REQUEST FOR PROPOSALS
RFP No. 08/15-298

Design-Build Services for
Gladstone Square & Multnomah Manor Apartments

RFP Issue Date: September 23rd, 2015
Proposal Due Date: October 23rd, 2015

Pre-Proposal Conference:
September 29th, 2015, 10:00 AM
Gladstone Square, Community Room
12020 SE Gladstone Street, Portland, OR 97266
Site tours of each property will immediately follow conference.

HOME FORWARD
135 SW Ash Street, 5th Floor
Portland, OR 97204
REQUEST FOR PROPOSALS
RFP No. 08/15-298

Design-Build Services for
Gladstone Square & Multnomah Manor Apartments

To: Prospective Design-Build Teams

Subject: Request for Proposals (RFP) for Design-Build Services for Gladstone Square & Multnomah Manor Apartments

Issue Date: September 23rd, 2015

Due Date: October 23rd, 2015, 2:00 PM
No faxed or e-mailed proposals will be accepted.

Submit Proposals to: Home Forward
Purchasing Department
135 SW Ash Street, 5th Floor
Portland, OR 97204

RFP Contact: Berit Stevenson
Purchasing & Contracts Manager
Home Forward
135 SW Ash Street, 5th Floor
Portland OR 97204
tel: 503-802-8541
e-mail: berit.stevenson@homeforward.org

Pre-Proposal Conference: September 29th, 2015, 10:00 AM
Gladstone Square, Community Room
12020 SE Gladstone Street, Portland, OR 97266
Site tours of each property will immediately follow conference.

Attendance of a representative of the Design-Build Proposer at the pre-proposal conference is not mandatory but is strongly encouraged.

Document Availability: Hard copy of the RFP and all required forms and attachments may be obtained from Home Forward’s Purchasing Department at 135 SW Ash Street, 5th Floor, Portland, Oregon, 97204 between the hours of 8:30 AM – 4:30 PM beginning September 23rd, 2015. Hard copy will also be available at the pre-proposal conference.

Electronic copy of the RFP and all required forms may be obtained from the Home Forward web site at www.homeforward.org. If the RFP is obtained via the website, prospective Proposers are asked to email a registration form to berit.stevenson@homeforward.org in order to be added to the Prospective Proposers List and receive addenda.
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I. INTRODUCTION

A. Notice

HOME FORWARD
REQUEST FOR PROPOSALS No. 08/15-298

Design-Build Services for
Gladstone Square & Multnomah Manor Apartments

Proposals are requested from qualified Design-Build Teams (also referred to in the RFP as “Proposer” or “Team”) for the provision of services related to the design and construction of renovation and repair work for Gladstone Square and Multnomah Manor Apartments.

Home Forward’s Purchasing Department will accept proposals until October 23rd, 2015, 2:00 PM. The Purchasing Department is located at 135 SW Ash Street, 5th Floor Portland, Oregon, 97204. Proposals should be clearly marked with the Proposer’s name and address and the RFP title and number.

Home Forward plans to undertake renovation and repair work at Gladstone Square and Multnomah Manor Apartments, both located in Portland Oregon. Together, these two properties contain 102 housing units and Gladstone Square serves residents at 60% of Area Median Income (AMI) and Multnomah Manor serves residents at 50% of AMI. Renovation and repair work for each building will be finalized during the programming phase and undertaken by the selected Design-Build Team. The combined construction budget for the two properties is $6,000,000. Work will be subject to the U.S. Department of Housing and Urban Development’s (HUD) Technical Salary Determination, federal Davis Bacon Act prevailing wage requirements, and Oregon BOLI requirements.

Hard copy of the RFP and all required forms and attachments may be obtained from Home Forward’s Purchasing Department at 135 SW Ash Street, 5th Floor, Portland, Oregon, 97204 between the hours of 8:30 AM – 4:30 PM beginning September 23rd, 2015.

Electronic copy of the RFP and all required forms may be obtained from the Home Forward website, www.homeforward.org. If the RFP is obtained via the website, prospective Proposers are asked to email a registration form to berit.stevenson@homeforward.org in order to be added to the Prospective Proposers List and receive addenda.

A non-mandatory pre-proposal conference will take place September 29th, 2015 at 10:00 AM in the Community Room located at Gladstone Square Apartments, 12020 SE Gladstone Street, Portland, OR 97266. This conference will be followed by site tours of Gladstone Square and Multnomah Manor, beginning with Gladstone Square and then moving to Multnomah Manor located at 9110 NE Hassalo Street, Portland, OR 97220.

Home Forward has established an aspirational goal of 20% participation by Minority-Owned, Women-Owned & Emerging Small Businesses (M/W/ESBs) certified by the State of Oregon and an aspirational goal of 10% for Section 3 businesses for this project. Interested M/W/ESBs and Section 3 businesses are encouraged to attend the pre-proposal conference.

RFP Contact:  Berit Stevenson
Purchasing & Contracts Manager
Home Forward
503-802-8541
B. Home Forward

The mission of Home Forward, formerly the Housing Authority of Portland, is to assure that the people of our community are sheltered. Home Forward has a special responsibility to those who encounter barriers to housing because of income, disability or special need.

Home Forward is an independent public corporation authorized by the State of Oregon under the Oregon Revised Statutes §456.055 to §456.235. Home Forward was established on December 11, 1941, by Resolution of the Council of the City of Portland. In 1992, Home Forward's jurisdiction was expanded to include all of Multnomah County. The organization is governed by a nine-member citizen Board of Commissioners appointed to represent the people of their communities in making major policy decisions for Home Forward. Commissioners are also responsible for hiring an Executive Director, who oversees the day-to-day operations of the organization and its nearly 300 employees. The Executive Director implements the policies and programs established by the Board. Members of the Board serve without pay.

As the owner of Gladstone Square and Multnomah Manor apartments, Home Forward will work with the Design-Build Team during pre-construction and construction. Home Forward will assign Mike Andrews as the Project Director. Other key Home Forward staff will be available to share expertise with the Design-Build Team. Home Forward will assign a Resident Specialist to the Project to assist with resident communications and coordination.

Website: www.homeforward.org

C. Project Overview

Home Forward is focused on renovating two affordable housing properties that contain 102 apartments. These properties are located in urban neighborhoods in the city of Portland and are generally occupied by low-income individuals and families. The resident population includes many school-aged children.

<table>
<thead>
<tr>
<th></th>
<th>Gladstone Square</th>
<th>Multnomah Manor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>12020 SE Gladstone</td>
<td>9110 NE Hassalo</td>
</tr>
<tr>
<td></td>
<td>Portland, Oregon 97266</td>
<td>Portland, Oregon 97220</td>
</tr>
<tr>
<td><strong>Year Built</strong></td>
<td>1998</td>
<td>1965</td>
</tr>
<tr>
<td><strong>Construction Type</strong></td>
<td>2 &amp; 3 story wood frame</td>
<td>2-story wood frame</td>
</tr>
<tr>
<td></td>
<td>on concrete slab Type V 1-Hour</td>
<td>on concrete slab Type V 1-Hour</td>
</tr>
<tr>
<td><strong>Units and Square Footages</strong></td>
<td>48 = total units</td>
<td>54 = total units</td>
</tr>
<tr>
<td></td>
<td>36 = 2 BR, 822 sf</td>
<td>24 = 1 BR, 570 sf</td>
</tr>
<tr>
<td></td>
<td>12 = 3 BR, 1000-1072 sf</td>
<td>18 = 2 BR, 800 sf</td>
</tr>
<tr>
<td></td>
<td></td>
<td>11 = 3 BR, 900 sf</td>
</tr>
<tr>
<td><strong>Site Area</strong></td>
<td>79,412 sf</td>
<td>87,991 sf</td>
</tr>
<tr>
<td><strong>Bldg. Area</strong></td>
<td>42,702 sf</td>
<td>42,737 sf</td>
</tr>
</tbody>
</table>

Both properties have had a variety of capital projects completed during several decades of operation. Existing condition information and previous studies and analyses are available in Exhibit E (Gladstone); Exhibit F (Multnomah).

Both properties have active resident groups. Community spaces in Gladstone Square and Multnomah Manor include kitchen and dining spaces that are frequently used for a variety of purposes including after-school programs for children, resident meetings and other resident services.
D. Project Goals
Renovation and repair work to Gladstone Square and Multnomah Manor represents a significant public investment. The project goals reflect our community’s values:

1. *Livability.* Develop a program that will improve livability for residents and a work plan that will mitigate impacts on residents and building operations during construction.

2. *Fiscal Responsibility.* Use financial resources wisely.

3. *Extend the Operational Life of the Buildings.* Remedy immediate needs, address life safety issues and increase the life of major components and systems to maximize value.

4. *Operational Sustainability.* Use durable building materials and systems that will deliver low long-term operational costs and an easy-to-maintain, functional, healthy, and efficient facility.

5. *Economic Equity.* Promote fair opportunity and fair access in contracting and workforce hiring.

E. Proposal and Construction Budget
Home Forward intends to select a single Design-Build Team for the work at the two properties. The construction budget for both properties is estimated at $6,000,000. The Design-Build Team will provide cost estimates based on current market conditions and will recommend value-engineering strategies to ensure final construction costs do not exceed available funds. The current estimated breakdown of the budget is as follows:

- Gladstone: $4,500,000
- Multnomah: $1,500,000

Budget allocations for each property are fungible (may be moved from one property to the other) at Home Forward’s discretion.

F. Scope of Work Overview
While the exact scopes of the work for each property will be evaluated and prioritized during the programming phase undertaken by the selected Design-Build Team, Home Forward project managers and operations staff believe the following capital work needs to be completed:

- **Gladstone Square:**Envelope and window replacement; roof replacement; ventilation improvements; energy efficiency improvements; interior dwelling improvements.

- **Multnomah Manor:**Domestic sewer piping replacement; ventilation improvements; energy efficiency improvements; interior dwelling improvements.

G. Project Funding
Funding for the project is a combination of Low Income Housing Tax Credits (LIHTCs), conventional construction and permanent loans, Home Forward funds and local sources. Home Forward has received federal project-based rent assistance for the two properties.

H. Project Schedule
Programming will begin as soon as the successful Design-Build Team is under contract. The first phase of the project will be due by December 17th 2015 and will require: a conceptual program, cost estimates, inspection of units to determine needs and supporting design materials necessary for the LIHTC application submittal. The second phase of the project will be finalizing and completing the design, permitting, subcontractor bidding and negotiation of a Guaranteed Maximum Price (GMP) for each property. The third phase is the construction phase and commences with the execution of the GMP amendment. The construction start schedule will vary depending on the scope of work and permitting for each property, but generally the expectation is that construction at each property will be occurring simultaneously. Substantial completion at both properties will occur within 7 months at Multnomah Manor and 12 months and Gladstone Square. This is an estimate which many adjust based on the final scope of work at each property.
The Design-Build Team will conform to a detailed project schedule that will be developed and maintained by the Team in consultation with Home Forward. Schedule development will begin immediately following the selection of the Design-Build Team.

I. Economic Participation Opportunities

Home Forward values fair and open access to opportunities for businesses and the workforce. In this regard:

1. State of Oregon certified M/W/ESBs are encouraged to respond to this RFP and to pursue subsequent subconsultant and subcontractor opportunities available during the design and construction phases. An aspirational goal of 20% M/W/ESB participation has been established for this project. Monthly reporting is required.


2. Compliance with Section 3 of the HUD Act of 1968 will be monitored throughout this project. A total of 10% of all construction contracts should be awarded to Section 3 Business Concerns and 3% of all non-construction contracts should be awarded to Section 3 Business Concerns. In addition, 30% of all aggregated new-hires should be Section 3 Residents living in the metropolitan Portland area or qualifying non-metropolitan counties. Monthly reporting is required.


3. Workforce goals conform to Home Forward’s Workforce Hiring and Training program. Economic Participation Program requirements are described in Exhibit C. Monthly reporting is required.

J. Joint Ventures, Partnerships

If the Proposer is a joint venture or partnership, each joint venture member or partner must sign the Agreement on behalf of both itself and the joint venture or partnership. Proposals submitted by multiple firms submitting as partners or joint ventures will be considered, provided that such proposal is accompanied by a copy of a joint venture agreement, partnership agreement, or other evidence of intent to form, signed by all parties.

K. Design-Builder

For the purposes of this RFP and the contract, “Design-Builder” is the entity that will enter into a contractual agreement with Home Forward. This RFP assumes the Design-Builder will perform pre-construction services as referenced and specified in Exhibit D (sections A.3.1 & A.3.2) and will subcontract for design services either with a single A&E subconsultant team or with multiple design services firms assigned to the individual properties. Design-Build Teams may choose to propose a different approach.

L. Contract

The AIA A141-2004 Standard Form of Agreement Between Owner and Design-Builder (“AIA A-141-2004” or “Agreement”) is attached as Exhibit D.

The Agreement contains pre-construction (programming and design) and construction services, described further in the Scope of Services section of this RFP. All pre-construction and construction work will be authorized by GMP amendments. Authorization to proceed with a subsequent phase will occur only after Home Forward and the Design-Builder have successfully negotiated the scope and cost of the contemplated GMP or amendment. The contract will be assigned to a limited partnership or similarly structured corporate body if required by funding sources.

The Owner-approved version of the Agreement, with all attachments and exhibits, is included in Exhibit D. Proposers should state their willingness to execute the form of Contract provided with this RFP (with the blanks and exhibits filled in appropriately as agreed in the normal course). Proposers should expressly state their reservations, if any, that they have regarding the form of Contract and identify changes, if any, that they request be made to the form of Contract and include these requests in their proposal.
M. Contract Requirements

The Design-Builder will be required to provide insurance, performance and payment bonds equal to 100% of both the design and construction elements of the contract, participate in the City of Portland Workforce Hiring and Training Program, HUD Section 3 and Home Forward’s M/W/ESB Program, as outlined in Exhibit C. All construction work shall comply with federal Davis Bacon Act prevailing wage requirements and Oregon BOLI requirements.

N. RFP Schedule

Home Forward reserves the right to deviate from this schedule.

<table>
<thead>
<tr>
<th>[RFP Schedule]</th>
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<tbody>
<tr>
<td>RFP Issue Date</td>
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<tr>
<td>Pre-Proposal Conference</td>
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<tr>
<td>Deadline for Written Requests for Information</td>
</tr>
<tr>
<td>Last Addendum Issue Date (if needed)</td>
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<tr>
<td>Proposals Due</td>
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<tr>
<td>Evaluation</td>
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<tr>
<td>Notice of Competitive Range</td>
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<tr>
<td>Interviews, (Proposers in Competitive Range Only)</td>
</tr>
<tr>
<td>Selection of Candidate</td>
</tr>
<tr>
<td>Notice of Intent to Award</td>
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<tr>
<td>Contract Execution</td>
</tr>
</tbody>
</table>

O. Changes to RFP

Home Forward reserves the right to change this RFP. Changes shall be by written addendum and shall be issued to all entities on Home Forward’s Prospective Proposers List for this RFP. Proposers shall not rely on verbal or written representations regarding this RFP except for written addenda issued by Home Forward.

A prospective Proposer may request a change to the RFP, by submitting a written request to the RFP Contact. The request shall specify the provision of the RFP or Agreement in question and shall contain an explanation for the requested change. Home Forward shall evaluate any request submitted but reserves the right to determine whether to accept or reject the change.

All requests for changes shall be submitted in writing to Home Forward no later than October 14, 2015, 2:00PM.

II. SCOPE OF SERVICES

A. Composition of Design-Build Team

The Design-Builder will be responsible for engaging all subconsultants and subcontractors necessary to complete the work. The Proposer must demonstrate to Home Forward that the proposed Team includes expertise that is clearly relevant to the work contemplated for Gladstone Square and Multnomah Manor Apartments:
1. Architectural and engineering work, including permitting, as required by the scope of work. Note that the final scope of work may require additional design and engineering disciplines than those initially anticipated.

2. Construction services, including but not limited to hazardous material abatement; selective demolition; renovation and repair.

3. Cost estimating

4. Value engineering

5. Budget control

6. Schedule control

7. Envelope and constructability review services

8. Job site safety, security, and traffic control

9. Economic Participation Program coordination

10. Quality assurance/quality control

11. Systems commissioning and training, depending on final scope of work

If required, Home Forward will retain the services of an environmental engineer & a geotech engineer.

B. Statement of Work

The selected Design-Build Team shall provide pre-construction and construction services as described in this RFP and the attached AIA A141-2004 within the specified schedule at the agreed upon price.

Pre-construction services include two elements:

1. All architectural & engineering (A&E) services necessary to complete the work (programming and final design); and

2. Traditional construction management services typically associated with a Construction Manager/General Contractor (CM/GC) contract.

Pre-construction services will be delivered in two phases:

1. Programming; and

2. Construction Documents

The exact scope of construction documents and construction services will be determined during programming.

III. SUBMISSION REQUIREMENTS

A. Content Specifications

To be considered responsive and responsible, Proposers shall respond to the following requirements. Respond only to the items listed below, and include only relevant information. Do not include lists (past projects, past clients, etc.) unless specifically requested. Responses must be specific and complete unto themselves. Any submittal or material that, in the opinion of Home Forward, does not fully and completely address these requirements will not be reviewed by the Selection Committee (Committee). Brevity is encouraged. The Committee will look favorably upon succinct and direct language.

For the purposes of this RFP, the Design-Build Team may be composed of one or more team members. A team member is defined as a legal entity that undertakes some or all of the obligations outlined in this RFP.
1. Cover Letter

Introduce your Team and describe your business philosophy. Identify only the Design-Builder and design professionals required for the currently identified scope of each property. Acknowledge receipt of addendum as appropriate. An authorized representative of the Design-Builder shall sign the letter.

2. Team (20 points)

a. Names & addresses of the Design-Builder and Architects(s) ONLY. List past collaborations. Present each firm’s history, including number of years in continuous operation; current staffing level; current workload; and capacity. Include M/W/ESB or Section 3 certification information if applicable.

b. Identify the key personnel from each firm at the corporate and field levels that will be assigned to this project during pre-construction and construction. Describe responsibilities and approximate amount of time each will devote to this project during every phase. Include resumes for key personnel. Resumes will not be included in the page count if they are located in an appendix.

c. Provide proof of valid State of Oregon licensure for all team members required to be licensed by state law. Licenses will not be included in the page count if they are located in an appendix.

d. Provide the Design Builder’s Accident Injury Incident Rate for the past five years. Describe any OSHA violations within the past five years.

3. Similar Project Experience (20 points)

Describe the Team’s recent experience in providing design and construction services for at least three (3) and no more than four (4) built projects that are relevant to the work contemplated, it is not necessary that team members worked together on similar projects. Relevant characteristics are public ownership; building size and scale; occupied residential buildings; extensive renovation and repair work; design quality; construction quality. Projects do not have to be design-build projects to be relevant. Work by all team members may be included. Include relevant project information such as location, ownership, cost, and MWESB, Section 3 and apprenticeship participation.

4. Project Approach (25 points)

Describe the Team’s approach to completing the work. Address both pre-construction and construction activities. This section provides an opportunity to present detailed project management strategies. Consider the following elements:

a. Architectural and engineering work.

b. Budget and Schedule Control.

c. Job Site Safety Plan. Include the Design Builder’s most recent Workers Compensation experience modifier.


e. Project Hand-Off. Including systems commissioning and O&M’s.

f. Resident Outreach and Coordination. Home Forward anticipates that a Home Forward Resident Coordinator will be assigned to this project to assist with resident relations.

5. Economic Participation (10 points)

Provide the framework of a plan that maximizes benefit to the community through M/W/ESB participation, Section 3 participation, workforce diversity, and apprenticeships during the construction phase. Describe the methods the team will use to:

a. Solicit and encourage participation by M/W/ESB and Section 3 subcontractors and suppliers;

b. Maximize employment of women and minorities; and
c. Establish, implement, and administer an apprenticeship program that complies with Home Forward’s Workforce Hiring and Training Program.

6. Fee (20 points)

Submit a fee proposal on the form provided as Exhibit B in accordance with the instructions provided below.

a. Programming Fee. A GMP for all pre-construction services related to programming only as described in AIA A141-2004. Provide an appropriate and adequate level of detail. Identify team members not yet selected as “TBD”.

b. Design-Builder Fee. A fee in the form of a percentage that will be applied to programming, construction documents, and construction services as described in Exhibit B of the AIA A141-2004. Costs to be included in this fee are described in Section 4.2.1 of the Agreement and Exhibit B of the Agreement.

c. Reimbursable Labor Costs. An estimate of reimbursable supervisory and administrative labor costs included as Cost of Work for construction services per sections B2.2.2 and B2.2.4 of Exhibit B of the AIA Agreement, Exhibit D. Base this information on the specific staff proposed for this project and include detail that describes job categories, time allocations and monthly or lump sum costs per position.

d. Hourly Rates. For the design professionals only. Hourly Rates will not be included in the page count if they are located in an appendix.

For purposes of the fee proposal, assume the following total construction cost and construction duration:

- Gladstone: $4,500,000, 12 month construction
- Multnomah: $1,500,000, 7 month construction

7. References (5 points)

For each similar project presented, provide current contact information for the client representative or another person familiar with the team member’s work and performance. Additional references associated with other projects may be included. At least two references should be public agencies. Verify that reference contact information is current prior to including it in the proposal. References will only be contacted for Design-Build Teams that are determined to be within the Competitive Range. References will not be included in the page count if they are located in an appendix.

B. Format Specifications

Each proposal shall comply with the following specifications:

1. 8.5” x 11” format, either vertical or horizontal.

2. Font size no smaller than 10 points.

3. Pages numbered sequentially. The proposal shall not exceed 15 pages. Pages in excess of 15 will not be evaluated, and only the first 15 pages will be evaluated. The page limit does not include front and back covers, section dividers, or items noted for inclusion in an appendix.

4. Submit only one (1) full color hard copy original of the proposal secured with a binder clip. Do not bind the original.

5. Submit only one (1) full color hard copy original of each of the following appendix items secured with a binder clip. Do not bind the appendices. These pages will not be counted within the page limit.
   a. Joint venture information, if applicable
   b. Resumes of key personnel
   c. References
   d. Hourly Rates (design professionals only)
e. Requested Contract Modifications, if applicable
f. Exhibit B, Certificate of Non-Discrimination

6. Submit only one (1) disc or USB flash drive with a single Portable Document Format file (PDF) of the proposal and a single PDF of all appendix items. Proposals should be designed to be compatible with the PDF format (no projecting tabs, no assumptions about color calibration, paper weight, etc.).

7. The original proposal and the disc shall be enclosed in a sealed envelope marked with the project title, RFP number and the name and address of the primary Team contact.

8. The original appendix items shall be enclosed in a separate sealed envelope marked with the project title, RFP number and the name and address of the primary Team contact.

9. Acknowledge receipt of all addenda within your cover letter. Proposals that do not acknowledge receipt of all addenda may be rejected.

IV. PROPOSAL EVALUATION & AWARD

A. Evaluation Process

The following process will be generally followed for the evaluation and award of a contract.

1. Determine if proposals meet minimum requirements;
2. Evaluate proposals;
3. Determine which proposals are in the Competitive Range;
4. Interviews for Proposers in the Competitive Range and final scoring;
5. Selection of candidate;
6. Home Forward Board of Commissioners approval of contract award.

B. Evaluation Criteria

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design-Build Team (Architect and Design Builder)</td>
<td>20</td>
</tr>
<tr>
<td>Similar Project Experience</td>
<td>20</td>
</tr>
<tr>
<td>Project Approach</td>
<td>25</td>
</tr>
<tr>
<td>Economic Participation</td>
<td>10</td>
</tr>
<tr>
<td>Fee</td>
<td>20</td>
</tr>
<tr>
<td>References (will be contacted and scored only for Design-Build Teams determined to be within the Competitive Range)</td>
<td>05</td>
</tr>
</tbody>
</table>

Home Forward reserves the right to investigate the qualifications of all Proposers and Team members under consideration and to confirm any part of the information furnished by a Proposer, or to require additional evidence of managerial, financial, technical, or other capabilities that are considered necessary for the successful performance of the work.

The Selection Committee will employ only those evaluation criteria set forth in this RFP or in addenda that may be issued prior to receipt of proposals or interviews.

C. Written Proposal Evaluation

A Selection Committee will be formed to evaluate responsive proposals and shall apply the evaluation criteria and scoring set forth above. The Committee will determine which proposals are in the Competitive Range. A Proposer that the Committee considers as not having a reasonable chance of being determined as a top ranked Proposer based on the proposal as submitted will
not be considered in the Competitive Range. The Committee may conclude that only one proposal is, or multiple proposals are, in the Competitive Range. The Committee may meet one or more times to discuss and rank proposals. Home Forward will provide written notice of the Competitive Range to all Proposers.

Proposals that do not adhere to all terms and conditions of this RFP or that are otherwise non-responsive may, in the sole discretion of Home Forward, be found to not meet the minimum requirements and may be rejected or given a low rating in the evaluation process.

D. Interviews of Proposers in Competitive Range, Scoring Revisions

The Proposers in the Competitive Range will be interviewed. Upon conclusion of the interviews, Committee members will revise scores, again based on the evaluation criteria and scoring set forth above. The Committee may meet one or more times to discuss interviews and revise scores. Interviews are not a separate evaluation criterion eligible for points, but the Committee may consider the interview when revising its scores. In addition, the Committee will evaluate references submitted by Proposers in the Competitive Range, which shall be worth five (5) points. The Committee will rank the Proposers in the Competitive Range and recommend the candidate determined to be most highly qualified based on final scores.

E. Award of Contract

Intent to Award letter(s) will be sent to each Proposer in the Competitive Range to notify proposers who the selection committee deemed most advantageous to Home Forward and who will be awarded the contract.

V. STATEMENTS & REQUIRED INFORMATION

A. Clarifications, Addenda, Protests of RFP Terms and Conditions

Proposers are cautioned not to make any assumptions as to the implied meaning or intent of any part of the RFP. Proposers should request clarification or additional information concerning the RFP in writing as soon as possible, but in no event will such requests be honored if received by Home Forward later than October 14, 2015, 2:00 PM. If, in Home Forward's opinion, additional information or interpretation is necessary, such information will be supplied in the form of an addendum that will be emailed to all individuals, businesses, etc., on the Prospective Proposers List. Such addenda shall have the same binding effect as though contained in the main body of the RFP. Corrections or clarifications made in any manner other than by written addendum addressed to all Proposers will not be binding on Home Forward and Proposers shall not rely thereon. Any prospective Proposer who contends that the terms and conditions of this RFP, the Contract, or any aspect of the selection process (1) will encourage favoritism in the award of the Contract for Services; (2) will substantially diminish competition; (3) will violate any other statute, regulation (including but not limited to Home Forward’s Public Contracting Rules), policy, or law of any kind; or (4) is ambiguous, insufficient, or unfair for any reason, must file a written protest to the RFP, which must be received by Home Forward in a timely manner. Failure to file a protest by this time will be deemed a waiver of any claim by any Proposer that the selection process violates any of the items (1)-(4) of the foregoing sentence.

B. Clarification of Proposals

Home Forward reserves the right to seek clarification of written Proposals. Proposers will provide additional clarifying information in a timely manner.

C. Protests

Following interviews and final scoring of Proposals in the Competitive Range, Home Forward will issue a Notice of Intent to Award letter to each Proposer in the Competitive Range.

1. Competitive Range Protest and Intent to Award Protest. An adversely affected or aggrieved Proposer may submit a written protest of Home Forward’s decision regarding the Competitive Range and/or the Notice of Intent to Award. The protest shall specify the grounds upon which the protest is based. To be adversely-affected or aggrieved, the Proposer must demonstrate that but for Home Forward’s (a) error in failing to reject a non-responsive higher-ranked proposal, or (b) substantial violation of a provision in the RFP or
applicable procurement statute or administrative rule, or (c) error in evaluating and scoring
the protesting party’s Proposal, the protesting party would have been awarded the Contract.

2. Latest Date to Protest. Protests must be received by Home Forward no later than seven (7)
calendar days from the date of the Home Forward’s Competitive Range Notice or Notice of
Intent to Award, unless indicated otherwise in the letter.

3. Protest Delivery. Protests shall be delivered in hard copy to the address below no later than
2:00PM on the protest due date. Late protests shall not be considered. Any protests of this
solicitation should be sent to:

Berit Stevenson
Purchasing & Contracts Manager
Home Forward
135 SW Ash Street, 5th Floor
Portland OR 97204

4. Hearing. At the request of the protesting party, a hearing will be conducted before the
Manager for Purchasing and Contracts or other person so delegated by Home Forward’s
Executive Director within seven calendar days after submission of the written protest. The
Manager for Purchasing and Contracts or other person so delegated by Home Forward’s
Executive Director shall consider a written protest and issue a written decision on the protest.
A protest that is filed in an untimely manner or that fails to allege facts that support a finding
that the protestor is an aggrieved Proposer will not be considered.

D. Selection of Subconsultants, Subcontractors, Suppliers
Home Forward reserves the right to accept or reject any subconsultant, subcontractor or supplier.

E. Cancellation or Rejection, Waiver of Irregularities
Home Forward reserves the right to cancel this solicitation or reject any or all proposals in whole
or in part, and to cancel award of this Contract at any time before execution of the Contract by
both parties if cancellation or rejection is deemed to be in Home Forward’s best interest. In no
event shall Home Forward have any liability for cancellation of award or rejection of Proposals.
Home Forward reserves the right to waive irregularities or deficiencies in a Proposal if such
waiver is in the best interest of Home Forward.

F. Cost of Proposal Preparation
Proposers responding to this RFP do so solely at their own expense. Under no circumstances will
Home Forward be responsible for or reimburse Proposers for any costs incurred in the
preparation and presentation of Proposals or for any related expenses or consequential
damages.

G. References
Home Forward reserves the right to investigate references including references in addition to
those listed in the response to this RFP. Investigation may include past performance of the
Proposer with respect to the successful performance of similar projects, compliance with
specifications and contractual obligations, completion or delivery of a project on schedule or on
budget, and lawful payment of subcontractors, employees, and workers. Supportive references
must be furnished if demanded by Home Forward.

H. Confidentiality
All information submitted by Proposers shall be a public record and subject to disclosure pursuant
to the Oregon Public Records Act, except such portions of the Proposal for which Proposer
requests exception from disclosure consistent with Oregon Law. The Proposal should identify any
confidential information that the Proposer contends is exempt from disclosure under ORS
192.501 or 192.502. Home Forward will endeavor in good faith to honor appropriate requests for
exemption from disclosure, but Home Forward reserves exclusive discretion to determine
whether information qualifies for a statutory exemption. Home Forward’s obligation under this
section shall survive selection of the Design-Build Contractor.
I. Withdrawal of Proposals

Any Proposal may be withdrawn by delivering a written request to Home Forward at any time prior to the time set for opening Proposals. The request shall be executed by a duly authorized representative of the withdrawing Proposer.

J. Reservation of Rights Concerning RFP

Home Forward retains exclusive discretion and reserves the right to determine:

1. Whether a Proposal is complete and complies with the provisions of this RFP;
2. Whether a Proposer should be allowed to submit supplemental information;
3. Whether irregularities or deficiencies in a Proposal should be waived;
4. Whether to seek clarifications of a Proposal or request additional information necessary to permit Home Forward to evaluate, rank, and select the most qualified Proposer;
5. Whether the Selection Committee should reconvene at any time to collectively review the scoring and make changes the Committee deems appropriate.

VI. EXHIBITS

A. Certification of Non-Discrimination (submission requirement)
B. Fee Proposal Form (submission requirement)
C. Economic Participation Program Requirements
D. AIA A141-2004 Design-Build Agreement
E. Background Information for Gladstone Square (E1 – E6)
F. Background Information for Multnomah Manor (F1 – F4)
G. HUD Technical Salary Wage Determination

- END -
Exhibit A.
Certification of Non-Discrimination
(submission requirement)
CERTIFICATION OF NON-DISCRIMINATION

The undersigned proposer is aware that, under ORS 279A.110, no proposer who contracts with a public contracting agency may discriminate against minority, women or emerging small businesses in the awarding of subcontracts. Accordingly, the undersigned proposer hereby certifies as part of its proposal submission that it has not and will not discriminate against any minority, women, or emerging small business enterprises in obtaining any of the required subcontracts for this Project.

Proposer’s Name: ________________________________
Signed By: ________________________________
Its: ________________________________
Dated: ________________________________
Exhibit B.  
Fee Proposal Form (submission requirement)
## FEE PROPOSAL FORM

### (Submission Requirement)

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Construction Budget</strong></td>
<td>$6,000,000</td>
</tr>
<tr>
<td><strong>Initial Guaranteed Maximum Price (GMP)</strong></td>
<td></td>
</tr>
<tr>
<td>Programming phase fee only. Provide an appropriate and adequate level of detail on a separate sheet.</td>
<td></td>
</tr>
<tr>
<td>1) Design &amp; Engineering Team</td>
<td>$</td>
</tr>
<tr>
<td>2) Design-Builder</td>
<td>$</td>
</tr>
<tr>
<td><strong>Construction Documents Amendment</strong></td>
<td></td>
</tr>
<tr>
<td>Construction documents phase fee only.</td>
<td>Do not provide an estimated cost for this work. An increase to the GMP will be negotiated when final scope of work is known.</td>
</tr>
<tr>
<td><strong>Construction Services Amendment</strong></td>
<td></td>
</tr>
<tr>
<td>Construction services phase fee only.</td>
<td>Do not provide an estimated cost for this work. An increase to the GMP will be negotiated when final scope of work is known.</td>
</tr>
<tr>
<td><strong>Design-Builder Fee</strong></td>
<td></td>
</tr>
<tr>
<td>This fee is applied to all pre-construction and construction GMPs and is described as a percentage of the GMP. This fee is further described in the AIA A141-2004 Design-Build Agreement, Section 4.2.1.</td>
<td>Total %</td>
</tr>
<tr>
<td><strong>Reimbursable Labor Costs</strong></td>
<td></td>
</tr>
<tr>
<td>Estimate of reimbursable supervisory and administrative labor costs included as cost of work for the construction phase only. These costs are further described in Exhibit B to the AIA A141-2004 Design-Build Agreement, Sections B2.2.2 and B2.2.4. Provide an appropriate and adequate level of detail on a separate sheet.</td>
<td>$</td>
</tr>
</tbody>
</table>

Signature: __________________________
Name: __________________________
Title: __________________________
Date: __________________________
Exhibit C.
Economic Participation Program Requirements
Workforce Training & Hiring Program
With Section 3 Requirements
Contractor Checklist

The following Workforce Training & Hiring Program requirements are a summary of the key contractual obligations of contractors working on Home Forward construction projects. It is the Contractor’s responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for Home Forward.

CHECKLIST:
I. Prime Contractor:
   A. Submit Projected Hiring Needs form (Exhibit 2) to Contract Compliance Specialist within 15 calendar days after bid opening or prior to contract award, whichever occurs first.
   
   B. Ensure compliance by all subcontractors with subcontracts of $100,000 or more, and provide them with a copy of the Workforce Training & Hiring Program specifications.

II. Subcontractors, at all tiers, with contracts of $100,000 or more:
   A. Submit Projected Hiring Needs form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.

III. Prime Contractor and all subcontractors with contracts of $100,000 or more must:
   A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industry (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI at (971) 673-0760 or the City of Portland at (503) 823-6888 for information on how to become a BOLI registered training agent.
   
   B. Throughout the duration of the project:
      1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of $100,000 or more are worked by State-registered apprentices.
      2. For any new hires, document efforts to employ Section 3 Residents by seeking referrals from WorkSource Portland Metro’s CAWS Hiring Pool.
      3. Make all reasonable and necessary efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of a diverse workforce through the assistance of WorkSource Portland Metro, as described herein.
      4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
      5. When an apprentice is hired, notify the City’s Contract Compliance Specialist at (503) 823-6888.
      6. Submit the Monthly Employment Report (Exhibit 4) by the 5th of each month to the City’s Contract Compliance Specialist. This report can be submitted via email to mer@portlandoregon.gov.

Refer questions or requests for additional information to the City’s Contract Compliance Specialist, Cathleen Massier, at (503) 823-6888.
WORKFORCE TRAINING AND HIRING PROGRAM
Specifications

I. PURPOSE
A. General Program Description

The Portland City Council has directed that all Bureaus and Departments maximize apprenticeship and employment opportunities for minorities, women and economically disadvantaged workers in the construction trades (ref. City Ordinance No. 167374, Feb. 16, 1994 and County Ordinance No. 861, July 11, 1996). Their goals include a) ensuring that the City and County do business with contractors whose workforce reflects the diversity of the workforce found in the city of Portland and Multnomah County, and b) that their contracting dollars provide fair and equal opportunities to the jurisdictions' diverse populations.

The Workforce Training & Hiring Program is administered for Home Forward by the City of Portland, Bureau of Internal Business Services, Procurement Services office (Compliance Agency). The Workforce Training & Hiring Program applies to all prime contracts of $200,000 or more and to each subcontractor having a subcontract of $100,000 or more on the project.

Contractors shall make reasonable efforts to ensure that their workforce reflects the diversity of the City of Portland.

The Workforce Training & Hiring Program is an important part of meeting the Section 3 requirements of the Housing and Urban Development Act of 1968. Section 3 requires that when employment or contracting opportunities are generated by HUD-funded projects that preference is given to low-income persons and businesses residing in the community where the project is located.

For purposes of the Workforce Training & Hiring Program, the following definitions shall apply:

The “Compliance Agency” shall mean the City of Portland, Bureau of Internal Business Services, Procurement Services

The “Contract” shall mean the Contract awarded as a result of these bid specifications

The “Contractor” shall mean the Prime Contractor to whom a Contract is awarded, and any subcontractors with subcontracts of $100,000 or more

The term “minorities” shall include members of either sex who are African-Americans, Hispanic Americans, Asian or Pacific Islanders, Native Americans or Alaskan Native Americans

“Owner” shall mean the government agency that awarded the Contract or leveraged public involvement in the project through a loan, or development agreement

The“Project” shall include all work performed pursuant to the Contract

“New Hire” shall mean any employee that an individual company hires after the effective date of signing the Section 3 Statement of Commitment.
Section 3 Resident –
   i. Residents of Public and Indian Housing; or
   ii. An individual who resides in the metropolitan or nonmetropolitan county, in which the proposed contract will be performed and who is defined by HUD as low-or very-low income (80% of the area median income or less, based on household size). Income guidelines, for applicable counties (Clark, Columbia, Washington, Multnomah, Clackamas, Yamhill & Skamania) are listed, below:

<table>
<thead>
<tr>
<th>Number in Household</th>
<th>Annual Household Income Less Than</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$41,200</td>
</tr>
<tr>
<td>2</td>
<td>$47,050</td>
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<td>3</td>
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<td>$63,550</td>
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<tr>
<td>6</td>
<td>$68,250</td>
</tr>
<tr>
<td>7</td>
<td>$72,950</td>
</tr>
<tr>
<td>8</td>
<td>$77,650</td>
</tr>
</tbody>
</table>

II. ACTIONS REQUIRED FOR AWARD

The Contractor shall thoroughly read this Workforce Program specification and commit to perform all requirements described herein. The Contractor shall submit Exhibit 2, Projected Hiring Needs prior to award of the Contract, or as otherwise designated. The Exhibit shall provide complete information. The Projected Hiring Needs must demonstrate how the workforce on this project will fulfill all program requirements, including utilization of apprentices and Section 3 requirements.

III. ACTIONS NECESSARY TO SATISFY CONTRACT REQUIREMENTS

A. Make Reasonable Efforts to Have Diverse Workforce

The Contractor must make all necessary and reasonable efforts to have a workforce that reflects the diversity of the City of Portland and Multnomah County and is reasonably consistent with the availability of qualified women and minorities based on Equal Employment Opportunity data supplied by the City. This requirement is in addition to any other requirement on this portion of the contract.

B. Make Reasonable Efforts to Employ Section 3 Residents

1. The Contractor shall document efforts to employ Section 3 residents.
2. Provide appropriate employment outreach signage at the project site and throughout the project area to inform low and very low income neighborhood residents of employment opportunities.

C. Ensure Compliance by Subcontractors

1. The PRIME shall ensure that each subcontractor having a subcontract of $100,000 or more, at all tiers, shall comply with all of the provisions of the Workforce Training & Hiring Program specifications. Contractors shall include in their bid all costs associated with this requirement. No change order will be executed in order for the contractor to comply with this section.
2. The PRIME shall provide a copy of this Workforce Training & Hiring Program specification to all subcontractors with contracts of $100,000 or more executed for the project.

D. Register as a Training Agent

The Contractor shall register with the Oregon Bureau of Labor and Industries (BOLI) as a Training Agent and ensure that all subcontractors who have contracts in the amount of $100,000 or more are registered as Training Agents. However, registration as a Training Agent in a specific trade is not required if there are no training opportunities in that trade on the project, based on the maximum ratio allowed by BOLI.

1. Training programs approved by and registered with BOLI may be used to fulfill training requirements under the Workforce Specifications. Other training alternatives must be approved by the City’s Workforce Program Coordinator. Hours performed in crafts, which are not apprenticeable occupations are exempt from the training requirements.

2. Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations are exempt from the training requirements.

3. Exemptions to the training requirements must be approved by the Compliance Agency in writing prior to starting work on the project. Written requests for exemptions related to the training requirements will be considered by the Compliance Agency during the course of the project, only for extreme circumstances, and must also be approved in writing. All requests to exempt all or any portion of the work on a project shall be submitted to the Compliance Agency (14) days before any work on the project begins. All exemptions must be approved by the Workforce Program Coordinator.

E. Submit Documentation

The PRIME shall submit documentation regarding the following subjects to the Compliance Agency. The Compliance Agency's failure to object to documentation submitted by the Contractor or subcontractor shall not relieve them of the requirements of this section.

1. Training Agent Status
   The PRIME and all required subcontractors must submit proof to the Compliance Agency that they are registered Training Agents with BOLI prior to beginning any work on the project.

2. Subcontractor Workforce Information
   Exhibit 2, Projected Hiring Needs, must also be submitted for each subcontractor with a contract of $100,000 or more, prior to beginning work on the project or within 5 calendar days after the execution of the applicable subcontract, whichever occurs first. The Exhibit 2 should demonstrate how the subcontractor will actively solicit and give preference to qualified Section 3 residents, when hiring workers for this project. Work by a subcontractor shall not begin prior to submission of such documentation.

3. Prime and Subcontractor Reports After Work Begins
The Monthly Employment Report (Exhibit 4) must be submitted by the PRIME and any subcontractor having a subcontract of $100,000 or more to the Compliance Agency by the 5th day of each month. The Contractor shall follow the submittal instructions on the report form. All hours subject to prevailing wage rates on public projects, in addition to supervisors, foremen, and superintendents, shall be reported on Exhibit 4.

4. A copy of certified payroll reports may be requested by the Compliance Agency to verify information in the Report. The payroll reports shall be provided within 7 days of the date when the contractor receives the request for the payroll.

5. Any employee reported as a Section 3 Resident on Monthly Employment Reports must complete the Section 3 Resident Certification Form (Exhibit 6) and provide supporting documentation. Procurement Services will then verify whether or not employees are Section 3 eligible.

F. Use of Apprentices

The PRIME shall:

1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed on the project by the PRIME, and subcontractors with subcontracts of $100,000 or more, are worked by state registered apprentices throughout the duration of the project. Contractors and subcontractors shall fulfill the 20% apprenticeship hour’s requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program.

2. Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations.

3. Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions.

4. Notify the Compliance Agency when an apprentice is hired for this project.

5. Count apprentice hours as follows:

   (a) Hours worked on the project by apprentices enrolled in state-approved apprenticeship programs. If the Contractor is unable to fulfill its 20% requirement, then the Contractor may also use methods (b) and (c) below;

   (b) Hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the project, but only if the apprentice is rehired by the same employer after completion of training; and

   (c) Hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice’s completion date.

G. Use Apprenticeship Programs for Referrals

Contractors must follow all of these steps in seeking apprentice referrals:
1. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are in enrolled in the apprenticeship program and who meet the definition of a Section 3 Resident using Exhibit 3;

2. If referrals are not available, contact WorkSource Portland Metro to access the CAWS Hiring Pool, as a source for requesting apprentices. Fill out the attached Request for Apprentice form (Exhibit 3); and

3. Request female or minority apprentices from the union or open shop apprenticeship program if such an action will help remedy historical underutilization in the Contractor’s workforce; and

4. Keep a written record of the request for apprentices, including name of contact person at apprenticeship program, phone, fax, date, time, job location, start date, etc.; and

NOTE: Contractors may contact the Contract Compliance Specialist for assistance regarding the apprentice referral process.

H. Utilize Community Organizations When Recruiting For Any Positions on this Project

When hiring, requesting, recruiting, or replacing workers for this project, the Contractor shall:

1. Actively solicit and give preference to qualified Section 3 residents.

2. Make reasonable and necessary efforts to employ a diverse workforce. Such actions should include requests for minority and female applicants. Contractors are notified that direct hiring of employees (such as "walk-ons") without providing notification of that job opportunity, in accordance with paragraph H.3. below, may not constitute a reasonable effort.

3. Document its employment efforts. Documentation should be sufficient to establish the Contractor’s efforts, and should include:
   a) Requests to union halls for signatory contractors;
   b) Requests to union or open shop apprenticeship programs;
   c) Requests to community resources that assist contractors with recruitment and referral of workers.

Documentation will be requested by the Compliance Agency from Contractors who are not following their Section 3 Hiring Plan, if it appears that the Contractor has not made reasonable and necessary efforts. When requested, the Contractor shall provide that documentation to the Compliance Agency within 7 calendar days.

IV. CONSEQUENCES OF NONCOMPLIANCE WITH WORKFORCE REQUIREMENTS

The Owner’s commitment to this program is reflected, in part, by the cost of administering the program. Failure to meet the requirements of this section of the specifications negates such funding and impairs the Owner’s efforts to promote workforce diversity and to provide fair and equal opportunities to the public as a whole as a result of the expenditure of public funds. Therefore, the parties mutually agree that failure to meet the requirements of this section of the specifications, including but not limited to the submission of required documentation, constitutes a material breach of contract.
In the event of a breach of this section of the contract, the Compliance Agency may take any or all of the following actions:

A. Withholding Progress Payments

The Owner may withhold all or part of any progress payment or payments until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the contractor shall not be entitled to interest on said payments.

If a subcontractor(s) is responsible for noncompliance with the Workforce Training & Hiring Program requirements, the Compliance Agency may choose to withhold only their portion of the progress payment.

B. Retain sums as damages for failure to comply with Workforce Program Specifications

The parties mutually agree that it would be difficult, if not impossible, to assess the actual damage incurred by the Compliance Agency for the Contractor's failure to comply with the Workforce Specifications. The parties further agree that it is difficult, if not impossible, to determine the cost to the Compliance Agency when workforce opportunities are not provided.

Therefore, if the Contractor fails to comply with the workforce provisions of this contract, the Contractor agrees to pay the sum of $250 per day for each day of missed apprenticeship hours or until the breach of contract is remedied. Damages may be assessed for failure to meet the 20% apprenticeship training requirements by the prime and each required subcontractor in each trade employed. Damages will be calculated based on the training hours not provided to the Compliance Agency at a rate of $250 per day. For example, if the Contractor was required to provide 200 hours of carpenter training (20% of 1,000 total carpenter hours), and the Contractor only provided 150 training hours, then the difference (50 hours) is divided by 8 (one day of work) to determine number of days of undelivered training. (50/8 = 6.25 x $250 = $1,562.5).

Damages may also be assessed for failure to fulfill the inclusive hiring process described in Section III, subsections F & G.

These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by the Contractor's failure to comply with the Workforce Training & Hiring Program provisions of the contract.

C. Retain sums as liquidated damages for delay

The PRIME agrees that any delay to the specified contract time as a result of the PRIME’s failure to comply with the requirements of these specifications shall subject the PRIME to the amount of liquidated damages specified elsewhere in the Contract.

D. Notification of Possible Debarment

By executing this contract, the contractor agrees that it has been notified that failure to comply with the requirements of this portion of the contract may lead to the Contractor's disqualification from bidding on and receiving other Compliance Agency contracts for a minimum of two years and a maximum of three years based on the violation.
E. Other Remedies

The remedies that are noted above do not limit any other remedies available to the Compliance Agency in the event that the Contractor fails to meet the requirements of the Workforce Specifications.

V. REVIEW OF RECORDS

In the event that the Compliance Agency reasonably believes that a violation of the requirements of this section has occurred, the Compliance Agency is entitled to review the books and records of the Contractor and any subcontractors employed on the project to whom the requirements of this section are applicable to determine whether such a violation has or has not occurred.

In the event that the Contractor or any subcontractor fails to provide the books and records for inspection and copying when requested, such failure shall constitute a material breach of this contract and permit the imposition of any of the remedies noted in Section IV above, including the withholding of all or part of any progress payment.

ATTACHMENTS:
Exhibit 1: Recommended Recruitment & Retention Practices
Exhibit 2: Projected Hiring Needs
Exhibit 3: Request For Apprentice form
Exhibit 4: Monthly Employment/Training Report
Exhibit 5: Ratios
Exhibit 6: Section 3 Resident Certification Form

Questions Regarding Apprenticeship:

Bureau of Labor & Industries
Apprenticeship & Training Division
800 N.E. Oregon St. # 32
Portland, OR 97232
(971) 673-0760

Questions Regarding the Workforce Training & Hiring Program:

Cathleen Massier
City of Portland
1120 S.W. Fifth Ave., Room 750
Portland, OR 97204
(503) 823-6888
cathleen.massier@portlandoregon.gov

CAWS Hiring Pool

Please contact the Account Rep listed, below, to access the CAWS Hiring Pool:

Desirae Rickman
WorkSource Portland Metro Central
30 N. Webster St., Suite E
Portland, OR 97217
Phone (503) 280-6060
EXHIBIT 1

RECOMMENDED GOOD FAITH RECRUITMENT & RETENTION PRACTICES

A. Recruitment Efforts
Good faith recruitment efforts are those intense, aggressive, sincere, and result-oriented actions taken by the Contractor designed to accomplish the objectives of the Workforce Training & Hiring Program, and Equal Employment Opportunity Programs. Good faith recruitment efforts include, but are not limited to:

1. Work aggressively with Contractor’s Joint Apprenticeship Training Committee (JATC) to recruit minorities, women and disadvantaged individuals. Provide evidence of these efforts.
2. Assist the JATC by conducting a workshop with minority and women employees to enlist their assistance as recruiters and request their ideas on how to increase employment of underutilized groups.
3. Support the efforts of the Contractor’s JATC by giving all apprentices referred to the Contractor a fair chance to perform successfully, allowing for possible lack of previous experience. Recognize that the Contractor is responsible for providing on-the-job training, and that all apprentices should not be expected to have previous experience.
4. Participate in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades.
5. Allow scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades.
6. Keep applications of those not selected for an opening. Contact when opening occurs.

B. Retention Efforts
The Contractor shall endeavor to retain minorities, women, and disadvantaged individuals by implementing steps such as the following:

1. Maintain a harassment-free work place.
2. Ensure that employees are knowledgeable about the company’s policies if they need to report a harassment problem.
3. Make reasonable attempts to keep apprentices working and train them in all work processes described in the apprenticeship standards.
4. Review and disseminate, at least annually, the company’s EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions.
5. Conduct a review, at least annually, of all supervisors’ adherence to and performance under the Contractor’s EEO policies and affirmative action obligations.
6. Take steps to reduce feelings of isolation among minorities and women to curb hostile attitudes and behavior (e.g., have several minorities and women at the job site, provide access to support group system).
7. Provide adequate toilet facilities for women on the job site.
8. Match minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.
EXHIBIT 2
PROJECTED HIRING NEEDS / SECTION 3 HIRING PLAN

Instructions
1. This form must be completed by the prime and each subcontractor with a subcontract of $100,000 or more.
2. Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices, by trade.
3. This workforce plan must demonstrate how your company will fulfill all Workforce Training & Hiring Program requirements, including utilization of apprentices and Section 3 residents.

<table>
<thead>
<tr>
<th>Project Name:</th>
<th>Contract Amount:</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company Name:</td>
<td>Federal Tax ID:</td>
<td></td>
</tr>
<tr>
<td>Prime Contractor:</td>
<td>Subcontractor:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List all Trades to be used on this Project</th>
<th>Total # of Journey Workers</th>
<th>Total # of Apprentices</th>
<th>Total # of Female Workers</th>
<th>Total # of Minority Workers</th>
<th># of New Hires</th>
<th>Section 3 Hire Anticipated?</th>
<th>Anticipated Start Date</th>
<th>Estimated Total Hours (all workers in each trade)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
<td>Yes</td>
</tr>
</tbody>
</table>

TOTAL SECTION 3 HIRES ANTICIPATED: A minimum of 30% of new hires is required to be Section 3

NOTE: IF NO NEW HIRES ARE EXPECTED, AN EXPLANATION MUST BE PROVIDED BELOW.

Please list the apprentices who will work on this project. If you need more space, attach an additional sheet of paper. The Owner must approve all apprentices on the project.

<table>
<thead>
<tr>
<th>Name of Apprentice</th>
<th>Trade</th>
<th>Race</th>
<th>Gender</th>
<th>Date of Hire</th>
<th>STAFF USE ONLY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

If no current apprentices, indicate when and how they will be hired:

Person in your company who does hiring:

CCB# Phone: Fax:
e-mail address for submitting Monthly Employment Reports via e-mail:

Are you a registered Training Agent: Yes
Are you a Union or Open Shop Contractor: Union
With which JATCs are you registered to train apprentices?

Apprentice committee or union contact person who dispatches apprentices to your company:

Name: Phone: Fax:
Name: Phone: Fax:

Prepared By: (sign and print) Date:

Send to: Cathleen Massier, City of Portland, Bureau of Internal Business Services, Procurement Services
BY FAX (503) 823-5539 OR EMAIL Cathleen.Massier@portlandoregon.gov
EXHIBIT 3

REQUEST FOR APPRENTICE
For projects with Section 3 Requirements

To the Contractor:
Please complete and send this form to the applicable apprentice program with a copy to:
Cathleen Massier   Email: Cathleen.Massier@portlandoregon.gov   Fax: 503.823.5539

Date: ________
To: ________  Fax: ________
From: ________  Contact: ________
Phone: ________  Fax: ________

Re: SECTION 3 REQUEST FOR APPRENTICE

As a registered training agent, I am using this form to request referral of an apprentice for employment with my company in cooperation with the Workforce Training & Hiring Program AND Section 3 of the HUD Act. Therefore, please refer individuals that meet the qualification of a Section 3 resident. A Section 3 resident is a) either a resident of public or Indian housing, or b) meets the income guidelines below, and resides in Clark, Columbia, Washington, Multnomah, Clackamas, Yamhill, or Skamania County.

<table>
<thead>
<tr>
<th># in Household</th>
<th>Annual Household Income Less Than</th>
<th># in Household</th>
<th>Annual Household Income Less Than</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$41,200</td>
<td>5</td>
<td>$63,550</td>
</tr>
<tr>
<td>2</td>
<td>$47,050</td>
<td>6</td>
<td>$68,250</td>
</tr>
<tr>
<td>3</td>
<td>$52,950</td>
<td>7</td>
<td>$72,950</td>
</tr>
<tr>
<td>4</td>
<td>$58,800</td>
<td>8</td>
<td>$77,650</td>
</tr>
</tbody>
</table>

Apprentice referral is needed by this date: ________  Expected Length of Employment: ________

Project Name: ________  Job Site Address: ________  Compliance Agency: ________

# of Apprentices: ________  Trade/Occupation: ________

Minimum qualifications (if different from apprenticeship standards): ________

Safety Needs: □ Hard Hat  □ Gloves  □ Hard-toed boots  □ Other ________

Referral Notice
Please complete and fax to the Workforce Training & Hiring Program @ 503.823.5539

JATC Use Only

☐ We were able to dispatch an apprentice meeting the guidelines above:

  Name of apprentice: ________  Race: ________  Gender: ________

☐ We were unable to dispatch an apprentice meeting the guidelines above. A copy of this request has been forwarded to WorkSource.

WorkSource Use Only

☐ We were able to refer the following Section 3 eligible resident(s):

  Name: ________  Name: ________  Name: ________
EXHIBIT 4

MONTHLY EMPLOYMENT REPORT
(Document will be emailed prior to start of work)

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMPANY NAME</td>
<td>FEDERAL TAX ID</td>
<td>MONTH ENDING</td>
<td>BIDNO</td>
<td>PRIME?</td>
<td>FINAL REPORT?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Monthly Employment/Training Report must be completed by the prime contractor and all subcontractors with contracts of $100,000 or more. The prime contractor shall submit a report for its workforce on the project. Each subcontractor shall separately submit a report for its workforce on the project. It is the responsibility of the prime contractor to assure that all subcontractors submit Monthly Employment/Training Reports in a timely manner.

Complete the form on the worksheet titled MER (third tab), filling in all categories for each employee working on the project during the reporting period.

Email the completed worksheet as an Excel attachment to mur-mer@portlandoregon.gov no later than the 5th of each month for work performed during the previous month. The emailed worksheet must be titled mer.xls. Please do not change the worksheet's layout or contents.

Please direct questions about electronic data submission to the same email address.

REVISED 3.11.11

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
<th>I</th>
</tr>
</thead>
<tbody>
<tr>
<td>FEDID</td>
<td>MONTH ENDING</td>
<td>BIDNO</td>
<td>LASTNAME</td>
<td>FIRSTNAME</td>
<td>ZIP</td>
<td>SSN</td>
<td>JOBCLASS</td>
<td>LEVEL</td>
</tr>
<tr>
<td>123456789</td>
<td>8/31/2002</td>
<td>100758</td>
<td>DOE</td>
<td>JANE</td>
<td>97214</td>
<td>9874</td>
<td>1010</td>
<td>A</td>
</tr>
<tr>
<td>123456789</td>
<td>8/31/2002</td>
<td>100758</td>
<td>DOE</td>
<td>JOHN</td>
<td>97204</td>
<td>7489</td>
<td>1018</td>
<td>J</td>
</tr>
</tbody>
</table>
### Ratios

The following data may be used to determine the ratio of apprentices on a jobsite in proportion to journey-level workers on the jobsite. The ratios that apply are those listed in the standards of the apprenticeship committee to which the Training Agent (Contractor) is a member. If the applicable trade is not listed, contact the Bureau of Labor & Industries, or your apprenticeship committee.

*Ratios may change pursuant to actions taken by the Oregon State Apprenticeship & Training Council. For the purposes of this contract, the ratios approved by BOLI on the date the bid is advertised shall prevail.*

<table>
<thead>
<tr>
<th>Trade</th>
<th>1st Apprentice</th>
<th>2nd Apprentice</th>
<th>Max</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asbestos/Insulation Workers</td>
<td>1:1</td>
<td>1:4</td>
<td></td>
</tr>
<tr>
<td>Brick/Marble/Terrazzo/Tile Finisher</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Bricklayer/Masonry</td>
<td>1:1</td>
<td>1:5</td>
<td></td>
</tr>
<tr>
<td>Carpenter</td>
<td>1:1</td>
<td>1:1 (1:5 union)</td>
<td>1:1 for 1st 3; Additional apprentices authorized at 1:5</td>
</tr>
<tr>
<td>Carpet Installers/Floorlayers</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Cement Masons</td>
<td>1:2</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Drywall Applicator (Ext/Int. Specialist)</td>
<td>1:3</td>
<td>1:5</td>
<td></td>
</tr>
<tr>
<td>Drywall Finisher (Taper)</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Electricians</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inside</td>
<td>1:1</td>
<td>1:2 (1:3 union)</td>
<td></td>
</tr>
<tr>
<td>Outside</td>
<td>1:6</td>
<td>1:6</td>
<td></td>
</tr>
<tr>
<td>Ltd. Energy/Ltd. Residential</td>
<td>1:1</td>
<td>1:2 (1:1 union)</td>
<td></td>
</tr>
<tr>
<td>Construction Lineman</td>
<td>1:1</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Ltd. Maintenance</td>
<td>1:1</td>
<td>1:2</td>
<td></td>
</tr>
<tr>
<td>Stationary Engineer</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Elevator Contractor</td>
<td>1:1</td>
<td>1:1</td>
<td>1:2 thereafter</td>
</tr>
<tr>
<td>Environmental Control (HVAC)</td>
<td>1:1</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Glazier</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Hod Carrier/Mason Tender</td>
<td>1:1</td>
<td>1:3 (1:5 union)</td>
<td></td>
</tr>
<tr>
<td>Ironworker</td>
<td>1:1</td>
<td>1:6</td>
<td></td>
</tr>
<tr>
<td>Laborer (Construction)</td>
<td>1:1</td>
<td>1:3 (1:5 union)</td>
<td></td>
</tr>
<tr>
<td>Maintenance Mechanic</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Millwright</td>
<td>1:3 (1:5 union)</td>
<td>1:3 (1:5 union)</td>
<td></td>
</tr>
<tr>
<td>Operating Engineer</td>
<td>1:1 (1:1-4 union)</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Painter</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Pile Driver</td>
<td>1:3</td>
<td>1:5</td>
<td></td>
</tr>
<tr>
<td>Pipe Fitter/Steam Fitter</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Plasterer</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Plumber</td>
<td>1:1</td>
<td>1:1</td>
<td>1:3 thereafter</td>
</tr>
<tr>
<td>Roofer</td>
<td>1:1</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Sheet Metal Worker</td>
<td>1:1</td>
<td>1:1</td>
<td>1:3 thereafter</td>
</tr>
<tr>
<td>Sprinkler Fitter</td>
<td>1:1</td>
<td>1:1</td>
<td></td>
</tr>
<tr>
<td>Structural Fabricator</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Terrazzo Worker</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Tile/Marble Setter</td>
<td>1:1</td>
<td>1:3</td>
<td></td>
</tr>
<tr>
<td>Truck Driver (Heavy)</td>
<td>1:1</td>
<td>1:1</td>
<td></td>
</tr>
</tbody>
</table>
SECTION 3 RESIDENT CERTIFICATION

Any employee claiming Section 3 Resident status must complete this form. Information provided on this form shall remain confidential and shall be used for certification and reporting purposes only. Please fax or email this form to (503) 823-5539 Cathleen.Massier@portlandoregon.gov

Name:
Address: City: State: Zip:
Employer Name: Hire Date: Position:

Section 3 Criteria: A Section 3 qualified person must:

a) Be a resident of public housing; or
b) Live in the metropolitan statistical area (MSA) covering Clark, Columbia, Multnomah, Clackamas, Washington, Skamania and Yamhill counties, and
c) Earn no more than the following amounts for the respective counties, as follows:

<table>
<thead>
<tr>
<th>Number in Household</th>
<th>Annual Household Income Less Than</th>
<th>Number in Household</th>
<th>Annual Household Income Less Than</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$41,200</td>
<td>5</td>
<td>$63,550</td>
</tr>
<tr>
<td>2</td>
<td>$47,050</td>
<td>6</td>
<td>$68,250</td>
</tr>
<tr>
<td>3</td>
<td>$52,950</td>
<td>7</td>
<td>$72,950</td>
</tr>
<tr>
<td>4</td>
<td>$58,800</td>
<td>8</td>
<td>$77,650</td>
</tr>
</tbody>
</table>

Based on the criteria above, please select from the following:

☐ I am a resident in a Home Forward property. Please provide Property Name: ______

☐ I am currently a participant in a Section 8 Program located within the MSA. Please fill-in the following:

There are a total of ____ members in my family. The total number of deductions claimed on my Federal income tax return from last year was ____. The total gross income for my family, from all sources, from all related family members was $____.

☐ I am a participant in Portland Youthbuilders. Please attach supporting documentation.

☐ I am a resident living within the MSA, and I meet the income guidelines stated above. My current gross annual income is ____. There are a total of ____ members in my family.

If you are claiming income eligibility for more than (1) in household, please provide name and date of birth, for each household member.

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<tr>
<td></td>
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<td></td>
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<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The source(s) of my total annual household income is/are (fill-out table, below):

<table>
<thead>
<tr>
<th>Source of Income</th>
<th>Head of Household</th>
<th>Spouse (if Applicable)</th>
<th>Other Adult members- 18 or older (if applicable)</th>
<th>Other Adult members- 18 or older (if applicable)</th>
<th>Other Adult members- 18 or older (if applicable)</th>
<th>Other Adult members- 18 or older (if applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross Earnings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Temporary Assistance for Needy Families (TANF)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Child Support</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bank Income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Income (list)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

I hereby certify under penalty of perjury that the information above is true and correct.

Print Name: ____________________________  Signature: ____________________________  Date: __________

**WARNING:** Title 18, US Code Section 1001, States that a person who knowingly and willingly makes false or fraudulent statements to any Department or Agency of the United States is guilty of a felony. State law may also provide penalties for false or fraudulent statements.
Exhibit D.
AIA A141-2004 Design-Build Agreement
AGREEMENT made as of the ____ day of ______ in the year of 2015.
(In words, indicate day, month and year)

BETWEEN the Owner:

Home Forward
135 SW Ash Street
Portland, OR 97204

and the Design-Builder:

For the following Project:
Gladstone Square & Multnomah Manor Apartments

The Owner and Design-Builder agree as follows.

The Project Criteria are:

See Exhibit D
TABLE OF ARTICLES

1 THE DESIGN-BUILD DOCUMENTS
2 WORK OF THIS AGREEMENT
3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4 CONTRACT SUM
5 PAYMENTS
6 DISPUTE RESOLUTION
7 MISCELLANEOUS PROVISIONS
8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF EXHIBITS

A TERMS AND CONDITIONS
B DETERMINATION OF THE COST OF THE WORK
C INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the “Agreement”) and its attached Exhibits; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)
Performance of the Work shall commence on _________, 2015.

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents. (Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

§ 3.3 Dates for Substantial Completion and Final Completion shall be established pursuant to the Construction Amendment. Depending on the circumstances of the two separate properties included in the Work, there may be different dates for each properties’ Substantial Completion and Final Completion.

§ 3.4 The Design-Builder shall prosecute the Work diligently and continuously consistent with the Design-Builder’s construction schedule prepared and approved pursuant to Section A.3.9 of Exhibit A, as modified.

§ 3.5 The Design-Builder acknowledges and agrees that time is particularly of the essence in the Design-Builder’s performance of its services in accordance with the agreed date of commencement of performance of the Work, the agreed date(s) of Substantial Completion and Final Completion of the Work and the Design-Builder’s Construction Schedule(s) prepared by the Design-Builder and approved by the Owner. The parties acknowledge and agree that, if the Work is not Substantially Complete by the agreed date of Substantial Completion(s) as adjusted by Change Orders, the amount of the Owner’s actual damages for delay will be difficult or impractical to determine. Accordingly, after negotiations, the parties agree that, if the Work is not Substantially Complete by the agreed date(s) of Substantial Completion, as adjusted by Change Orders, the Design-Builder shall pay to the Owner as liquidated damages for delay the amount determined as set out in this Section. Such amount shall be $1,300 for Gladstone Square and $1,300 for Multnomah Manor for each and every calendar day after the agreed date(s) of Substantial Completion of the Work, as adjusted by Change Orders, that the Work is not Substantially Complete. The parties further acknowledge and agree that the Design-Builder’s obligation to pay liquidated damages for delay under this Section shall be in lieu of any obligation to pay actual damages, that the daily sums in liquidated damages to be paid as set out above are reasonable under the circumstances existing as of the date of this Agreement, that the payment of such liquidated damages for delay is not intended to be a penalty or forfeiture and that liquidated damages for delay do not abridge (and Owner does not waive) other rights and remedies of Owner, including but not limited to termination of this Contract.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Design-Build Contract. The Contract Sum shall be one of the following:

(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

(To be completed.)

[ ] Stipulated Sum;

[ ] Cost of the Work Plus Design-Builder’s Fee;

[ X ] Cost of the Work Plus Design-Builder’s Fee with a Guaranteed Maximum Price in accordance with Section 4.2 below.

(Based on the selection above, complete either Section 4.2.1 or 4.2.2 below.)

§ 4.2 COST OF THE WORK PLUS DESIGN-BUILDER’S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.2.1 The Cost of the Work is defined in Exhibit B. The Design-Builder’s Fee is _______ percent (%) of the Cost of the Work. The Design-Builder’s Fee includes all of Design-Builder’s profit and all overhead, except for those costs expressly reimbursable hereunder.

§ 4.2.2 The sum of the Cost of the Work for the Programming Services described in Exhibit A at A. 3. 1 and the Design-Builder’s Fee is guaranteed by the Design-Builder not to exceed $__________, subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed...
Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. If the sum of the final Cost of the Work plus the final Design-Builder’s Fee is less than the Guaranteed Maximum Price, the savings shall devolve 100% to Owner and 0% to Design-Builder.

§ 4.2.3 Owner and Design-Builder acknowledge that, as of the date of execution of this Agreement, Programming Services (as described in Section A.3.1 of Exhibit A) for the Project have not been performed. As a result, certain terms and conditions of this Agreement and Exhibit A have yet to be determined and agreed upon as specifically set out below. The parties agree that upon completion of Programming Services, Design-Builder shall submit to Owner a proposal to increase the Guaranteed Maximum Price to perform the design services described in Section A.3.2 of Exhibit A, including but not limited to preparing Construction Documents, and to perform the Preconstruction Services described in Sections A.3.2.11 through A.3.2.13 of Exhibit A. Design-Builder’s proposal will include the following:

1. The proposed increase in the Guaranteed Maximum Price for the design services described in Section A.3.2 of Exhibit A;
2. The proposed increase in the Guaranteed Maximum Price for the performance of the Preconstruction Services described in Sections A.3.2.11 through A.3.2.13 of Exhibit A; and
3. The proposed schedule for the performance of the design services and Preconstruction Services.

§ 4.2.4 After receipt of the Design-Builder’s proposal described in Section 4.2.3, Owner and Design-Builder will negotiate in good faith in an effort to reach agreement regarding the terms and conditions of an amendment (the “Construction Documents Amendment”) to the contract providing for the design services and Preconstruction Services. Upon acceptance (if any) by Owner of this proposal, the agreed-upon increase in the Guaranteed Maximum Price and the schedule for performance of the design services and Preconstruction Services shall be set forth in the Construction Documents Amendment. In the event the Owner and Design-Builder cannot agree on the terms and conditions of the Construction Documents Amendment, the Owner shall have the right to terminate this Contract in accordance with Article A.14 of Exhibit A.

§ 4.2.5 In the event that Owner and Design-Builder execute the Construction Documents Amendment and Design-Builder prepares the Construction Documents, upon completion of the Construction Documents, the Design-Builder shall submit to Owner a proposal to increase the Guaranteed Maximum Price. Design-Builder’s proposal will include the following:

1. Proposed increase in the Guaranteed Maximum Price for the construction Work, including an itemized breakdown of the Guaranteed Maximum Price into the cost categories of Article B.2 of Exhibit B, as modified.
2. Dates of commencement of the construction Work, Substantial Completion and Final Completion.
4. Proposed initial schedule of values.
5. A list of allowances and a statement of their basis, if any.
6. A list of unit prices, if any.
7. A list of alternates, if any.

§ 4.2.6 After receipt of Design-Builder’s proposal described in Section 4.2.5, Owner and Design-Builder will negotiate in good faith in an effort to reach agreement regarding the terms and conditions of an amendment (the “Construction Amendment”) to the contract providing for the performance of the Work described in the Construction Documents. Upon acceptance (if any) by the Owner of this proposal, the agreed-upon increase in the Guaranteed Maximum Price, Construction Schedule, dates of Substantial Completion and Final Completion, alternates (if any), unit prices (if any), allowances (if any) and initial schedule of values shall be set forth in the Construction Amendment. In the event that the Owner and Design-Builder cannot agree on the terms and conditions of the Construction Amendment, the Owner shall have the right to terminate this Contract in accordance with Article A.14 of Exhibit A.

§ 4.3 CHANGES IN THE WORK
§ 4.3.1 Adjustments of the Contract Sum on account of changes in the Work shall be subject to:

1. Design-Builder’s Fee – ___% of the Cost of the Work;
2. A total of no more than 5% of the Cost of the Work for work of other Subcontractors and a total of no more than 10% of the Cost of the Work for any Contractor or Subcontractor;
ARTICLE 5  PAYMENTS
§ 5.1 PROGRESS PAYMENTS
§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received not later than the 1st day of the month, the Owner shall make payment to the Design-Builder not later than the 28th day of the same month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder’s Fee; plus (3) payrolls from Contractors for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder’s Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder’s Applications for Payment.

§ 5.1.6 Design-Builder shall submit waivers and releases from Design-Builder, the Architect, and all Contractors, Subcontractors, suppliers and consultants in the forms specified on Exhibit E except that waivers and releases are not required from Contractors, Subcontractors, suppliers and consultants when their individual payment request is less than $10,000.

§ 5.1.7 In taking action on the Design-Builder’s Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.6, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner’s accountants acting in the sole interest of the Owner.

§ 5.1.7 Except with the Owner's prior approval or upon Owner having clear title and Design-Builder confirming the materials or equipment are in a licensed and bonded warehouse under the control of Design-Builder, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS
§ 5.2.1 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:
.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Exhibit A.

§ 5.2.3 Except with the Owner’s prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than five percent (5%). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.3 FINAL PAYMENT

§ 5.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.9 of Exhibit A, Terms and Conditions, except for the Design-Builder’s responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ 5.3.2 Design-Builder shall, as a condition of Final Payment, submit to Owner any information required by Owner showing the Cost of the Work.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

Not applicable.

§ 6.2 The method of binding dispute resolution shall be the following:

[X] Arbitration pursuant to Exhibit A, Terms and Conditions

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect, other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

The form of agreement between Design-Builder and the Architect shall be subject to the approval of Owner.

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

§ 7.4 The Owner’s Designated Representative is:
§ 7.4.1 The Owner’s Designated Representative identified above shall be authorized to act on the Owner’s behalf with respect to the Project.

§ 7.5 The Design-Builder’s Designated Representative is:

§ 7.5.1 The Design-Builder’s Designated Representative identified above shall be authorized to act on the Design-Builder’s behalf with respect to the Project.

§ 7.6 Neither the Owner’s nor the Design-Builder’s Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build Contract shall bear interest from the date payment is due the legal rate prevailing from time to time at the place where the Project is located.

§ 7.7.3 ORS Chapters 279A and 279C and the Home Forward Public Contracting Rules (“Home Forward Rules”) contain certain requirements for public contracts, including but not limited to, certain required contract provisions. The required contract provisions are attached as Exhibit F and are incorporated herein by this reference. Furthermore, Design-Builder and Owner agree to comply with all requirements of ORS Chapters 279A and 279C, the Home Forward Rules and other Oregon laws whether or not such provisions are included in Exhibit F and whether or not such provisions are excised in Exhibit F.

§ 7.7.4 This Project is subject to the HUD Technical Salary Determination set out in Exhibit J, and Design-Builder shall pay or cause to be paid all workers in the categories set forth on Exhibit J wages no less than the minimum hourly wage set forth on Exhibit J.

§ 7.7.5 The Design-Builder shall submit to Owner a Final Ledger containing all cost information related to the Work in a format approved by Owner no later than 75 day after the date of Substantial Completion of the Work. This submittal is necessary to issue the tax credits to the Project’s tax credit investor(s) and must be submitted within the 75-day period in order to insure timely issuance of tax credits. The Contractor acknowledges that the Owner will incur significant damages if the Final Ledger is not timely submitted to Owner, including without limitation damages in the form of inability to deliver tax credits to tax credit investor(s) within established time frame (i.e., loss of tax credit revenue). The Owner and Contractor acknowledge and agree that if the Final Ledger is not submitted within 75 days of Substantial Completion, the amount of the Owner’s damages for loss of tax credit revenue will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if the Final Ledger is not submitted within 75 days of the date of Substantial Completion, the Contractor shall pay to the Owner as liquidated damages for the loss of tax credit revenue the sum of Three Hundred Dollars ($300) for each partial day or full of delay beyond the deadline for submittal of the Final Ledger. The parties further acknowledge and agree that the Contractor’s obligation to pay liquidated damages under this Section shall be in lieu of the obligation to pay actual delay damages for loss of tax credit revenue, that the daily sums in liquidated damages will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if the Final Ledger is not submitted within 75 days of the date of Substantial Completion, the Contractor shall pay to the Owner as liquidated damages for the loss of tax credit revenue the sum of Three Hundred Dollars ($300) for each partial day or full of delay beyond the deadline for submittal of the Final Ledger. The parties further acknowledge and agree that the Contractor’s obligation to pay liquidated damages under this Section shall be in lieu of the obligation to pay actual delay damages for loss of tax credit revenue, that the daily sums in liquidated damages will be paid as set out above are reasonable in comparison to the approximate scope of actual damages that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of tax credit revenue damages and that Owner reserves the right to claim additionally other
types of damages against Contractor, including but not limited to the liquidated damages for delay set forth in Section 3.5.

ARTICLE 8  ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004 and all Exhibits.

§ 8.1.2 Exhibit A, Terms and Conditions.

§ 8.1.3 Exhibit B, Determination of the Cost of the Work

§ 8.1.4 Other documents, if any, forming part of the Design-Build Documents are as follows:

.1 Exhibit C – Insurance Requirements
.2 Exhibit D – Project Criteria
.3 Exhibit E – Waivers and Releases
.4 Exhibit F – Public Contracting Provisions
.5 Exhibit G – Federal Requirements
.6 Exhibit H – Performance Bond and Payment Bond
.7 Exhibit I – HUD – 5370 General Conditions for Construction Contracts – Public Housing Programs
.8 Exhibit J – HUD Technical Salary Determination

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner

HOME FORWARD

OWNER (Signature)  
(Printed name and title)

DESIGN-BUILDER (Signature)

(Printed name and title)
AIA Contract A141-2004
Exhibit A. Terms and Conditions
AIA Document A141™ – 2004

Exhibit A

Terms and Conditions

for the following PROJECT:

**Gladstone Square**
12020 SE Gladstone Street
Portland OR 97266

**Multnomah Manor**
9110 NE Hassalo Street
Portland OR 97220

THE OWNER:

**Home Forward**
135 SW Ash Street
Portland OR 97204

THE DESIGN-BUILDER:

[Name]
[Street Address]
[City State Zip]

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

ELECTRONIC COPYING of any portion of this AIA Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.
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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS
§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS
The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA
The Project Criteria are identified in the Agreement and describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT
The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative.

§ A.1.1.4 CONTRACTOR
A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term “Contractor” is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term “Contractor” does not include a separate contractor of Owner or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR
A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term “Subcontractor” is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK
The term “Work” means the design, construction and services required by the Design-Build Documents, whether completed or partially completed (including but not limited to Programming Services), and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder’s obligations including but not limited to the Preconstruction Services. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT
The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL
The Neutral is the individual appointed by the parties to decide Claims and disputes.

§ A.1.1.9 HUD GENERAL CONDITIONS
§ A.1.1.9.1 The HUD 5370 General Conditions of the Contract for Construction are included as Exhibit I and apply to the Work under this Contract with the following revisions:

.1 Paragraph 1(a): The term “Architect” shall have the meaning set forth in Section A.1.1.3.

.2 Paragraph 1(d): The term “Contractor” in the HUD 5370 General Conditions shall be construed to mean “Design-Builder.”

.3 The term “subcontractor” in the HUD 5370 General Conditions shall be construed to mean “Subcontractor” and “Contractor.”

.4 Paragraph 1(l): The term “Work” shall have the meaning set forth in Section A.1.1.6.
Paragraph 23: This paragraph and its subparagraphs are deleted in their entirety.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS
§ A.1.2.1 It is understood by Design-Builder that this is a design-build project and Design-Builder is solely responsible for all design and construction in accordance with this Agreement. In addition, Design-Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of the Drawings, Specifications and other design documents in accordance with the applicable standards of care. Once it is designed, Design-Builder will construct the Project in accordance with this Agreement. The Project will be designed and constructed in strict accordance with all applicable laws, codes, regulations and other applicable standards. Design-Builder will be solely responsible for all testing, inspection and design and construction of the Project so it meets all applicable requirements and can be used by Owner for the purpose intended. If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Owner shall be entitled to rely on the completeness and accuracy of the information contained in the final program document prepared pursuant to Section A.3.1.8.4. The Owner will not be responsible for determining that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the final program document conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes.

§ A.1.3 CAPITALIZATION
§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION
§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.4.3 Notwithstanding anything to the contrary in this Contract or any exhibits incorporated by reference herein, in the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Design-Build Documents, interpretations shall be based on the following order of precedence:

.1 All Statutory Provisions required by ORS 279A and 279C and other applicable statutes and regulations and the City of Portland permits.

.2 Modifications of the contract with those of a later date having precedence over those of an earlier date.

.3 AIA A141-2004 Exhibit A, as modified.

.4 AIA A411-2004, as modified.

.5 HUD 5370 General Conditions of the Contract for Construction.

.6 The Project Criteria (Exhibit D).

§ A.1.4.4 The Owner and Design-Builder acknowledge their intent and agreement that there shall be no binding revisions to the provisions of the Agreement or of this Exhibit A made in the Specifications. The Owner and Design-
Builder expressly agree that in the event of conflicts or inconsistencies between the provisions of the Agreement or this Exhibit, on the one hand, and the provisions of the specifications or other Design-Build Documents, on the other hand, then the provisions of the Agreement or this Exhibit A shall govern. The Owner and Design-Builder further agree that no revisions shall be made to the Agreement or this Exhibit A except by means of a Modification.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS
§ A.1.5.1 In addition to any stamping or execution required by law, the Design-Build Documents shall be signed by the Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA
§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are the property of Owner and all copyrights and other rights shall be assigned to Owner. The Owner shall have all common law, statutory and other reserved rights, including copyright in the Instruments of Services, drawings, specifications, and other documents and materials and electronic data furnished for use with respect to this Project and its operation, maintenance and remodeling.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service in connection with the Project as specified above, including the Project’s further development by the Owner and others retained by the Owner for such purposes. Such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner may assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner’s sole risk and expense without liability to the Design-Builder and its design professionals.

§ A.1.6.3 Neither Owner nor Design-Builder shall use such Instruments of Service on other projects without the consent of the other. Such consent shall not be unreasonably withheld. Architect and Design-Builder may not, however, under any circumstances use on other projects any unique and material parts of the Instruments of Service.

ARTICLE A.2 OWNER
§ A.2.1 GENERAL
§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner’s approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder’s schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic’s lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ A.2.2.1 All consultants required for the Project will be supplied by Design-Builder. Any other information or services relevant to the Design-Builder’s performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 The Design-Builder shall be responsible to provide surveys describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site, when such items are deemed reasonably necessary by the Owner or Design-Builder to properly carry out the design services provided by the Design-Builder and the Architect. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations,
dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder’s design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner’s expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder and Architect in securing building and other permits, licenses and inspections. The Owner shall pay the fees for such permits, licenses and inspections.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Design-Builder under Section A.2.2, shall be furnished at the Design-Builder’s expense, and the Owner shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner’s obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of a geotechnical engineer or other consultant for subsoil, air and water conditions when such services are deemed reasonably necessary by the Owner or Design-Builder to properly carry out the design services provided by the Design-Builder and the Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall furnish the services of an Environmental Engineer or other consultants for hazardous materials identification, and environmental site assessments when such services are deemed necessary by the Owner or Design-Builder to properly carry out the design services provided by the Design-Builder and the Architect.

§ A.2.2.12 The Owner shall promptly obtain easements and legal authorizations regarding site utilization where essential to the execution of the Owner’s program. The Design-Builder and Architect shall be responsible for zoning adjustments and other land-use approvals.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder’s submittals, including but not limited to final programming document, Schematic Design, Design Development and Construction Documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner’s action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or
§ A.2.3.2 Upon review of the final programming document, Schematic Design, Design Development and Construction Documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

1. Determine that the documents or submittals are in general conformance with the Design-Build Documents and approve them.

2. Determine that the documents or submittals are in general conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.

3. Determine that the documents or submittals are not in general conformity with the Design-Build Documents and reject them.

4. Determine that the documents or submittals are not in general conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.

5. Determine that the documents or submittals are not in general conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner’s approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner’s approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner’s review and approval of the Design-Builder’s documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless (a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, (b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder’s rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder’s failure to perform the Work in accordance with the requirements of the Design-Build Documents and Construction Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents and Construction Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing.
§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER’S RIGHT TO STOP WORK
§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents and Construction Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents and Construction Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent specified herein.

§ A.2.5 OWNER’S RIGHT TO CARRY OUT THE WORK
§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and Construction Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, after such seven-day period, give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER
§ A.3.0 GENERAL
§ A.3.0.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builder may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative. The Design-Builder’s representative is authorized to act on the Design-Builder’s behalf with respect to the Project.

§ A.3.0.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.1 PROGRAMMING SERVICES
§ A.3.1.1 The Design-Builder shall manage and administer the Programming Services. The Design-Builder shall consult with the Owner, research applicable programming criteria, attend Project meetings, communicate with members of the Project team and issue a final, reconciled program document. The Design-Builder shall coordinate the services provided by the Design-Builder and the Architect’s and their consultants with those services provided by the Owner and the Owner’s consultants. In addition, Design-Builder and Architect shall:

.1 Review and evaluate available building information and prior architectural and engineering studies and reports to gain an understanding of existing conditions and needs of the Project;

.2 Facilitate a programming session with the Owner, Architect, and any other parties identified by the Owner to identify, discuss, and prioritize values and goals that will impact the Project, including Owner’s mission and long-term programmatic objectives.

.3 Conduct a walkthrough of all housing units with the appropriate personnel, such as the Owner, property manager, or facility manager, to document existing conditions;

.4 Perform or cause to be performed any additional investigations necessary to identify the Project’s 15-year capital needs;

§ A.3.1.2 Data Analysis
§ A.3.1.2.1 Based on the information gathered, the Design-Builder and Architect shall develop performance and design criteria for the proposed facility.
§ A.3.1.2.2 Based on discussions with the Owner, the Design-Builder and Architect shall make recommendations for solutions to the unresolved programming issues for approval by the Owner prior to preparation of the Architect’s initial report.

§ A.3.1.3 Development of Final Program

§ A.3.1.3.1 At the conclusion of the Programming Services, the Design-Builder and Architect shall prepare and deliver to Owner a Final Program Document including but not limited to

.1 A conceptual construction cost estimate;
.2 Value engineering and cost reduction options including projects cost savings offsets (including any additional design costs) if required to bring the conceptual construction cost estimate within the Owner’s construction budget;
.3 General performance standards for light fixtures, electrical and low voltage equipment, HVAC equipment, plumbing equipment, emergency systems, acoustic mitigation, furnishings, and aesthetics;
.4 Specific space requirements for light fixtures, electrical and low voltage equipment, HVAC equipment, plumbing equipment, emergency systems, acoustic mitigation, and furnishings.

§ A.3.1.3.2 The Final Program Document shall include written and graphic materials that may include without limitation:

.1 an executive summary;
.2 value and goal statements;
.3 relevant facts upon which the program was based;
.4 conclusions derived from data analysis;
.5 diagrams and sketches;
.6 Cut sheets for light fixtures, electrical and low voltage equipment, HVAC equipment, plumbing equipment, emergency systems, acoustic mitigation, and furnishings.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 As stated in Section 4.2.4 of AIA Document A141-2004, in the event that Owner and Design-Builder execute the Construction Documents Amendment, Design-Builder shall perform the design services described in this Section A.3.2. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be subject to approval of Owner.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder’s employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder’s obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, and, when completed, Construction Documents; shall take field measurements of any existing conditions related to the Work; shall observe any conditions at the site affecting the Work; and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 Based upon the approved final program document, the Design-Builder shall perform the following design services.

§ A.3.2.5.1 Based on the Project’s requirements and the approved final program document, the Design-Builder shall prepare and present for the Owner’s approval a preliminary design illustrating the scale and relationship of the Project components.

§ A.3.2.5.2 Based on the Owner’s approval of the preliminary design, the Design-Builder shall prepare Schematic Design Documents for the Owner’s approval. The Schematic Design Documents shall consist of drawings and other...
documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ A.3.2.5.3 The Design-Builder shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner’s program, schedule and budget.

§ A.3.2.5.4 The Design-Builder shall submit the Schematic Design Documents to the Owner, and request the Owner’s approval.

§ A.3.2.5.5 Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget, the Design-Builder shall prepare Design Development Documents for the Owner’s approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ A.3.2.5.6 The Architect shall submit the Design Development Documents to the Owner and request the Owner’s approval.

§ A.3.2.6 Upon the Owner’s written approval of the Design Development Documents submitted by the Design-Builder, the Design-Builder shall provide Construction Documents for review and written approval by the Owner. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing and subject to the advance written approval of Owner. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

.1 be consistent with the approved Design Development Documents;
.2 provide information for the use of those in the building trades; and
.3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner not less than twice a month to review progress of the design documents.

§ A.3.2.8 Upon the Owner’s written approval of Construction Documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 If required by Owner, the Design-Builder shall obtain from each of the Design-Builder’s professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents and the approved final programming document, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project in effect at the time of the applicable permit; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder’s other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be consistent with the approved Design Development Documents; provide information for the use of those in the building trades; and include documents customarily required for regulatory agency approvals.
§ A.3.2.11 During the preparation of the Schematic Documents, Design Development Documents and Construction Documents, Design-Builder shall perform the following Preconstruction Services:

.1 Review design documents for constructability and propose revisions to reduce cost and time.
.2 During the design process, participate in sustainability review(s) of costs and life-cycle analyses for “green building” options and sustainable practices, as requested by Owner.
.3 Prepare and submit to Owner construction cost estimates based on design documents at:
   a. 90% Schematic Design phase
   b. 90% Design Development phase
   c. 90% Construction Document phase

Use CSI or other estimating format acceptable to Owner. At Schematic Design and Design Development, the Design-Builder shall identify value engineering and cost reduction options, including projected cost savings offset with any additional design costs, if necessary to bring its construction cost estimate within Owner’s construction budget. Once a Design-Builder estimate is evaluated and a reconciled, it will become the approved construction budget utilized for future budget reconciliation. If the Design-Builder’s estimate at 90% Construction Document phase is greater than the approved construction budget, the Design-Builder shall work with the Owner to identify a list of add-back alternates and cost reduction strategies to achieve scope and budget alignment.

.4 Prepare a Construction Schedule that indicates commencement of construction by TBD. Schedule format shall be critical path method (“CPM”).
.5 Work with Owner to develop a Contracting Plan for accomplishment of all construction. Recommend divisions of the work to facilitate bidding and award of trade contracts. Recommend which work, if any, should be procured through value-based competitive selection in lieu of low bid. Identify Work which the Design-Builder proposes to self-perform and how competitive pricing will be accomplished. Identify the plan to manage any subcontractor who is not performing in accordance with the Project’s requirements for budget control, on-time schedule performance, safety and/or quality control.
.6 Develop a job-specific Economic Participation Plan that achieves 20% State of Oregon Certified M/W/ESB participation, Section 3 goals, and compliance with Owner’s Workforce Training and Hiring Program.
.7 Develop a Hazardous Materials Plan that addresses the handling of unanticipated hazardous materials that may be encountered during construction. Work with the Owner to develop a strategy for site remediation, if indicated by the Phase 1 and Phase 2 Environmental Site Assessments and/or other environmental reports.
.8 Develop a job-specific Safety Plan that addresses the Project location, resident and public safety and worker safety.
.9 Provide a Quality Control Plan for use during construction.
.10 Prepare bid packages, solicit and receive bids.
.11 After receipt of subcontractor bids, prepare an estimate for review by Owner. If the initial construction cost estimate exceeds Owner’s approved construction cost estimate, the Design-Builder shall notify Owner and propose how to complete the Work within budget.

§ A.3.2.12 As part of Design-Builder’s preparation of the construction cost estimate at the 90% Construction Document phase, Design-Builder shall solicit and make a good faith effort to obtain bids from no fewer than three independent subcontractor bidders, unless Owner agrees in writing in advance to fewer than three bids for particular subcontracted or supplied Work. The Design-Builder shall solicit and make a good faith effort to obtain bids from no fewer than two independent subcontractor bidders for portions of the Work that Design-Builder desires to self-perform with its own personnel. In the event that Design-Builder provides bids for self-performed Work, such bids shall be prepared and submitted to Owner one day before receipt of subcontractor bids and considered in the same manner as if they were subcontractors. For the purposes of this Section, Design-Builder’s “own personnel” shall be construed to mean both (1) Design-Builder’s own personnel per se and (2) the personnel of Design-Builder’s affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by Design-Builder.

§ A.3.2.13 Design-Builder shall submit a list of all proposed Subcontractors. The list shall identify the name of each Subcontractor, whether the Subcontractor is a State of Oregon certified Minority-owned, Woman-owned or
Emerging Small Business ("M/W/ESB"), and the portion of the Work to be performed by each Subcontractor. The information submitted by Design-Builder shall be sufficient to permit the Owner to determine the percentage of Work subcontracted for purposes of the Economic Participation Plan.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 Unless otherwise approved in writing by Owner the Design-Builder shall perform no construction Work prior to the Owner’s review and approval of the Construction Documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner’s review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner’s approval of the Construction Documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and Construction Documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner’s approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner’s approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional’s written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder’s best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
§ A.3.4 LABOR AND MATERIALS
§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents or the Construction Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder’s employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY
§ A.3.5.1 The Design-Builder warrants to the Owner that the Work furnished under the Design-Build Documents will be of best quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects, that the Work will be performed in a workmanlike manner, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES
§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES
§ A.3.7.1 The Owner shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required as of the date of this Agreement, except for those trade permits which are required to be secured by the Design Builder or the Design Builder’s Contractors or Subcontractors.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder’s responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations in effect at the time the applicable permit was issued, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES
§ A.3.8.1 The Design-Builder shall include in the Guaranteed Maximum Price amounts for all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not employ persons or entities to which the Owner has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:
   .1 allowances shall cover the cost to the Design-Builder for unloading and handling at the site, labor, installation costs, materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
.2 Design-Builder’s costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder’s costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER’S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner’s information the Design-Builder’s schedule for the Work. The schedule shall not exceed time limits and shall be in such detail as required under the Design-Build Documents, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project. During the course of the Work, and not less often than monthly, the Design-Builder shall submit to the Owner a current, updated version of the initial Design-Builder’s construction schedule. Each updated Design-Builder’s construction schedule shall be in the same form and provide the same detail as the initial Design-Builder’s construction schedule, unless approved otherwise by the Owner. Design-Builder’s schedules shall be submitted in a Microsoft Project compatible format. Design-Builder’s construction schedule shall not be modified without the written approval of the Owner, and otherwise shall conform to any changes in the Contract Time set out in Change Orders. For the purposes of whether any Change Orders or Construction Change Directives shall extend the contractual dates for Substantial Completion and Final Completion, any unused “float” or “slack” time for the whole or any part of the Work as provided in the Design-Builder’s construction schedule shall belong to neither the Owner nor the Design-Builder but shall be equitably allocated in the interests of the Project. To the fullest extent permitted by law, in no event will Design-Builder be entitled to make an “early completion” claim or similar claim based on Design-Builder’s failure to achieve Substantial Completion on any earlier date set forth in Design-Builder’s construction schedule. In the event that Design-Builder experiences a delay caused by Owner and begins pacing the Work to mitigate its damages, Design-Builder shall give written notice of pacing to the Owner within seven calendar days of such pacing of the Work.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents. The submittal schedule shall (1) be coordinated with the Design-Builder’s construction schedule, (2) be updated and submitted at the same time as Design-Builder’s updated construction schedule, (3) allow the Owner reasonable time to review submittals. If the Design-Builder fails to submit a submittal schedule or updated submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ A.3.9.3 The Design-Builder shall perform the Work in accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be prepared in format acceptable to Owner and delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.
§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents and Construction Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE
§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING
§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder’s consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP
§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project and properly dispose of all waste materials, rubbish, the Design-Builder’s tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.14.3 There shall be no smoking, drugs or alcohol at the site. Design-Builder may, however, have a designated outdoor smoking area in a location approved by Owner.

§ A.3.15 ACCESS TO WORK
§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS
§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or
§ A.3.17 INDEMNIFICATION
§ A.3.17.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, reimburse and hold harmless the Owner, Owner’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, including, without limitation, claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property whether directly incurred or from third parties, but only to the extent caused by the negligent acts or omissions of or breach of any requirement of this Agreement by the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party of person described in this Section A.3.17.

ARTICLE A.4 DISPUTE RESOLUTION
§ A.4.1 CLAIMS AND DISPUTES
§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims by Design-Builder must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by Design-Builder must be initiated by written notice to the Owner no later than 21 calendar days after the occurrence of the event giving rise to such Claim or within 21 calendar days after the Design-Builder reasonably should have recognized the condition of the Claim, whichever is later. Failure to deliver notice within the time period set out in this Section shall result in a waiver of the Claim and all rights and remedies arising therefrom.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the Design-Builder shall give notice to the Owner promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder’s cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work or such Claim shall be deemed waived by Design-Builder. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.
§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner’s suspension or (6) other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder’s Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim notice is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, had an adverse effect on the scheduled construction and were more than five percent (5%) worse than the average for the last five years.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 If there is an enactment or revision of codes, laws or regulations or a materially different official interpretation, after the time the applicable permit was issued, and it causes an increase or decrease of the Design-Builder’s cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 Decision by Neutral. If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 shall be in writing, shall state the reasons therefore and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder’s default, the Owner may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.
§ A.4.2.5 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 ARBITRATION

§ A.4.3.1 Any claim, dispute or other matter in question arising out of or related to this Contract shall be decided by arbitration in the place where the Project is located. The demand for arbitration shall be filed in writing with the other party to this Contract. The parties shall mutually select the arbitrator and the rules applicable to the arbitration process. If the parties cannot agree on the choice of an arbitrator, the parties shall apply to the local state court to appoint an arbitrator. The arbitration shall include, by consolidation or joinder or in any other manner, any additional persons or entities if (1) such persons or entities are materially involved in a common issue of law or fact in dispute and (2) such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration. If another involved party will not consent to arbitration, Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute. The venue for such litigation shall be in the place where the Project is located, and the outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, Owner, in its sole discretion, has the option to elect a consolidated jury trial. The agreements contained in this paragraph shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Any award rendered by an arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitrator is specifically empowered to award attorney fees and costs to the extent allowed by contract or law. It is understood that the purpose of this paragraph is to allow Owner to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all significant parties, if possible; or (2) alternatively, a consolidated bench trial of all significant parties, if possible; or (3) alternatively, and as a last resort, a consolidated jury trial of all significant parties.

§ A.4.3.2 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ A.4.3.3 Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ A.4.3.4 Should any suit, action or arbitration be commenced in connection with any dispute arising out of this Agreement, the prevailing party shall be entitled to recover its costs and disbursements, investigation costs and fees, expert witness costs and fees, and attorney costs and fees, as the court or arbitrator may adjudge reasonable, incurred in connection with such dispute before trial or arbitration, at trial or arbitration, upon any motion for reconsideration, upon any appeal or petition for review, and upon any collection efforts or proceedings.

ARTICLE A.5 AWARD OF CONTRACTS

§ A.5.1 Unless otherwise agreed to by Owner, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder’s proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection.

§ A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.
§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ A.5.5.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

1. assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder’s Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term “separate contractor” shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder’s construction and operations with theirs.

§ A.6.2.2 If part of the Design-Builder’s Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner discrepancies or defects discovered in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner’s or separate contractor’s completed or partially completed construction is fit and proper to receive the Design-Builder’s Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall, after reasonable notice to Design-Builder and an opportunity to cure, be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall, after reasonable notice to Design-Builder and an opportunity to cure, be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, bodily injury to any of the employees of the Design-Builder, or Contractors or Subcontractors, or, damage to the Work or defective construction caused by a separate contractor of Owner.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.
§ A.6.3 OWNER’S RIGHT TO CLEAN UP
§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK
§ A.7.1 GENERAL
§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.1.4 Design-Builder will, as a condition of Final Payment, furnish Owner with a set of “as builts.”

§ A.7.2 CHANGE ORDERS
§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

.1 a change in the Work;
.2 the amount of the adjustment, if any, in the Contract Sum; and
.3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES
§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder’s agreement or disagreement with the
method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

1. additional costs of professional services;
2. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;
3. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
4. rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
5. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
6. additional costs of supervision and field office personnel directly attributable to the change.

The Owner’s determination, as specified above, shall not be less than the actual costs expended by the Design-Builder in performing the changed Work. If the Owner’s determination is believed by the Contractor to be less than its actual costs (incurred or projected) in performing the Work, the Design-Builder may assert a Claim in accordance with this Contract.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties’ agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK
§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME
§ A.8.1 DEFINITIONS
§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.
§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date set out in the Construction Amendment.

§ A.8.1.4 The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Design-Builder’s control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus Design-Builder’s Fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an initial schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder’s Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder’s right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:
§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner or as specified in Section 5.1.7 of the Agreement, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner’s title to such materials and equipment or otherwise protect the Owner’s interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder’s knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 DECISIONS TO WITHHOLD PAYMENT
§ A.9.4.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner’s determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:
.1 defective Work not remedied;
.2 third-party claims filed;
.3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
.5 damage to the Owner or a separate contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.4.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.5 PROGRESS PAYMENTS
§ A.9.5.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder’s Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.5.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party’s respective portion of the Work, the amount to which each such party is entitled.
§ A.9.5.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor’s portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor’s portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.5.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.5.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.5.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.5.7 Payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.6 FAILURE OF PAYMENT

§ A.9.6.1 If for reasons other than those enumerated herein, the Owner does not issue a payment within the time period required by the Agreement, then the Design-Builder may, upon seven additional days’ written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.7 SUBSTANTIAL COMPLETION

§ A.9.7.1 Substantial Completion is the stage in the progress of the Work when the Work as a whole is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work for its intended use. For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose. The requirement shall be deemed satisfied if all construction, submittals and other performance by the Design-Builder required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Design-Builder. Failure of the involved governmental agencies to issue such certificate and approvals, even though the Design-Builder has completed all construction, submittals and other performance required, shall not constitute a “factor beyond the reasonable control of the Design-Builder” until the normal period for such agencies to issue such certificates and approvals has expired.

§ A.9.7.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder and its Architect shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.7.3 Upon receipt of the Design-Builder’s list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner’s inspection discloses any item, whether or not included on the Design-Builder’s list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder’s Work is substantially complete.
§ A.9.7.4 In the event of a dispute regarding whether the Design-Builder’s Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.7.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner’s signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner’s inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.7.6 Retainage shall not be released until Design-Builder has fully and completely satisfied all obligations under this Agreement for Final Payment.

§ A.9.8 PARTIAL OCCUPANCY OR USE
§ A.9.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided herein. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.8.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.8.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.9 FINAL COMPLETION AND FINAL PAYMENT
§ A.9.9.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.9.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. Only conditional waivers and releases will be required of subcontractors and suppliers prior to Final Payment to such subcontractors and suppliers. Design-Builder will, however, obtain unconditional waivers and releases at the time of Final Payment to such subcontractors and suppliers.
§ A.9.9.3 If, after the Owner determines that the Design-Builder’s Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Build. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.9.4 Acceptance of final payment by the Design-Build, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY
§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS
§ A.10.1.1 The Design-Build shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY
§ A.10.2.1 The Design-Build shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
   .1 employees on the Work and other persons who may be affected thereby;
   .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Build or the Design-Build’s Contractors or Subcontractors; and
   .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Build shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Build shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Build shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Build shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Build, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Build is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Build. The foregoing obligations of the Design-Build are in addition to the Design-Build’s obligations under Section A.3.17.

§ A.10.2.6 The Design-Build shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Build shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.
§ A.10.3 HAZARDOUS MATERIALS
§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder’s reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect’s consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance exists on site as of the date of the Agreement, is not disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in Section A.10.3.1 and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect’s consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES
§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder’s discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 INSURANCE AND BONDS
§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER’S LIABILITY INSURANCE
§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located the insurance required by Exhibit C.

§ A.11.3 PROPERTY INSURANCE
§ A.11.3.1 The Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance for the entire Project at the site. Additional terms...
and conditions concerning property insurance, including but not limited to any waivers of subrogation shall be set out in the Construction Amendment.

§ A11.4 PERFORMANCE BOND AND PAYMENT BOND
§ A11.4.1 Design-Builder shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Guaranteed Maximum Price, and such amount shall be adjusted as the Guaranteed Maximum Price is adjusted pursuant to the Design-Build Documents. The form of the bonds and the identity of the surety shall be in the form attached as Exhibit H to the Agreement.

§ A11.4.1.1 Any Change Order, Construction Change Directive, order for a minor change in the Work or other Modification under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve, and consents to, any such Change Order, Construction Change Directive, order or Modification.

§ A11.4.1.2 The surety on any required bond shall be bound to mediate and arbitrate any disputes between and among it, the Owner, Owner’s separate consultants and contractors and their subconsultants and subcontractors, consultants and subconsultants, contractors and subcontractors and their sureties, Contractors, Contractors’ sureties, Subcontractors, Subcontractors’ sureties, Architect, Architect’s consultants, and other persons or entities under contract or otherwise engaged to furnish labor, services, materials or equipment for the Project in the same way and to the same extent that the Design-Builder shall be bound to mediate and arbitrate any disputes between and among such parties. The surety shall be bound by the mediated agreement in the same way and to the same extent that the Design-Builder shall be bound.

§ A11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Design-Builder shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ A11.4.3 With the Owner’s prior written approval, the Design-Builder may require one or more Contractors to furnish payment and performance bonds covering faithful performance of the particular subcontract and payment of obligations arising thereunder.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK
§ A12.1 UNCOVERING OF WORK
§ A12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner’s examination and be replaced at the Design-Builder’s expense without change in the Contract Time.

§ A12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall be at the Owner’s expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder’s expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A12.2 CORRECTION OF WORK
§ A12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.
§ A12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including reasonable and necessary additional testing, shall be at the Design-Builder’s expense.

§ A12.2.2 AFTER SUBSTANTIAL COMPLETION
§ A12.2.2.1 In addition to the Design-Builder’s obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly.
after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder’s correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder’s liability with respect to the Design-Builder’s obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK
§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS
§ A.13.1 GOVERNING LAW
§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS
§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract and any payment and performance bonds to an entity created by Owner or an institutional lender providing construction financing for the Project. In addition, an entity created by Owner may, without consent of Design-Builder, assign the assigned Design-Build Contract and any payment and performance bonds to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner’s rights and obligations under the Design-Build Documents. The Design-Builder shall execute or obtain all consents reasonably required to facilitate such assignments.
§ A.13.3 WRITTEN NOTICE
§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES
§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS
§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner’s expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder’s expense and within the Guaranteed Maximum Price.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

ARTICLE A.14 TERMINATION OR SUS PENSION OF THE DESIGN/BUILD CONTRACT
§ A.14.1 TERMINATION BY THE DESIGN-BUILDER
§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days’ written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner’s obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days’ written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE
§ A.14.2.1 The Owner may terminate the Design-Build Contract in whole or in part if the Design-Builder:
   .1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
   .2 fails to make payment to Architect or Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
   .3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
   .4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder’s surety, if any, seven days’ written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:
   .1 take possession of the site and of all materials, purchased for incorporation into the Work; and
   .2 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract in whole or in part for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. Under no circumstances shall Design-Builder be entitled to markup, including but not limited to overhead and profit, on work not performed.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE
§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:
   .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
   .2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.
§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract in whole or in part for the Owner’s convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination in whole or in part for the Owner’s convenience, the Design-Builder shall:

.1 cease operations as directed by the Owner in the notice;
.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner’s convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services completed. In case of termination for the Owner’s convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed. Under no circumstances shall Design-Builder be entitled to markup, including but not limited to overhead and profit, on Work not performed.

§ A.15 MISCELLANEOUS

§ A.15.1 OPERATION AND MAINTENANCE MANUALS
As part of the Work, Design-Builder shall submit one hard copy and two electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) completed operation and maintenance manual (“O & M Manual”) for review by the owner’s representative prior to submission of any pay request for more than 90 percent of the work. No payments beyond 90 percent will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the specifications; training information; a telephone list of consultants, manufacturers, installer and suppliers; manufacturer’s printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; and bonds, etc. The owner’s representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, complete and approved sets of O & M Manuals shall be delivered to the owner’s representative by the Design-Builder.

§ A.15.2 TRAINING
As part of the Work, and prior to submission of the request for final payment, the Design-Builder shall schedule with the owner’s representative training sessions for all equipment and systems, as required in the individual specifications sections. The Design-Builder shall schedule training sessions at least two weeks in advance of the date of training to allow the Owner’s personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment or system is completely installed and operational in its normal operating environment.

§ A.15.3 OTHER DESIGN-BUILDER RESPONSIBILITIES
The Design-Builder shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Design-Builder shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Design-Builder to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the Project and the Design-Builder’s forces continue with their work.
AIA Contract A141-2004
Exhibit B. Determination of the Cost of the Work
DRAFT AIA® Document A141™ - 2004
Exhibit B

Determination of the Cost of the Work

for the following PROJECT:
(Name and location or address)

«Gladstone Square & Multnomah Manor Apartments»

THE OWNER:
(Name, legal status and address)

Home Forward
135 SW Ash Street
Portland, OR 97204

THE DESIGN-BUILDER:
(Name, legal status and address)

« »

« »

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion.
The author may also have revised the text of the original AIA Standard form.
An Additions and Deletions Report that notes added information as well as
revisions to the standard form text is available from the author and should be
reviewed.

This document has important legal consequences.
Consultation with an attorney is encouraged with respect to its completion or modification.
Consultation with an attorney is also encouraged with respect to professional licensing
requirements in the jurisdiction where the Project is located.

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prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.
ARTICLE B.2 COSTS TO BE REIMBURSED
§ B.2.1 COST OF THE WORK
The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS
§ B.2.2.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner’s approval, at off-site locations.
§ B.2.2.2 Wages or salaries of the Design-Builder’s supervisory and administrative personnel when stationed at the site, or at other locations, but only for that portion of their time required for the Work.
§ B.2.2.3 Wages and salaries of the Design-Builder’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS
§ B.2.3.1 Payments made by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION
§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.
§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS
§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.
§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner’s prior approval. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of that item.
§ B.2.5.3 Costs of removal and proper disposal of debris from the site.
§ B.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, and reasonable petty cash expenses of the site office.
§ B.2.5.5 That portion of the reasonable expenses of the Design-Builder’s personnel incurred while traveling in discharge of duties connected with the Work when approved in advance in writing by Owner.

§ B.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance in writing by the Owner.

§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES
§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid by the Design-Builder for design and other consulting services required by the Design-Build Documents.

§ B.2.7 MISCELLANEOUS COSTS
§ B.2.7.1 That portion of insurance and bond premiums that are required by this Design-Build Contract. Subcontractor bonds are not required by this Design Build Contract and will only be included in the Cost of the Work if approved in writing by the Owner.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work provided that such taxes shall be excluded from the Cost of the Work for purposes of determining Contractor’s Fee.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay provided that such fees shall be excluded from the Cost of the Work for purposes of determining Contractor’s Fee.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner’s consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder’s Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Data processing costs related to the Work with Owner’s prior written approval.

§ B.2.7.7 Deposits lost for causes other than the Design-Builder’s fault or failure to fulfill a specific responsibility to the Owner as set forth in the Design-Build Documents.

§ B.2.7.8 Legal, mediation and arbitration costs, including attorneys’ fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner’s prior written approval, which approval shall not be unreasonably withheld.

§ B.2.7.9 Expenses incurred in accordance with the Design-Builder’s standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved in writing in advance by the Owner.

§ B.2.8 OTHER COSTS AND EMERGENCIES
§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.
§ B.2.8.3 Cost of repairing or correcting damaged or non-conforming Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged or non-conforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recoverable by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Design-Builder’s personnel stationed at the Design-Builder’s principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder’s principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder’s capital expenses, including interest on the Design-Builder’s capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

§ B.3.1.8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price, if any, to be exceeded.

§ B.3.1.9 Costs incurred before Owner’s approval when such approval is required by the Design-Build Documents.

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS Hired BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder’s own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner’s prior consent.
ARTICLE B.6 ACCOUNTING RECORDS
§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner’s accountants shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder’s records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 No later than 75 days after the date of Substantial Completion, the Design-Builder shall deliver to the Owner’s accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner’s accountants may review and report in writing on the Design-Builder’s final accounting. Based upon such Cost of the Work as the Owner’s accountants report to be substantiated by the Design-Builder’s final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will notify the Design-Builder in writing of the Owner’s intention to make final payment or to withhold final payment.

§ B.6.4 If the Owner’s accountants report the Cost of the Work as substantiated by the Design-Builder’s final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Design-Builder fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Owner’s accountants shall become binding on the Design-Builder. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Owner shall pay the Design-Builder the amount, if any, determined by the Owner’s accountant to be due the Design-Builder.

§ B.6.5 If, subsequent to final payment and at the Owner’s request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder’s Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Design-Builder has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Design-Builder.

ARTICLE B.7 RELATED PARTY TRANSACTIONS
§ B.7.1 For purposes of this Section B.7, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having partial or complete common ownership or management with Design-Builder; any entity in which any stockholder, or management employee of, the Design-Builder owns any interest in excess of 10% in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term “related party” includes but is not limited to any member of the immediate family of any person identified above.

§ B.7.2 If any of the costs to be reimbursed under this Contract arise from a transaction between Design-Builder and a related party, Design-Builder shall notify the Owner in writing in advance of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated costs to be incurred before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed and Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of the Contract. If the Owner fails to authorize the proposed transaction in writing, the Design-Builder shall procure the Work, equipment, goods, or service from some other person or entity other than a related party in accordance with the terms of the Contract.
AIA Contract A141-2004
Exhibit C. Insurance Requirements
EXHIBIT C

INSURANCE REQUIREMENTS

As a condition precedent to payment, Design-Builder will at all times specified herein provide and maintain for itself and require the Architect, Contractors, Subcontractors and major subconsultants to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of “Best’s Insurance Guide” (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located.

A. Workers’ Compensation and Employer’s Liability:
   (i) Workers Compensation, with limits as required by applicable law. Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
   (ii) Employers Liability:
        $1,000,000  Each Accident
        $1,000,000  Disease, Policy Limit
        $1,000,000  Disease, Each Employee
        Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

B. Commercial General Liability (Occurrence Form):
   (i) Combined Bodily Injury and Property Damage:
        $1,000,000  Each Occurrence
        $1,000,000  Personal and Advertising Injury
        $2,000,000  General Aggregate
        $2,000,000  Products/Completed Operations Aggregate
        $50,000  Fire Damage Legal Liability
        $10,000 Medical Expenses Per Person
   (ii) The scope of coverage must meet the following:
        (1) Premises Operations must be included.
        (2) Elevators and Escalators must be included.
        (3) Coverage for Independent Contractors and work performed on Design-Builder’s behalf by Contractors and Subcontractors must be included.
        (4) Pollution Liability and Hazardous Materials Liability must be included.
        (5) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)
        (6) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
        (7) There can be no exclusions for subsidence, collapse, explosion or underground property damage.
        (8) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office “separation of insureds” clause.
        (9) The limits will not be eroded or wasted by defense costs.
        (10) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Owner by Design-Builder)
C. **Commercial Business Auto:**
   (i) Combined Bodily Injury and Property Damage  
       $1,000,000  Each Accident  
   (ii) The following coverages must be included:
       (1) Owned Automobiles  
       (2) Non-Owned and Hired Automobiles  
   Will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

D. **Professional Liability:**
   (i) $2,000,000 Each Claim  
   (ii) $2,000,000 Aggregate  
   (iii) There can be no exclusion for mold, fungus, water intrusion or water damage.  
   (iv) The professional liability insurance described in this Paragraph D and Subparagraphs (i), (ii) and (iii) will be maintained by Design-Builder for the duration of the applicable statute of repose in the state in which the Project is located.

E. **Excess/Umbrella Liability Coverage:**
   (i) $10,000,000 Each Occurrence  
   (ii) $10,000,000 Aggregate  
   (iii) Coverage will be at least as broad as all liability policies described above.  
   (iv) Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.  
   (v) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer’s Liability and Pollution policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

F. **Pollution Liability**
   (i) $2,000,000 Each Claim  
   (ii) $2,000,000 Aggregate

G. **Certificates and Certified Copies of Policies.** Certificates of insurance for Design-Builder, Architect, Contractors’, Subcontractors’ and all major subconsultants’ insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner’s request at any time, Design-Builder will immediately provide an actual certified copy of its insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.

G. **Notice of Cancellation, Reduction or Expiration.** The insurance policies required by this Exhibit will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days’ prior written notice has been given to Owner. In addition, Design-Builder, Architect, Contractors, Subcontractors and major subconsultants will give
immediate written notice to Owner immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning reduction of limits on account of claims paid or to be paid will be furnished by the Design-Builder to Owner not more than three (3) business days of when Design-Builder learns that revised or reduced limits are likely. When Design-Builder becomes aware of cancellation, expiration or reduction in coverage or available limits, Design-Builder will procure other policies of insurance that meet all requirements of this Exhibit as soon as possible.

H. **Owner’s Right To Terminate or Cure.** Failure of Design-Builder, Architect, or a Contractor, Subcontractor, or major subconsultant to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Design-Builder for work on the Project, (ii) terminate the Design-Builder for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Design-Builder. Design-Builder consents to Owner procuring replacement insurance in Design-Builder’s name and will cooperate in all respects with Design-Builder’s efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner’s protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Design-Builder, Architect, Contractors, Subcontractors and major subconsultants maintained the insurance required by this Exhibit. Owner’s costs incurred in finding replacement insurance or an Owner’s protective policy will either be reimbursed directly by Design-Builder or may be offset against amounts owed by Owner to Design-Builder on the Project or other projects. This requirement will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

I. **Insurance In Excess of Requirements.** In the event Design-Builder, Architect, or any Contractor, Subcontractor, or major subconsultant purchases insurance in excess of the coverages or limits required under this Exhibit, such excess coverages or limits will apply to the Project and inure to the benefit of Owner.

J. **No Waiver by Owner.** The insurance requirements under this Exhibit can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner’s waiver of the insurance requirements of this Exhibit.

K. **Architect, Architect’s Subconsultants and the Subcontractor Insurance.** All Architect, Architect’s Subconsultants, Contractors’ and Subcontractors’ insurance will meet all insurance requirements of Design-Builder as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Contractors and Subcontractors will be no less than the following:

(i) Workers’ Compensation and Employer’s Liability: same as above.

(ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:

- $1,000,000 Each Occurrence
- $1,000,000 Personal and Advertising Injury
- $2,000,000 General Aggregate
- $2,000,000 Products/Completed Operations Aggregate

(iii) Professional Liability: same as above, except that none will be required if a Contractor or Subcontractor will not be performing design services on the Project.

(iv) Business Auto: same as above.

(v) Excess/Umbrella Liability Coverage: none required.

(vi) Pollution Liability: none required
M. Waiver of Subrogation. To the fullest extent permitted by law, all of Design-Builder’s, Architect’s, Contractors’, Subcontractors’ and major subconsultants’ liability insurance policies, including worker’s compensation, will contain a waiver of subrogation against Owner.

N. Additional Insureds. To the fullest extent permitted by law, all of Design-Builder’s, Architect’s, Contractors’, Subcontractors’ and major subconsultants’ liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to ongoing operations, (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as additional insureds:

Home Forward
135 SW Ash Street
Portland, Oregon 97204

The Owner and the Design Builder acknowledge that other persons or entities affiliated with the Owner may need to be named as additional insured. If such persons or entities are identified by the Owner, that parties agree that the foregoing list will be amended by the Construction Addendum.
AIA Contract A141-2004
Exhibit D. Project Criteria
# EXHIBIT D
## PROJECT CRITERIA | GLADSTONE SQUARE

Home Forward will undertake renovation and repair work at Gladstone Square and Multnomah Manor Apartments. While the scope of renovation and repair work will be finalized during the programming phase undertaken by the Design-Build Team, Home Forward has established initial priorities for the work at each building which are listed below.

## Gladstone Square Apartments

<table>
<thead>
<tr>
<th>SITE IMPROVEMENTS</th>
<th>Available Background Information</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Paving and Sidewalks:</strong> At the front entry of the apartments, concrete landings were added after the installation of the siding. The concrete pad is poured against the bottom edge of the wall cladding. This condition has caused trapped moisture and decay in the battens and the wainscoting at the base of the wall.</td>
<td>• 2015 CNA by EMG</td>
</tr>
<tr>
<td><strong>Site Grading and Landscaping:</strong> Slope grade away from buildings and replace landscaping, Zoning Code upgrades.</td>
<td>• 2014 Building Enclosure CNA by RDH</td>
</tr>
<tr>
<td><strong>ENVELOPE IMPROVEMENTS</strong></td>
<td>• Site Reference Plan</td>
</tr>
<tr>
<td><strong>Roof Replacement:</strong> Replace entire composition roofing. Roof is at end of lifecycle. Replace dormer vents that are improperly flashed with new bird block vents at eaves. Fascia and barge boards appear to be deteriorating and should be replaced. Replacement of the existing gutters and downspouts is recommended.</td>
<td>• 1998 Original Drawings</td>
</tr>
<tr>
<td><strong>Siding and Window Replacement:</strong> Exterior rehabilitation program should address the entire exterior cladding system from the base of the wall to 2nd Floor below eaves. A building envelope assessment by RDH Building Sciences found elevated moisture meter readings at localized areas in the exterior gypsum sheathing underneath the siding which has contributed to organic growth and rot to the trim around the windows. New cementitious lap siding installed over a drainage cavity over new WRB material is recommended (rainscreen). Windows are approximately 15 years old. Vinyl windows of this type have a service life of approximately 25 years.</td>
<td>• Energy Analysis by MPower Oregon on request!</td>
</tr>
<tr>
<td><strong>Stair &amp; Balcony Replacements:</strong> (Units A11 &amp; B57): Replace balconies that have cracked and spalled concrete topping on exposed timber construction. Replace balcony stairs with new stand alone galvanized steel stringers with precast concrete treads.</td>
<td></td>
</tr>
<tr>
<td><strong>Front and Back Entry Doors:</strong> Existing metal doors have wood frames that show signs of damage and decay. Replacement of all doors in conjunction with the exterior rehabilitation program is recommended.</td>
<td></td>
</tr>
<tr>
<td><strong>New Patio Privacy Walls:</strong> Replace patio partition walls with new free-standing aluminum or wood privacy walls supported on the existing concrete patio surface.</td>
<td></td>
</tr>
<tr>
<td><strong>Exterior LED Lighting Upgrades:</strong> Replace wall packs that illuminate walkways to entrances. Replace parking pole lights to LED. Replace all apartment bldg. &amp; Community front and rear entry lights. Seek ETO tax credit incentives.</td>
<td></td>
</tr>
<tr>
<td><strong>Security Systems:</strong> Provide new cameras and monitoring equipment.</td>
<td></td>
</tr>
</tbody>
</table>

## INTERIOR IMPROVEMENTS

| **Bath Fan Replacement:** Provide energy efficient humidity sensor ventilation fans. Seek ETO tax credit incentives. Replace vent hoods that integrate into rainscreen cladding at ground floor flats. Replace metal ducting in attics, wrapped with insulation and properly vent to roof. | |
| **Kitchen and Bath Countertops:** Replace plastic laminate tops with new preformed laminate with integral back splash. New plumbing fixtures is recommended. | |
| **Select Kitchen Cabinetry Replacement or Refinishing:** Cabinetry is original, and were of reasonably high quality with plywood boxes and faces. Some the original cabinetry have been subject to allot of abuse and are nearing the end of their useful life. There are some instances of physical damage to drawer fronts and cabinet doors. | |
| **ENERGY EFFICIENCY IMPROVEMENTS** | |
| **Kitchen Appliances:** Some appliances are original and are nearing their useful life. Replace with new energy efficient appliances. | |
| **New Bath Plumbing Fixtures:** Some fixtures are original and are nearing their useful life. Replace water heaters, toilets and shower fixtures with water conserving fixtures. | |
| **Interior LED Lighting Upgrades:** Replace Community/Office Building lighting. Replace interior unit lighting. | |
EXHIBIT D
PROJECT CRITERIA | MULTNOMAH MANOR

Home Forward will undertake renovation and repair work at Gladstone Square and Multnomah Manor Apartments. While the scope of renovation and repair work will be finalized during the programming phase undertaken by the Design-Build Team, Home Forward has established initial priorities for the work at each building which are listed below.

<table>
<thead>
<tr>
<th>Multnomah Manor</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SITE IMPROVEMENTS</strong></td>
</tr>
<tr>
<td>Paving and Sidewalks: Zoning Code upgrades in regards to pedestrian connections between each building entrance and a street; ADA accessibility; internal connections to other areas of the site such as the parking areas.</td>
</tr>
<tr>
<td>Site Grading and Landscaping: Slope grade away from buildings and new landscaping. Zoning Code upgrades.</td>
</tr>
<tr>
<td>Replacement External Sanitary System from the buildings to the Street: There have been a number of problems with sewer lines under building slabs. Video scope inspection should be done to determine severity.</td>
</tr>
<tr>
<td>• 2015 CNA by EMG</td>
</tr>
</tbody>
</table>

| • 2014 Phase I Environmental Site Assessment by PBS |

<table>
<thead>
<tr>
<th><strong>ENVELOPE IMPROVEMENTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Exterior LED Lighting Upgrades: Replace wall packs that illuminate walkways to entrances. Replace parking pole lights to LED. Replace all apartment bldg. &amp; Community front and rear entry lights. Seek ETO tax credit incentives.</td>
</tr>
<tr>
<td>Wood Framed Balcony Repairs: Wood framed balconies that provide access to apartment front entrances. These balconies are supported by a cross beam sandwiched between two wood post. These support beams and post show signs of decay.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>INTERIOR IMPROVEMENTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Replacement Internal Sanitary System underneath the buildings: The kitchen drain lines were installed with inadequate slopes leading to standing water and degradation of cast iron pipes. A number of these lines have been replaced and it is anticipated the problem may continue. Video scope inspection should be done to determine severity. Vinyl floor tile appears to have no asbestos containing materials according ERV report by PBS.</td>
</tr>
<tr>
<td>Bath Fan Replacement: Provide energy efficient humidity sensor ventilation fans. Seek ETO tax credit incentives. Replace vent hoods that integrate into rainscreen cladding at ground floor flats. Replace metal ducting in attics, wrapped with insulation and properly vent to roof.</td>
</tr>
<tr>
<td>Kitchen and Bath Countertops: Replace plastic laminate tops with new preformed laminate with integral back splash. New plumbing fixtures is recommended.</td>
</tr>
<tr>
<td>Select Kitchen Cabinetry Replacement: Cabinets in most kitchens were replaced in 2003. The replacement cabinets are low quality laminate faced particleboard. Some the original cabinetry have been subject to allot of abuse. There are some instances of physical damage to drawer fronts and cabinet doors.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>ENERGY EFFICIENCY IMPROVEMENTS</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Kitchen Appliances: Some appliances are original and are nearing their useful life. Replace with new energy efficient appliances.</td>
</tr>
<tr>
<td>New Bath Plumbing Fixtures: Some fixtures are original and are nearing their useful life. Replace water heaters, toilets and shower fixtures with water conserving fixtures.</td>
</tr>
<tr>
<td>Interior LED Lighting Upgrades: Replace Community/Office Building lighting. Replace interior unit lighting.</td>
</tr>
</tbody>
</table>

| • 2003 Renovation Drawings |
| • Energy Analysis by MPower Oregon (on request) |
AIA Contract A141-2004
Exhibit E. Forms & Waivers
CONTRACTOR/SUBCONTRACTOR/SUPPLIER
CONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor/Subcontractor/Supplier, upon receipt of a check in the sum of
______________________ Dollars ($__________) payable to Contractor/Subcontractor/Supplier, and when the
check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases
any construction lien claim, stop notice, payment and performance bond claim, and any and all other claims
Contractor/Subcontractor/Supplier has with respect to its Work on the ___________________________ (“Project”) under and related to the prime contract for the Project between __________________________ (“Design-Builder”) and Home Forward (“Owner”) dated _______ ___, 201__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services,
overhead, materials, and equipment furnished and any and all other claims by Contractor/Subcontractor/Supplier and
its subcontractors and suppliers at all tiers during the period commencing on and including __________ ______,
201_ and ending on and including ______________, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Design-Builder, any principal and surety on a bond, and any
lender providing financing for the Project; provided that any party intending to rely upon this document should first
verify evidence of payment to Contractor/Subcontractor/Supplier of the full amount set out above.

Date: ______________________

____________________________
By: ______________________________________
   (signature)

____________________________
Name: ___________________________________
   (printed or typed)

____________________________
Title: ___________________________________
CONTRACTOR/SUBCONTRACTOR/SUPPLIER
UNCONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor/Subcontractor/Supplier has been paid and has received a final/progress payment (identify which) in the sum of ____________________ Dollars ($__________), and hereby waives and releases any stop notice, payment and performance bond claim, and any and all other claims Contractor/Subcontractor/Supplier has with respect to its Work on the ______________________ (“Project”) under and related to the prime contract for the Project between ___________________ (“Design-Builder”) and Home Forward (“Owner”) dated __________ ____, 201__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Contractor/Subcontractor/Supplier and its subcontractors and suppliers at all tiers during the period commencing on and including __________ ____, 201_ and ending on and including ______________, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Design-Builder, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Contractor/Subcontractor/Supplier of the full amount set out above.

Date: ______________________  CONTRACTOR/SUBCONTRACTOR/SUPPLIER

________________________________________
By: ______________________________
   (signature)

Name: ________________________________
   (printed or typed)

Title: ________________________________
DESIGN-BUILDER
CONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Design-Builder, upon receipt of a check in the sum of ____________________ Dollars ($__________) payable to Design-Builder, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claims, stop notice and any and all claims Design-Builder has with respect to its Work on the _____________________________________ (“Project”) under and related to its prime contract for the Project with Home Forward (“Owner”) dated ___________ , 201__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Design-Builder and its architect, consultants, contractors, subcontractors and suppliers at all tiers during the period commencing on and including ______________, 201_ and ending on and including ______________, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Design-Builder of the full amount set out above.

Date: ______________________  DESIGN-BUILDER

________________________________________
By:  ______________________________________
      (signature)
Name:  ___________________________________
      (printed or typed)
Title:  ___________________________________
DESIGN-BUILDER
UNCONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Design-Builder upon receipt of a check in the sum of ______________________ Dollars ($____________) payable to Design-Builder, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claims, stop notice and any and all claims Design-Builder has with respect to its Work on the ______________________ (“Project”) under and related to its prime contract for the Project with Home Forward (“Owner”), dated ______________, 201__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Design-Builder or its architect, consultants, contractors, subcontractors and suppliers at all tiers during the period commencing on and including __________________, 201_ and ending on and including ______________, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Design-Builder of the full amount set out above.

Date: ______________________  DESIGN-BUILDER
________________________________________
By:  ____________________________________
   (signature)
Name:  ___________________________________
   (printed or typed)
Title:  ___________________________________
AIA Contract A141-2004
Exhibit F. Public Contracting Provisions
1. GENERAL

1.1 INCORPORATION OF ALL CONTRACT PROVISIONS. The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Home Forward Public Contracting Rules (which are referred to in this Exhibit as the “Home Forward Rules”) or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed.

1.2 DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS. The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Home Forward Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Home Forward Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Contractor’s obligation to comply with applicable laws.

2. PAYMENT.

2.1 PROMPT PAYMENT. Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 CONTRACTOR’S OBLIGATIONS TO FIRST-TIER SUBCONTRACTOR. Contractor shall pay each first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract. Contractor shall provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor. Contractor shall use the same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure. Contractor shall also include in each subcontract entered into by the Contractor a provision requiring each first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 2.2 in each of its subcontracts and to require each of the first-tier Subcontractor’s lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

2.3 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 CONTRACTOR’S FAILURE TO MAKE PROMPT PAYMENT. If the Contractor has failed, neglected or refused to pay promptly a person’s claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner’s request, Contractor shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.
2.5 CONTRACTOR’S AND FIRST-TIER SUBCONTRACTOR’S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection the Contract within thirty (30) days after receiving payment from the Owner or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

2.7 CONTINUING LIABILITY OF CONTRACTOR AND SURETY. Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Contractor or the Contractor’s surety from obligation with respect to any unpaid claims.

3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract.

3.2 PUBLIC WORKS BOND. Before starting the Work, Contractor and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Contractor shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. COMPLIANCE WITH LAWS/TAX LAWS. Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors at any tier. Contractor must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

5. CONTRACTOR’S EMPLOYEES AND SUBCONTRACTORS.

5.1 EMPLOYEE DRUG TESTING PROGRAM. Contractor shall certify to Owner that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 WORK DAY/WORK WEEK. No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, including Monday through Thursday.
days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

5.3 NOTICE OF REQUIRED WORK HOURS. The Contractor and each Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.4 CLAIMS FOR OVERTIME. Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the Contract, provided the Contractor has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.4 to be posted in a prominent place alongside the door of the timekeeper’s office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.5 WORKERS’ COMPENSATION. All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

5.6 PROMPT PAYMENT FOR MEDICAL SERVICES. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.7 PROMPT PAYMENT BY CONTRACTOR AND SUBCONTRACTORS; INTEREST PENALTY. Contractor shall include in each subcontract entered into by the Contractor a clause obligating the Contractor (1) to make payment to the Subcontractor for satisfactory performance within ten (10) days out of such amounts as are paid to the Contractor by the Owner under the Contract, and (2) if payment is not made within 30 days after receipt of payment from the Owner, to pay the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract as required by the preceding clause, (1) above. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515(2). Contractor shall also include in each subcontract entered into by the Contractor a provision requiring each first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 5.7 in each of its subcontracts and to require each of the first-tier Subcontractor’s lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

5.8 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD. Before commencing the Work, Contractor shall ensure that the Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Subcontractor has been declared ineligible to work on a public contract.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.
8. **RECYCLED MATERIALS.** The Contractor, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. **ENVIRONMENTAL AND NATURAL RESOURCES LAWS.** Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

   **Federal Agencies:**
   
   Agriculture, Dept. of  
   Forest Service  
   Natural Resource Conservation Service  
   Defense, Dept. of  
   Army Corps of Engineers  
   Coast Guard  
   Environmental Protection Agency  
   Interior, Dept. of  
   U.S. Fish and Wildlife Service  
   Bureau of Land Management  
   Bureau of Indian Affairs  
   Bureau of Reclamation  
   Labor, Dept. of  
   Occupational Safety and Health Administration  
   Transportation, Dept. of  
   Federal Highway Administration

   **State Agencies:**
   
   Agriculture, Dept. of  
   Consumer and Business Services Dept.  
   Oregon Occupational Safety and Health Division  
   Environmental Quality, Dept. of  
   Fish and Wildlife, Dept. of  
   Forestry, Dept. of  
   Geology and Mineral Industries, Dept. of  
   Human Services, Dept. of  
   Land Conservation and Development, Dept. of  
   Natural Resources, Dept. of  
   State Fire Marshall  
   State Lands, Dept. of  
   Water Resources Department

   **Local Agencies:**
   
   City Councils  
   Circuit Courts  
   County Commissioners, Boards of  
   Fire Districts  
   Planning Commissions

10. **RETAINAGE.** The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570.
11. LIENS. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

12. MWESB CERTIFICATION STATUS. If Contractor is certified as a disadvantaged, minority, women or emerging small business enterprise under ORS 200.055 and Owner awarded the Contract to Contractor in whole or in part on the basis of Contractor’s certification, Contractor shall remain certified for the entire term of the Contract. Similarly, if one or more of Contractor’s Subcontractors are certified as a disadvantaged, minority, women or emerging small business enterprise under ORS 200.055 and Owner awarded the Contract to Contractor in whole or in part on the basis of the Subcontractors’ certifications, Contractor shall require that those Subcontractors remain certified for the entire term of the Contract. This requirement is a material condition of the Contract and, if Contractor or a Subcontractor is no longer certified, Owner may, without prejudice to any other right or remedy, (a) terminate the Contract, (b) require the Contractor to terminate the subcontract, or (b) exercise any or all other remedies for breach of this Contract. Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 12, such that all subcontracts at all tiers include a requirement to comply with this Section 12.

13. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surey or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Contractor or Subcontractor).

__________(here to be signed)
AIA Contract A141-2004
Exhibit G. Federal Requirements
FEDERAL REQUIREMENTS

1. Audit and Inspection of Records

A. Contractor shall maintain a complete set of records relating to this contract, in accordance with generally accepted accounting procedures. Contractor shall permit the authorized representatives of Home Forward, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States to inspect and audit all work, materials, payrolls, books, accounts, and other data and records of Contractor relating to its performance under this contract until the expiration of three (3) years after final payment under this contract.

B. Contractor further agrees to include in all of its subcontracts under this contract a provision to the effect that the subcontractor agrees that Home Forward, the U.S. Department of Housing and Urban Development, and the Comptroller General of the United States, or any of their duly authorized representatives shall, until the expiration of three (3) years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and other records of the subcontractor. The term "subcontract" as used in this Paragraph excludes (1) purchase orders not exceeding $10,000.00 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

C. The periods of access and examination described in subparagraphs A and B of this Paragraph for records that relate to (1) disputes between Home Forward and Contractor, (2) litigation or settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his or her duly authorized representatives, shall continue until all disputes, claims, litigation, appeals, and exceptions have been resolved.

2. Lobbying

A. Definitions. As used in this clause,

"Agency", as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1).

"Covered Federal action" means any of the following Federal actions:

(1) The awarding of any Federal contract;
(2) The making of any Federal grant;
(3) The making of any Federal loan;
(4) The entering into of any cooperative agreement; and,
(5) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Covered Federal action does not include receiving from an agency a commitment providing for the United States to insure or guarantee a loan. "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 450B). Alaskan Natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Revised January 2014
"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under title 5, U.S. Code, including a position under a temporary appointment;
2. A member of the uniformed services as defined in section 101(3), title 37, U.S. Code;
3. A special Government employee as defined in section 202, title 18, U.S. Code; and,
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, U.S. Code appendix 2.

"Person" means an individual, corporation, company association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government. "Reasonable payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal contract. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed" means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State, regional, or interstate entity having governmental duties and powers.

B. **Prohibition**

1. Section 1352 of title 31, U.S. Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or
(2) The prohibition does not apply as follows:

(i) Agency and legislative liaison by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(b) For purposes of paragraph B (2) (i) (a) of this section, providing any information specifically requested by an agency or Congress is allowable at any time.

(c) For purposes of paragraph B (2) (i) (a) of this section the following age agency and legislative liaison activities are allowable at any time only where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities; and,

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(d) For purposes of paragraph B (2) (i) (a) of this section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

(e) Only those activities expressly authorized by paragraph B (2) (i) of this section are allowable under paragraph B (2) (i).

(ii) Professional and technical services by Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract if payment is for
professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (ii) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Only those services expressly authorized by paragraph B (2) (ii) of this section are allowable under paragraph B (2) (ii).

(iii) Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iv) Professional and technical services by Other than Own Employees.

(a) The prohibition on the use of appropriated funds, in paragraph B (1) of this section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

(b) For purposes of paragraph B (2) (iv) (a) of this section, "professional and technical services" shall be limited advice and analysis directly applying to any professional or technical discipline. For example, drafting of a
legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(c) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

(d) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(e) Only those services expressly authorized by paragraph B (2) (iv) of this section are allowable under paragraph B (2) (iv).

C. Disclosure

(1) Each person who requests or receives from an agency a Federal contract shall file with that agency a certification, set forth in this document, that the person has not made, and will not make, any payment prohibited by paragraph (b) of this clause.

(2) Each person who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, Standard Form-LLL, “Disclosure of Lobbying Activities,” if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (b) of this clause if paid for with appropriated funds.

(3) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraph C (2) of this section. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(b) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or,
D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this clause.

E. Penalties

(1) Any person who makes an expenditure prohibited under paragraph B of this clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.

(2) Any person who fails to file or amend the disclosure form to be filed or amended if required by this clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

(3) Contractors may rely without liability on the representations made by their subcontractors in the certification and disclosure form.

3. Environmental Violations

For all contracts and subcontracts in excess of $100,000.00, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), which prohibit the use under nonexempt Federal contracts, grants, or loans, of facilities included on the EPA List for Violating Facilities.

4. Energy Conservation

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321, et seq.).

5. Section 3

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by Housing and Urban Development (HUD) assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD’s regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to
this contact certify that they are under no contractual or other impediment that would prevent
them from complying with the part 135 regulations.

C. The Contractor agrees to send to each labor organization or representative of workers with
which the contractor has a collective bargaining agreement or other understanding, if any, a
notice advising the labor organization or workers’ representative of the contractor’s
commitments under this Section 3 clause, and will post copies of the notice in conspicuous
places at the work site where both employees and applicants for training and employment
positions can see the notice. The notice shall describe the Section 3 preference, shall set
forth minimum number and job titles subject to hire, availability of apprenticeship and training
positions, the qualifications for each; and the name and location of the person(s) taking
applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to
compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as
provided in an applicable provision of the subcontract or in this Section 3 clause, upon a
finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The
contractor will not subcontract with any subcontractor where the contractor has notice or
knowledge that the subcontractor has been found in violation of the regulations in 24 CFR
part 135.

E. The contactor will certify that any vacant employment positions, including training positions,
that are filled (1) after the contractor is selected but before the contract is executed, and (2)
with persons other than those to whom the regulations of 24 CFR part 135 require
employment opportunities to be directed, were not filled to circumvent the contractor’s
obligations under 24 CFR part 135.

F. Noncompliance with HUD’s regulations in 24 CFR part 135 may result in sanctions,
termination of this contract for default, and debarment or suspension from future HUD
assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing
assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25
U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b)
requires that to the greatest extent feasible (i) preference and opportunities for training and
employment shall be given to Indians, and (ii) preference in the award contacts and
subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises.
Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree
to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance
with Section 7(b).

6. Certification of Eligibility

The Contractor certifies that to the best of its knowledge and belief, neither it, nor any person or
firm which has an interest in the Contractor’s firm, nor any of the Contractor’s subcontractors is
ineligible to be awarded contracts by any agency of the United States Government, HUD, or the
State in which this contract is to be performed; or participate in HUD programs pursuant to 24

END OF FEDERAL REQUIREMENTS
AIA Contract A141-2004
Exhibit H. Performance Bond & Payment Bond
PERFORMANCE BOND

(Bond No. __________)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, ______________________________, as Principal and ______________________________ as Surety, a corporation organized and existing under the laws of the state of ____________________, are held and bound unto Home Forward and its heirs, executors, administrators, and assigns as Obligee, in the penal sum of ____________________ Dollars ($_______________), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Design-Build Contract (“Contract”) dated ________, 201_ with Obligee for ______________________________ (“Project”), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall faithfully, punctually and completely perform and abide with the covenants, terms, conditions and provisions of said Contract and any extensions thereof in all respects and within the time prescribed therein, including, but not limited to, the terms of any warranty and guarantee required under the said Contract; shall pay all laborers, mechanics, contractors, subcontractors, material and equipment suppliers and all persons supplying to Principal or its contractors, subcontractors and suppliers at any tier labor, materials, supplies or equipment for the prosecution of the work or any part thereof; shall fully defend, indemnify and hold Obligee harmless from all cost and damage that Obligee may suffer by reason of Principal’s failure to do so; and shall in all respects perform said Contract according to applicable law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal’s payments to Architect, consultants, Contractors, and Subcontractors or Design-Builder’s use of Project funds.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee’s favor, Surety shall pay all of Obligee’s costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees. In the event there is an arbitration clause in said Contract, Surety agrees to participate in and to be bound by any such arbitration to the same extent Principal is bound.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of ______________, 201_.

__________________________________________
PRINCIPAL

______________________________
Title

______________________________
Address

__________________________________________
SURETY

______________________________
Title

______________________________
Address

__________________________________________
COUNTERSIGNED:

______________________________
Resident Agent

______________________________
Address

73635961.1 0051700-00025

EXHIBIT H
Page 2 of 3
PAYMENT BOND

(Bond No. ______)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, ________________ as Principal and __________________ as Surety, a corporation organized and existing under the laws of the state of ____________, are held and bound unto Home Forward and its heirs, executors, administrators, and assigns as Obligee, for the use and benefit of all persons or entities that provide labor, materials, equipment or supplies for use under the Contract described below, in the penal sum of ____________ Dollars ($__________), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS the Principal has entered into a Design-Build Contract (“Contract”) dated __________, 201_ with Obligee for the __________________________ project (“Project”), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall promptly make payment to all persons or entities that provide labor, material, equipment or supplies for use under said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal’s payments to Architect, Contractors, Subcontractors or Principal’s use of Project funds.

Principal and Surety hereby jointly and severally agree that any person or entity that provides labor, material, equipment or supplies for use under said Contract and has not been paid in full within the applicable time period set forth in ORS 279C.605 may sue on this bond for the use of such person or entity, prosecute the suit to final judgment for such sums as may be justly due and owing claimant and have execution thereon. Obligee shall not be liable for the payment of any damages, costs or expenses (including attorney fees) awarded in any such suit.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee’s favor, Surety shall pay all of Obligee’s costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.

Except as expressly provided above, no right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of ____________, 201_.

________________________________________
PRINCIPAL

Title

Address

________________________________________
SURETY

Title

Address

________________________________________
COUNTERSIGNED:

Resident Agent

Address
AIA Contract A141-2004
Exhibit I. HUD Form 5370
General Conditions for Construction Contracts - Public Housing Programs

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing
OMB Approval No. 2577-0157 (exp. 1/31/2017)

Applicability. This form is applicable to any construction/development contract greater than $100,000.

This form includes those clauses required by OMB's common rule on grantee procurement, implemented at HUD in 24 CFR 85.36, and those requirements set forth in Section 3 of the Housing and Urban Development Act of 1968 and its amendment by the Housing and Community Development Act of 1992, implemented by HUD at 24 CFR Part 135. The form is required for construction contracts awarded by Public Housing Agencies (PHAs).

The form is used by Housing Authorities in solicitations to provide necessary contract clauses. If the form were not used, HAs would be unable to enforce their contracts.

Public reporting burden for this collection of information is estimated to average 1.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses to the collection of information are required to obtain a benefit or to retain a benefit.

The information requested does not lend itself to confidentiality.

HUD may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB number.

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1. Definitions

(a) "Architect" means the person or other entity engaged by the PHA to perform architectural, engineering, design, and other services related to the work as provided for in the contract. When a PHA uses an engineer to act in this capacity, the terms "architect" and "engineer" shall be synonymous. The Architect shall serve as a technical representative of the Contracting Officer. The Architect's authority is as set forth elsewhere in this contract.

(b) "Contract" means the contract entered into between the PHA and the Contractor. It includes the forms of Bid, the Bid Bond, the Performance and Payment Bond or Bonds or other assurance of completion, the Certifications, Representations, and Other Statements of Bidders (form HUD-5370), these General Conditions of the Contract for Construction (form HUD-5370), the applicable wage rate determinations from the U.S. Department of Labor, any special conditions included elsewhere in the contract, the specifications, and drawings. It includes all formal changes to any of those documents by addendum, change order, or other modification.

(c) "Contracting Officer" means the person delegated the authority by the PHA to enter into, administer, and/or terminate this contract and designated as such in writing to the Contractor. The term includes any successor Contracting Officer and any duly authorized representative of the Contracting Officer also designated in writing. The Contracting Officer shall be deemed the authorized agent of the PHA in all dealings with the Contractor.

(d) "Contractor" means the person or other entity entering into the contract with the PHA to perform all of the work required under the contract.

(e) "Drawings" means the drawings enumerated in the schedule of drawings contained in the Specifications and as described in the contract clause entitled Specifications and Drawings for Construction herein.

(f) "HUD" means the United States of America acting through the Department of Housing and Urban Development including the Secretary, or any other person designated to act on its behalf. HUD has agreed, subject to the provisions of an Annual Contributions Contract (ACC), to provide financial assistance to the PHA, which includes assistance in financing the work to be performed under this contract. As defined elsewhere in these General Conditions or the contract documents, the determination of HUD may be required to authorize changes in the work or for release of funds to the PHA for payment to the Contractor. Notwithstanding HUD's role, nothing in this contract shall be construed to create any contractual relationship between the Contractor and HUD.

(g) "Project" means the entire project, whether construction or rehabilitation, the work for which is provided for in whole or in part under this contract.

(h) "PHA" means the Public Housing Agency organized under applicable state laws which is a party to this contract.

(i) "Specifications" means the written description of the technical requirements for construction and includes the criteria and tests for determining whether the requirements are met.

(j) "Work" means materials, workmanship, and manufacture and fabrication of components.

2. Contractor's Responsibility for Work

(a) The Contractor shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the work. The Contractor shall also furnish all necessary water, heat, light, and power not made available to the Contractor by the PHA pursuant to the clause entitled Availability and Use of Utility Services herein.

(b) The Contractor shall perform on the site, and with its own organization, work equivalent to at least [ ] (12 percent unless otherwise indicated) of the total amount of work to be performed under the order. This percentage may be reduced by a supplemental agreement to this order if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the PHA.

(c) At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(d) The Contractor shall be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence, and shall take proper safety and health precautions to protect the workers, the public, and the property of others. The Contractor shall hold and save the PHA, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(e) The Contractor shall lay out the work from base lines and bench marks indicated on the drawings and be responsible for all lines, levels, and measurements of all work executed under the contract. The Contractor shall verify the figures before laying out the work and will be held responsible for any error resulting from its failure to do so.

(f) The Contractor shall confine all operations (including storage of materials) on PHA premises to areas authorized or approved by the Contracting Officer.

(g) The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. After completing the work and before final inspection, the Contractor shall (1) remove from the premises all scaffolding, equipment, tools, and materials (including rejected materials) that are not the property of the PHA and all rubbish caused by its work; (2) leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer; (3) perform all specified tests; and, (4) deliver the installation in complete and operating condition.

(h) The Contractor's responsibility will terminate when all work has been completed, the final inspection made, and the work accepted by the Contracting Officer. The Contractor will then be released from further obligation except as required by the warranties specified elsewhere in the contract.

3. Architect's Duties, Responsibilities, and Authority

(a) The Architect for this contract, and any successor, shall be designated in writing by the Contracting Officer.
(b) The Architect shall serve as the Contracting Officer’s technical representative with respect to architectural, engineering, and design matters related to the work performed under the contract. The Architect may provide direction on contract performance. Such direction shall be within the scope of the contract and may not be of a nature which: (1) institutes additional work outside the scope of the contract; (2) constitutes a change as defined in the Changes clause herein; (3) causes an increase or decrease in the cost of the contract; (4) alters the Construction Progress Schedule; or (5) changes any of the other express terms or conditions of the contract.

(c) The Architect’s duties and responsibilities may include but shall not be limited to:

1. Making periodic visits to the work site, and on the basis of his/her on-site inspections, issuing written reports to the PHA which shall include all observed deficiencies. The Architect shall file a copy of the report with the Contractor’s designated representative at the site;
2. Making modifications in drawings and technical specifications and assisting the Contracting Officer in the preparation of change orders and other contract modifications for issuance by the Contracting Officer;
3. Reviewing and making recommendations with respect to - (i) the Contractor’s construction progress schedules; (ii) the Contractor’s shop and detailed drawings; (iii) the machinery, mechanical and other equipment and materials or other articles proposed for use by the Contractor; and, (iv) the Contractor’s price breakdown and progress payment estimates; and,
4. Assisting in inspections, signing Certificates of Completion, and making recommendations with respect to acceptance of work completed under the contract.

4. Other Contracts

The PHA may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with PHA employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by PHA employees.

Construction Requirements

5. Pre-construction Conference and Notice to Proceed

(a) Within ten calendar days of contract execution, and prior to the commencement of work, the Contractor shall attend a preconstruction conference with representatives of the PHA, its Architect, and other interested parties convened by the PHA. The conference will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the contract. The PHA will provide the Contractor with the date, time, and place of the conference.

(b) The contractor shall begin work upon receipt of a written Notice to Proceed from the Contracting Officer or designee. The Contractor shall not begin work prior to receiving such notice.

6. Construction Progress Schedule

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring labor, materials, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments or take other remedies under the contract until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as required by the Contracting Officer, and immediately deliver three copies of the annotated schedule to the Contracting Officer. If the Contracting Officer determines, upon the basis of inspection conducted pursuant to the clause entitled Inspection and Acceptance of Construction, herein that the Contractor is not meeting the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the PHA. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the Contract. Upon making this determination, the Contracting Officer may terminate the Contractor’s right to proceed with the work, or any separable part of it, in accordance with the Default clause of this contract.

7. Site Investigation and Conditions Affecting the Work

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to, (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is.
reasonably ascertainable from an inspection of the site, including all exploratory work done by the PHA, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the PHA.

(b) The PHA assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the PHA. Nor does the PHA assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

8. Differing Site Conditions

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of (1) subsurface or latent physical conditions at the site which differ materially from those indicated in this contract, or (2) unknown physical conditions at the site(s), of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. Work shall not proceed at the affected site, except at the Contractor's risk, until the Contracting Officer has provided written instructions to the Contractor. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, the Contractor shall file a claim in writing to the PHA within ten days after receipt of such instructions and, in any event, before proceeding with the work. An equitable adjustment in the contract price, the delivery schedule, or both shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; provided, that the time prescribed in (a) above for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

9. Specifications and Drawings for Construction

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words “directed”, “required”, “ordered”, “designated”, “prescribed”, or words of like import are used, it shall be understood that the “direction”, “requirement”, “order”, “designation”, or “prescription”, of the Contracting Officer is intended and similarly the words “approved”, “acceptable”, “satisfactory”, or words of like import shall mean “approved by” or “acceptable to” or “satisfactory to” or “furnished and installed” the Contracting Officer, unless otherwise expressly stated.

(c) Where “shown”, “indicated”, “detailed”, or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place” that is “furnished and installed”.

(d) “Shop drawings” means drawings, submitted to the PHA by the Contractor, subcontractor, or any lower tier subcontractor, showing in detail (1) the proposed fabrication and assembly of structural elements and (2) the installation (i.e., form, fit, and attachment details) of materials of equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the Contractor to explain in detail specific portions of the work required by the contract. The PHA may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with other contract requirements and shall indicate its approval the same as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor’s approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the PHA’s reasons therefore. Any work done before such approval shall be at the Contractor’s risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) below.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the Architect approves any such variation and the Contracting Officer concurs, the Contracting Officer shall issue an appropriate modification to the contract, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) It shall be the responsibility of the Contractor to make timely requests of the PHA for such large scale and full size drawings, color schemes, and other additional information, not already in his possession, which shall be
required in the planning and production of the work. Such requests may be submitted as the need arises, but each such request shall be filed in ample time to permit appropriate action to be taken by all parties involved so as to avoid delay.

(h) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the PHA and one set will be returned to the Contractor. As required by the Contracting Officer, the Contractor, upon completing the work under this contract, shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the work is completed and accepted.

(i) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all shop drawings prepared by subcontractors are submitted to the Contracting Officer.

10. As-Built Drawings

(a) “As-built drawings,” as used in this clause, means drawings submitted by the Contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract. “As-built drawings” shall be synonymous with “Record drawings.”

(b) As required by the Contracting Officer, the Contractor shall provide the Contracting Officer accurate information to be used in the preparation of permanent as-built drawings. For this purpose, the Contractor shall record on one set of contract drawings all changes from the installations originally indicated, and record final locations of underground lines by depth from finish grade and by accurate horizontal offset distances to permanent surface improvements such as buildings, curbs, or edges of walks.

(c) This clause shall be included in all subcontracts at any tier. It shall be the responsibility of the Contractor to ensure that all as-built drawings prepared by subcontractors are submitted to the Contracting Officer.

11. Material and Workmanship

(a) All equipment, material, and articles furnished under this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the contract to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of, and as approved by the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) Approval of equipment and materials.

(1) The Contractor shall obtain the Contracting Officer’s approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment.

When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer’s approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(2) When required by the specifications or the Contracting Officer, the Contractor shall submit appropriately marked samples (and certificates related to them) for approval at the Contractor’s expense, with all shipping charges prepaid. The Contractor shall label, or otherwise properly mark on the container, the material or product represented, its place of origin, the name of the producer, the Contractor’s name, and the identification of the construction project for which the material or product is intended to be used.

(3) Certificates shall be submitted in triplicate, describing each sample submitted for approval and certifying that the material, equipment or accessory complies with contract requirements. The certificates shall include the name and brand of the product, name of manufacturer, and the location where produced.

(4) Approval of a sample shall not constitute a waiver of the PHA right to demand full compliance with contract requirements. Materials, equipment and accessories may be rejected for cause even though samples have been approved.

(5) Wherever materials are required to comply with recognized standards or specifications, such specifications shall be accepted as establishing the technical qualities and testing methods, but shall not govern the number of tests required to be made nor modify other contract requirements. The Contracting Officer may require laboratory test reports on items submitted for approval or may approve materials on the basis of data submitted in certificates with samples. Check tests will be made on materials delivered for use only as frequently as the Contracting Officer determines necessary to insure compliance of materials with the specifications. The Contractor will assume all costs of retesting materials which fail to meet contract requirements and/or testing materials offered in substitution for those found deficient.

(6) After approval, samples will be kept in the Project office until completion of work. They may be built into the work after a substantial quantity of the materials they represent has been built in and accepted.

(c) Requirements concerning lead-based paint. The Contractor shall comply with the requirements concerning lead-based paint contained in the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846) as implemented by 24 CFR Part 35.

12. Permits and Codes

(a) The Contractor shall give all notices and comply with all applicable laws, ordinances, codes, rules and regulations. Notwithstanding the requirement of the Contractor to comply with the drawings and specifications in the contract, all work installed shall comply with all applicable codes and regulations as amended by any
waivers. Before installing the work, the Contractor shall examine the drawings and the specifications for compliance with applicable codes and regulations bearing on the work and shall immediately report any discrepancy it may discover to the Contracting Officer. Where the requirements of the drawings and specifications fail to comply with the applicable code or regulation, the Contracting Officer shall modify the contract by change order pursuant to the clause entitled Changes herein to conform to the code or regulation.

(b) The Contractor shall secure and pay for all permits, fees, and licenses necessary for the proper execution and completion of the work. Where the PHA can arrange for the issuance of all or part of these permits, fees and licenses, without cost to the Contractor, the contract amount shall be reduced accordingly.

13. Health, Safety, and Accident Prevention

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and,

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 CFR Part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96), 40 U.S.C. 3701 et seq.; and

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904.

(d) The Contracting Officer shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor’s representative at the site of the work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors’ compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as the PHA, the Secretary of Housing and Urban Development, or the Secretary of Labor shall direct as a means of enforcing such provisions.

14. Temporary Heating

The Contractor shall provide and pay for temporary heating, covering, and enclosures necessary to properly protect all work and materials against damage by dampness and cold, to dry out the work, and to facilitate the completion of the work. Any permanent heating equipment used shall be turned over to the PHA in the condition and at the time required by the specifications.

15. Availability and Use of Utility Services

(a) The PHA shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the PHA or, where the utility is produced by the PHA, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the PHA, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

16. Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed under this contract, and which do not unreasonably interfere with the work required under this contract.

(b) The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during performance of this contract, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(c) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. Prior to disturbing the ground at the construction site, the Contractor shall ensure that all underground utility lines are clearly marked.

(d) The Contractor shall shore up, brace, underpin, secure, and protect as necessary all foundations and other parts of existing structures adjacent to, adjoining, and in the vicinity of the site, which may be affected by the excavations or other operations connected with the construction of the project.

(e) Any equipment temporarily removed as a result of work under this contract shall be protected, cleaned, and replaced in the same condition as at the time of award of this contract.
(f) New work which connects to existing work shall correspond in all respects with that to which it connects and/or be similar to existing work unless otherwise required by the specifications.

(g) No structural members shall be altered or in any way weakened without the written authorization of the Contracting Officer, unless such work is clearly specified in the plans or specifications.

(h) If the removal of the existing work exposes discolored or unfinished surfaces, or work out of alignment, such surfaces shall be refinished, or the material replaced as necessary to make the continuous work uniform and harmonious. This, however, shall not be construed to require the refinishning or reconstruction of dissimilar finishes previously exposed, or finished surfaces in good condition, but in different planes or on different levels when brought together by the removal of intervening work, unless such refinishning or reconstruction is specified in the plans or specifications.

(i) The Contractor shall give all required notices to any adjoining or adjacent property owner or other party before the commencement of any work.

(j) The Contractor shall indemnify and save harmless the PHA from any damages on account of settlement or the loss of lateral support of adjoining property, any damages from changes in topography affecting drainage, and from all loss or expense and all damages for which the PHA may become liable in consequence of such injury or damage to adjoining and adjacent structures and their premises.

(k) The Contractor shall repair any damage to vegetation, structures, equipment, utilities, or improvements, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

17. Temporary Buildings and Transportation of Materials

(a) Temporary buildings (e.g., storage sheds, shops, offices, sanitary facilities) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the PHA. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(b) The Contractor shall, as directed by the Contracting Officer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any federal, state, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

18. Clean Air and Water

The contractor shall comply with the Clean Air Act, as amended, 42 USC 7401 et seq., the Federal Water Pollution Control Water Act, as amended, 33 U.S.C. 1251 et seq., and standards issued pursuant thereto in the facilities in which this contract is to be performed.

19. Energy Efficiency

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163) for the State in which the work under the contract is performed.

20. Inspection and Acceptance of Construction

(a) Definitions. As used in this clause -

(1) “Acceptance” means the act of an authorized representative of the PHA by which the PHA approves and assumes ownership of the work performed under this contract. Acceptance may be partial or complete.

(2) “Inspection” means examining and testing the work performed under the contract (including, when appropriate, raw materials, equipment, components, and intermediate assemblies) to determine whether it conforms to contract requirements.

(3) “Testing” means that element of inspection that determines the properties or elements, including functional operation of materials, equipment, or their components, by the application of established scientific principles and procedures.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. All work is subject to PHA inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) PHA inspections and tests are for the sole benefit of the PHA and do not: (1) relieve the Contractor of responsibility for providing adequate quality control measures; (2) relieve the Contractor of responsibility for loss or damage of the material before acceptance; (3) constitute or imply acceptance; or, (4) affect the continuing rights of the PHA after acceptance of the completed work under paragraph (j) below.

(d) The presence or absence of the PHA inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specifications without the Contracting Officer’s written authorization. All instructions and approvals with respect to the work shall be given to the Contractor by the Contracting Officer.

(e) The Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The PHA may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The PHA shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.
(f) The PHA may conduct routine inspections of the construction site on a daily basis.

(g) The Contractor shall, without charge, replace or correct work found by the PHA to not conform to contract requirements, unless the PHA decides that it is in its interest to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(h) If the Contractor does not promptly replace or correct rejected work, the PHA may (1) by contract or otherwise, replace or correct the work and charge the cost to the Contractor, or (2) terminate for default the Contractor’s right to proceed.

(i) If any work requiring inspection is covered up without approval of the PHA, it must, if requested by the Contracting Officer, be uncovered at the expense of the Contractor. If at any time before final acceptance of the entire work, the PHA considers it necessary or advisable, to examine work already completed by removing or tearing it out, the Contractor, shall on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray all the expenses of the examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the Contracting Officer shall make an equitable adjustment to cover the cost of the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(j) The Contractor shall notify the Contracting Officer, in writing, as to the date when in its opinion all or a designated portion of the work will be substantially completed and ready for inspection. If the Architect determines that the state of preparedness is as represented, the PHA will promptly arrange for the inspection. Unless otherwise specified in the contract, the PHA shall accept, as soon as practicable after completion and inspection, all work required by the contract or that portion of the work the Contractor determines and designates can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the PHA’s right under any warranty or guarantee.

21. Use and Possession Prior to Completion

(a) The PHA shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the PHA intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The PHA’s possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the PHA has such possession or use, the Contractor shall be relieved of the responsibility for (1) the loss of or damage to the work resulting from the PHA’s possession or use, notwithstanding the terms of the clause entitled Permits and Codes herein; (2) all maintenance costs on the areas occupied; and, (3) furnishing heat, light, power, and water in the areas occupied without proper remuneration therefore. If prior possession or use by the PHA delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

22. Warranty of Title

The Contractor warrants good title to all materials, supplies, and equipment incorporated in the work and agrees to deliver the premises together with all improvements thereon free from any claims, liens or charges, and agrees further that neither it nor any other person, firm or corporation shall have any right to a lien upon the premises or anything appurtenant thereto.

23. Warranty of Construction

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of ________ (one year unless otherwise indicated) from the date of final acceptance of the work. If the PHA takes possession of any part of the work before final acceptance, this warranty shall continue for a period of (one year unless otherwise indicated) from the date that the PHA takes possession.

(b) The Contractor shall remedy, at the Contractor’s expense, any failure to conform, or any defect. In addition, the Contractor shall remedy, at the Contractor’s expense, any damage to PHA-owned or controlled real or personal property when the damage is the result of—

(1) The Contractor’s failure to conform to contract requirements; or

(2) Any defects of equipment, material, workmanship or design furnished by the Contractor.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor’s warranty with respect to work repaired or replaced will run for (one year unless otherwise indicated) from the date of repair or replacement.

(d) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the PHA shall have the right to replace, repair or otherwise remedy the failure, defect, or damage at the Contractor’s expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall:

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed in writing, for the benefit of the PHA; and,

(3) Enforce all warranties for the benefit of the PHA.

(g) In the event the Contractor’s warranty under paragraph (a) of this clause has expired, the PHA may bring suit at its own expense to enforce a subcontractor’s, manufacturer’s or supplier’s warranty.
(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defect of material or design furnished by the PHA nor for the repair of any damage that results from any defect in PHA furnished material or design.

(i) Notwithstanding any provisions herein to the contrary, the establishment of the time periods in paragraphs (a) and (c) above relate only to the specific obligation of the Contractor to correct the work, and have no relationship to the time within which its obligation to comply with the contract may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor’s liability with respect to its obligation other than specifically to correct the work.

(j) This warranty shall not limit the PHA’s rights under the Inspection and Acceptance of Construction clause of this contract with respect to latent defects, gross mistakes or fraud.

24. Prohibition Against Liens

The Contractor is prohibited from placing a lien on the PHA’s property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

Administrative Requirements

25. Contract Period

This contract within calendar days of the effective date of the contract, or within the time schedule established in the notice to proceed issued by the Contracting Officer.


In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

27. Payments

(a) The PHA shall pay the Contractor the price as provided in this contract.

(b) The PHA shall make progress payments approximately every 30 days as the work proceeds, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer. The PHA may, subject to written determination and approval of the Contracting Officer, make more frequent payments to contractors which are qualified small businesses.

(c) Before the first progress payment under this contract, the Contractor shall furnish, in such detail as requested by the Contracting Officer, a breakdown of the total contract price showing the amount included therein for each principal category of the work, which shall substantiate the payment amount requested in order to provide a basis for determining progress payments. The breakdown shall be approved by the Contracting Officer and must be acceptable to HUD. If the contract covers more than one project, the Contractor shall furnish a separate breakdown for each. The values and quantities employed in making up this breakdown are for determining the amount of progress payments and shall not be construed as a basis for additions to or deductions from the contract price. The Contractor shall prorate its overhead and profit over the construction period of the contract.

(d) The Contractor shall submit, on forms provided by the PHA, periodic estimates showing the value of the work performed during each period based upon the approved submitted not later than _______ days in advance of the date set for payment and are subject to correction and revision as required. The estimates must be approved by the Contracting Officer with the concurrence of the Architect prior to payment. If the contract covers more than one project, the Contractor shall furnish a separate progress payment estimate for each.

(e) Along with each request for progress payments and the required estimates, the Contractor shall furnish the following certification, or payment shall not be made: I hereby certify, to the best of my knowledge and belief, that:

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) Payments to subcontractors and suppliers have been made from previous payments received under the contract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements; and,

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract.

Name: __________________________________________

Title: __________________________________________________________________

Date: __________________________________________________________________

(f) Except as otherwise provided in State law, the PHA shall retain ten (10) percent of the amount of progress payments until completion and acceptance of all work under the contract; except, that if upon completion of 50 percent of the work, the Contracting Officer, after consulting with the Architect, determines that the Contractor’s performance and progress are satisfactory, the PHA may make the remaining payments in full for the work subsequently completed. If the Contracting Officer subsequently determines that the Contractor’s performance and progress are unsatisfactory, the PHA shall reinstate the ten (10) percent (or other percentage as provided in State law) retainage until such time as the Contracting Officer determines that performance and progress are satisfactory.

(g) The Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration when computing progress payments.
Material delivered to the Contractor at locations other than the site may also be taken into consideration if the Contractor furnishes satisfactory evidence that (1) it has acquired title to such material; (2) the material is properly stored in a bonded warehouse, storage yard, or similar suitable place as may be approved by the Contracting Officer; (3) the material is insured to cover its full value; and (4) the material will be used to perform this contract. Before any progress payment which includes delivered material is made, the Contractor shall furnish such documentation as the Contracting Officer may require to assure the protection of the PHA’s interest in such materials. The Contractor shall remain responsible for such stored material notwithstanding the transfer of title to the PHA.

(h) All material and work covered by progress payments made shall, at the time of payment become the sole property of the PHA, but this shall not be construed as (1) relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or, (2) waiving the right of the PHA to require the fulfillment of all of the terms of the contract. In the event the work of the Contractor has been damaged by other contractors or persons other than employees of the PHA in the course of their employment, the Contractor shall restore such damaged work without cost to the PHA and to seek redress for its damage only from those who directly caused it.

(i) The PHA shall make the final payment due the Contractor under this contract after (1) completion and final acceptance of all work; and (2) presentation of release of all claims against the PHA arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. Each such exception shall embrace no more than one claim, the basis and scope of which shall be clearly defined. The amounts for such excepted claims shall not be included in the request for final payment. A release may also be required of the assignee if the Contractor’s claim to amounts payable under this contract has been assigned.

(j) Prior to making any payment, the Contracting Officer may require the Contractor to furnish receipts or other evidence of payment from all persons performing work and supplying material to the Contractor, if the Contracting Officer determines such evidence is necessary to substantiate claimed costs.

(k) The PHA shall not; (1) determine or adjust any claims for payment or disputes arising there under between the Contractor and its subcontractors or material suppliers; or, (2) withhold any moneys for the protection of the subcontractors or material suppliers. The failure or refusal of the PHA to withhold moneys from the Contractor shall in no wise impair the obligations of any surety or sureties under any bonds furnished under this contract.

28. Contract Modifications

(a) Only the Contracting Officer has authority to modify any term or condition of this contract. Any contract modification shall be authorized in writing.

(b) The Contracting Officer may modify the contract unilaterally (1) pursuant to a specific authorization stated in a contract clause (e.g., Changes); or (2) for administrative matters which do not change the rights or responsibilities of the parties (e.g., change in the PHA address). All other contract modifications shall be in the form of supplemental agreements signed by the Contractor and the Contracting Officer.

(c) When a proposed modification requires the approval of HUD prior to its issuance (e.g., a change order that exceeds the PHA’s approved threshold), such modification shall not be effective until the required approval is received by the PHA.

29. Changes

(a) The Contracting Officer may, at any time, without notice to the sureties, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract including changes:

(b) Any other written order or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; provided, that the Contractor gives the Contracting Officer written notice stating (1) the date, circumstances and source of the order and (2) that the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement or conduct of the Contracting Officer shall be treated as a change order under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor’s cost of, or the time required for the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for a adjustment based on defective specifications, no proposal for any change under paragraph (b) above shall be allowed for any costs incurred more than 20 days (5 days for oral orders) before the Contractor gives written notice as required. In the case of defective specifications for which the PHA is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause, or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting a written statement describing the general nature and the amount of the proposal. If the facts justify it, the Contracting Officer may extend the period for submission. The proposal may be included in the notice required under paragraph (b) above. No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(f) The Contractor’s written proposal for equitable adjustment shall be submitted in the form of a lump sum proposal supported with an itemized breakdown of all increases and decreases in the contract in at least the following details:
30. Suspension of Work

(a) The Contracting Officer may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the PHA.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer’s failure to act within the time specified (or within a reasonable time if not specified) in this contract an adjustment shall be made for any increase in the cost of performance of the contract (excluding profit) necessarily caused by such unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or for which any equitable adjustment is provided for or excluded under any other provision of this contract.

(c) A claim under this clause shall not be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and, (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

31. Disputes

(a) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the contract, unlike a claim relating to the contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(b) Except for disputes arising under the clauses entitled Labor Standards - Davis Bacon and Related Acts, herein, all disputes arising under or relating to this contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this clause.

(c) All claims by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the PHA against the Contractor shall be subject to a written decision by the Contracting Officer.

(d) The Contracting Officer shall, within 60 (unless otherwise indicated) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.

(e) The Contracting Officer’s decision shall be final unless the Contractor (1) appeals in writing to a higher level in the PHA in accordance with the PHA’s policy and procedures, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within 30 (unless otherwise indicated) days after receipt of the Contracting Officer’s decision.

(f) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

32. Default

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with the diligence that will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within this time, the Contracting Officer may, by written notice to the Contractor, terminate the right to
proceed with the work (or separable part of the work) that has been delayed. In this event, the PHA may take over the work and complete it, by contract or otherwise, and may take possession of and use any materials, equipment, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the PHA resulting from the Contractor’s refusal or failure to complete the work within the specified time, whether or not the Contractor’s right to proceed with the work is terminated. This liability includes any increased costs incurred by the PHA in completing the work.

(b) The Contractor’s right to proceed shall not be terminated or the Contractor charged with damages under this clause if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (i) acts of God, or of the public enemy, (ii) acts of the PHA or other governmental entity in either its sovereign or contractual capacity, (iii) acts of another contractor in the performance of a contract with the PHA, (iv) fires, (v) floods, (vi) epidemics, (vii) quarantine restrictions, (viii) strikes, (ix) freight embargoes, (x) unusually severe weather, or (xi) delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers;

(2) The Contractor, within days (10 days unless otherwise indicated) from the beginning of such delay (unless extended by the Contracting Officer) notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, time for completing the work shall be extended by written modification to the contract. The findings of the Contracting Officer shall be reduced to a written decision which shall be subject to the provisions of the Disputes clause of this contract.

(c) If, after termination of the Contractor’s right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been for convenience of the PHA.

33. Liquidated Damages

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, as specified in the clause entitled Default of this contract, the Contractor shall pay to the PHA as liquidated damages, the sum of $_______(Contracting Officer insert amount) for each day of delay. If different completion dates are specified in the contract for separate parts or stages of the work, the amount of liquidated damages shall be assessed on those parts or stages which are delayed. To the extent that the Contractor’s delay or nonperformance is excused under another clause in this contract, liquidated damages shall not be due the PHA. The Contractor remains liable for damages caused other than by delay.

(b) If the PHA terminates the Contractor’s right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the PHA in completing the work.

(c) If the PHA does not terminate the Contractor’s right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

34. Termination for Convenience

(a) The Contracting Officer may terminate this contract in whole, or in part, whenever the Contracting Officer determines that such termination is in the best interest of the PHA. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which the performance of the work under the contract is terminated, and the date upon which such termination becomes effective.

(b) If the performance of the work is terminated, either in whole or in part, the PHA shall be liable to the Contractor for reasonable and proper costs resulting from such termination upon the receipt by the PHA of a properly presented claim setting out in detail: (1) the total cost of the work performed to date of termination less the total amount of contract payments made to the Contractor; (2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by the PHA to the Contractor or by the Contractor to the subcontractor or supplier; (3) the cost of preserving and protecting the work already performed until the PHA or assignee takes possession thereof or assumes responsibility therefore; (4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to the PHA; and (5) an amount constituting a reasonable profit on the value of the work performed by the Contractor.

(c) The Contracting Officer will act on the Contractor’s claim within days (60 days unless otherwise indicated) of receipt of the Contractor’s claim.

(d) Any disputes with regard to this clause are expressly made subject to the provisions of the Disputes clause of this contract.

35. Assignment of Contract

The Contractor shall not assign or transfer any interest in this contract; except that claims for monies due or to become due from the PHA under the contract may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the Contracting Officer. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the Contracting Officer.

36. Insurance

(a) Before commencing work, the Contractor and each subcontractor shall furnish the PHA with certificates of insurance showing the following insurance is in force and will insure all operations under the Contract:

(1) Workers’ Compensation, in accordance with state or Territorial Workers’ Compensation laws.

(2) Commercial General Liability with a combined single limit for bodily injury and property damage of not less than $_______(Contracting Officer insert amount)
37. Subcontracts

(a) Definitions. As used in this contract -

(1) "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.

(2) "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

(b) The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this contract is to be performed.

(c) The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

(d) The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this contract so far as they are applicable to the work of subcontractors.

(e) Nothing contained in this contract shall create any contractual relationship between any subcontractor and the PHA or between the subcontractor and HUD.

38. Subcontracting with Small and Minority Firms, Women’s Business Enterprise, and Labor Surplus Area Firms

The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women’s business enterprises, and labor surplus area firms:

(a) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;

(b) Ensuring 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 requirements of the contract permit, which encourage participation by small and minority businesses and women’s business enterprises;

(e) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies.

39. Equal Employment Opportunity

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

(b) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
(c) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(d) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or handicap.

(e) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(g) The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(h) In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further Government contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(i) The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the Secretary of Housing and Urban Development or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(j) Compliance with the requirements of this clause shall be to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act and the Indian Preference clause of this contract.


(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).
41. Interest of Members of Congress

No member of or delegate to the Congress of the United States of America shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

42. Interest of Members, Officers, or Employees and Former Members, Officers, or Employees

No member, officer, or employee of the PHA, no member of the governing body of the locality in which the project is situated, no member of the governing body of the locality in which the PHA was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project, shall, during his or her tenure, or for one year thereafter, have any interest, direct or indirect, in this contract or the proceeds thereof.

43. Limitations on Payments made to Influence Certain Federal Financial Transactions

(a) The Contractor agrees to comply with Section 1352 of Title 31, United States Code which prohibits the use of Federal appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. “Subcontract,” as used in this clause, excludes purchase orders not exceeding $10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the Disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the PHA, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

46. Labor Standards - Davis-Bacon and Related Acts

If the total amount of this contract exceeds $2,000, the Federal labor standards set forth in the clause below shall apply to the development or construction work to be performed under the contract.

(a) Minimum Wages.

(1) All laborers and mechanics employed under this contract in the development or construction of the project(s) involved will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the regular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall
be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met: (A) The work to be performed by the classification requested is not performed by a classification in the wage determination; and (B) The classification is utilized in the area by the construction industry; and (C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employee Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (a)(2)(ii) or (iii) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding of funds. HUD or its designee 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 the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working in the construction or development of the project, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working in the construction or development of the project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
(2) (i) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under subparagraph (c)(1) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1214-0149.)

(ii) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under paragraph (c) (1) of this clause and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirements for submission of the “Statement of Compliance” required by subparagraph (c)(ii) of this clause.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(3) The Contractor or subcontractor shall make the records required under subparagraph (c)(1) available for inspection, copying, or transcription by authorized representatives of HUD or its designee, the Contracting Officer, or the Department of Labor and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(d) (1) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under
the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(e) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(f) Contract termination; debarment. A breach of this contract clause may be grounds for termination of the contract and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.

(g) Compliance with Davis-Bacon and related Act requirements. All rulings and interpretations of the Davis-Bacon and related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this clause shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the PHA, HUD, the U.S. Department of Labor, or the employees or their representatives.

(i) Certification of eligibility.

(1) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor’s firm is a person or firm ineligible to be awarded contracts by the United States Government by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a United States Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).


(j) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) 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, including watchmen and guards, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 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 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in subparagraph (j)(1) of this clause, the Contractor and any subcontractor responsible thereof 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 provisions set forth in subparagraph (j)(1) of this clause, 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 40 hours without payment of the overtime wages required by provisions set forth in subparagraph (j)(1) of this clause.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee 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 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 provisions set forth in subparagraph (j)(1) of this clause.

(k) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts all the provisions contained in this clause, and such other clauses as HUD or its designee may by appropriate instructions require, and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all these provisions.
47. Non-Federal Prevailing Wage Rates

(a) Any prevailing wage rate (including basic hourly rate and any fringe benefits), determined under State or tribal law to be prevailing, with respect to any employee in any trade or position employed under the contract, is inapplicable to the contract and shall not be enforced against the Contractor or any subcontractor, with respect to employees engaged under the contract whenever such non-Federal prevailing wage rate exceeds:

(1) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3141 et seq.) to be prevailing in the locality with respect to such trade;

(b) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the U.S. Department of Labor (DOL) or a DOL-recognized State Apprenticeship Agency; or

(c) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program.


(a) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Contractor shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition. The Contractor shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless the Contractor determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

(b) Paragraph (a) of this clause shall apply to items purchased under this contract where: (1) the Contractor purchases in excess of $10,000 of the item under this contract; or (2) during the preceding Federal fiscal year, the Contractor: (i) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (ii) purchased a total of in excess of $10,000 of the item both under and outside that contract.
AIA Contract A141-2004
Exhibit J. HUD Technical Salary
Determination
U.S. Department of Housing and Urban Development
Housing Development

TECHNICAL SALARY DETERMINATION

Geographic Area: **Oregon State**
Effective Date: **June 1, 2007**

Applicable To: All Local Housing Authorities and Tribally Designated Entities

The following minimum salary hourly wage rates applicable to the above work have been determined to be prevailing in the area, pursuant to Section 16(2) of the United States Housing Act, as amended; and Section 104(b) of the Native American Housing and Self-Determination Act of 1996. Any appeals should be directed to the Regional HUD Labor Relations Office.


_________________________ ________________________________
Labor Relations Specialist Director, Office of Labor Relations

**Wage Rates**

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Exhibit G.
HUD Technical Salary Wage Determination
U.S. Department of Housing and Urban Development  
Housing Development  

TECHNICAL SALARY DETERMINATION

Geographic Area: Oregon State  
Effective Date: June 1, 2007

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William K. Toxvard  

_________________________  ______________________________
Labor Relations Specialist  Director, Office of Labor Relations

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