitations** – Limitations of operations specified in these Special Provisions include, but or not limited to the following:

<b>Limitations</b>	<b>Subsection</b>
Contract Completion Time .....	00180.50(f)
Traffic Lane Restrictions .....	00220.40(e)
Special Events .....	00220.40(e)
In-water Work Restrictions .....	00290.34(a)
Noise Control .....	00290.32

**SP180.42 Meetings and Conferences** – Add the following paragraph before item (a):

Items (a) Design Mobilization Meeting and (b) Pre-Design Meeting shall be combined to occur during the same meeting.

**SP180.45 Construction Work Schedules** – Add this Subsection

The Contractor shall submit a supplemental “look ahead” Project Work schedule each week to the Engineer. The “look ahead” Project Work schedule is supplemental to the Type A, B, or C schedule specified below. The supplemental “look ahead” Project Work schedule shall:

- Identify the sequencing of activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.

- Contain sufficient detail to enable both the Contractor and the Engineer to plan, coordinate, analyze, document, and control their respective Contract responsibilities.

The supplemental “look ahead” Project Work schedule shall be written in common terminology and show the planned Work activities broken down into logical, separate activities by area, stage, and size and include the following information:

- The resources the Contractor, subcontractors, or services will use.
- The locations of each activity that will be done including the limits of the work by mile posts, stations, or other indicators.
- The time frames of each activity by Calendar Days, shifts, and hours.
- All anticipated shoulder, lane, and road closures.

At a minimum, the Contractor shall prepare a bar chart that:

- Shows at least three weeks of activity including the week the bar chart is issued.
- Uses a largest time scale unit of one Calendar Day. Smaller time scale units may be used if needed.
- Is appropriate to the activities.
- Identifies each Calendar Day by month and day.

Include the Contract name, Contract number, Contractor’s name, and date of issue on each page of the bar chart.

The Contractor shall submit the supplemental “look ahead” Project Work schedule starting at First Notification and continuing each week until Second Notification has been issued and all punch list items and final trimming and clean up has been completed. The Contractor shall meet with the Engineer each week to review the supplemental “look ahead” Project Work schedule as needed. If the Engineer or the Contractor determines that the current supplemental “look ahead” Project Work schedule requires changes or additions, either notations can be made on the current schedule or the Engineer may require the submittal of a revised supplemental “look ahead” Project Work schedule. Review of the current and subsequent supplemental “look ahead” Project Work schedules does not relieve the Contractor of responsibility for timely and efficient execution of the Contract.

**SP180.50 Contract Time to Complete Work** - Add the following to the end of this Section:

**SP180.50(f) Completion Dates** – There are three (3) completion dates for this Project as follows:

- (1) Interim Completion Date “A”** – All design and environmental permitting work required to obtain FEMA authorization to proceed with construction no later than August 17, 2017.
- (2) Interim Completion Date “B”** – All work required to stabilize the site for the new bridge construction below the ordinary high water mark, including streambank stabilization establishment of temporary site access during construction and establishment of streambank protections for the existing sanitary sewer no later than, October 31, 2017.

**(3) Specified Completion Date** – Complete all work required to be done under the contract, except for seeding, plant establishment and punch-list items, not later than October 31, 2019.

**SP180.85(b) Liquidated Damages** – Add the following to the end of this Subsection:

There are three (3) daily amounts of liquidated damages on this Project, as follows:

Liquidated damages for failure to complete the work on time required by SP180.50(f-1) will be \$1,100 per calendar day. Liquidated damages for failure to complete the work on the required by SP180.50(f-2) will be \$800 per calendar day. Liquidated damages for failure to complete the work on time required by SP180.50(f-3) will be \$1100 per calendar day. If liquidated damages should become payable concurrently under the combination of SP180.50(f-1), (f-2) and (f-3), liquidated damages will be \$1100 per calendar day.

**SP180.85(c) Traffic Delays** – Stopping or holding vehicles beyond the limits specified or approved by Agency in advance will inconvenience the traveling public and will be a cost to the Agency.

**(1) Traffic Delays Beyond 20 Minutes** – It is impractical to determine the actual damages the Agency will sustain in the event traffic is stopped or held longer than the time limit listed in 00220.02. Therefore, the Contractor shall pay to the Agency, not as a penalty, but as liquidated damages, \$500 per 20 minutes, or for a portion of 20 minutes, for stopping or holding traffic longer than approved by Agency. In addition to the liquidated damages, any added cost for traffic control measures, including flagging, required to stop or hold traffic beyond the time limit, will be at no additional cost to the Agency. The required traffic control measures will be as determined by the Engineer.

Assessment of liquidated damages will stop when the Engineer determines that traffic is no longer stopped or held beyond the approved time limit. Any liquidated damages assessed under these provisions will be in addition to those listed in 00180.85(b).

**SP195.10 Asphalt Cement Material Price Escalation/De-Escalation** – This Subsection deleted.

**SP195.50(c)(2) Cash and Retainage Surety Bond** – This Subsection deleted.

## **VOLUME 2 – TECHNICAL SPECIFICATIONS**

Comply with 2015 Oregon Standard Specifications supplemented and/or modified as follows:

### **SECTION 00220 – ACCOMMODATIONS FOR PUBLIC TRAFFIC**

Comply with Section 00220 of the Standard Specifications supplemented and/or modified as follows:

**Section 00220.02 Public Safety and Mobility** – Replace the last bulleted item with the following item:

- Allow emergency vehicles and incident response units immediate passage at all times unless otherwise approved;
- When construction requires a closure of a sidewalk, during (the project), place a Type “W1” “SIDEWALK CLOSED” (R9-9) sign at each point of closure. Use a Type “W1” directional arrow (M6-1-381) rider, as needed, to direct pedestrians and bicyclists to the temporary pathway. Mount each sign above the striped panel of a Type II barricade placed across the sidewalk, facing pedestrians and bicyclists approaching the work area. Close the sidewalk at a point where the pedestrians and bicyclists can proceed to the temporary pathway. Provide a 5 feet minimum wide temporary pathway with the surface meeting the requirements of the Americans with Disabilities Act (ADA). Protect pedestrians and bicyclists by installing an approved minimum four-foot-high chain link fence to separate the temporary pathway from the work area. Keep fencing in place, except as needed for Contractor’s access during nightly closures, until the new sidewalk is opened. Provide and maintain safe passage for pedestrians and bicyclists using the temporary pathway.

Add the following bulleted items to the end of this subsection:

- Provide written notice to all adjacent properties in accordance with Section 00150.58 of the Contract Specifications.
- Maintain a minimum of 1 way, flagged traffic during allowable hours specified in Section 00220.40(e).
- During flagging operations, when practical, flaggers shall notify the first stopped vehicle in the queue of an approximate amount of delay.
- Maintain and coordinate access to all affected properties. Allow unrestricted vehicle and pedestrian access to all properties outside the allowable working hours.
- Provide and maintain access to garbage containers and garbage pick-up or other regularly scheduled deliveries.
- Notify all emergency services of all changes to the traffic control plan prior to completing the change.
- When an abrupt edge is created by excavation, protect traffic using the “EXCAVATION ABRUPT EDGE DETAIL” and the “TYPICAL ABRUPT EDGE SIGNING DETAIL” configurations shown on Standard Drawings TM800.
- Do not allow vertical differences in pavement height, created by paving or removal, to exceed 3 inches. Provide tapered asphalt pavement wedges across all pavement joints exposed to traffic according to 00620.40(d)
- Inform and contact all affected residents and businesses with special written notices approved by the Engineer, within the project area 48 hours before each of the following work activities: utility trenching, dig outs, and before top lift asphalt concrete paving.

**Section 00220.40(e-1) Closed Lanes** – Replace this section with the following:

Do not close any traffic lanes and remove all barricades and objects from the Milwaukie Riverfront Park frontage road during the following periods:

(1) **Weekdays:**

- Between 6:00 a.m. and 9:00 a.m. and between 4:00 p.m. and 6:00 p.m. Monday through Thursday.
- Between 6:00 a.m. and 9:00 a.m. Friday morning.

- (2) **Weekends** - Between noon on Friday and sunrise on Sunday.
- (3) **Holidays** – Between noon on the day preceding a legal holiday or holiday weekend and midnight on a legal holiday or the last day of the holiday weekend, except Thanksgiving, when no lanes may be closed between noon on Wednesday and midnight on the following Sunday.

For the purposes of this Section, legal holidays are as follows:

- Each Sunday
- New Year's Day on January 1
- Martin Luther King Day on 3<sup>rd</sup> Monday in January
- Presidents' Day on 3<sup>rd</sup> Monday in February
- Memorial Day on the last Monday in May
- Independence Day on July 4
- Labor Day on the first Monday in September
- Veterans' Day on November 11
- Thanksgiving Day on the fourth Thursday in November
- The Friday after Thanksgiving
- Christmas Day on December 25

When a holiday falls on Sunday, the following Monday shall be recognized as a legal holiday. When a holiday falls on Saturday, the preceding Friday shall be recognized as a legal holiday.

**Section 00220.40(e-2-b) Special Events** - Add the following to the end of this Subsection.

Between noon on the day preceding and midnight on the final day of the special event.

For the purposes of this Section, special events are as follows:

- Race for Resilience – October 2017, 2018 and 2019
- Sellwood-Milwaukie Sunday Parkways – October 2017, 2018 and 2019
- Umbrella Parade and Tree Lighting – December 2017, 2018 and 2019
- Milwaukie Earth Day – April 2017, 2018 and 2019
- Milwaukie Sunday Framers Market – Every Sunday from May through October 2017, 2018 and 2019
- First Friday – May through October 2017, 2018 and 2019
- Dogwood Dash – April 2017, 2018 and 2019

Additional events may occur during the construction period. Contractor shall be responsible to verify dates of events. No work shall occur that will interfere with the above events.

All pedestrian ways will be open, traffic lanes will be unobstructed and parking will be available to the maximum extent possible. TP&DT measures will be placed as necessary for the safe movement of pedestrians, bicycles, and motor vehicles through the construction site.

**Section 00220.45 Load Restrictions on Bridges** – Limit the combined weight of construction vehicles, equipment, and daily material usage to 45,000 pounds for every 1,000 square feet of surface area plus the weight of long term storage of materials of 18,000 pounds for every 100 square feet of surface area of the bridge or a total of 150,000 pounds for each span of the bridge, whichever is less.

The Contractor may request alternate loadings by submitting, 30 Calendar Days before proposed loadings, stamped loading calculations and data according to 001503.35.

## **SECTION 00225 – WORK ZONE TRAFFIC CONTROL**

Comply with Section 00225 of the Standard Specifications supplemented and/or modified as follows:

**Section 00225.02 General Requirements** – Add the following paragraph to the end of this subsection:

During (the project), when bicyclists are required to use the temporary pathway for safe passage, install a “BICYCLE symbol” (W11-1-30) sign with a Type “W1” “USE PATHWAY” 24-inch x 18-inch rider sign, fabricated using two lines of 4-inch C legend approximately 50 feet in advance of the restriction, as directed.

Add the following subsection:

**Section 00225.18(a) Temporary Pathway** – Separate the temporary pathway from the work area with chain link fencing as shown on the standard drawings, Section 00270, and as directed.

## **SECTION 00290 – ENVIRONMENTAL PROTECTION**

Comply with Section 00290 of the Standard Specifications supplemented and/or modified as follows:

**00290.10 Staging and Disposal Sites** - Add the following to the end of this subsection:

Use the following staging site:

- **Site Type** - Staging
- **Location** – Parking Lot
- **Access** – McLoughlin Boulevard
- **Available Area** – See Plan

No other sites may be used on this Project, including non-Agency sites. Delineate the limits of the site with fencing from the QPL for the duration of the Project. Remove the fencing when the Project is complete and the site has been restored to preconstruction conditions.

Restore the site by:

- Removing all imported fabric, rock, and other construction debris.
- Smoothing the ground.
- Reseeding all disturbed earth.
- Reconstruct pavement materials as required.

**00290.30(a) Pollution Control Measures** - Add the following subsections and bullets:

**(7) Water Quality:**

- Do not discharge contaminated or sediment-laden water, including drilling fluids and waste, or water contained within a work area isolation, directly into any waters of the State or U.S. until it has been satisfactorily treated (for example: bioswale, filter, settlement pond, pumping to vegetated upland location, bio-bags, dirt-bags). Treatment shall meet the turbidity requirements below.
- Do not cause turbidity in waters of the State or U.S. greater than 10% above background reading (up to 100 feet upstream of the Project), as measured 100 feet downstream of the Project.
- During construction, monitor in-stream turbidity and inspect all erosion controls daily during the rainy season and weekly during the dry season, or more often as necessary, to ensure the erosion controls are working adequately meeting treatment requirements.
- If construction discharge water is released using an outfall or diffuser port, do not exceed velocities more than 4 feet per second, and do not exceed an aperture size of 1 inch.
- If monitoring or inspection shows that the erosion and sediment controls are ineffective, mobilize work crews immediately to make repairs, install replacements, or install additional controls as necessary.
- Underwater blasting is not allowed.
- Implement containment measures adequate to prevent pollutants or construction and demolition materials, such as waste spoils, fuel or petroleum products, concrete cured less than 24 hours, concrete cure water, silt, welding slag and grindings, concrete saw cutting by-products and sandblasting abrasives, from entering waters of the state or U.S.
- End-dumping of riprap within the waters of the state or U.S. is not allowed. Place riprap from above the bank line.
- Cease project operations under high flow conditions that may result in inundation of the project area, except for efforts to avoid or minimize resource damage.
- The Project Manager retains the authority to temporarily halt or modify the Project in case of excessive turbidity or damage to natural resources.

**(8) Visual Turbidity Monitoring** - Perform visual turbidity monitoring each day when working in regulated work areas according to the following:

- Before beginning work, make in stream turbidity observation approximately 100 feet upstream and, based on the wetted stream width, at the compliance distance listed in Table 00290-1 downstream of the in-water work area.

- Make in stream turbidity observations upstream and downstream every four hours.
- If a turbidity plume is observed within the compliance distance downstream of the in-water work area, implement in-water best management practices (BMP). If a turbidity plume is still observed at the second four-hour observation, stop all in-water work and implement additional BMP. Resume in-water work activity the next morning.
- If a turbidity plume is observed beyond the compliance distance downstream of the in-water work area at any observation interval, stop all in-water work and implement additional BMP. Resume in-water work activity the next morning.

**Table 00290-1**

<b>Wetted Stream Width</b>	<b>Compliance Distance</b>
≤ 30 feet	50 feet
> 30 feet to 100 feet	100 feet
> 100 feet to 200 feet	200 feet
> 200 feet	300 feet
Lakes, Ponds, and Reservoirs	Lesser of 100 feet or max. surface dimension

Perform additional turbidity monitoring when working in regulated work areas according to the final permit obtained as part of the Design-Build process.

Document all turbidity monitoring results including date, time, and location on the Agency provided form or another form approved by the Agency. Submit reports to the Engineer weekly when working in regulated work areas and keep copies of the reports at the project site.

If work activities violate permit conditions or cause water quality violations which may endanger the health of aquatic life or environment, stop all in-water work activities and notify the Engineer. Submit a written report of violations to the Engineer within 5 Calendar Days of violation.

**00290.32 Noise Control** - Add the following paragraphs to the end of this subsection:

The Contractor's attention is directed to City of Milwaukie Municipal Code 8.08 which describes noise control regulations. Comply with the applicable noise control requirements of the ordinance for project work, unless permit waiver is obtained.

Copies of the ordinance and noise control code are available at the office of the Project Manager.

**00290.34(a) Regulated Work Areas** - Add the following to the end of this subsection:

The regulated work area is the area within the ordinary high water (OHW) elevation that is shown on the plans.

- For this Project, the regulated work area is the area at or below 22.9 feet elevation.

- Perform work within the regulated work area only during the in-water work period. The in-water work period is from July 1 to October 31.
- The total volume of material filled or discharged into waters of the state and waters of the U.S. shall not exceed that approved in the final permit obtained as part of the design-build process.
- The total volume of material excavated from the waters of the state and waters of the U.S. shall not exceed that approved in the final permit obtained as part of the design-build process.

Submit a schedule to complete all work within the regulated work area within the in-water work period at least 10 days prior to the preconstruction conference.

**00290.34(b) Prohibited Operations** - Replace this subsection, except for the subsection number and title, with the following:

Except where allowed by the Contract or by permit, do not:

- Blast underwater.
- Use water jetting.
- Release petroleum products or chemicals in the water.
- Disturb spawning beds.
- Obstruct stream channels.
- Cause silting or sedimentation of waters of the State or waters of the U.S.
- Use treated timbers within the regulated work area.
- Impede adult and juvenile fish passage, including intermittent streams.

## **SECTION 00305 – CONSTRUCTION SURVEY WORK**

Section 00305, which is not a Standard Specification, is included for this Project by Special Provision.

**Section 00305.00 Scope** – Provide, design and construction survey work according to the current edition on the date of Advertisement, of the ODOT “Construction Surveying Manual for Contractors”. This manual is available on the web at:

<http://www.oregon.gov/ODOT/HWY/GEOMETRONICS/Pages/documents.aspx>

### **Section 00305.05 Electronic Data**

Delete chapter 2 of the ODOT “Construction Manual for Contractors: and substitute the following:

1. General – The Engineer will not be responsible for any data translations. Compressed data provided by the Engineer or the Contractor and the method of exchange of electronic data will be mutually agreed to at the pre-survey conference.
  - a. Data Formats Provided by the Engineer
    - 1) CAD (Graphics) Files – AutoCAD (.DWG) format

- b. Data Formats Provided by the Contractor
  - 1) CAD (Graphics) Files – AutoCAD (.DWG) format
  - 2) “AS Staked” Coordinate Data – ASCII Coordinate File Format
  - 3) Confidence Points – ASCII Coordinate File Format
  - 4) Vertical Control Point Elevations – ASCII Coordinate File Format
  - 5) Coordinates of Miscellaneous Survey Points Set – ASCII Coordinate File Format
  
- c. Date Format Details – Data exchanged between the Engineer and the Contractor will be in the following formats as referred to in this section.
  - 1) ASCII Coordinate File Format:
    - a) Point ID, Northing, Easting, Elevation, Description
      - Point IDs are alphanumeric up to 8 characters long.
      - Coordinates/Elevations are decimal numbers in Oregon State Plane International feet per the Milwaukie GIS system requirements.
      - Descriptions names are alphanumeric up to 27 characters long.
      - Columns are separated by commas.
      - Name all ASCII coordinate files with an extension of ASC.
  
  2. All files will be in accordance with the City of Milwaukie’s Coordinate and Elevation Datums.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/20/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER AG Sadowski Company 1605 Liberty Street S.E.  Salem OR 97302	CONTACT NAME: Robin Guzman	
	PHONE (A/C, No, Ext): (503) 362-2711 FAX (A/C, No): (866) 581-6327 E-MAIL ADDRESS: robin@agsadowski.com	
INSURED HP Civil, Inc. PO Box 556  Stayton OR 97383	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: The Phoenix Insurance Company	25623
	INSURER B: The Travelers Indemnity Company	25658
	INSURER C: Travelers Property Casualty Co of	25674
	INSURER D: SAIF Corporation	36196
	INSURER E: Westchester Surplus Lines Insurance	10172
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: 2017-18 PROJECTS REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>		DT-CO-1J15546A-PHX-17	2/13/2017	2/13/2018	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 WA STOP GAP \$ 1,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	<input checked="" type="checkbox"/>		BA-1J15546A-17-CNS	2/13/2017	2/13/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
							BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE	<input checked="" type="checkbox"/>		DTSM-CUP-1J15546A-TIL-17	2/13/2017	2/13/2018	EACH OCCURRENCE \$ 4,000,000
	DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						AGGREGATE \$ 4,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/>	N/A	787699	10/1/2016	10/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
							E.L. EACH ACCIDENT \$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
E	POLLUTION LIABILITY			G27600499003	2/13/2017	2/13/2018	EA POLLUTION CONDITION \$ 2,000,000
							AGGREGATE \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: CIP2016-D22 - Kellogg Creek Bridge (BR #22142) Emergency Replacement Design-Build Certificate Holder and all required entities are Additional Insured where required by written contract and per the terms/conditions of the above policies. Endorsements attached: CG D2 46 08 05; CG D3 16 11 11; CG D2 11 01 04; and CA T3 53 02 15.

Umbrella Liability provides limits over the General Liability, Auto and Employers Liability.

## CERTIFICATE HOLDER

(503) 774-8236 TuckerK@milwaukieoregon.gov

City of Milwaukie  
6101 SE Johnson Creek Blvd  
Milwaukie, OR 97206

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Robin Guzman/ROBIN

© 1988-2014 ACORD CORPORATION. All rights reserved.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY****BLANKET ADDITIONAL INSURED  
(CONTRACTORS)**

This endorsement modifies insurance provided under the following:

## COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include any person or organization that you agree in a "written contract requiring insurance" to include as an additional insured on this Coverage Part, but:
  - a) Only with respect to liability for "bodily injury", "property damage" or "personal injury"; and
  - b) If, and only to the extent that, the injury or damage is caused by acts or omissions of you or your subcontractor in the performance of "your work" to which the "written contract requiring insurance" applies. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization.
2. The insurance provided to the additional insured by this endorsement is limited as follows:
  - a) In the event that the Limits of Insurance of this Coverage Part shown in the Declarations exceed the limits of liability required by the "written contract requiring insurance", the insurance provided to the additional insured shall be limited to the limits of liability required by that "written contract requiring insurance". This endorsement shall not increase the limits of insurance described in Section III – Limits Of Insurance.
  - b) The insurance provided to the additional insured does not apply to "bodily injury", "property damage" or "personal injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services, including:
    - i. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders or change orders, or the preparing, approving, or failing to prepare or approve, drawings and specifications; and
    - ii. Supervisory, inspection, architectural or engineering activities.
3. The insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" specifically requires that this insurance apply on a primary basis or a primary and non-contributory basis, this insurance is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured for such loss, and we will not share with that "other insurance". But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance", whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance".
4. As a condition of coverage provided to the additional insured by this endorsement:
  - a) The additional insured must give us written notice as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, such notice should include:
    - c) The insurance provided to the additional insured does not apply to "bodily injury" or "property damage" caused by "your work" and included in the "products-completed operations hazard" unless the "written contract requiring insurance" specifically requires you to provide such coverage for that additional insured, and then the insurance provided to the additional insured applies only to such "bodily injury" or "property damage" that occurs before the end of the period of time for which the "written contract requiring insurance" requires you to provide such coverage or the end of the policy period, whichever is earlier.

## COMMERCIAL GENERAL LIABILITY

- i. How, when and where the "occurrence" or offense took place;
  - ii. The names and addresses of any injured persons and witnesses; and
  - iii. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b) If a claim is made or "suit" is brought against the additional insured, the additional insured must:
- i. Immediately record the specifics of the claim or "suit" and the date received; and
  - ii. Notify us as soon as practicable.

The additional insured must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c) The additional insured must immediately send us copies of all legal papers received in connection with the claim or "suit", cooperate with us in the investigation or settlement of the claim or defense against the "suit", and otherwise comply with all policy conditions.
- d) The additional insured must tender the defense and indemnity of any claim or "suit" to

any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insured by this endorsement is primary to "other insurance" available to the additional insured which covers that person or organization as a named insured as described in paragraph 3. above.

5. The following definition is added to SECTION V. – DEFINITIONS:

"Written contract requiring insurance" means that part of any written contract or agreement under which you are required to include a person or organization as an additional insured on this Coverage Part, provided that the "bodily injury" and "property damage" occurs and the "personal injury" is caused by an offense committed:

- a. After the signing and execution of the contract or agreement by you;
- b. While that part of the contract or agreement is in effect; and
- c. Before the end of the policy period.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTORS XTEND ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**GENERAL DESCRIPTION OF COVERAGE**—This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li><b>A.</b> Aircraft Chartered With Pilot</li> <li><b>B.</b> Damage To Premises Rented To You</li> <li><b>C.</b> Increased Supplementary Payments</li> <li><b>D.</b> Incidental Medical Malpractice</li> <li><b>E.</b> Who Is An Insured – Newly Acquired Or Formed Organizations</li> <li><b>F.</b> Who Is An Insured – Broadened Named Insured – Unnamed Subsidiaries</li> <li><b>G.</b> Blanket Additional Insured – Owners, Managers Or Lessors Of Premises</li> </ul> | <ul style="list-style-type: none"> <li><b>H.</b> Blanket Additional Insured – Lessors Of Leased Equipment</li> <li><b>I.</b> Blanket Additional Insured – States Or Political Subdivisions – Permits</li> <li><b>J.</b> Knowledge And Notice Of Occurrence Or Offense</li> <li><b>K.</b> Unintentional Omission</li> <li><b>L.</b> Blanket Waiver Of Subrogation</li> <li><b>M.</b> Amended Bodily Injury Definition</li> <li><b>N.</b> Contractual Liability – Railroads</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**PROVISIONS**

**A. AIRCRAFT CHARTERED WITH PILOT**

The following is added to Exclusion **g.**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

**B. DAMAGE TO PREMISES RENTED TO YOU**

1. The first paragraph of the exceptions in Exclusion **j.**, **Damage To Property**, in Paragraph 2. of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.
2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A. BODILY**

**INJURY AND PROPERTY DAMAGE LIABILITY:**

Exclusions **c.** and **g.** through **n.** do not apply to "premises damage". Exclusion **f.(1)(a)** does not apply to "premises damage" caused by:

- a.** Fire;
- b.** Explosion;
- c.** Lightning;
- d.** Smoke resulting from such fire, explosion, or lightning; or
- e.** Water;

unless Exclusion **f.** of Section I – Coverage **A** – Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion – All Pollution Injury Or Damage or Total Pollution Exclusion in its title.

A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of **SECTION III-LIMITS OF INSURANCE**.

## COMMERCIAL GENERAL LIABILITY

3. The following replaces Paragraph 6. of **SECTION III – LIMITS OF INSURANCE**:

Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "premises damage" to any one premises. The Damage To Premises Rented To You Limit will apply to all "property damage" proximately caused by the same "occurrence", whether such damage results from: fire; explosion; lightning; smoke resulting from such fire, explosion, or lightning; or water; or any combination of any of these causes.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
  - b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.
4. The following replaces Paragraph a. of the definition of "insured contract" in the **DEFINITIONS** Section:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";
5. The following is added to the **DEFINITIONS** Section:
- "Premises damage" means "property damage" to:
- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
  - b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.
6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**:
- (b) That is insurance for "premises damage"; or
7. Paragraph 4.b.(1)(c) of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

## C. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGE**:
  - b. Up to \$2,500 for the cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** of **SECTION I – COVERAGES**:
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

## D. INCIDENTAL MEDICAL MALPRACTICE

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

"Occurrence" also means an act or omission committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to a person.
2. The following is added to Paragraph 2.a.(1) of **SECTION II – WHO IS AN INSURED**:

Paragraph (1)(d) above does not apply to "bodily injury" arising out of providing or failing to provide:

  - (i) "Incidental medical services" by any of your "employees" who is a nurse practitioner, registered nurse, licensed practical nurse, nurse assistant, emergency medical technician or paramedic; or
  - (ii) First aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any such "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III – LIMITS OF INSURANCE:**

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed in providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following exclusion is added to Paragraph 2., **Exclusions**, of **SECTION I – COVERAGES – COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY:**

**Sale Of Pharmaceuticals**

"Bodily injury" or "property damage" arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals committed by, or with the knowledge or consent of, the insured.

5. The following is added to the **DEFINITIONS** Section:

"Incidental medical services" means:

- a. Medical, surgical, dental, laboratory, x-ray or nursing service or treatment, advice or instruction, or the related furnishing of food or beverages; or
- b. The furnishing or dispensing of drugs or medical, dental, or surgical supplies or appliances.

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

6. The following is added to Paragraph 4.b., **Excess Insurance**, of **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The insurance is excess over any valid and collectible other insurance available to the insured, whether primary, excess, contingent or on any other basis, that is available to any of your "employees" or "volunteer workers" for "bodily injury" that arises out of providing or failing to provide "incidental medical services", first aid or "Good Samaritan services" to any person to the extent not subject to Paragraph 2.a.(1) of Section II – Who Is An Insured.

**E. WHO IS AN INSURED – NEWLY ACQUIRED OR FORMED ORGANIZATIONS**

The following replaces Paragraph 4. of **SECTION II – WHO IS AN INSURED:**

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:

- (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or

- (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

**F. WHO IS AN INSURED – BROADENED NAMED INSURED – UNNAMED SUBSIDIARIES**

The following is added to **SECTION II – WHO IS AN INSURED:**

Any of your subsidiaries, other than a partnership, joint venture or limited liability company, that is not shown as a Named Insured in the Declarations is a Named Insured if you maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed after the date, if any, during the policy period, that you no longer maintain an ownership interest of more than 50% in such subsidiary.

## COMMERCIAL GENERAL LIABILITY

### G. BLANKET ADDITIONAL INSURED – OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is a premises owner, manager or lessor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Arises out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor is subject to the following provisions:

- a. The limits of insurance provided to such premises owner, manager or lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
- b. The insurance provided to such premises owner, manager or lessor does not apply to:
  - (1) Any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
  - (2) Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, lessor or manager.
- c. The insurance provided to such premises owner, manager or lessor is excess over any valid and collectible other insurance available to such premises owner, manager or lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.

### H. BLANKET ADDITIONAL INSURED – LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II – WHO IS AN INSURED**:

Any person or organization that is an equipment lessor and that you have agreed in a written contract or agreement to include as an insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" that:

- a. Is "bodily injury" or "property damage" that occurs, or is "personal injury" or "advertising injury" caused by an offense that is committed, subsequent to the execution of that contract or agreement; and
- b. Is caused, in whole or in part, by your acts or omissions in the maintenance, operation or use of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor is subject to the following provisions:

- a. The limits of insurance provided to such equipment lessor will be the minimum limits which you agreed to provide in the written contract or agreement, or the limits shown on the Declarations, whichever are less.
  - b. The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" that occurs, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.
  - c. The insurance provided to such equipment lessor is excess over any valid and collectible other insurance available to such equipment lessor, whether primary, excess, contingent or on any other basis, unless you have agreed in the written contract or agreement that this insurance must be primary to, or non-contributory with, such other insurance, in which case this insurance will be primary to, and non-contributory with, such other insurance.
- ### I. BLANKET ADDITIONAL INSURED- STATES OR POLITICAL SUBDIVISIONS –PERMITS

The following is added to **SECTION II- WHO IS AN INSURED**:

Any state or political subdivision that has issued a permit in connection with operations performed by you or on your behalf and that you are required

## COMMERCIAL GENERAL LIABILITY

by any ordinance, law or building code to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of such operations.

The insurance provided to such state or political subdivision does not apply to:

- a. Any "bodily injury," "property damage," "personal injury" or "advertising injury" arising out of operations performed for that state or political subdivision; or
- b. Any "bodily injury" or "property damage" included in the "products-completed operations hazard".

### J. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of SECTION IV –COMMERCIAL GENERAL LIABILITY CONDITIONS:

- e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of Section II – Who Is An Insured:
  - (1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture or limited liability company) or any "employee" authorized by you to give notice of an "occurrence" or offense.
  - (2) If you are a partnership, joint venture or limited liability company, and none of your partners, joint venture members or managers are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:
    - (a) Any individual who is:
      - (i) A partner or member of any partnership or joint venture;

- (ii) A manager of any limited liability company; or
- (iii) An executive officer or director of any other organization;

that is your partner, joint venture member or manager; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or of an offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this Coverage Part includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

### K. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations**, of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

### L. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us**, of SECTION IV–COMMERCIAL GENERAL LIABILITY CONDITIONS:

## COMMERCIAL GENERAL LIABILITY

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" that occurs; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of that contract or agreement.

### **M. AMENDED BODILY INJURY DEFINITION**

The following replaces the definition of "bodily injury" in the **DEFINITIONS** Section:

3. "Bodily injury" means bodily injury, mental anguish, mental injury, shock, fright, disability, humiliation, sickness or disease sustained by a person, including death resulting from any of these at any time.

### **N. CONTRACTUAL LIABILITY – RAILROADS**

1. The following replaces Paragraph **c.** of the definition of "insured contract" in the **DEFINITIONS** Section:
  - c. Any easement or license agreement;
2. Paragraph **f.(1)** of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY**

**DESIGNATED PROJECT(S)  
GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Designated Project(s):**

EACH "PROJECT" FOR WHICH YOU HAVE AGREED, IN A WRITTEN CONTRACT WHICH IS IN EFFECT DURING THIS POLICY PERIOD, TO PROVIDE A SEPARATE GENERAL AGGREGATE LIMIT, PROVIDED THAT THE CONTRACT IS SIGNED AND EXECUTED BY YOU BEFORE THE "BODILY INJURY" OR "PROPERTY DAMAGE" OCCURS.

**Designated Project  
General Aggregate(s):**

GENERAL AGGREGATE  
LIMIT SHOWN ON THE  
DECLARATIONS.

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)**, which can be attributed only to operations at a single designated "project" shown in the Schedule above:
1. A separate Designated Project General Aggregate Limit applies to each designated "project", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations unless separate **Designated Project General Aggregate(s)** are scheduled above.
  2. The Designated Project General Aggregate Limit is the most we will pay for the sum of all damages under **COVERAGE A.**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under **COVERAGE C**, regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the Designated Project General Aggregate Limit for that designated "project". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project General Aggregate Limit for any other designated "project" shown in the Schedule above.
  4. The limits shown in the Declarations for **Each Occurrence, Damage To Premises Rented To You and Medical Expense** continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project General Aggregate Limit.
- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under **COVERAGE A. (SECTION I)**, and for all medical expenses caused by accidents under **COVERAGE C. (SECTION I)**, which cannot be attributed only to operations at a single designated "project" shown in the Schedule above:

COMMERCIAL GENERAL LIABILITY

1. Any payments made under **COVERAGE A.** for damages or under **COVERAGE C.** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-Completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Project General Aggregate Limit.
- C. Part 2. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:
2. The General Aggregate Limit is the most we will pay for the sum of:
    - a. Damages under **Coverage B;** and
    - b. Damages from "occurrences" under **COVERAGE A (SECTION I)** and for all medical expenses caused by accidents under **COVERAGE C (SECTION I)** which cannot be attributed only to operations at a single designated "project" shown in the **SCHEDULE** above.
- D. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-Completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Project General Aggregate Limit.
- E. For the purposes of this endorsement the **Definitions Section** is amended by the addition of the following definition:
- "Project" means an area away from premises owned by or rented to you at which you are performing operations pursuant to a contract or agreement. For the purposes of determining the applicable aggregate limit of insurance, each "project" that includes premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad shall be considered a single "project".
- F. The provisions of **SECTION III – LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **BUSINESS AUTO EXTENSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **BUSINESS AUTO COVERAGE FORM**

**GENERAL DESCRIPTION OF COVERAGE**—This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to the Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- |                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>A. BROAD FORM NAMED INSURED</b></p> <p><b>B. BLANKET ADDITIONAL INSURED</b></p> <p><b>C. EMPLOYEE HIRED AUTO</b></p> <p><b>D. EMPLOYEES AS INSURED</b></p> <p><b>E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS</b></p> <p><b>F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS</b></p> <p><b>G. WAIVER OF DEDUCTIBLE – GLASS</b></p> | <p><b>H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT</b></p> <p><b>I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT</b></p> <p><b>J. PERSONAL PROPERTY</b></p> <p><b>K. AIRBAGS</b></p> <p><b>L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS</b></p> <p><b>M. BLANKET WAIVER OF SUBROGATION</b></p> <p><b>N. UNINTENTIONAL ERRORS OR OMISSIONS</b></p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### **PROVISIONS**

**A. BROAD FORM NAMED INSURED**

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II—COVERED AUTOS LIABILITY COVERAGE**:

Any organization you newly acquire or form during the policy period over which you maintain 50% or more ownership interest and that is not separately insured for Business Auto Coverage. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier.

**B. BLANKET ADDITIONAL INSURED**

The following is added to Paragraph **c.** in **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any person or organization who is required under a written contract or agreement between you and that person or organization, that is signed and executed by you before the "bodily injury" or "property damage" occurs and that is in effect during the policy period, to be named as an additional insured is an "insured" for Covered Autos Liability Coverage, but only for damages to which

this insurance applies and only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Section II.

**C. EMPLOYEE HIRED AUTO**

1. The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II—COVERED AUTOS LIABILITY COVERAGE**:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

2. The following replaces Paragraph **b.** in **B.5., Other Insurance**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**b.** For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your

## COMMERCIAL AUTO

permission, while performing duties related to the conduct of your business.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

### D. EMPLOYEES AS INSURED

The following is added to Paragraph **A.1., Who Is An Insured**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

### E. SUPPLEMENTARY PAYMENTS – INCREASED LIMITS

1. The following replaces Paragraph **A.2.a.(2)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(2) Up to \$3,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

2. The following replaces Paragraph **A.2.a.(4)**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**:

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

### F. HIRED AUTO – LIMITED WORLDWIDE COVERAGE – INDEMNITY BASIS

The following replaces Subparagraph (5) in Paragraph **B.7., Policy Period, Coverage Territory**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

(5) Anywhere in the world, except any country or jurisdiction while any trade sanction, embargo, or similar regulation imposed by the United States of America applies to and prohibits the transaction of business with or within such country or jurisdiction, for Covered Autos Liability Coverage for any covered "auto" that you lease, hire, rent or borrow without a driver for a period of 30 days or less and that is not an "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

(a) With respect to any claim made or "suit" brought outside the United States of America, the territories and possessions of the United States of America, Puerto Rico and Canada:

(i) You must arrange to defend the "insured" against, and investigate or settle any such claim or "suit" and keep us advised of all proceedings and actions.

(ii) Neither you nor any other involved "insured" will make any settlement without our consent.

(iii) We may, at our discretion, participate in defending the "insured" against, or in the settlement of, any claim or "suit".

(iv) We will reimburse the "insured" for sums that the "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, that the "insured" pays with our consent, but only up to the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**.

(v) We will reimburse the "insured" for the reasonable expenses incurred with our consent for your investigation of such claims and your defense of the "insured" against any such "suit", but only up to and included within the limit described in Paragraph **C., Limits Of Insurance**, of **SECTION II – COVERED AUTOS LIABILITY COVERAGE**, and not in addition to such limit. Our duty to make such payments ends when we have used up the applicable limit of insurance in payments for damages, settlements or defense expenses.

(b) This insurance is excess over any valid and collectible other insurance available to the "insured" whether primary, excess, contingent or on any other basis.

(c) This insurance is not a substitute for required or compulsory insurance in any country outside the United States, its territories and possessions, Puerto Rico and Canada.

You agree to maintain all required or compulsory insurance in any such country up to the minimum limits required by local law. Your failure to comply with compulsory insurance requirements will not invalidate the coverage afforded by this policy, but we will only be liable to the same extent we would have been liable had you complied with the compulsory insurance requirements.

- (d) It is understood that we are not an admitted or authorized insurer outside the United States of America, its territories and possessions, Puerto Rico and Canada. We assume no responsibility for the furnishing of certificates of insurance, or for compliance in any way with the laws of other countries relating to insurance.

**G. WAIVER OF DEDUCTIBLE – GLASS**

The following is added to Paragraph **D.**, **Deductible**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

No deductible for a covered "auto" will apply to glass damage if the glass is repaired rather than replaced.

**H. HIRED AUTO PHYSICAL DAMAGE – LOSS OF USE – INCREASED LIMIT**

The following replaces the last sentence of Paragraph **A.4.b.**, **Loss Of Use Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

However, the most we will pay for any expenses for loss of use is \$65 per day, to a maximum of \$750 for any one "accident".

**I. PHYSICAL DAMAGE – TRANSPORTATION EXPENSES – INCREASED LIMIT**

The following replaces the first sentence in Paragraph **A.4.a.**, **Transportation Expenses**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

We will pay up to \$50 per day to a maximum of \$1,500 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type.

**J. PERSONAL PROPERTY**

The following is added to Paragraph **A.4.**, **Coverage Extensions**, of **SECTION III – PHYSICAL DAMAGE COVERAGE**:

**Personal Property**

We will pay up to \$400 for "loss" to wearing apparel and other personal property which is:

- (1) Owned by an "insured"; and

- (2) In or on your covered "auto".

This coverage applies only in the event of a total theft of your covered "auto".

No deductibles apply to this Personal Property coverage.

**K. AIRBAGS**

The following is added to Paragraph **B.3.**, **Exclusions**, of **SECTION III- PHYSICAL DAMAGE COVERAGE**:

Exclusion **3.a.** does not apply to "loss" to one or more airbags in a covered "auto" you own that inflate due to a cause other than a cause of "loss" set forth in Paragraphs **A.1.b.** and **A.1.c.**, but only:

- a. If that "auto" is a covered "auto" for Comprehensive Coverage under this policy;
- b. The airbags are not covered under any warranty; and
- c. The airbags were not intentionally inflated.

We will pay up to a maximum of \$1,000 for any one "loss".

**L. NOTICE AND KNOWLEDGE OF ACCIDENT OR LOSS**

The following is added to Paragraph **A.2.a.**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

Your duty to give us or our authorized representative prompt notice of the "accident" or "loss" applies only when the "accident" or "loss" is known to:

- (a) You (if you are an individual);
- (b) A partner (if you are a partnership);
- (c) A member (if you are a limited liability company);
- (d) An executive officer, director or insurance manager (if you are a corporation or other organization); or
- (e) Any "employee" authorized by you to give notice of the "accident" or "loss".

**M. BLANKET WAIVER OF SUBROGATION**

The following replaces Paragraph **A.5.**, **Transfer Of Rights Of Recovery Against Others To Us**, of **SECTION IV – BUSINESS AUTO CONDITIONS**:

**5. Transfer Of Rights Of Recovery Against Others To Us**

We waive any right of recovery we may have against any person or organization to the extent required of you by a written contract signed and executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by

COMMERCIAL AUTO

such contract. The waiver applies only to the person or organization designated in such contract.

**N. UNINTENTIONAL ERRORS OR OMISSIONS**

The following is added to Paragraph **B.2., Concealment, Misrepresentation, Or Fraud,** of **SECTION IV –BUSINESS AUTO CONDITIONS:**

The unintentional omission of, or unintentional error in, any information given by you shall not prejudice your rights under this insurance. However this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.



# EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)  
6/2/2017

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY AG Sadowski Company 1605 Liberty Street S.E.  Salem OR 97302		PHONE (A/C, No. Ext): (503) 362-2711	COMPANY Beazley Ins Co (A Lloyds of London Syndicate) Attn: Accounting 777 Figueroa Street, Suite 2550 Los Angeles CA 90017	
FAX (A/C, No.): (866) 581-6327	E-MAIL ADDRESS: robin@agsadowski.com			
CODE:	SUB CODE:			
AGENCY CUSTOMER ID #: 00000602		LOAN NUMBER		POLICY NUMBER W0281217PNB
INSURED HP CIVIL INC. PO BOX 556  STAYTON OR 97383		EFFECTIVE DATE 6/1/2017	EXPIRATION DATE 10/31/2018	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:				

### PROPERTY INFORMATION

LOCATION/DESCRIPTION  
CIP2016-D22 - Kellogg Creek Bridge (BR #22142) Emergency Replacement Design-Build  
11211 SE McLoughlin Blvd  
Milwaukie, OR 97222

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

### COVERAGE INFORMATION

COVERAGE / PERILS / FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk "All Risk" coverage including:		
Project Value	\$ 2,610,000	\$ 50,000
Covered Property in Transit	\$ 250,000	\$ 50,000
Covered Property at Off-site Storage Locations	\$ 250,000	\$ 50,000
Delay in Completion (including Soft Costs)	\$ 250,000	30 Days
Earth Movement	\$ 2,860,000	\$ 100,000
Flood	\$ 2,860,000	\$ 100,000

### REMARKS (Including Special Conditions)

City of Milwaukie, HP Civil, Inc., and Subcontractors of Every Tier are Named Insureds on the Builders Risk Policy

### CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

### ADDITIONAL INTEREST

(503) 774-8236 TuckerK@milwaukieoregon.gov City of Milwaukie 6101 SE Johnson Creek Blvd Milwaukie, OR 97206	MORTGAGEE	ADDITIONAL INSURED
	LOSS PAYEE	<input checked="" type="checkbox"/> Additional Named Insured
LOAN #		
AUTHORIZED REPRESENTATIVE		
Robin Guzman/ROBIN		<i>RK Guzman</i>



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

6/1/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> JD Fulwiler & Co. Insurance, Inc. 5727 SW Macadam Ave PO Box 69508 Portland OR 97239		<b>CONTACT NAME:</b> Peggy MacMillan <b>PHONE (A/C, No, Ext):</b> (503) 293-8325 <b>E-MAIL ADDRESS:</b> pmacmillan@jdfulwiler.com <b>FAX (A/C, No):</b> (503) 293-5418																						
<b>INSURED</b> Otak Inc. 808 SW 3rd Ave Ste 300 Portland OR 97204		<table border="1"> <thead> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A:</td> <td>Travelers Indemnity Co of CT</td> <td>25682</td> </tr> <tr> <td>INSURER B:</td> <td>Travelers Indemnity Co of Am</td> <td>25666</td> </tr> <tr> <td>INSURER C:</td> <td>Saif Corporation</td> <td>36196</td> </tr> <tr> <td>INSURER D:</td> <td>Beazley Insurance Company Inc</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td>AGCS Marine Insurance</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> <td></td> </tr> </tbody> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A:	Travelers Indemnity Co of CT	25682	INSURER B:	Travelers Indemnity Co of Am	25666	INSURER C:	Saif Corporation	36196	INSURER D:	Beazley Insurance Company Inc		INSURER E:	AGCS Marine Insurance		INSURER F:		
INSURER(S) AFFORDING COVERAGE		NAIC #																						
INSURER A:	Travelers Indemnity Co of CT	25682																						
INSURER B:	Travelers Indemnity Co of Am	25666																						
INSURER C:	Saif Corporation	36196																						
INSURER D:	Beazley Insurance Company Inc																							
INSURER E:	AGCS Marine Insurance																							
INSURER F:																								

**COVERAGES** CERTIFICATE NUMBER: 17/18 Gen Use REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS			
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY			6805H242469	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 1,000,000			
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000			
	<input checked="" type="checkbox"/> WA Stop Gap Liability						MED EXP (Any one person) \$ 5,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:									PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC									GENERAL AGGREGATE \$ 2,000,000
	OTHER:									PRODUCTS - COMP/OP AGG \$ 2,000,000
										Employee Benefits \$ 1,000,000
A	<b>AUTOMOBILE LIABILITY</b>			BA1502P892	1/1/2017	1/1/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000			
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$			
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident) \$			
							Towing \$			
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR			CUP5C8570811247	1/1/2017	1/1/2018	EACH OCCURRENCE \$ 10,000,000			
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 10,000,000			
	<input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000						\$			
C	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>			OREGON 967262 OTAK Architects Inc 487431 OTAK INC	4/1/2017	1/1/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000			
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000			
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000			
D	A&E Prof'l W/Pollution			V10267160801	1/1/2017	1/1/2018	Limits per Claim/Agg/Ded \$2m/\$4m/\$200K			
E	Inland Marine			MXI93070329	1/1/2017	1/1/2018	Misc Unscheduled Items/Ded \$100,000/\$1k			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**RE:** Kellogg Creek - Certificate holder and City of Milwaukie are included as additional insureds on the general liability with regard to operations of the named insured subject to policy terms, conditions and exclusions;

<b>CERTIFICATE HOLDER</b> larry@hpcivil.com HP Civil Inc PO Box 556 Stayton, OR 97383	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE P MacMillan/TMAYDA <i>Peggy MacMillan</i>
---------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

© 1988-2014 ACORD CORPORATION. All rights reserved.

## Additional Named Insureds

### Other Named Insureds

HLB Otak Inc., an Oregon Corporation

OTAK Architects Inc, a Washington Corporation

Otak Architects Inc., an Oregon Corporation

Otak Engineering, Inc., an Oregon Corporation

Otak International (Caymen Islands)

Otak Nevada, LLC, an Oregon Limited Liability Co

Otak, Inc. 401K Employee Savings Plan

Otak, Inc., a Colorado Corporation

Otak, Inc., an Washington Corporation

STATE OF OREGON  
CONSTRUCTION CONTRACTORS BOARD  
LICENSE CERTIFICATE

LICENSE NUMBER: 202060

This document certifies that:

HP CIVIL INC  
PO BOX 556  
STAYTON OR 97383

is licensed in accordance with Oregon Law as a Commercial General Contractor Level 2.

**License Details:**

EXPIRATION DATE: 02/18/2018

ENTITY TYPE: Corporation

INDEP. CONT. STATUS: NONEXEMPT

RESIDENTIAL BOND: NONE

COMMERCIAL BOND: \$20,000

INSURANCE: \$1,000,000 / \$2,000,000

RMI: ROGER LEWIS SILBERNAGEL

HOME INSPECTOR CERTIFIED: NO