STATE OF OREGON

SAMPLE DESIGN-BUILD AGREEMENT

THE CONTRACT No. (Insert contract number) IS BETWEEN:

AGENCY: The State of Oregon, acting by and through the Oregon Department of Transportation ("Agency")

And

(Insert Design-Builder name)
(Insert Design-Builder address line 1)
(Insert Design-Builder address line 2)

Design-Builder
("Design-Builder," also referred to as "Contractor")

The Project is: Northwest Oregon 2024-2027 ADA Curb Ramps, Phase 2
Key No. 23029

Class of Project: This is a Federal Aid Project.

Advertisement Date: December 10, 2024

Proposal Due Date: March 7, 2025

STATE OF OREGON
DESIGN-BUILD AGREEMENT

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DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT (the **"**Agreement") is made and entered into by and between the State of Oregon, acting by and through the Oregon Department of Transportation (the "Agency") and [Enter successful Proposer's legal name], (the "Design-Builder") (individually, a "Party" and collectively, the "Parties") for the Northwest Oregon 2024-2027 ADA Curb Ramps, Phase 2 Project (the "Project") and shall become effective on the first date on which every Party has signed this Agreement and all necessary approvals have been obtained, including but not limited to approval for legal sufficiency by the Oregon Department of Justice (the "Effective Date").

ARTICLE 1
GENERAL SCOPE OF THE WORK AND PROJECT REQUIREMENTS

The Project involves completion of all Work required for remediation of the Settlement Curb Ramp locations listed in the Inventory Matrix (Exhibit A) (and related intersection improvements such as signal poles and push button work) in ODOT Region 2 within the cities of Monmouth, Salem, Springfield, Newberg, Astoria, Coburg, Cottage Grove, Independence, Keizer, Philomath, Corvallis, Sherwood, and the surrounding counties, spanning approximately 200 miles between project work locations. The Scope of Work is set forth in more detail in DB 140, as supplemented by the DB Technical Approach incorporated in Exhibit A. Exhibit A sets forth the Agency-approved Design Units, and Alternative Technical Concepts (ATCs) applicable to the Project.

Design-Builder shall perform all design, construction and quality management services, and providing all materials, equipment, tools and labor, transportation and incidentals necessary to complete the Project in accordance with the and all terms, provisions and conditions of the Contract Documents. The Design-Builder shall provide and perform all Design Services, Quality Management, and Construction Services in good faith and as expeditiously as is consistent with the Standards of skill and care.

All Work shall be performed in accordance with all applicable federal, state and local statutes, regulations, administrative rules, executive orders, ordinances and other Laws and Standards then in effect, unless otherwise specified in the Contract Documents.

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

1.1 Design Services ("Design Services") – Design-Builder shall perform all Design Services required under the Contract and otherwise necessary to complete the Work in accordance with all Contract requirements which shall include, at a minimum:

- Management of all Design Services
- Providing all Design Documents
- Performance of all Professional Services, including, but not limited to structural design, Roadway design, hydraulic design, geotechnical design, environmental design, drainage design, and traffic control design

The Design Professionals currently designated as Key Personnel to provide such Design Services are listed in Article 2. All Design Services shall be performed by a Design Professional of the appropriate professional discipline in accordance with the degree of skill and care ordinarily used by competent practitioners of the same professional discipline when performing similar services under similar circumstances, taking into consideration the contemporary state of the practice and the project conditions.

All Design Documents and Design Reviews shall be provided and performed in accordance with the Design Review schedule established in the Project Work Schedule, and in accordance with all Contract requirements, including, but not limited to Section DB155. Upon completion of the Definitive Design Reviews, Interim Design Reviews, and Readiness-for-Construction Design Reviews, as specified in Section DB155, the Design-Builder shall finalize the Readiness-for-Construction Plans and Specifications. Readiness-for-Construction Plans and Specifications shall be a complete, fully coordinated, integrated package, without any significant modifications or further clarifications required.

Unless otherwise provided, the Design-Builder shall obtain all necessary permits not obtained by the Agency, and shall pay for all associated fees, including, but not limited to application, filing, plan review, and appeal fees.

1.2 Construction Services ("Construction Services") – The Design-Builder shall perform, supervise and administer all Construction Services and Work required under the Contract and otherwise necessary to complete the Work in accordance with all Contract requirements and Contract documents, including furnishing of all Materials, Equipment, labor, and Incidentals necessary. The Construction Services and Work shall be of good quality free from faults and defects in Equipment, Materials and workmanship, and in conformance with the requirements of all Contract Documents, including all Legal Requirements. At no additional cost to the Agency, the Design-Builder shall correct construction Work that does not conform to these requirements.

1.3 Quality Management Services ("Quality Management Services") - Quality Management services shall include, at a minimum, performance of all activities and obligations, including preparation of all documentation, described in Sections DB154, DB155, and DB156, and as otherwise necessary to ensure that the Work is performed in accordance with all Contract requirements. (See also DB110.20, definition for Quality Management.)

ARTICLE 2
RELATIONSHIP AND ROLES OF THE PARTIES

2.1 Independent Contractor- By executing this Agreement, the Design-Builder certifies that it is an independent Contractor, as defined in Oregon Revised Statute (ORS) 670.600, and represents and warrants that it is not an officer, employee, or agent of the Agency as those terms are used in ORS 30.265.

2.2 Agency Representative and Contact Information - The Agency's representative(s) for this Project are:

Agency Representative (Agency Engineer)

Name: Miranda Wells

E-mail Address: Miranda.wells@odot.oregon.gov

Phone Number: 541-480-7812

Agency Representative (Deputy Project Manager)

Name: _Anita Eaton_____

Address: 350 W Marine Dr, Astoria, OR 97103

E-mail Address: _Anita.C.eaton@odot.oregon.gov_____

Phone Number: ___971-403-8522_____

2.2 Design-Builder Representative - The Design-Builder's representative for this Project is Design-Builder's Project Manager, (Enter name).

Address: _____

E-mail Address: _____

Phone Number: _____

2.3 Design Builder's Team (Design Firm, Major Subcontractors and Principal Participants) [insert from DB's Proposal]

2.3.1 Design Firm

2.3.2 Major Subcontractors

2.3.3 Principal Participants

2.4 Key Personnel - Key Personnel shall consist of the individuals serving in the roles listed below. The following Key Personnel shall perform the functions established under the Contract for the duration of the Contract.

The Design-Builder represents that the following Key Personnel are duly qualified and available to properly and timely perform their responsibilities under the Contract and for Project.

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

2.4.1.1 Project Principal: (Enter name) (Enter firm)

2.4.1.2 Design-Build Project Manager: (Enter name) (Enter firm)

2.4.1.3 Construction Manager: (Enter name) (Enter firm)

2.4.1.4 Design Manager: (Enter name) (Enter firm)

2.4.1.5 EEO Officer/ DBE Program Administrator/Liaison (DBEPA) : (Enter name(s)) (Enter firm(s))

2.4.1.6 Utility Coordinator: (Enter name) (Enter firm)

2.4.1.8 Environmental Compliance Manager: (Enter name) (Enter firm)

2.4.1.9 Traffic Control Manager: (Enter name) (Enter firm)

2.4.2 Quality Management Personnel – The Design-Builder's Quality Management personnel shall consist of the Key Personnel listed below. The Quality Management personnel must be employed by Entities meeting the requirements set forth in DB180.35.

2.4.2.1 Project Quality Manager: (Enter name) (Enter firm)

2.4.2.2 Design Quality Manager: (Enter name) (Enter firm)

2.4.2.3 Construction Quality Manager: (Enter name) (Enter firm)

2.4.2.2 ADA Curb Ramp Lead Inspector: (Enter name) (Enter firm)

2.4.3 Design Professionals – The following Design Professionals shall be Key Personnel:

2.4.3.1 Roadway Lead Engineer: (Enter name) (Enter firm)

2.5 Replacement of Key Personnel - The Design-Builder acknowledges and agrees that the Agency selected the Design-Builder, and is entering into the Contract, at least in part, because of the special qualifications, expertise, experience, judgement, and personal attention of each Key Personnel identified in this Article whether employed by the Design-Builder, a Subcontractor, or other entity. No Key Personnel \ shall be transferred, reassigned, or replaced, nor shall the authority or responsibilities of any Key Personnel be delegated to another person or Entity, without the prior written consent of the Agency. In those limited circumstances in which the Agency elects to consider a transfer, reassignment, replacement or delegation, the process shall be governed by DB180.35(c).

Should the Agency elect to consent to a transfer, reassignment, replacement or delegation, such consent shall not relieve the Design-Builder of its sole responsibility under the Contract to complete all Work and deliver the Project in accordance with all Contract requirements.

2.6 Replacement of Principal Participants and Major Subcontractors - The Design-Builder acknowledges and agrees that the Agency selected the Design-Builder, and is entering into the Contract, at least in part, because of the special qualifications, expertise and experience of each Principal Participant and Major Subcontractor identified in Article 2.3. No Principal Participant or Major Subcontractor shall be reassigned or replaced, in whole or in part, without the prior written consent of the Agency. In those limited circumstances in which the Agency elects to consider a reassignment or replacement, the process shall be governed by DB180.35(d).

Should the Agency elect to consent to a reassignment or replacement, such consent shall not relieve the Design-Builder of its sole responsibility under the Contract to complete all Work and deliver the Project in accordance with all Contract requirements.

ARTICLE 3
DATE OF COMMENCEMENT, PROJECT SCHEDULE, AND COMPLETION OF SERVICES

3.1 Commencement of Services - The Design-Builder will be authorized to commence the Work contemplated by the Contract upon the issuance of Notice to Proceed. The Agency will not issue the Notice to Proceed until all required state and federal approvals have been obtained.

3.1.1 Commencement of Design Services - The Design-Builder shall not proceed with Design Services for Readiness-for-Construction Plans and Specifications for a Design Unit prior to receiving written notification from the Agency that the National Environmental Policy Act (NEPA) review process has been fully completed for that Design Unit.

3.1.2 Commencement of Construction Services - The Design-Builder shall not begin Construction Services for a Design Unit until the applicable Readiness-for-Construction Plans and Specifications have been accepted by the Agency and all other requirements described in DB155.15 have been met.

3.2 Project Schedule The Project Work Schedule establishes the schedule and deadlines for Contract performance, with which the Design-Builder must comply. (See DB180.50(h) regarding completion dates.) The Project Work Schedule, as it may be modified during the course of the Project pursuant to DB180.41, shall anticipate and accommodate such periods of time as may be required for the Agency's review of Design Documents, and for approval by Authorities having jurisdiction over the Project of any required submissions, including, but not limited to, applications for permits and environmental impact evaluations.

3.3 Completion Dates – The Contract Completion Dates are set forth in DB180.50(h).

3.4 Time is of the Essence - All time limits and performance completion dates stated in the Contract Documents are of the essence. (See DB180.85(a).)

3.5 Time Extensions - Notwithstanding terms, provisions and conditions for Contract Time extensions in DB180.80 or elsewhere in the Contract Documents, the Agency and the Design-Builder agree that timely completion of the Work within the Contract Time allowed is essential to the success of the Project.

ARTICLE 4
COMPENSATION

4.1 Contract Amount - The Agency agrees to compensate the Design-Builder for all Work performed under the Contract for a fixed price of $(Enter amount) (the "Contract Amount").

The Contract Amount includes the entire cost of completing the Project in accordance with all Contract requirements, as contemplated by the Parties under the Contract, and further includes all Design-Builder contingencies, overhead and profit.

4.2 Progress Payments - The Contract Amount shall be payable in accordance with Section DB195. The Agency will make progress payments to the Design-Builder in accordance with Section DB195. Progress payments shall be based upon the Schedule of Prices included in Exhibit A-2, which shall include the cost of all Work. The Agency's payment of progress payments shall not be deemed by either Party to constitute Acceptance or approval of any Work or Price Item covered by such payment, or a waiver of a claim or demand for repair of any defects therein. Computing Pay Requests for any Work done under Unit Prices will be in accordance with Section DB190.

4.3 Adjustments to the Contract Amount - The Contract Amount shall only be adjusted through issuance of properly-authorized Change Orders or other authorized payments for Extra Work, Options, and Changed Work or any applicable adjustments for escalation or de-escalation described in Section DB195, or any adjustments or assessments for incentives,

disincentives, or liquated damages, or any other adjustments as provided for in the Contract Documents.

4.4 Deductions from Monies Due - The Agency may deduct from monies due or to become due the Design-Builder: (a) amounts representing price adjustments authorized under the commodity escalation/de-escalation terms, provisions and conditions of Section DB195; (b) amounts representing recoupment of damages, including, but not limited to liquidated damages; (c) amounts assessed by Authorities (e.g., fines and penalties) for which the Design-Builder is responsible under the terms or the Contract or by Law; (d) amounts the Agency is compelled by court order or other legal mandate to withhold or tender to Authorities or third parties; (e) amounts as reimbursement for Agency payments made on behalf of the Design-Builder or to meet Design-Builder obligations, as authorized under terms, provisions and conditions of the Contract; (f) amounts representing liquidated and delinquent debt owed to the State or any department or agency of the State. (In addition to the Agency's other rights and remedies, the Agency may also undertake collection by administrative offset, or garnishment if applicable, of all monies due to recover such debt. Offsets or garnishment may be initiated after the Design-Builder has been given notice if required by law.); (g) Amounts as determined by the Agency to adjust or correct prior overpayments to the Design-Builder; and (h) any other amounts authorized under the Contract or by Law to be deducted or withheld. (See also Sections DB141, DB150, DB156, DB165, DB170, DB174, DB180 and DB195.)

ARTICLE 5
CHANGES IN THE WORK

The Design-Builder may make minor changes in the Work that do not involve an adjustment in the Contract Amount or Contract Time and do not materially or adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents and are consistent with the intent of the Contract Documents. Provided, further, that the Design-Builder shall immediately notify Agency, in writing, of such minor changes and shall provide to the Agency such Design Documents as may be necessary to clearly identify the minor changes. The Agency in its sole discretion may at any time modify or revoke this Article.

Other than such minor changes in the Work as described above, Changed Work and Extra Work shall be authorized by the Agency only under the circumstances set forth in, and pursuant to the terms of, Sections DB140, DB195, DB196 and DB197. The Design-Builder shall not begin performance of any Changed Work, Options, or Extra Work, until the Agency has issued a properly-authorized Change Order (or Extra Work order, if applicable), and the Design-Builder shall perform all such Work strictly in accordance with the terms of the Change Order (or Extra Work order, if applicable).

ARTICLE 6
INSURANCE AND BONDING REQUIREMENTS

6.1 Insurance Requirements - Before the Agency will execute this Agreement, the Design-Builder shall obtain, at its expense, all of the insurance coverages identified in DB170.70 and shall maintain such insurance coverages in full force and effect throughout the duration of the Contract, and for any extended reporting period or tail coverage requirements. Provided, however, DB170.70 identifies insurance which may be obtained by the Design-Builder or Subcontractor after execution of this Design-Build Agreement, but shall be obtained and provided to Agency for approval at least 35 Calendar Days before commencement of the related Work. All coverages shall be obtained from insurance companies authorized to transact the business of insurance and issue coverage in the State of Oregon and that are acceptable to the Agency. The Design-Builder shall also comply with all other terms, provisions and requirements provided in DB170.70. In addition, for Change Orders, the Design-Builder shall also obtain any new or additional insurance, or modify the amount or coverage, or both, of insurance previously provided in connection with the Contract, as the Agency may require at any time.

If the Design-Builder is a partnership or a joint venture, the Agency reserves the right to require that insurance coverages be issued, as applicable, in the name of the partnership and the partners or in the name of the joint venture and its members.

No contractor-controlled insurance program will be used for the Contract or the Project.

No owner-controlled insurance program will be used for the Contract or the Project.

As evidence of the insurance coverages required by the Contract, the Design-Builder shall furnish Certificate(s) of Insurance and related insurance documentation needed to the Agency at the time(s) provided in the RFP Instructions to Proposers and DB170.70. All insurance and insurance providers are subject to the Agency's acceptance.

6.2 Bonding Requirements – The Design-Builder shall provide to the Agency and maintain in full force, at its own expense and from Sureties licensed to do business in State of Oregon, a Performance Bond and a Payment Bond, each in the full Contract Amount, and the required Public Works Bond.

All bonds required under the terms, provisions and conditions of the Contract must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact must be attached to the bonds, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Faxed or photocopied bond forms will not be accepted by the Agency.

Performance and Payment Bonds. The Design-Builder shall maintain in full force, at its own expense and from Sureties licensed to do business in State of Oregon, a Performance Bond and a Payment Bond, using the forms provided in the RFP, each in the full Contract Amount. Bonds shall not be cancelled without the Agency's prior consent, nor will the Agency release them prior to Contract completion. The Parties understand and agree that the obligation of the Design-Builder's Surety for the faithful performance of the Contract shall include not only all construction, but also the performance of all Design Services and related non-Construction Services under the Contract, pursuant to the requirements of ORS 279C.375.

In the event of a Change Order that increases the Contract Amount, prior to the execution of the Change Order and prior to performance of the Work authorized by the Change Order, the Design-Builder shall provide to the Agency an additional or supplemental Performance Bond and Payment Bond each in the amount of such increase, and in each case in a sufficient amount so that the total bonded sum of all Performance Bonds and the total bonded sum of all Payment Bonds each equals or exceeds the total Contract Amount.

Public works Bond. Before starting Work, the Design-Builder and Subcontractors, unless exempt, shall each file with the Construction Contractors Board, and maintain in full force and effect a separate Public Works Bond as required by ORS 279C.836. The Design-Builder shall include this requirement in each of its subcontracts. The Design-Builder shall verify Subcontractors have filed a Public Works Bond before the Subcontractor begins Work.

ARTICLE 7
WORK PRODUCT

7.1 Ownership of Work Product:

(a) Work Product - All Work Products created for the Project, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire", will be the exclusive property of the Agency. The Agency and the Design-Builder agree that such original works of authorship are "work made for hire" of which the Agency is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created for the Project is not "work made for hire", the Design-Builder hereby irrevocably assigns to the Agency any and all of its rights, title, and interest in all original Work Product created for the Project, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property Law, doctrine or otherwise. The Design-Builder agrees to (a) ensure and confirm to the Agency that the Design-Builder's agreements with its Subcontractors, employees and agents conform to the requirements of this Subsection, and (b) execute such further documents and instruments as may be reasonably necessary or as the Agency may reasonably request in order to fully vest such rights in the Agency. The Design-Builder forever waives and shall obtain waivers from its Subcontractors, employees and agents of any and all rights relating to original Work Product created for the Project, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

(b) Design-Builder Intellectual Property - In the event that any Work Product is Design-Builder Intellectual Property or a derivative work based on Design-Builder Intellectual Property or a compilation that includes Design-Builder Intellectual Property or in the event any Design-Builder Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, the Design-Builder hereby grants to the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Design-Builder Intellectual Property and the pre-existing elements of the Design-Builder Intellectual Property employed in the Work Product, including the right of the Agency to authorize Design-Builder, consultants and others to do the same on the Agency's behalf. At the request of the Design-Builder, the Agency will take reasonable steps to protect the confidentiality and proprietary

interests of the Design-Builder in any Design-Builder Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

(c) Third Party Work Product - In the event that Work Product is Third Party Intellectual Property or a derivative work based on Third Party Intellectual Property or a compilation that includes Third Party Intellectual Property or in the event any Third Party Intellectual Property is needed by the Agency to reasonably enjoy and use any Work Product, the Design-Builder shall secure on the Agency's behalf and in the name of the Agency, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property and the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right of the Agency to authorize Design-Builders, consultants and others to do the same on the Agency's behalf.

(d) Third Party Work Product-Derivative Work - In the event that Work Product created by the Design-Builder for the Project is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, the Design-Builder shall secure on the Agency's behalf and in the name of the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on the Agency's behalf.

(e) Design-Builder Intellectual Property-Derivative Work - In the event that Work Product created by the Design-Builder for the Project is a derivative work based on Design-Builder Intellectual Property, or is a compilation that includes Design-Builder Intellectual Property, the Design-Builder hereby grants to the Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Design-Builder Intellectual Property employed in the Work Product, including the right of the Agency to authorize others to do the same on the Agency's behalf.

(f) Limited Agency Indemnity - If the Agency reuses or modifies the Work Product without the Design-Builder's involvement or prior written consent, to the extent permitted by Article XI, Section 7, of the Oregon Constitution, and subject to the protections afforded by the Oregon Tort Claims Act, the Agency will indemnify the Design-Builder, within the limits of the Tort Claims Act and any other protections afforded the Oregon Department of Transportation, against liability for damage to life or property arising from the State's reuse or modification of the Work Product; provided however, the Agency will not be required to indemnify the Design-Builder for any such liability arising out of or related to defective Plans and Design-Builder Specifications, or the Design-Builder's breach of the Contract, professional negligence, or the negligent or wrongful acts of the Design-Builder's Subcontractors, employees, or agents in preparing the Plans and Design-Builder Specifications or testing and Inspection conducted for the Project.

(g) Design-Builder Use of Work Product - The Design-Builder, despite other conditions of this provision, shall have the right to utilize such Work Products on its brochures or other literature that it may disseminate for its sales promotions, and in addition, unless

specifically otherwise prohibited elsewhere in the Contract Documents, the Design-Builder may use its standard line drawings, Design-Builder Specifications, and calculations on other, unrelated projects.

(h) Quality and Accuracy - The Design-Builder shall be responsible for the professional quality, technical accuracy and coordination of all surveys, designs, drawings, specifications, geotechnical and other services furnished by the Design-Builder under this Contract. The Design-Builder shall, without additional compensation, correct all errors or deficiencies in the surveys, designs, drawings, specifications and/or other services. No fabrication, casting, or construction will occur until all related Design Review and shop drawing review comments are resolved with written Acceptance from the Agency Engineer.

7.2 Patents, Copyrights and Trademarks - Prior to use of designs, devices, materials, or processes protected by patent, copyright, or trademark, the Design-Builder shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of the Design-Builder's legal right to use such design, device, material, or process.

The Design-Builder shall indemnify, defend, and hold harmless the Agency and its officers, directors, agents, and employees, and all third parties and Authorities having a possessory or ownership interest or regulatory authority over the Project, a Work Location, or the Project Site from claims of patent, copyright, or trademark infringement, and from costs, expenses, and damages the Design-Builder or the Agency may be obligated to pay as a result of such infringement during or after completing the Work.

ARTICLE 8
RECORD REQUIREMENTS

8.1 Accounting and Controls - The Design-Builder shall keep full and detailed accounts and records and shall exercise such controls as may be necessary for proper financial management under the Contract. The accounting and control systems shall be satisfactory to the Agency

The Design-Builder shall maintain all fiscal records in material compliance with generally accepted accounting principles, or other accounting principles that are accepted accounting principles and practices for the subject industry and adequate for the nature of the Design-Builder's business, and in such a manner that providing a complete copy is neither time-consuming nor burdensome. Failure to maintain the records in this manner shall not be an excuse for not providing the records.

8.2 Access to Records - Throughout the term of the Contract and during the Record Retention Period, Design-Bulder shall provide the Agency and the Agency's representatives, including, but not limited to, Agency consultants, the Oregon Secretary of State accountants and auditors, representatives of the Federal Highway Administration (FHWA), and representatives of regulatory bodies or other units of government, reasonable and regular

access to the Project Records described herein, no matter how or where stored or with whom, electronically, paper format or otherwise. Such Agency or representatives of regulatory bodies or units of government may:

- Inspect, examine and copy or be provided a copy of all Design-Builder records;
- Audit the records, a Contract or the performance of a Contract;
- Inspect, examine and audit the records when, in the Agency's sole discretion, the records may be helpful in substantiating costs associated with change orders or in the resolution of any claim, litigation, administrative proceeding or controversy arising out of or related to a Contract.

Reasons for access to audit, inspect, examine and copy records include without limitation, general auditing, reviewing claims, checking for collusive bidding, reviewing or checking payment of required wages, performance and contract compliance, workplace safety compliance, evaluating Related Entities, environmental compliance, and qualifications for performance of the Contract, including the ability to perform and the integrity of the Design-Builder. The Agency Project Manager's authority to request or access records is subject to OAR 734-010-0400(9).

Where such records are stored in a computer or in other digital media, the Agency Engineer may request, and the Design-Builder shall provide, a copy of the data files and such other information or access to software to allow the Agency Engineer review of the records.

Nothing in this Article is intended to operate as a waiver of the confidentiality of any communications privileged under the Oregon Evidence Code. Nothing in this Article limits the records or documents that can be obtained by legal process.

8.3 Record Retention Period. The Design-Builder shall preserve the foregoing for a period of 3 years after Final Acceptance, or until all disputes, if any, concerning the Contract or the Project have been resolved, whichever occurs later, or for such longer period as may be required by applicable law.

8.4 Records Required - The Design-Builder shall maintain all records, whether created before or after execution of the Contract, or during Contract performance, or after Contract completion, to document the following Project Records:

- The Design-Builder's performance of the Contract or a subcontract;
- The Design-Builder's ability to continue performance of the Contract or a subcontract; and
- All claims arising from or relating to performance under the Contract or a subcontract.
- All Project business records, including fiscal records, regardless of when created for the Design-Builder including without limitation:
    - All documents and information required by Section DB141
    - Work Product
    - Bidding estimates and records, worksheets, tabulations or similar documents.

- Job cost detail reports, including monthly totals.
- Payroll records (including without limitation the ledger or register, and tax forms) and all documents that establish the periods, individuals involved, the hours for the individuals and the rates for the individuals.
- Records that identify the Equipment used by the Design-Builder and Subcontractors at all tiers in the performance of the Contract or Subcontracts, including without limitation, Equipment lists, rental contracts and any records used in setting rental rates.
- Invoices from vendors, rental agencies, and Subcontractors.
- Material quotes, invoices, purchase orders and requisitions.
- Contracts with Subcontractors at all tiers and contracts with Material Suppliers, Suppliers and providers of rented Equipment.
- Contracts or documents of other arrangements with any Related Entity as defined in OAR 734-010-0400.
- General ledger.
- Trial Balance.
- Financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial statement notes).
- Income tax returns.
- All worksheets used to prepare bids or claims, or to establish the cost components for the Pay Items, including without limitation, the labor, benefits and insurance, Materials, Equipment, and Subcontractors.

The following are examples, but not an exhaustive list, of Project Records:

- Daily time sheets and supervisors' daily reports.
- Collective bargaining agreements.
- Earnings records.
- Journal entries and supporting schedules.
- Insurance, welfare, and benefits records.
- Material cost distribution worksheet.
- Subcontractors' and lower tier Subcontractors' payment certificates.
- Payroll and vendor's cancelled checks.
- Cash disbursements journal.
- All documents related to each and every claim together with all documents that support the amount of damages as to each claim.
- Additional financial statements (including without limitation the balance sheet, income statement, statement of cash flows, and financial notes) preceding the execution of the Contract and following final payment of the Contract.

- Depreciation records on all business Equipment maintained by the business involved, its accountant, or other Entity. (If a source other than depreciation records is used to develop cost for the Design-Builder's internal purposes in establishing the actual cost of owning and operating Equipment, all such other source documents.)

8.5 Public Records Requests - If records provided under this Section contain any information that may be considered exempt from disclosure as a trade secret under either ORS 192.345(2) or ORS 646.461(4), or under other grounds specified in Oregon Public Records Law, ORS 192.311 through 192.478, the Design-Builder shall clearly designate on or with the records the portions which the Design-Builder claims are exempt from disclosure, along with a justification and citation to the authority relied upon. Entire records or documents should not be designated as a trade secret or otherwise exempt from disclosure. Only specific information within a record or document should be so designated.

To the extent allowed by the Oregon Public Records Law or other applicable law related to the disclosure of public records, the Agency will not disclose records or portions of records the Design-Builder has designated as trade secrets to a third party, who is not a representative of the Agency, to the extent the records are exempt from disclosure as trade secrets under the Oregon Public Records Law or other applicable law, except to the extent the Agency is ordered to disclose in accordance with the Oregon Public Records Law or by a court of competent jurisdiction. Application of the Oregon Public Records Law or other applicable law shall determine whether any record, document or information is actually exempt from disclosure.

In addition, in response to a public records request, the Agency will not produce or disclose records so identified as exempt by the Design-Builder to any person other than representatives of the Agency, and others with authorized access under (b) above, without providing the Design-Builder a copy of the public records request, unless:

- The Design-Builder consents to such disclosure; or
- The Agency is prohibited by applicable law or court order from providing a copy of the public records request to the Design-Builder.

8.6 Subcontractor Requirements - The Design-Builder shall require each Major Subcontractor, Principal Participant, and subcontractors at any tier to comply with this Article 9., requirements.

ARTICLE 9
DISPUTES

9.1 Disputes - In the event of the existence of any dispute between the Parties under the Contract, the Design-Builder shall continue to perform the Contract in accordance with its terms and seek resolution in accordance with Section DB199.

9.2 Design-Builder's Remedies - In the event of dispute involving alleged Agency default, the Design-Builder shall be limited solely to pursuing remedies through those claims procedures set forth in Section DB199.

9.3 Litigation - In the event of litigation instigated by the Design-Builder in accordance with DB199.40(e), or by the Agency for breach of contract, in addition to its other available remedies the Agency may pursue both recoupment and set-off.

ARTICLE 10
TERMINATION

10.1 Agency's Termination for Public Convenience - The Contract may be terminated for convenience by the Agency, in whole or in part, without penalty, as provided in DB180.90(c). In such case, the Agency will make payment in accordance with DB195.70(b). However, the amount to be paid to the Design-Builder shall in no event exceed the Contract Amount.

10.2 Agency's Termination for Default - The Contract may be terminated by the Agency for default, as provided in DB180.90(a). In addition to the acts listed in DB180.90(a), the following shall also be considered defaults for which the Contract may be terminated:

10.2.1 The Design-Builder or its Design Professionals no longer hold the licenses or certificates required to perform the Work or any portion thereof.

10.2.2 The Design-Builder so fails to perform any agreed-upon portion of the Work or Contract Item as to endanger the Design-Builder's performance under the Contract in accordance with its terms, provisions and conditions, and such breach, default or failure is not cured within the time periods and requirements of DB180.90(b).

10.2.3 The Design-Builder made knowing or reckless misrepresentations, concealed facts, or failed to disclose information in any responses provided by Design-Builder in its responses to the solicitation documents for the Project. Such shall constitute fraudulent inducements, and shall entitle the Agency to recover reliance damages, in addition to any other available remedies to which it may show itself entitled.

10.2.4 The Design-Builder fails to undertake, perform and complete the outreach and other measures and good faith efforts included in, or fails to otherwise comply with the requirements of, the Design-Builder's Diversity Plan Accepted by the Agency, including Accepted updates.

In case of termination for default as set forth in this 10.2, the Agency will make payment consistent with the payment provisions included in DB195.70(a), and at the Agency's option, including payment for Materials left on hand, in accordance with DB195.80.

10.3 Agency's Termination for Non-availability of Funds or Legal Authority – The Agency reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder, and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including

making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds, and will use its best efforts to have such budget approved. It is the Agency's intention to make all payments due hereunder if funds are legally available for such purpose. If, despite the above, the Agency is not allotted sufficient funds for the next succeeding fiscal period by appropriation, limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, the Agency may terminate the Contract, in whole or in part, without penalty, immediately upon notice to the Design-Builder or at such later date as the Agency may establish on such notice effective upon exhaustion of allocated funds, and such termination shall not constitute an event of default under any provision of the Contract. The Agency will give the Design-Builder notice of such non-availability of funds within 30 Calendar Days after it receives notice.

The Agency may terminate the Contract, in whole or in part, without penalty, immediately upon notice to the Design-Builder, or at such later date as the Agency may establish in such notice, upon the occurrence of any of the following events:

10.3.1 The Agency fails to receive funding, or appropriations, allotments, limitations or other expenditure authority at levels sufficient to pay for the Design-Builder's Design Services, Work, or any other work;

10.3.2 Federal or State Laws are modified or interpreted in such a way that either the Design Services or Construction Services are prohibited, the Agency is prohibited from paying for such Design Services or Construction Services from the planned funding source, or the Agency otherwise lacks the legal authority to perform the contract.

In the event of termination under this Article 10.3, payment to the Design-Builder will be according to Article 10.1. The Parties shall otherwise perform their respective remaining obligations as provided in DB180.90(c) and DB195.70(b).

In the case of termination as set forth in this 10.3, the Agency will provide the Design-Builder and the Design-Builder's Surety 7 Calendar Days' written notice of such termination. After such notice, the Design-Builder and the Design-Builder's Surety shall provide the Agency with immediate and peaceful possession of (i) the Project Site; (ii) all Design Documents and Work Products, both the final versions and also all Work Products that are under development and t he Design-Builder shall provide full access to the foregoing, in all forms (electronic and paper), to the Agency; and (iii) Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Design-Builder received progress payments under Section DB195.

If the Agency terminates under this Article 10.3, the Agency shall be entitled to electronic and paper copies of, and shall have the right to use, all Design Documents and Work Products of the Design-Builder, Subcontractors, consultants, and Suppliers performed to the date of termination (see Section DB170), both the final versions and also all Work Products that are under development, and the Design-Builder shall deliver copies of the same to the Agency upon request. The Design-Builder shall provide all Work Products that are stamped by the Professional of Record with the stamps and signatures intact.

10.4 NEPA Related Termination – In addition to the Agency's other rights of termination, consistent with 23 CFR 636.109, in the event the NEPA environmental review process does not result in the selection of a build alternative, or in the event the NEPA environmental review process was completed and resulted in a build alternative but was later reversed or modified resulting in selection of the no-build alterative, upon notice to the Design-Builder as provided in DB180.90(d), the Contract may be terminated by the Agency, in whole or in part, without penalty.

10.5 Quality of the Work - In the event of the Agency's termination of the Contract, regardless of reason, the Design-Builder shall remain responsible for the quality of the Work performed.

ARTICLE 11
WAGE RATES AND WORKFORCE REQUIREMENTS

11.1 General - The Design-Builder is responsible for investigating local labor conditions. The Agency does not imply that labor can be obtained at the minimum hourly wage rates specified in State or federal wage rate publications, and no increase in the Contract Amount will be made if wage rates paid are more than those listed.

11.2 Wage Rate Requirements for Public Works Projects (Federal Funds) - The Design-Builder shall comply with, and shall require all Subcontractors to comply with, all applicable minimum wage rate and other wage-related legal requirements, including but not limited to the requirement to pay the higher of the applicable federal Davis-Bacon wage rates and the State of Oregon Bureau of Labor and Industries (BOLI) wage rates. The Design-Builder shall pay each worker in each trade or occupation employed to perform any work under the Contract not less than the existing State BOLI prevailing wage rate or the applicable federal prevailing wage rate required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.), whichever is higher. The Design-Builder shall comply with the prevailing wage provisions of ORS 279C.800 through ORS 279C.870.

The Design-Builder shall ensure this provision is included in all subcontracts.

See the Project Wage Rates page included in DB Agreement Exhibit C for additional information about which wage rates apply to the Project and how to access the applicable wage rates.

11.3 Payroll and Certified Statements - As required in ORS 279C.845, the Design-Builder and every Subcontractor shall submit written certified statements to the Agency Engineer on the form prescribed by the Commissioner of BOLI in OAR 839-025-0010 certifying compliance with wage payment requirements and accurately setting out the Design-Builder's or Subcontractor's weekly payroll records for each worker employed on the Project.

The Design-Builder and Subcontractors shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

In addition to providing the payroll information and certified statements required under ORS 279C.845, the Design-Builder and every Subcontractor shall submit written certified statements that also meet the requirements in Section IV of FHWA Form 1273 incorporated in Exhibit B-1 of the Design-Build Agreement, except the Design-Builder and every Subcontractor shall preserve the certified statements for a period of 6 years from the date of completion of the Contract.

11.3.1 Additional Retainage:

a. Agency - As required in ORS 279C.845(7) the Agency will retain 25% of any amount earned by the Design-Builder on the Project until the Design-Builder has

filed the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. The Agency will pay to the Design-Builder the amount retained within 14 Calendar Days after the Design-Builder files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

b. Design-Builder - As required in ORS 279C.845(8) the Design-Builder shall retain 25% of any amount earned by a first tier Subcontractor on the Project until the first tier Subcontractor has filed with the Agency the certified statements required in ORS 279C.845 and in FHWA Form 1273, if applicable. Before paying any amount retained, the Design-Builder shall verify that the first tier Subcontractor has filed the certified statement. Within 14 Calendar Days after the first tier Subcontractor files the required certified statement the Design-Builder shall pay the first tier Subcontractor any amount retained.

11.3.2 Owner/Operator Data - The Design-Builder shall furnish data to the Agency Engineer for each owner/operator providing trucking services. The Design-Builder shall furnish the data before the time the services are performed and include without limitation for each owner/operator:

- Driver's name;
- Present driver license upon request;
- Vehicle identification number;
- Present vehicle registration upon request;
- Motor vehicle license plate number;
- Motor Carrier account number;
- Present ODOT Motor Carrier 1A Permit upon request; and
- Name of owner/operator from the side of the truck.

11.3.3 Overtime Requirements - As a condition of the Contract, the Design-Builder shall comply with the pertinent provisions of ORS 279C.520 and ORS 279C.540. The Design-Builder shall comply with the overtime provision affording the greatest compensation required under ORS 279C.540 and FHWA Form 1273 incorporated in Exhibit B-1 of the Design-Build Agreement

11.3.4 Maximum Hours of Labor and Overtime Pay - According to ORS 279C.540, no person shall be employed to perform Work under this Contract for more than 10 hours in any 1 Day, or 40 hours in any 1 week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, the Design-Builder shall pay the employee at least time and a half pay:

- For all overtime in excess of 8 hours a day or 40 hours in any 1 week when the work week is 5 consecutive days, Monday through Friday; or
- For all overtime in excess of 10 hours a day or 40 hours in any 1 week when the work week is 4 consecutive days, Monday through Friday; and

- For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

For additional information on requirements for overtime and establishing a work schedule see OAR 839-025-0050 and OAR 839-025-0034.

11.4 Notice of Hours of Labor - The Design-Builder shall give written notice to employees of the number of hours per day and days per week the employees may be required to work. Provide the notice either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees.

11.4.1 Exception - The maximum hours of labor and overtime requirements under ORS 279C.540 will not apply to the Design-Builder's Work under this Contract if the Design-Builder is a party to a collective bargaining agreement in effect with any labor organization. For a collective bargaining agreement to be in effect it shall be enforceable within the geographic area of the Project, and its terms shall extend to workers who are working on the Project (see OAR 839-025-0054).

11.4.2 State Time Limitation on Claim for Overtime - According to ORS 279C.545, any worker employed by the Design-Builder is foreclosed from the right to collect any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Design-Builder within 90 days from the completion of the Contract, provided the Design-Builder posted and maintained a circular as specified in this provision. Accordingly, the Design-Builder shall:

- Cause a circular, clearly printed in boldfaced 12-point type and containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed to perform Work; and
- Maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

11.5 Implementation Requirements for EEO, Affirmative Action, Apprenticeship, Outreach and Retention, and DBE Program

11.5.1 General - The Design-Builder fully implement the following program requirements:

- FHWA-1273 Required Contract Provisions Federal-Aid Construction Contracts, Exhibit B-1
- On-site Workforce Affirmative Action Requirements For Women and Minorities on Federal-Aid Contracts, Exhibit B-2
- Equal Employment Opportunity Provisions, Exhibit B-3
- Outreach, Recruitment and Retention, Exhibit B-4
- DBE Requirements, Exhibit B-5
- Apprenticeship Requirements, Exhibit B-8

The Design-Builder shall also:

- Develop and implement all activities in accordance with Outreach, Recruitment and Retention Plan and provide associated updates and reports.
- Coordinate and report on activities involving EEO, Affirmative Action, Apprenticeship, and DBE Program duties development and implementation.
- Take corrective action, as needed, regarding DBE and workforce-related concerns, in coordination with the Agency.

11.5.2 Staffing and Management - Design-Builder shall maintain the necessary personnel to work on implementation and compliance of program requirements ncluding the DBE Program Administrator/Liaison (DBEPA) and EEO Officer, as required by FHWA 1273 Required Contract Provisions (Exhibit B-1) who will serve as the team lead.

The EEO Officer shall also be responsible for:

- Administering EEO Program.
- Monitoring the coordination, implementation, and reporting responsibilities throughout the life of the Project and be the primary point of contact for compliance and implementation of this section.
- Coordinating all required submittals.
- Preparing for and attend all design mobilization and preconstruction meetings.
- Organizing relevant meetings related to EEO, Affirmative Action, Apprenticeship and Outreach
- Ensuring Design-Builder is in compliance with requirements of this Exhibits B1 – B8.

11.5.3 Monthly Coordination Meeting - The Agency will hold monthly coordination meetings with the Design-Builder, EEO Officer, and team members on status of activities performed pursuant to these requirements, including but not limited to:

- Employment of apprentices
- Hours worked by all employees
- EEO monitoring
- Administration project records
- Submission of required reports, forms, and plan updates

ARTICLE 12
ENUMERATION OF CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE

The Contract Documents are listed below and are intended to be complementary. However, in the event of conflicts or discrepancies among the Contract Documents, interpretation will be based on the descending order of precedence in which the Contract Documents are listed. The Contract Documents include the following:

12.1 Extra Work Orders, and Change Orders, with those of later date having precedence over those of an earlier date;

12.2 This Design-Build Agreement, excluding exhibits

12.3 DB General Provisions**,** excluding attachments to the DB General Provisions

12.4 Accepted Readiness-for-Construction Specifications (See DB155);

12.5 Accepted Readiness-for-Construction Plans (See DB155);

12.6 Certified Working Drawings (See DB155.)

12.7 Exhibits to the Design Build Agreement;

12.8 DB Standard Technical Specifications (See DB110);

12.9 All Accepted Programmatic Plans**;** and

12.10 All other Contract Documents and all other documents identified as a Contract Document in any other Contract Document and all other remaining Exhibits, Attachments documents and material incorporated in this Agreement by reference.

ARTICLE 13
MISCELLANEOUS PROVISIONS

13.1 Notices - Notices to be given hereunder to the Agency or the Design-Builder, except as otherwise specified elsewhere in the Contract documents, shall be in accordance with DB150.30.

13.2 Compliance with ORS 279C.520 - The Design-Builder must comply with the prohibitions set forth in ORS 652.220, and shall not discriminate against any of Design-Builder's employees in the payment of wages or other compensation for work of comparable character, the performance of which requires comparable skills, or pay any employee at a rate less than another for comparable work, based on an employee's membership in a "protected class." For purposes of this provision, a "protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, veteran status, disability or age. Design-Builder's failure to

comply with these requirements is a breach of the Contract that entitles the Owner to terminate the Contract for cause.

Compliance with ORS 279C.520 includes, but is not limited to, not prohibiting employees from discussing wages, salaries, benefits and other compensation, and compliance with the wage related prohibitions in ORS 652.220. Compliance with ORS 279C.520 and ORS 652.220 is a material element of the Contract, and Design-Builder's failure to comply is a breach of the Contract that entitles the contracting agency to terminate the Contract for cause.

13.3 Severability - The Parties agree that if any term, provision or condition of the Contract is declared by a court of competent jurisdiction to be illegal or otherwise invalid, the validity of the remaining terms, provisions and conditions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term, condition or provision held to be invalid.

13.4 No Waiver - The failure of the Agency to enforce any term, provision or condition of the Contract shall not constitute a waiver by the Agency of that term, provision or condition or any other term, provision or condition of the Contract. The characterization of provisions of the Contract as material provisions or the failure to comply with certain provisions as a material breach of the Contract shall in no way be construed to mean that any other provisions of the Contract are not material or that failure to comply with any other provisions is not a material breach of the Contract.

13.5 Media Contacts - The Agency will perform all media contact related functions with respect to this the Project. Unless otherwise specifically authorized in writing, the Design-Builder shall provide no news release, press release, or any other statement to any news or opinion media (print, television, radio, internet, blog, podcast or any other medium or form) regarding this Project without the Agency's prior written authorization.

13.6 Confidentiality Except in the case where the Agency specifically authorizes in writing disclosure of the Agency's confidential information (or except in cases of the information of Utilities, Governmental Bodies and other third parties or Entities, identified as trade secrets or otherwise as confidential that is authorized by the foregoing sources to be disclosed), the Design-Builder shall maintain the confidentiality of the information pertaining to the Project (and the information of Utilities, Governmental Bodies and other third parties or Entities identified as trade secrets or otherwise as confidential). In the event the Design-Builder is required to disclose any confidential information from any of the foregoing sources pursuant to a subpoena or other legal process, the Design-Builder shall notify the Agency and the source of the information of such subpoena or other legal process, provide the Agency with copies of any subpoena, other legal process and any other written materials supporting the subpoena or other legal process, and otherwise cooperate with the Agency in the event the Agency decides to oppose the disclosure of the confidential information. In the event the Agency decides not to oppose such subpoena or other legal process or the Agency's decision to oppose the subpoena or legal process has not been successful, the Design-Builder shall be excused from the confidentiality provisions of this Article, to the extent necessary to meet the requirements of the subpoena or other legal process controlling the required disclosure. The Design-Builder shall ensure that the foregoing requirements and restrictions are included in all subcontracts at all tiers.

13.7 Conflict of Interest - The Design-Builder shall not engage in any activity that would constitute a "conflict of interest." No ex-employee of the Agency who has worked for the Agency on any phase of the Project within the prior 2 years may be employed by the Design-Builder to perform Work on the Project.

The Design-Builder shall not give or offer any gift, loan, or other thing of value to any member of the Agency's governing body or employee of the Agency in connection with the award or performance of any Contract.

The Design-Builder shall not rent, lease, or purchase Materials, supplies, or Equipment from or through any Agency employee or member of the Agency's governing body. The Design-Builder and all Subcontractors, along with their officers, employees, and agents, are prohibited from acquiring any interest, including purchase options, in property within or adjacent to the Project Site that is reasonably anticipated to be impacted by the Project. The Design-Builder and all Subcontractors, along with their officers, employees, and agents, are also prohibited from receiving any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person in connection with any real estate acquisition activity related to this Project. The Design-Builder shall include these prohibitions in all of its subcontracts and require that they be included in all lower-tier subcontracts. Any such acquisition of a property interest or receipt of fees, compensation, or benefit shall constitute a material breach of Contract, and may result in the termination of the Contract by the Agency.

No person(s) on the Design-Builder's team for this Project shall discuss compensation for any parcels being acquired by the Agency for the Project with a property owner or a property owner's representative prior to establishment of just compensation by the Agency and a written offer being made to a property owner.

The Design-Builder, Major Subcontractors, Principal Participants, and any subcontractors at any tier shall also be and remain in compliance with the requirements of 23 CFR 636.116 and the Agency's Conflict of Interest Guidelines. At any time during the term of the Agreement an Entity (including the Design-Builder) has any changes to staffing or organization that results in an actual, apparent or potential Conflict of Interest (Individual or Organizational) per the Conflict of Interest Guidelines or per the criteria of any Conflict of Interest disclosure form associated with a particular Procurement or Contract, any such changes shall be disclosed within 10 Business Days via submittal of a correct and signed Conflict of Interest Disclosure Form to Agency Engineer.

13.8 Governing Law; Jurisdiction; Venue - This Contract shall be governed by and construed and enforced according to the laws of the State of Oregon without regard to principles of conflict of laws.

Any dispute between the Agency and the Design-Builder that arises from or relates to this Contract and that is not resolved under the provisions of Section DB199 shall be brought and conducted solely and exclusively within the Circuit Court for the State of Oregon in the county where the Agency's main office is located; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

In no event shall this Subsection be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. THE DESIGN-BUILDER BY EXECUTION OF THE CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION.

13.9 Contract Not Construed Against Drafter - The Design-Builder acknowledges and agrees that it had the opportunity, prior to submission of its Proposal, to review the terms, provisions and conditions of the Contract and to bring to the Agency's attention any conflicts, ambiguities or protests regarding them. The Design-Builder further acknowledges and agrees that it has independently reviewed the Contract with legal counsel and that it has the requisite experience and sophistication to understand, interpret, agree to and be bound by the particular language of the terms, provisions and conditions of the Contract. No term, provision or condition of the Contract shall be construed by any court or other judicial authority or dispute resolution person or board against any Party hereto because such Party or its counsel drafted or participated in drafting any such term, provision or condition.

Other than as modified by the Contract, the applicable rules of contract construction and evidence shall apply.

13.10 Execution by the Agency - Notwithstanding any other term, provision or condition in the Contract Documents, Agency consultants have no authority to execute Change Orders or Amendments on behalf of the Agency, and only duly authorized personnel of the Agency may do so.

13.11 Electronic Signatures - The Design-Builder and the Agency agree that signatures showing on PDF documents, including but not limited to PDF copies of the Contract, bonds, Change Orders and Amendments, submitted or received via email, when submittal or receipt in that manner is required or allowed by the Agency in its discretion, are "Electronic Signatures" under ORS Chapter 84 and bind the signing party and are intended to be and can be relied upon by the Parties. The Agency reserves the right at any time to require the Design-Builder to deliver the hard copy originals of any documents. See DB170.08 regarding submittal and receipt procedures and requirements for Electronic Document Management.

13.12 Acknowledgement of Terms - Each Party, Entity and person signing the Contract acknowledges they have read the Contract, understand the terms, provisions and conditions of the Contract, have had the opportunity to consult with and have consulted with independent legal counsel in connection with the Contract, and have signed this Contract voluntarily.

13.13 Headings - The headings used in this Contract are solely for convenience of reference, are not part of the Contract and are not to be considered in construing or interpreting the Contract.

13.14 False Claims - The Design-Builder understands, acknowledges and agrees it is subject to the Oregon False Claims Act (ORS 180.750 to 180.785) as well as the provisions of 31 United States Code (U.S.C.) §3801 et seq., (Administrative Remedies for False Claims and Statements) and to any liabilities or penalties associated with the making of a false claim

under these laws. By its execution of this Contract, the Design-Builder certifies the truthfulness, completeness and accuracy of all statements and claims it has made, it makes, it may make, or cause to be made that pertain to the Contract or the Project, including but not limited to the Design-Builder's responses to the solicitation documents for this Project, all cost and other proposals, Amendments and Change Orders, requests for payment or reimbursement, reports, and accountings and all responses to Agency inquiries produced by or on behalf of the Design-Builder. The Design-Builder agrees that for purposes of application of the Oregon False Claims Act, all of the foregoing shall be treated as "claims" under that Act.

The Design-Builder shall immediately disclose in writing to the Agency whenever, in connection with the award, performance or closeout of the Contract, or any subcontract thereunder, the Design-Builder has credible evidence that a principal, employee or agent of the Design-Builder, or a Subcontractor, has committed a violation of the Oregon False Claims Act or a violation of State or federal criminal or civil law involving fraud, conflict of interest, bribery, gratuity or similar misconduct.

The Design-Builder shall include the foregoing provisions or cause the foregoing provisions to be included in all subcontracts.

13.15 Antitrust Rights - The Design-Builder irrevocably assigns to the Agency any claim for relief or cause of action the Design-Builder acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of:

- Title 15 (Commerce and Trade), United States Code
- ORS 646.725; or
- ORS 646.730

In connection with this assignment, it is an express obligation of the Design-Builder to take no action that would in any way impair or diminish the value of the rights assigned to the Agency pursuant to the provisions of this Subsection. Further, it is the express obligation of the Design-Builder to take all action necessary to preserve the rights assigned. It is an express obligation of the Design-Builder to advise the Agency's legal counsel of any of the following occurrences:

- In advance, of its intention to commence any action involving such claims for relief or causes of action;
- Immediately upon becoming aware of the fact that an action involving such claims for relief or causes of action has been commenced by some other person or persons;
- The date on which it notified the obligor(s) of any such claims for relief or causes of action of the fact of the Design-Builder's assignment to the Agency pursuant to the provisions of this Subsection; and
- Immediately upon the discovery of any such antitrust claim for relief or cause of action.

In the event any payment is made to the Design-Builder under any such claims for relief, the Design-Builder shall promptly pay the full sum over to the Agency. In the event the Design-

Builder fails to make such payment, the Agency may deduct the amount from monies due or to become due the Design-Builder under the Contract

13.16 Merger Clause - THE CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS, PROVISIONS AND CONDITIONS OF THE CONTRACT CANNOT BE WAIVED OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED STATE OF OREGON APPROVALS. ANY WAIVER, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THE CONTRACT EXCEPT AS CONTAINED OR INCORPORATED BY REFERENCE HEREIN. THE DESIGN-BUILDER'S AUTHORIZED REPRESENTATIVE (THE UNDERSIGNED), BY THE UNDERSIGNED'S SIGNATURE BELOW, HEREBY ACKNOWLEDGES THAT THE UNDERSIGNED HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND CAN AFFIRM THAT THE DESIGN-BUILDER AGREES TO BE BOUND BY ITS TERMS, PROVISIONS AND CONDITIONS. THIS AGREEMENT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT.

ARTICLE 14
DESIGN-BUILDER CERTIFICATIONS

14.1 Employee Drug Testing Program - By executing this Agreement, the Design-Builder certifies that:

- The Design-Builder has an employee drug-testing program complying with all requirements of ORS 279C.505(2) in place and shall maintain such program for the duration of the Contract. The Agency retains the right to audit and/or monitor the program. On request by the Agency Engineer the Design-Builder shall furnish a copy of the employee drug-testing program
- The Design-Builder shall include in each of its subcontracts a requirement that the Subcontractor either maintain such a program or participate in the Design-Builder's program for the duration of the subcontract.

14.2 Prohibition of Non-Discrimination in Subcontracting Laws (ORS 279A.110). Design-builder certifies that it has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a veteran owns, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

14.3 Prevention of Sexual Harassment, Sexual Assault, and Discrimination. Design-builder certifies, in accordance with ORS 279A.112, that it has in place a policy and practice of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a "protected class" As a material term and condition of this Contract, Design-Builder must maintain, throughout the duration of this Contract, a policy and practice that

complies with ORS 279A.112, including, but not limited to, giving employees written notice of the Design-Builder's policy and practice.

14.4 Use of Registered Subcontractors - By executing this Agreement, the Design-Builder certifies that:

All Subcontractors shall be qualified to perform their respective Work and, as legally required or appropriate for the Work they are performing, they shall be registered or licensed in the State of Oregon by the appropriate board or authority before such Subcontractors commence Work and for the duration of the subcontract. Further, Design-Builder certifies that all subcontractors performing Work subject to the licensing requirement in ORS Chapter 701 will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board (as applicable) before the subcontractors commence Work under the Contract. As applicable, these registration and licensing requirements shall also apply to employees of the Design-Builder and to employees of Subcontractors and the Design-Builder shall require and ensure that the employees are in compliance.

14.5 Debt. Design-Builder certifies that Design-Builder has no undisclosed liquidated and delinquent debt owed to the State or any department or agency of the State.

THIS AGREEMENT is executed in two (2) original copies, of which one is to be delivered to the Design-Builder, and the remainder to the Agency.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which shall be effective as of the Effective Date.

DESIGN-BUILDER: (Enter name of firm / joint venture)

Design-Builder's Federal Tax I.D. Number: (Enter number)

Oregon Construction Contractors Board Registration Number: (Enter number)

Expiration: (Enter date)

ADDRESS: (Enter address)

_____
Signature of Authorized Representative of Design-Builder

_____
Printed Name

_____
Title

_____
Date

[Review the Technical Proposal Signature Page and Proposal Firm Offer and the Technical Proposal Response Category I(j) documents to confirm signatory authority and the correct name and title of Design-Builder's authorized representative with authority to execute the Contract. Insert all information, and include signature blocks for all required signatures.]

If the Design-Builder is a joint venture or a partnership, each joint venture member or partner of the Design-Builder shall sign this Agreement, and by doing so is signing on behalf of and is therefore binding both itself and the Design-Builder, and each joint venture member or partner and Design-Builder shall be jointly and severally liable under the Contract, including but not limited to joint and several liability for any obligations subcontracted by the Design-Builder to any of the joint venture members or partners.

(Enter Joint Venture Partner Company #1 Name)
Joint Venture Member/Partner #1

By:

_____
Signature (On behalf of Joint Venture Member/Partner and Design-Builder)

_____
Printed Name

_____
Title

_____
Joint Venture Member/Partner FEIN ID# or SSN# (Required)

_____
Date

(Enter Joint Venture Partner Company #2 Name)
Joint Venture Member/Partner #2

By:

_____
Signature (On behalf of Joint Venture Member/Partner and Design-Builder)

_____
Printed Name

_____
Title

_____
Joint Venture Member/Partner FEIN ID# or SSN# (Required)

_____
Date

AGENCY: STATE OF OREGON by and through the Oregon Department of Transportation

ADDRESS: **355 Capitol Street NE, MS 11, Salem, OR 97301-3871**

By _____ Date _____, 20__
(Insert name), Deputy Delivery and Operations Administrator

By _____ **Date:** _____

(Insert Name), Procurement Operations Manager

Approved as to Legal Sufficiency for the benefit of the Agency:

Oregon Department of Justice

By (insert name)_____By Email Dated: (insert date)

Senior Assistant Attorney General

[Insert DB Agreement Exhibits into the follow pages.]

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NORTHWEST OREGON 2024-2027
ADA CURB RAMPS, PHASE 2

DESIGN-BUILD AGREEMENT

EXHIBIT A-1 -

DB TECHNICAL APPROACH("DB Technical Approach")

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NORTHWEST OREGON 2024-2027
ADA CURB RAMPS, PHASE 2

DESIGN-BUILD AGREEMENT

EXHIBIT A-2 –

Form SP

("Form SP" or "Schedule of Prices")

FORM SP - SCHEDULE OF PRICES

INSTRUCTIONS TO PROPOSERS: Replace blue italicized text below with information specific to the Proposal. Add rows as needed for additional Design Units in each Price Center Table. Delete any unused Design Unit rows in each Price Center Table. If the price center will only include a single Design Unit, delete all Design Unit rows below the main "Design" Price Item. DO NOT DELETE ANY OTHER ROWS IN THE PRICE CENTER TABLES.

PRICE CENTER A: ODOT Region 2 ADA North Area (Astoria, Newberg, Dundee, Clatsop County, and Yamhill County)

PRICE ITEM	**PRICE ITEM VALUE**
A1 Design Services	$ *(Sum of Design Unit Values)*
A1.1 *Proposer's Design Unit 1*	$*Proposal Value*
A1.2 *Proposer's Design Unit 2*	$*Proposal Value*
A1.3 *Proposer's Design Unit 3*	$*Proposal Value*
A1.4 *Proposer's Design Unit 4*	$*Proposal Value*
A1.5 *Proposer's Design Unit 5*	$*Proposal Value*
A2 Quality Management Services	$*Proposal Value*
A3 Construction Mobilization	$*Proposal Value*
A4 Construction	$*Proposal Value*
PRICE CENTER A TOTAL	**$*(Sum of Price Item Values)***

PRICE CENTER B: ODOT Region 2 ADA Central Area (Independence, Monmouth, Corvallis, Philomath, Salem, Marion County, Polk County, and Benton County)

PRICE ITEM	**PRICE ITEM VALUE**
B1 Design Services	$ *(Sum of Design Unit Values)*
B1.1 *Proposer's Design Unit 1*	$*Proposal Value*
B1.2 *Proposer's Design Unit 2*	$*Proposal Value*
B1.3 *Proposer's Design Unit 3*	$*Proposal Value*
B1.4 *Proposer's Design Unit 4*	$*Proposal Value*
B1.5 *Proposer's Design Unit 5*	$*Proposal Value*
B2 Quality Management Services	$*Proposal Value*
B3 Construction Mobilization	$*Proposal Value*
B4 Construction	$*Proposal Value*
PRICE CENTER B TOTAL	**$*(Sum of Price Item Values)***

PRICE CENTER C: ODOT Region 2 ADA South Area (Springfield, Coburg, Cottage Grove, Linn County, and Lane County)

PRICE ITEM	PRICE ITEM VALUE
C1 Design Services	$ *(Sum of Design Unit Values)*
C1.1 *Proposer's Design Unit 1*	$*Proposal Value*
C1.2 *Proposer's Design Unit 2*	$*Proposal Value*
C1.3 *Proposer's Design Unit 3*	$*Proposal Value*
C1.4 *Proposer's Design Unit 4*	$*Proposal Value*
C1.5 *Proposer's Design Unit 5*	$*Proposal Value*
C2 Quality Management Services	$*Proposal Value*
C3 Construction Mobilization	$*Proposal Value*
C4 Construction	$*Proposal Value*
PRICE CENTER C TOTAL	**$*(Sum of Price Item Values)***

FHWA-1273 Electronic version – Revised October 23, 2023
http://www.fhwa.dot.gov/programadmin/contracts/
NOTE: In this document, the word "proposal" means "bid" in other ODOT documents.

[Before using this Exhibit, check the FHWA website (http://www.fhwa.dot.gov/programadmin/contracts/) to verify that the Required Federal Contract Provisions included below are current. The Federal Contract Provisions cannot be changed.]

EXHIBIT B-1 - FHWA - 1273
REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Non-segregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
XI. Certification Regarding Use of Contract Funds for Lobbying
XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal Employment Opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (*see* 28 CFR Part 35, 29 CFR Part 1630, 29 CFR Parts 1625-1627, 41 CFR Part 60 and 49 CFR Part 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140, shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR Part 35 and 29 CFR Part 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract. 23 CFR 230.409 (g)(4) & (5).

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, sexual orientation, gender identity, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action or are substantially involved in such action, will be made fully cognizant of and will implement the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer or other knowledgeable company official.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action

within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs (i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance). In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. 23 CFR 230.409. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors, suppliers, and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurances Required:

a. The requirements of 49 CFR Part 26 and the State DOT's FHWA-approved Disadvantaged Business Enterprise (DBE) program are incorporated by reference.

b. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
(1) Withholding monthly progress payments;
(2) Assessing sanctions;
(3) Liquidated damages; and/or
(4) Disqualifying the contractor from future bidding as non-responsible.

c. The Title VI and nondiscrimination provisions of U.S. DOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women.

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of more than $10,000. 41 CFR 60-1.5.

As prescribed by 41 CFR 60-1.8, the contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location under the contractor's control where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size), in accordance with 29 CFR 5.5. The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. 23 U.S.C. 113. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. 23 U.S.C. 101. Where applicable law requires that projects be treated as a project on a Federal-aid highway, the provisions of this subpart will apply regardless of the location of the project. Examples include: Surface Transportation Block Grant Program projects funded under 23 U.S.C. 133 [excluding recreational trails projects], the Nationally Significant Freight and Highway Projects funded under 23 U.S.C. 117, and National Highway Freight Program projects funded under 23 U.S.C. 167.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages (29 CFR 5.5)

a. *Wage rates and fringe benefits.* All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 basic hourly 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. As provided in paragraphs (d) and (e) of 29 CFR 5.5, the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.e. of this section; 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 particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in paragraph 4. of this section. 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 classifications and wage rates conformed under paragraph 1.c. of this section) and the Davis-Bacon poster (WH–1321) must 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.

b. *Frequently recurring classifications.* (1) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to § 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to paragraph 1.c. of this section, provided that:

(i) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(ii) The classification is used in the area by the construction industry; and

(iii) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(2) The Administrator will establish wage rates for such classifications in accordance with paragraph 1.c.(1)(iii) of this section. Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

c. *Conformance.* (1) The contracting officer must require that 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 be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is used in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(3) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(4) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov*, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(5) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under paragraphs 1.c.(3) and (4) of this section. The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 1.c.(3) or (4) of this section must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

d. *Fringe benefits not expressed as an hourly rate.* 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 may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

e. *Unfunded plans.* 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, in accordance with the criteria set forth in § 5.28, 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.

f. *Interest.* In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

2. Withholding (29 CFR 5.5)

a. *Withholding requirements.* The contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in this section for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in paragraph 3.d. of this section, the contracting agency may on its own initiative and 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.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with paragraph

2.a. of this section or Section V, paragraph 3.a., or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

3. Records and certified payrolls (29 CFR 5.5)

a. *Basic record requirements* (1) *Length of record retention.* All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least 3 years after all the work on the prime contract is completed.

(2) *Information required.* Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(3) *Additional records relating to fringe benefits.* Whenever the Secretary of Labor has found under paragraph 1.e. of this section that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. 3141(2)(B) of the Davis-Bacon Act, the contractor must 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.

(4) *Additional records relating to apprenticeship.* Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

b. *Certified payroll requirements* (1) *Frequency and method of submission.* The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls to the contracting agency. The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency or prime contractor permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(2) *Information required.* The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph 3.a.(2) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.*, the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH–347 or in any other format desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division website at https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf or its successor website. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to the contracting agency.

(3) *Statement of Compliance.* Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(i) That the certified payroll for the payroll period contains the information required to be provided under paragraph 3.b. of this section, the appropriate information and basic records are being maintained under paragraph 3.a. of this section, and such information and records are correct and complete;

(ii) That each laborer or mechanic (including each helper and apprentice) working 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

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(4) *Use of Optional Form WH–347.* The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 will satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(3) of this section.

(5) *Signature.* The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(6) *Falsification.* The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(7) *Length of certified payroll retention.* The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

c. *Contracts, subcontracts, and related documents.* The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

d. *Required disclosures and access* (1) *Required record disclosures and access to workers.* The contractor or subcontractor must make the records required under paragraphs 3.a. through 3.c. of this section, and any other documents that the contracting agency, the State DOT, the FHWA, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(2) *Sanctions for non-compliance with records and worker access requirements.* If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, the Federal agency may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(3) *Required information disclosures.* Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to the contracting agency, the State DOT, the FHWA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

4. Apprentices and equal employment opportunity (29 CFR 5.5)

a. *Apprentices* (1) *Rate of pay.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform 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 (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) *Fringe benefits.* Apprentices must 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(3) *Apprenticeship ratio.* The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to paragraph 4.a.(4) of this section. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph 4.a.(1) of this section, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) *Reciprocity of ratios and wage rates.* Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

b. *Equal employment opportunity.* The use of apprentices and journeyworkers under this part must be in conformity with

the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

c. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. 23 CFR 230.111(e)(2). The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeyworkers shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract as provided in 29 CFR 5.5.

6. Subcontracts. The contractor or subcontractor must insert FHWA-1273 in any subcontracts, along with the applicable wage determination(s) and such other clauses or contract modifications as the contracting agency may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate. 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. 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 as provided in 29 CFR 5.5.

9. Disputes concerning labor standards. As provided in 29 CFR 5.5, disputes arising out of the labor standards provisions of this contract 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 contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility. a. By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

c. The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

11. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

d. Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Pursuant to 29 CFR 5.5(b), the following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchpersons 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 shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. 29 CFR 5.5.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1. of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. 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 watchpersons and guards, employed in violation of the clause set forth in paragraph 1. of this section, in the sum currently provided in 29 CFR 5.5(b)(2)* for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 1. of this section.

* $31 as of January 15, 2023 (See 88 FR 88 FR 2210) as may be adjusted annually by the Department of Labor, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990.

3. Withholding for unpaid wages and liquidated damages

a. *Withholding process.* The FHWA or the contracting agency may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in this section on this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in § 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

b. *Priority to withheld funds.* The Department has priority to funds withheld or to be withheld in accordance with Section IV paragraph 2.a. or paragraph 3.a. of this section, or both, over claims to those funds by:

(1) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(2) A contracting agency for its reprocurement costs;

(3) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(4) A contractor's assignee(s);

(5) A contractor's successor(s); or

(6) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

4. Subcontracts. The contractor or subcontractor must insert in any subcontracts the clauses set forth in paragraphs 1. through 5. of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 1. through 5. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

5. Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

a. Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

b. Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

c. Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

d. Informing any other person about their rights under CWHSSA or this part.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System pursuant to 23 CFR 635.116.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" in paragraph 1 of Section VI refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions: (based on longstanding interpretation)

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;

(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and

(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract. 23 CFR 635.102.

2. Pursuant to 23 CFR 635.116(a), the contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. Pursuant to 23 CFR 635.116(c), the contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract. (based on long-standing interpretation of 23 CFR 635.116).

5. The 30-percent self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements. 23 CFR 635.116(d).

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR Part 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract. 23 CFR 635.108.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR Part 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704). 29 CFR 1926.10.

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR Part 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 11, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (42 U.S.C. 7606; 2 CFR 200.88; EO 11738)

This provision is applicable to all Federal-aid construction contracts in excess of $150,000 and to all related subcontracts. 48 CFR 2.101; 2 CFR 200.327.

By submission of this bid/proposal or the execution of this contract or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, subcontractor, supplier, or vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Highway Administration and the Regional Office of the Environmental Protection Agency. 2 CFR Part 200, Appendix II.

The contractor agrees to include or cause to be included the requirements of this Section in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements. 2 CFR 200.327.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200. 2 CFR 180.220 and 1200.220.

1. **Instructions for Certification – First Tier Participants:**

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction. 2 CFR 180.320.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default. 2 CFR 180.325.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. 2 CFR 180.345 and 180.350.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900-180.1020, and 1200. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction. 2 CFR 180.330.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 180.300.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. 2 CFR 180.300; 180.320, and 180.325. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. 2 CFR 180.335. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/). 2 CFR 180.300, 180.320, and 180.325.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default. 2 CFR 180.325.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.335;.

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property, 2 CFR 180.800;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification, 2 CFR 180.700 and 180.800; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default. 2 CFR 180.335(d).

(5) Are not a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(6) Are not a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability (USDOT Order 4200.6 implementing appropriations act requirements).

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal. 2 CFR 180.335 and 180.340.

* * * * *

3. **Instructions for Certification - Lower Tier Participants:**

(Applicable to all subcontracts, purchase orders, and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200). 2 CFR 180.220 and 1200.220.

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances. 2 CFR 180.365.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180, Subpart I, 180.900 – 180.1020, and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. 2 CFR 1200.220 and 1200.332.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold. 2 CFR 180.220 and 1200.220.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (https://www.sam.gov/), which is compiled by the General Services Administration. 2 CFR 180.300, 180.320, 180.330, and 180.335.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily

excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. 2 CFR 180.325.

* * * * *

4. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

a. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals:

(1) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency, 2 CFR 180.355;

(2) is a corporation that has been convicted of a felony violation under any Federal law within the two-year period preceding this proposal (USDOT Order 4200.6 implementing appropriations act requirements); and

(3) is a corporation with any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. (USDOT Order 4200.6 implementing appropriations act requirements)

b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant should attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000. 49 CFR Part 20, App. A.

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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 cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

XII. USE OF UNITED STATES-FLAG VESSELS:

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, or any other covered transaction. 46 CFR Part 381.

This requirement applies to material or equipment that is acquired for a specific Federal-aid highway project. 46 CFR 381.7. It is not applicable to goods or materials that come into inventories independent of an FHWA funded-contract.

When oceanic shipments (or shipments across the Great Lakes) are necessary for materials or equipment acquired for a specific Federal-aid construction project, the bidder, proposer, contractor, subcontractor, or vendor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels. 46 CFR 381.7.

2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b)(1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Office of Cargo and Commercial Sealift (MAR-620), Maritime Administration, Washington, DC 20590. (MARAD requires copies of the ocean carrier's (master) bills of lading, certified onboard, dated, with rates and charges. These bills of lading may contain business sensitive information and therefore may be submitted directly to MARAD by the Ocean Transportation Intermediary on behalf of the contractor). 46 CFR 381.7.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS (23 CFR 633, Subpart B, Appendix B) This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

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EXHIBIT B-2 - ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND MINORITIES ON FEDERAL-AID CONTRACTS

Pursuant to 41 CFR 60-4.6 (see also 41 CFR 60-4.2(a)) the following notice concerning Affirmative Action Requirements for Women and Minorities shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designated by the United States Department of Labor (USDOL) Director. The USDOL, Office of Federal Contract Compliance Programs (OFCCP) has made the following statement concerning Goals, Timetables and Good Faith Efforts:

"Numerical goals are established based on the availability of qualified applicants in the job market or qualified candidates in the employer's work force. Executive Order [E.O. 11246] numerical goals do not create set-asides for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, the goal- setting process in affirmative action planning is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent discrimination. The Executive Order and its supporting regulations do not authorize OFCCP to penalize contractors for not meeting goals. The regulations at 41 CFR 60-2.12(e), 60-2.30 and 60-2.15, specifically prohibit quota and preferential hiring and promotions under the guise of affirmative action numerical goals. In other words, discrimination in the selection decision is prohibited."

For purposes of this "Exhibit B-2 On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts", "Good Faith Efforts" means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan 23 CFR 230.407(o).

A. AFFIRMATIVE ACTION REQUIREMENTS

Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)

1. The goals and timetables for minority and female participation, expressed in percentage terms for the Design-Builder's aggregate workforce in each trade on all construction work in the covered area, are as follows:

GOAL AND TIMETABLE FOR FEMALE UTILIZATION STATEWIDE

Timetable	Goal (Percent)
From Apr. 1, 1980 until further notice	6.9

GOALS FOR MINORITY UTILIZATION BY COUNTY

County	Goal (Percent)
Clackamas, Multnomah, and Washington Counties	.....4.5
Marion and Polk Counties	.....2.9
Benton, Clatsop, Columbia, Crook, Deschutes, Hood River, Jefferson, Lincoln, Linn, Sherman, Tillamook, Wasco, and Yamhill Counties	.....3.8
Lane, Coos, Curry, Douglas, Jackson, Josephine, Klamath, and Lake Counties	.....2.4
Baker, Gilliam, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties	.....3.6
Harney and Malheur Counties	.....4.4

These goals are applicable to all the Design-Builder's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Design-Builder performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Design-Builder also is subject to the goals for both its federally involved and non-federally involved construction.

The Design-Builder's compliance with the Executive Order and the regulations in 41 CFR Part 604 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 604.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Design-Builder shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Design-Builder's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

2. The Design-Builder shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 Business Days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address and telephone number of the Subcontractor; employer identification number of the Subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

3. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is the county or counties shown in the Solicitation Documents. In cases where the work is two or more

counties covered by different percentage goals, the highest percentage will govern.

B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

1. As used in these specifications:

a. "Covered area" means the geographical area, described in the solicitation from which this Contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian American and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Design-Builder, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this Contract resulted.

3. A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan; provided, that each Contractor or Subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other contractor or Subcontractors toward a goal in an approved plan does not excuse any covered contractor's or Subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

4. The Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minorities and female utilization the Design-Builder should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or

federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Design-Builder is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Design-Builder has a collective bargaining agreement, to refer either minorities or women shall excuse the Design-Builder's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Design-Builder during the training period, and the Design-Builder must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Design-Builder shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Design-Builder's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Design-Builder shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Design-Builder's employees are assigned to work. The Design-Builder, where possible, will assign two or more women to each construction project. The Design-Builder shall specifically ensure that all foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Design-Builder's obligation to maintain- such a working environment, with specific attention to minorities and female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Design-Builder or its unions have employment opportunities available, and maintain a record of the organization’s responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off the street applicant and minority or female referral from a union, a recruitment source, or a community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Design-Builder by the union or, if referred, not employed by the Design-Builder, this shall be documented in the file with the reason therefore, along with whatever additional- actions the Design-Builder may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Design-Builder has a collective bargaining agreement has not referred to the Design-Builder a minority person or woman sent by the Design-Builder, or when the Design-Builder has other information that the union referral process has impeded the Design-Builder's efforts to meet its obligations.

e. Develop on the job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Design-Builder's employment needs, especially those

programs funded or approved by the Department of Labor. The Design-Builder shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Design-Builder's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Design-Builder in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting the Design-Builder's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, 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 including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject manner.

h. Disseminate the Design-Builder's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Design-Builder's EEO policy with other Design-Builders and Subcontractors with whom the Design-Builder does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Design-Builder's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Design-Builder shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Design-Builder's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 603.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female employees for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Design-Builder's obligations under these specifications are being carried out.

n. Ensure that all facilities and Design-Builder's activities are non-segregated except that separate or single user toilets- and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Design-Builder's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor community; or other similar group of which the Design-Builder is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that the Design-Builder actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Design-Builder's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Design-Builder. The obligation to comply, however, is the Design-Builder's and failure of such a group to fulfill an obligation shall not be a defense for the Design-Builder's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Design-Builder, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Design-Builder may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Design-Builder has achieved its goals for women generally, the Design-Builder may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The Design-Builder shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Design-Builder shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Design-Builder, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Design-Builder fails to comply with the requirements of the Executive Order, the implementation of regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 604.8.

14. The Design-Builder will designate an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active Design-Builder program of EEO and who must be assigned adequate authority and responsibility to do so. Additionally, the Design-Builder EEO Officer shall ensure that the company EEO policy is being carried out, to submit reports

relating to the specifications hereof as may be required by the Agency and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws, which establish different standards of compliance, or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The Office of Federal Contract Compliance Programs (OFCCP) may conduct compliance evaluations to determine if the Design-Builder maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. In the event of the Design-Builder's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Design-Builder may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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EXHIBIT B-3 - EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

As used in these provisions, "Agency Engineer" means the Chief Engineer of the Oregon Department of Transportation acting either directly or through authorized representatives. For this “Exhibit B-3 Equal Employment Opportunity Provisions”, “Good Faith Efforts" means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan" 23 CFR 230.407(o).

Section 140 of Title 23, United States Code, EQUAL EMPLOYMENT OPPORTUNITY, as in effect on May 1, 1982, is incorporated by this reference and made a part of these provisions.

Written Notification

The Design-Builder shall provide to the Agency Engineer within two weeks of award of any construction subcontract in excess of $10,000 at any tier for construction work under the Contract resulting from this solicitation written notification with the following information: the name, address and telephone number of the Subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

The Design-Builder shall provide immediate written notification to the Agency Engineer when (1) the union or unions with which the Design-Builder has a collective bargaining agreement has not referred to the Design-Builder minorities or women that the Design-Builder sent to the union, or (2) the Design-Builder has other information that the union referral process has impeded the Design-Builder's efforts to meet its equal opportunity obligations. This is in addition to the notification required in item 7d in the "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts".

Monthly Report

The Design-Builder and each Subcontractor (on contracts that require certified payrolls) shall submit each month to the Agency Engineer a "Monthly Employment Utilization Report" (Form 7310668). The electronic form is available at:

https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx

Annual Report

Each July for the duration of the Project, the Design-Builder and each Subcontractor shall submit Form FHWA1391. This report shall be sent directly to the ODOT Office of Civil Rights.

PURSUANT TO 23 CFR PART 230, SUBPART D, THE STATE HIGHWAY AGENCY HAS A RESPONSIBILITY TO ASSURE COMPLIANCE BY CONTRACTORS WITH THE REQUIREMENTS OF FEDERAL-AID CONSTRUCTION CONTRACTS, 23 CFR 230.405(b). THEREFORE, THE STATE HIGHWAY AGENCY HAS THE FOLLOWING OBLIGATIONS CONCERNING MONITORING AND COMPLIANCE, INCLUDING SHOW CAUSE NOTICE REQUIREMENTS.

Monitoring and Compliance

The Agency will maintain a vigorous monitoring process to ensure nondiscrimination and affirmative action on all federally funded Projects. Monitoring shall include at a minimum, monthly meetings to review the "Monthly Employment Utilization Report" (Form 7310668) with the Design-Builder's Equal Employment Opportunity (EEO) Officer and quarterly reviews of the Design-Builder's Good Faith Efforts as outlined in FHWA 1273.

The Agency shall determine the Design-Builder's compliance with equal opportunity requirements including:

- Non-discrimination in selection and retention of Subcontractors, material suppliers and vendors;
- Maintenance of non-segregated facilities;
- Adequate representation and utilization of minorities and women (by craft and trade) in the Design-Builder's workforce;
- Good Faith Efforts in meeting on-the-job training and training special provisions contained in FHWA 1273;
- Fair treatment in all terms and conditions of employment; and,
- Adherence (where applicable) to Indian preference provisions.

If the Agency or the FHWA becomes aware of any possible violations of Executive Order 11246 or 41 CFR 60, each has the authority and the responsibility to notify the Office of Federal Contract Compliance Programs. The Design-Builder has the responsibility either to meet all the craft goals set forth in the applicable "Covered Area" of "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts" or demonstrate Good Faith Efforts to meet these goals (as specified in paragraphs 7a through 7p of the "On-Site Workforce Affirmative Action Requirements for Women and Minorities on Federal-Aid Contracts").

Show Cause Notice

If an investigation or review reveals that a Design-Builder or Subcontractor has not complied with these EEO Provisions, the Agency shall issue a Show Cause Notice to initiate efforts to bring the Design-Builder or Subcontractor into compliance. This written notice shall state the deficiencies found during the review, and shall advise the Design-Builder or Subcontractor to show cause within 30 Calendar Days why the Agency shall not impose administrative sanctions. The Design-Builder or Subcontractor must then show good cause or must provide an acceptable agreement for corrective action within 30 Calendar Days.

If the Design-Builder or Subcontractor does not provide this information by the end of the 30 Calendar Days, the Agency Engineer shall withhold all project progress payments in process as of the date the Show Cause Notice was issued and will continue to withhold project progress payments until the Design-Builder or Subcontractor responds in an acceptable manner. If the Design-Builder or Subcontractor fails to meet the conditions of the corrective action agreement, no further Show Cause Notice is required; the Agency shall immediately initiate enforcement proceedings.

If a Design-Builder's prequalification certification is revoked or disqualified because the Design-Builder has been found on at least two occasions to be in breach of these EEO Provisions of Federal Aid highway construction contracts, the Design-Builder must be determined to be in compliance with these EEO Provisions prior to the Design-Builder's prequalification certificate being reinstated.

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EXHIBIT B-4 - OUTREACH, RECRUITMENT AND RETENTION

For projects with a contract price that exceeds $3 million, the Design-Builder is subject to the outreach, recruitment and retention requirements found in ORS 279C.533 and set forth herein.

Design-Builder shall comply fully with the provisions of ORS 279C.533**.** It is a material provision of this public improvement contract that Design-Builder establish and implement a plan for outreach to and recruitment and retention of women, minority individuals and veterans, with an aspirational target of having individuals in one or more of these groups to compose at least 15 percent of the total number of workers who perform Work under this contract ("Outreach, Recruitment and Retention Plan") that meets the Plan Requirements set forth herein. Additionally, Design-Builder shall require any subcontractor with which the Design-Builder has a subcontract with a contract price of $750,000 or more ("Covered Subcontractors") to establish and implement an Outreach, Recruitment and Retention Plan for Subcontractor's outreach to and recruitment and retention of women, minority individuals and veterans, with an aspirational target of having individuals in one or more of these groups to compose at least 15 percent of the total number of workers who perform work under that subcontract.

Outreach, Recruitment and Retention Plans must require, at a minimum, that Design-Builder (or Covered Subcontractor):

For projects with a contract price that exceeds $3 million, the Design-Builder is subject to the outreach, recruitment and retention requirements found in ORS 279C.533 and set forth herein.

Design-Builder shall comply fully with the provisions of ORS 279C.533**.** It is a material provision of this public improvement contract that Design-Builder establish and implement a plan for outreach to and recruitment and retention of women, minority individuals and veterans, with an aspirational target of having individuals in one or more of these groups to compose at least 15 percent of the total number of workers who perform Work under this contract ("Outreach, Recruitment and Retention Plan") that meets the Plan Requirements set forth herein. Additionally, Design-Builder shall require any subcontractor with which the Design-Builder has a subcontract with a contract price of $750,000 or more ("Covered Subcontractors") to establish and implement an Outreach, Recruitment and Retention Plan for Subcontractor's outreach to and recruitment and retention of women, minority individuals and veterans, with an aspirational target of having individuals in one or more of these groups to compose at least 15 percent of the total number of workers who perform work under that subcontract.

Outreach, Recruitment and Retention Plans must require, at a minimum, that Design-Builder (or Covered Subcontractor):

- Advertise employment opportunities available under the public improvement contract in general circulation publications, trade association publications and

publications that serve an audience or readership that consists primarily of minority individuals, women or veterans;

- Follow upon the Design-Builder's initial solicitations of interest by contacting minority individuals, women or veterans who expressed interest in or responded to the initial solicitation to determine with certainty whether the minority individual, woman or veteran is interested in the opportunities described in subsection
- Provide all persons who express continued interest with adequate information about hiring qualifications, pay rates, benefits, the expected duration of employment, work hours and other conditions of employment under the public improvement contract;
- Make efforts to encourage minority individuals, women and veterans to seek employment under the public improvement contract that the Design-Builder may reasonably expect will produce a level of participation that meets the aspirational target described herein; and
- Use the services of minority community organizations, local, state, federal and tribal governments or other organizations that have recruiting, training and otherwise assisting minority individuals, women and veterans as the organization's primary purpose or mission to assist the Design-Builder with outreach, recruitment and retention.

Design-Builder shall submit the Outreach, Recruitment, and Retention Plans of Covered Subcontractors with Design-Builder's request for Agency's consent to subcontract. Design-Builder shall follow the reporting requirements Section II of the Apprenticeship Requirements Special Provision to satisfy the reporting requirements of 279C.533 as it relates to the Outreach, Recruitment and Retention Plan. Upon request of Agency, Design-Builder shall provide any other supporting information Agency deems necessary or appropriate to determine compliance with this provision and requirements of ORS 279C.533.

Design-Builder shall demonstrate adequate good faith efforts to comply with this provision. While the aspirational target is not a requirement for this Contract and is not binding on the Design-Builder, ODOT desires to encourage the highest possible participation of women, minority individuals, and veterans in the workforce. Neither the Design-Builder nor its Subcontractors are under any obligation to meet or achieve the aspirational targets set forth herein.

Design-Builder shall submit the Outreach, Recruitment, and Retention Plans of Covered Subcontractors with Design-Builder's request for Agency's consent to subcontract. Design-Builder shall follow the reporting requirements Section II of the Apprenticeship Requirements Special Provision to satisfy the reporting requirements of 279C.533 as it relates to the Outreach, Recruitment and Retention Plan. Upon request of Agency, Design-Builder shall provide any other supporting information Agency deems necessary or appropriate to determine compliance with this provision and requirements of ORS 279C.533.

Design-Builder shall demonstrate adequate good faith efforts to comply with this provision. While the aspirational target is not a requirement for this Contract and is not binding on the Design-Builder, ODOT desires to encourage the highest possible participation of women, minority individuals, and veterans in the workforce. Neither the Design-Builder nor its Subcontractors are under any obligation to meet or achieve the aspirational targets set forth herein.

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EXHIBIT B-5 – DBE REQUIREMENTS AND GOALS

(A) DBE Required Assurances - Design-Builder shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 CFR part 26 in the Award and administration of this Contract. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as ODOT deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the Design-Builder from future bidding as non-responsible.

Design-Builder must include each of its Subcontractors to make this assurance in each of its Subcontract.

(B) Assigned DBE Contract Goals - This Project has an established a two-part DBE contract goal: A goal for Design Services, and a goal for Construction Services. The goals established are as follows:

(1) Assigned DBE Contract Goal for Design Services: _8.5___% for DBE participation in the Contract design price items, identified in Form SP, for Design, Quality Management, and Professional Services, and Design Mobilization; all according to the payment terms identified in DB190.10.

(2) Assigned DBE Contract Goal for Construction Services: __8__% of the Contract construction price items, identified in Form SP, for Construction Services according to the payment terms identified in DB190.10 and not subject to the DBE Assigned Contract Goal for Design Services as described above.

(C) DBE Open Ended Performance Plans (OEPP) - Design-Builder's DBE OEPP has three parts: (i) OEPP Management and Administration; (ii) Design and Quality Management Services Commitment, and (iii) an Open-Ended Plan for the Construction Services, as set forth in further detail below.

(1) OEPP Part -1 - OEPP Management, Administration and Outreach. This Section of the plan sets forth Design-Builder's plan and approach for staffing, administering and managing the OEPP and employing Good Faith Efforts over the life of the Project. The Design-Builder's DBE Program Administrator/Liaison (DBEPA) must be designated in this section of the OEPP. All Selected and Committed DBE Work Plan Proposals shall be included in OEPP Part I as they are approved and executed. OEPP Part I will also include the DBE Meeting Schedule finalized following the Kickoff Meeting (see Section 5)

(2) OEPP Part 2 - Design and Quality Management Services Commitment Plan (Committed DBE Breakdown and Certification Form). The Design and Quality Management Services Committed DBE Breakdown and Certification Form names the committed DBEs and the percentage of the Design and Quality Management Services Goal by contract amount that each named DBE will perform. The Design-Builder shall include a DBE Work Plan Proposal (Exhibit A) for each Committed DBE in Part 1 of its OEPP. The requirements 49 CFR §26.53 requirements apply. Design-Builder must continually utilize Good Faith Efforts over the entire course of the Commitment Plan, regardless of whether Design-Builder demonstrated Good Faith Efforts at the time of award.

(3) OEPP Part 3 - Construction Services OEPP. The open-ended plan for Construction Services is a modified DBE commitment plan that, instead of naming DBEs to perform specific Work at a specific price, lists the anticipated Work types for planned DBE participation in construction throughout the life of the Project. As Project details develop, the Design-Builder makes every effort to secure DBE Subcontracts in those Work area. Once a DBE has been selected by Design-Builder and approved by ODOT for Subcontract, it becomes a "Selected DBE" and is subject to the same termination and substitution requirements applicable to a Committed DBE shall apply.

- DBE Work Plan Proposal - The Design-Builder shall submit a DBE Work Plan Proposal (Exhibit A) to the Agency Engineer in time for review of the Design-Builder's request for consent to use the DBE Subcontractor on the Project. For trucking firms, each truck intended for use on the Project must be designated on its "Disadvantaged Business Enterprise Work Plan Proposal - Form 3A" or an attached list. The DBE Work Plan Proposals for Selected DBEs must be included in Part 1 of the OEPP.
- Submittal of Bidders List Information – Consistent with 49 CFR § 26.11(c)(2), the Design-Builder must provide the following information below for each Subcontractor of any tier who submitted a bid on the Project. This information must be included in Part 1 of the OEPP.
    - Firm name;
    - Firm address including ZIP code;
    - Firm's status as a DBE or non-DBE;
    - Race and gender information for the firm's majority owner;
    - NAICS code applicable to each scope of work the firm sought to perform in its bid;
    - Age of the firm; and
    - The annual gross receipts of the firm (e.g., less than $1 million, $1-3 million, $3-6 million, $6-10 million, etc.).

(D) Reporting - Design-Builder shall be required to monitor and report the ongoing status of DBE Outreach, DBE contracting, and DBE performance and shall provide a monthly OEPP Monthly Report by the 10th Day of the subsequent month. The OEPP Monthly Report shall be organized as set forth below, including the listed documentation.

(1) Section 1 - OEPP Management, Administration and Outreach Monthly Report.

Design-Builder shall provide a narrative and overview of its management and administration efforts over the previous month as well as general updates. Design-Builder shall provide a detailed report of its outreach and DBE support efforts provided over the previous month.

(2) Section 2 - Design and Quality Management Commitment Report.

- Provide a month-to-date summary of the status of the committed DBEs and any payments made, and show progress toward goal attainment.
- Summarize any requests to change, terminate, or substitute committed DBEs and any Commercially Useful Function, CUF violations.

(3) Section 3 - Monthly Construction DBE Report.

- Construction DBE Utilization Tracking and Forecasting. Provide an update of DBE Utilization for the remainder of the Project, including an updated table and narrative, including any proposed revisions submitted for Agency's approval.
- The Design-Builder shall document all solicitations. The Design-Builder shall list all DBE Firms solicited with each solicitation, showing adequate Good Faith Efforts were made to meet the applicable Assigned DBE Contract Goals. The report must include the following:
    - Cumulative number, value, listing of DBE contractors, and Work type of DBE contracts executed towards participation.
    - A listing of each DBE Subcontract and total value of the Subcontract (original and current), and:
        - Total invoiced by the DBE for the reporting period;
        - Total payments paid to the DBE in the reporting period; and
        - For Subcontracts with a difference in invoice vs paid, a clear description of the reason for the difference.
    - Number and type of Subcontracting Work packages identified during the reporting period.
    - Number of DBE quotes, including DBE firm name and date solicited and subsequently received during the reporting period.
    - Summary of any requests to change and/or terminate/substitute Subcontracted DBEs.
    - Summary of any CUF violations during the reporting period.

(E) Meetings –

(1) Kickoff Meeting - Design-Builder shall attend an OEPP Kickoff Meeting wherein representatives from ODOT and Design-Builder (including its designated DBE

Coordinator) review the OEPP as submitted with the RFP. If ODOT requests or approves any changes to the OEPP, Design-Builder shall promptly make such changes and submit a Final OEPP. At this Kickoff Meeting, ODOT and Design-Builder will set a meeting schedule corresponding with its overall Project schedule. Following the Kickoff Meeting, Design-Builder shall submit a Meeting Schedule to ODOT for approval. Following ODOT approval, the Meeting Schedule will be included in OEPP -Part 1.

(2) Regularly Occurring Meetings - Design-Builder must meet regularly with ODOT in accordance with its approved Meeting Schedule to review progress in achieving DBE participation goals. At these meetings, Design-Builder will summarize its the monthly reports, address any concerns or issues, and address modifications to the OEPP to align with the changing conditions of the Project. These meetings shall also include discussion of DBE outreach to support DBE participation on the Project, technical assistance for DBE Firm certification, and approach to increase and improve the capacity, capabilities, and expertise of certified DBEs to be successful with Project Subcontracting opportunities.

(F) Modifications to the Plan -

(1) The Construction OEPP can be modified throughout the Project with different work opportunities, the value of work opportunities or timeframes, but it must add up to the goal value. ODOT must approve all changes to the OEPP.

(2) ODOT and the Design-Builder may agree to make written revisions of the OEPP throughout the life of the Project, e.g., replacing the Type of Work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use Good Faith Efforts to meet the goal.

(3) Modifications to the OEPP must not include termination or substitution of Committed or Awarded DBEs. Any termination or substitution must be in compliance with 49 CFR Section 26.53.

(G) Goal Attainment and Calculating DBE Participation Toward DBE Contract Goals - As Subcontracts are executed with named DBEs (both Committed and Selected) and payments are made, achievement toward the DBE goal is credited. Only the value of the Work performed by a DBE will be counted toward DBE goals as set forth in this Section.

(1) Requirements for DBE Subcontracts -

a. DBE Certification Required - Only firms certified by COBID as DBEs can be used to satisfy the DBE contract goal.

b. Commercially Useful Function - The Design-Builder shall receive credit toward meeting the Assigned DBE Contract Goals and payment only when the DBE performs Commercially Useful Function Work. The Design-Builder is responsible for ensuring that DBE firms working on the Project perform a CUF.

c. DBE Subcontracts to others - When a DBE Subcontracts part of the Work of its contract to another firm, the value of the Subcontracted Work may be counted toward DBE goals only if the DBE's Subcontractor is itself a DBE.

d. DBE joint ventures - When a DBE performs as a participant in a joint venture, only the portion of the total dollar value of the Contract, equal to the distinct, clearly defined portion of the Work of the Contract that the DBE performs with its own forces toward DBE goals, will be counted.

(2) Calculating DBE Participation for Certain Types of Work -

a. Design, Quality Management and Professional Services provided by DBEs - Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract. Only fees or commissions that ODOT determines are reasonable and not excessive as compared with fees customarily allowed for similar services will be counted. Expenditures for Services obtained by DBEs will count toward DBE goals as follows:

- The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, Equipment, Materials, or supplies required for performance of the Contract.
- The fees charged for delivery of Materials and supplies required on a job site (but not the cost of Materials and supplies themselves) when the hauler, trucker, or delivery service is not also the Manufacturer of or a Regular Dealer in the Materials or supplies.
- The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract.
- The total dollar value of payments to the DBE for which a Commercially Useful Function was performed in delivering a professional, technical and/or expert service.

b. Construction Contract Work performed by DBEs - Count the entire amount of that portion of a construction contract performed by the DBE's own forces, including the cost of supplies and Materials obtained by the DBE for the Work of the contract and supplies purchased or Equipment leased by the DBE (except supplies and Equipment the DBE Subcontractor purchases or leases from the prime contractor or its affiliate). If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Subcontract with its own workforce, or the DBE Subcontracts a greater portion of the Work of a contract than would be expected within normal industry practice for the Type of Work involved, it will be presumed that it is not performing a CUF.

- **Materials and Supplies -** Expenditures for Materials or supplies obtained by DBEs will be applied toward DBE goals as follows:
    - Materials or supplies obtained from a DBE Manufacturer. Count 100 percent of the cost of the Materials or supplies. A DBE Manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the Materials, supplies, articles, or Equipment required under the Contract and of the general character described by the Specifications. Manufacturing includes blending or modifying raw Materials or assembling components to create the product to meet Contract Specifications. When a DBE makes minor modifications to the Materials, supplies, articles, or Equipment, the DBE is not a Manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
    - Materials or supplies are purchased from a DBE Regular Dealer. Count 60 percent of the cost of the Materials or supplies (including transportation costs). A Regular Dealer is a firm that is an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question, owns (or leases) and operates, a store, warehouse, or other establishment in which the Materials, supplies, articles or Equipment of the general character described by the Specifications and required under the Contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business. Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the Contract. DBE Regular Dealers of bulk items must own/lease and operate the distribution Equipment for the products it sells. To be a Regular Dealer, a DBE Supplier performs a CUF as a Regular Dealer and receives credit for 60 percent of the cost of Materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or Subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.
    - Bulk items. A DBE may be a Regular Dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business as provided in subsection (b) above if the firm both owns and operates distribution Equipment used to deliver the products. Any supplementing of Regular Dealers' own distribution Equipment must be by a

long-term operating lease and not on an ad hoc or contract-by-contract basis.

- Items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a Regular Dealer of bulk items per subsection (b) above. If the DBE Supplier of these items does not own or lease distribution Equipment, as descried above, it is not a Regular Dealer.
- Packagers, Brokers, Manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions. These are not Regular Dealers within the meaning of subsection (b) above.
- Materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution Equipment for the products in question. Count 40 percent of the cost of Materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a Manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the Manufacturer or another seller do not satisfy this requirement. The Design-Builder must submit the USDOT Regular/Dealer Distributor Affirmation Form, available at:

  https://www.transportation.gov/sites/dot.gov/files/2024-04/DBE%20Regular%20Dealer-Distributor%20Affirmation%20Form-Pending%20OMB%20approval%2004-17-2024.pdf

  or otherwise provided by OECR, to receive DBE credits.
- Materials or supplies purchased from a DBE that is neither a Manufacturer, a Regular Dealer, nor a distributor. Count the entire amount of fees or commissions charged that is deemed to be reasonable, including transportation charges for the delivery of Materials or supplies. Do not count any portion of the cost of the Materials and supplies themselves.

- **DBE Trucking -** Expenditures for transportation services from trucking companies may be counted toward the DBE Contract Goal if the DBE trucking company is performing a Commercially Useful Function in accordance with Section VII(c).
    - **DBE Trucking Services Agreement Details -** In order for the Design-Builder to receive credit and payment for the use of a DBE trucking firm, the trucking firm must be covered by a Subcontract or written agreement, and the Agency Engineer must have granted consent to that Subcontract or agreement prior to the commencement of the Work. The Subcontract or written agreement must include the following:
        - Driver's name;
        - Copy of driver's license;
        - Vehicle identification number;
        - Copy of vehicle registration;
        - Motor vehicle license plate number;
        - Motor Carrier Plate Number;
        - Copy of ODOT Motor Carrier 1A Permit;
        - Name of owner/operator from the side of the truck; and (9) Method of payment (hour, Ton or load). See DB180.20 for additional Trucking Services Agreement requirements. See Article 11 for Owner/Operator Data requirements.
    - **Daily Log -** The Design-Builder shall furnish a daily log of all trucking Work performed under the Committed DBE's Subcontract. The "Daily DBE Trucking Log" (Form 734-2916), (or an approved equal that contains all the information on the ODOT form, including the certification) shall be completed for each Day Work is performed under the DBE's Subcontract. The Daily DBE Trucking Log shall identify all trucks under the management and supervision of the DBE Subcontractor used on the Project. The Design-Builder shall submit the Daily DBE Trucking Log to the Engineer on a weekly basis and no later than 14 Calendar Days after the first recorded date in the logs.
    - **References -** See subsections DB180.20 for information regarding additional required trucking services agreement requirements, submittals, revocation of consent, and other pertinent information related to DBE trucking.

(3) Commercially Useful Function (CUF) Requirements –

a. DBE Performance Required - The DBE shall actually perform the Subcontract. The DBE's utilization of labor, supervisory personnel, Equipment and material in the performance of the Subcontract shall be consistent with industry standards and shall demonstrate that the DBE and

not some other business Entity is actually performing the Subcontract. For example, when a DBE associates itself too closely with another business Entity or entities, in acquiring a labor force, supervisors, Equipment or Materials to an extent inconsistent with industry standards, the DBE can no longer be said to be actually performing the Subcontract because a partnership or joint venture, of which the DBE is a member, is the actual performer of the Subcontract.

b. DBE's Work Force - The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing Work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the Work of the Contract. The DBE may with the prior written consent of the Engineer augment its workforce with personnel of another firm. The Engineer shall approve the request only when specialized skills are required and the use of such personnel is for a limited time period.

c. DBE Equipment - The DBE is expected to perform the Work with Equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the Engineer prior to the DBE starting Work. No credit will be given, nor payment made for the cost of Equipment leased or rented and used in the DBE firm's Work when payment for those costs is made by a deduction from the Design-Builder's payment(s) to the DBE firm. The DBE may lease specialized Equipment, provided a written rental agreement, separate from the Subcontract, specifying the terms of the lease arrangement, is consented to by the Engineer prior to the DBE starting Work. The Engineer will consent to the lease agreement only when (i) the Equipment is of a specialized nature, (ii) the Equipment is readily available at the job site, (iii) the operation of the Equipment is under the full control of the DBE, (iv) the lease arrangement is for a short term, (v) the lease arrangement for the specialized Equipment in question is a normal industry practice, and (vi) the DBE shall hire, direct, supervise, control and carry the operator of the Equipment on the DBE payroll.

d. DBE Trucking Firms – The following factors will be used to determine if a DBE Trucking firm is performing a CUF:

- The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. There cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE shall itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases

trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.

- The DBE may also lease trucks from a non-DBE firm, including an owner-operator, consistent with 49 CFR 26.55(d)(5). The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the Contract. For additional participation by non-DBE lessees, DBE credit will be counted only for the fee or commission it receives as a result of the lease arrangements.
- For the purposes of this subsection (iv), a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

e. DBE Flagging Firms – The requirements of this section applicable to flagging firms providing a CUF. DBE flagging firms shall be responsible for ensuring all their dispatched employees meet the required certification and licensing requirements and for furnishing their employees with Equipment (in this case, paddles and radios) to perform the Committed DBE Work. This does not preclude the DBE's employees from supplementing with their own Equipment.

(H) Monitoring -

(1) ODOT will provide ongoing monitoring of the Design-Builder to assure every effort is made to fulfill the OEPP with actual DBE Subcontracts when Project details are known.

(2) ODOT will provide ongoing monitoring and oversight to evaluate whether the Design-Builder is using Good Faith Efforts to comply with the OEPP and schedule.

(3) ODOT may perform an on-site review to ascertain whether the DBE is performing a Commercially Useful Function as required by subsection VII(c). If an investigation reveals that there has been a violation of the CUF requirements, that portion of the Work found to be in violation would not be counted toward goal achievement for either the Design-Builder or the Agency. The DBE may present evidence through the Design-Builder to the Agency to rebut a finding that there has been a violation of CUF requirements.

(I) Change Orders -

(1) Agency Initiated - The Agency will consider the impact on DBE participation in instances where the Agency changes, reduces, or deletes Work committed to a DBE at the time of contract award. In such instances, the Design-Builder shall not be required to replace the Work but is encouraged to do so. For any Change Orders adding Work to the Contract, Design-Builder will be required to analyze whether there are opportunities for DBEs, and if so, include those within the OEPP.

(2) Design-Builder Initiated - If Design-Builder proposes any changes that involve a Committed or Selected DBE, the Design-Builder shall notify the affected DBE of the proposed change, reduction, or deletion of any Work committed at the time of contract award prior to executing the Change Order. The Design-Builder shall enable the affected DBE to participate in the Change Order request and will make every effort to maintain the Committed DBE percentage that was the condition of contract award. Documentation of this effort and a letter from the DBE agreeing to the change shall be included with the request.

(J) Termination of Committed DBE or Selected DBEs - The Design-Builder shall use its Committed DBE and Selected DBEs to perform the Work and supply the Materials for which each is listed in the OEPP unless the Design-Builder obtains ODOT's prior written consent, coordinated with the ODOT Office of Equity and Civil Rights. Without ODOT consent, the Design-Builder shall not be entitled to any payment for Work or material unless it is performed or supplied by the listed DBE. Design-Builder must comply with the requirements and procedures under 49 CFR 26.53(f).

(1) Initiation of Termination of DBE - To initiate the termination process (including partial termination or substitution of Work) of a Selected or Committed DBE, Design-Builder must submit a written request including the following information:

- Date the Design-Builder determined the DBE to be unwilling, unable or ineligible to perform.
- Projected date Design-Builder will require substitution or replacement DBE to commence Work if consent is granted to the request.
- Brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Design-Builder's assertion that the DBE is unwilling, unable or ineligible to perform.
- Brief statement of the affected DBE's capacity and ability to perform the Work as determined by Design-Builder.
- Brief statement of facts regarding actions taken by Design-Builder that are believed to constitute Good Faith Efforts toward enabling the DBE to perform.
- To date percentage of Work completed by the DBE.
- The total dollar amount paid, , to date for Work performed by the DBE.
- The total dollar amount, remaining to be paid to the Committed DBE for Work completed, but for which the DBE has not received payment and with which the Design-Builder has no dispute.

(2) Notice - The Design-Builder shall send a copy of the request to terminate letter to the affected DBE in conjunction to submitting the request to the Engineer. The affected DBE firm may submit a response letter to the Engineer within five Calendar Days of receiving the notice from the Design-Builder. The affected DBE firm may explain its position concerning performance on the committed Work. The Engineer will consider both the Design-Builder's request and DBE's response and explanation before approving the Design-Builder's termination and substitution request. If the Design-Builder is unsuccessful in notifying the affected DBE firm, after trying its best

to deliver a copy of its request letter, the Agency may determine that the affected Committed DBE is unable or unwilling to continue the Contract and a substitution will be immediately approved by the Agency Engineer.

Design-Builder must provide the DBE with written notice and supporting documentation of its good cause reasons they wish to terminate and/or substitute the DBE with a copy to the Engineer and the ODOT Office of Equity and Civil Rights. The DBE must be given 5 Days to respond to the termination request, copying the ODOT Office of Equity and Civil Rights.

ODOT may provide such written consent only if it agrees, for reasons stated in its concurrence document, that the Design-Builder has good cause to terminate the DBE firm because the DBE is unable, unwilling or ineligible to perform or if it has received written, signed statement from the DBE, provided the DBE concurs with request to terminate, indicating its unwillingness or inability to perform.

(3) Proposed Substitution of Another Certified DBE - If a Committed DBE substitution occurs, the Design-Builder may submit another eligible DBE firm to replace the original Committed DBE firm in writing.

The Design-Builder shall submit the name of the DBE firm, the proposed Work to be performed, and the dollar amount of the Work. The Design-Builder shall give pertinent information including bid item, item description, bid quantity and unit, Unit Price, and total price. In addition, the Design-Builder shall submit a written DBE Work Plan for the requested substitute DBE according to Section III. The dollar value of Work to be performed by the substitute DBE shall be in an amount equal to the dollar value of the amount committed to the terminated DBE, minus the value of Work performed to date by the DBE, prior to the request for substitution. Should the Design-Builder be unable to commit the required dollar value to the substitute DBE, the Design-Builder shall provide written evidence of Good Faith Efforts made to obtain the substitute value requirement. The Agency will review the quality and intensity of those efforts. Efforts that are merely superficial are not Good Faith Efforts to meet the Assigned DBE Contract Goals. The Design-Builder shall document the steps taken to obtain participation which demonstrate the Good Faith Efforts outlined below:

- Evidence that the Design-Builder attended any pre-solicitation or pre-bid meetings that were scheduled by ODOT to inform DBE firms of contracting and Subcontracting or material supply opportunities available on the Project;
- Evidence that the Design-Builder identified and selected specific economically feasible units of the Project to be performed by DBE firms in order to increase the likelihood of participation by DBE firms;
- Evidence that the Design-Builder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the Subcontracting or supply opportunities;
- Evidence that the Design-Builder provided written notice to a reasonable number of specific DBE firms, identified from the DBE Directory of

Certified Firms for the selected Subcontracting or material supply Work, in sufficient time to allow the enterprises to participate effectively;

- Evidence that the Design-Builder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. The Design-Builder should provide the following information as evidence:
    - The names, addresses, and telephone numbers of DBE firms who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBE firms to determine with certainty whether the DBE firms were interested;
    - A description of the information provided to the DBE firms regarding the Plans and Specifications and estimated quantities for portions of the Work to be performed;
    - Documentation of each DBE contacted, but rejected and the reasons for the rejection.
- Evidence that the Design-Builder provided interested DBE firms with adequate information about the Plans, Specifications and requirements for the selected Subcontracting or material supply Work;
- Evidence that the Design-Builder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- Evidence that the Design-Builder advised and made efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by ODOT or Design-Builder;
- Evidence that the Design-Builder's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the Assigned DBE Contract Goals or requirements of ODOT; and
- Evidence that the Design-Builder used the services of minority community organizations or minority organizations that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises.

(K) Good Faith Efforts - The Design-Builder is required to exercise Good Faith Efforts during the entire life of the Contract to meet the Assigned DBE Contract Goals. Good Faith Efforts shall be made to secure DBE participation sufficient to meet the Assigned DBE Contract Goals. The Design-Builder shall also make every reasonable effort during the course of the Project to enable DBE firms to perform those portions of the Contract Work for which they have been committed or awarded. If the Design-Builder determines that the Committed DBE is unable or unwilling to perform under the Subcontract, unable to perform a Commercially Useful Function, or has changed its ownership and/or control, the Design-Builder shall make Good Faith Efforts to replace with another DBE. Section X sets forth the procedures that shall be followed to terminate a Committed DBE and replace the firm with a substitute. The Engineer may request the Design-Builder to submit evidence of Good Faith Efforts at any time during the course of the Contract and the Design-Builder shall promptly submit such evidence.

If the Assigned DBE Contract Goals were not met, the Design-Builder shall demonstrate through documentation that it had made adequate Good Faith Efforts to meet the goal, even though it failed in obtaining enough DBE participation to do so.

(L) Remedies - Failure of any Design-Builder to meet the requirements cited in Section 01.00(b) constitutes a breach of contract for which the imposition of the following sanctions could occur:

- Temporarily withholding progress payments until the Design-Builder complies with these provisions through future performance. If progress payments are withheld, the Design-Builder shall not be entitled to interest on said payments.
- Permanently withholding payment for Work already performed in a manner that constitutes a breach of contract.
- Suspension of Work according to the Oregon Standard Specifications for Construction, subsections 00150.00 and 00180.70.
- Retain Sums as Liquidated Damages for Delay. Any delay to the specified Contract Time as a result of the Design-Builder's failure to comply with the requirements of this Subsection DB141.56 shall subject the Design-Builder to the amount of liquidated damages specified elsewhere in the Contract.

DISADVANTAGED BUSINESS ENTERPRISE WORK PLAN PROPOSAL - FORM 3A (FORM 734-2165A)

Work Plan Proposal DBE Form 734-2165A is available inside the DBE Forms tab on the ODOT Office of Equity and Civil Rights website at: https://www.oregon.gov/ODOT/Business/OCR/Pages/Forms.aspx

The Design-Builder shall ensure the form is completed with sufficient information about the DBE's intended Work, personnel, Equipment, Materials, and performance to allow the Agency to determine whether the DBE's proposed performance will meet Commercially Useful Function requirements. Additional information and documentation may be requested by the Agency as needed to alleviate program compliance concerns and must be provided promptly according to 49 CFR 26.109.

The information provided in DBE Work Plan Proposal including:

(a) Type of Work - List the types of Work the DBE will perform.

(b) Personnel Required - List the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, or the source from which the individual was or is to be recruited.

(c) Equipment Required - List the items of Equipment that will be used on the Project. Indicate whether the Equipment is owned, rented or leased. If rented or leased, consent to the rental or lease shall be obtained from the Agency prior to beginning of the Work.

(d) Supplies and Materials Required - List the supplies and Materials that will be used on the Project. Indicate the source, by name, address, and phone number, from which supplies and Materials will be obtained. For a DBE Supplier committed to meet an Assigned DBE Contract Goals, attach documentation showing how the DBE meets Manufacturer, Regular Dealer, or Broker requirements, as applicable to the credit being claimed and provide any additional explanation needed regarding ordering, scheduling, and delivery according to subsection (f) below.

(e) Design-Builder Resources - Discuss any plans for the DBE to share any resources of the Design-Builder, e.g. personnel, Equipment, tools, or facilities.

(f) Additional Information - Provide comments or explanation of any of the information provided above. Include information related to joint check arrangements or any plans the DBE has to Subcontract Work to a lower tier or perform Work through a specialty contractor. The Engineer and Office of Equity and Civil Rights (OECR) Field Coordinator will review the proposals and may provide written comments as to whether the activities and type of Work identified in the proposals complies with program regulations. In those instances where proposed activity and type of Work violates applicable regulations, written comments will be offered as to corrective action required to comply with the regulations.

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EXHIBIT B-6 - RESERVED

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DESIGN-BUILD AGREEMENT

EXHIBIT B-7 - RESERVED

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EXHIBIT B-8 - APPRENTICESHIP REQUIREMENTS

For projects with a contract price that exceeds $3 million, the Design-Builder is subject to the apprenticeship requirements found in ORS 279C.533 and set forth herein.

For purposes of a Design-Build Contract, these Apprenticeship requirements only apply to Design-Builder and subcontractors who perform Work in Apprenticeable Occupations, as further set forth herein.

Apprenticeable Occupations are those designated by BOLI as available trades with apprenticeships. The list of those trades is available at:
https://www.oregon.gov/boli/apprenticeship/Pages/trades.aspx

(A) Apprenticeship Goal -

Design-Builder shall employ Apprentices to perform 12 percent of the Work hours that Design-Builder's employees in Apprenticeable Occupations perform under this Contract.

Design-Builder shall also require that each subcontractor with a subcontract of an estimated value of $750,000 or more at the time of Agency's consent to the subcontract ("Covered Subcontractors") employ Apprentices to perform 12 percent of the Work hours that its employees in Apprenticeable Occupations perform under the subcontract.

Design-Builder has the primary responsibility to ensure the apprenticeship requirements set forth herein are met. Design-Builder shall ensure that the applicable subcontracts contain the appropriate clauses, obligating subcontractors to the Apprenticeship goal as applicable; however, this shall not relieve the Design-Builder of the Design-Builder's primary responsibility.

Design-Builder and Covered Subcontractors shall use apprentices that the BOLI Apprenticeship & Training Division certifies are registered with the Oregon State Apprenticeship and Training Council in a Registered Apprenticeship Training Program. Design-Builder shall be an Oregon Bureau of Labor and Industries (BOLI) Registered Training Agent in accordance with OAR 839-011-0162 at time of time of contract execution. Reciprocal approval for federal purposes is accorded to contractors, apprentices, apprenticeship programs and standards that are registered with the USDOL Office of Apprenticeship ("OA") or registered to other State Apprenticeship Registration Agencies duly recognized by OA for federal public works projects in Oregon that are subject to the Davis-Bacon Act, in accordance with 29 CFR 29.5(b)(13) (see OAR 839-011-0162(6)). A Covered Subcontractor must be an approved training agent at the time of consent to subcontract unless it will not be performing work in an Apprenticeable Occupation.

Design-Builder and Covered Subcontractors shall pay an Apprentice for Work on the Project at the hourly rate to which the Apprentice is entitled under the applicable

Apprenticeship Agreement or as otherwise specified by the Apprenticeship Training Program.

(B) Reporting -

(1) Required Forms - Design-Builder shall weekly submit the BOLI Enhanced W-38 Form to BOLI with a copy to the Agency to report the extent of Design-Builder's and Covered Subcontractor's compliance with these Apprenticeship Requirements. Agency may disclose the reports as provided under ORS 279C.845(6).

If at any time, BOLI changes the required form or method to identify, collect, and report the information required under this Subsection II, the Design-Builder is under a continuing obligation to use the most current form required by BOLI for this purpose.

(2) Failure to Report - Failure of Design-Builder to provide reports as described in Subsection A above may result in withholding of payment as provided in ORS 279C.845(7).

(3) Obligation to Provide Additional Information - Upon request by Agency, and in a form and schedule specified by Agency, Design-Builder shall provide the following information:

- The name of or other identification for this Contract;
- The city or county in which the public improvement is located;
- A detailed accounting of:
    - The total number of hours of work that workers performed under this Contract and each Covered Subcontract;
    - The total number of hours of work that workers performed in each Apprenticeable Occupation for the Contract and each Covered Subcontract on the public improvement;
    - The total number of hours of work that Apprentices performed under this Contract and each Covered Subcontract; and
    - The total number of hours of work that Apprentices in each Apprenticeable Occupation performed under this Contract and each Covered Subcontract.
- The total number of workers who performed construction work and the total numbers of minority individuals, women and veterans who performed construction work under this Contract. A report under this subparagraph must separately list for each worker the worker's race, ethnicity, gender, veteran status and, as applicable, trade, craft or job category.

(4) Final Report - Upon request by Agency prior to final completion, Design-Builder shall provide Agency with a final report regarding its employment of Apprentices, which shall contain the following information for Design-Builder and each subcontractor subject to the Apprenticeship requirements:

- Total amount of Work hours that workers performed in each Apprenticeable Occupation
- Total amount of Work hours performed by Apprentices
- Number of hours subject to calculation of reduction in payment as described in Subsection II(C)(iii)(b)

(C) Noncompliance and Reduction in Payment –

As required by ORS 279C.533, Agency will reduce payment due to Design-Builder under this Contract if Design-Builder does not meet the Apprenticeship Goal set forth in Section I. The reduction will be the equivalent of the difference between the total number of work hours that Apprentices in Apprenticeable Occupations should have performed to meet the apprenticeship requirements less the total number of work hours that Apprentices in Apprenticeable Occupations actually performed, multiplied by $15 per hour.

Design-Builder may apply reduction in the amount due to a Covered Subcontractor if that Covered Subcontractor fails to meet the Apprenticeship Goal. In such case, Design-Builder must notify Agency and reduce its invoices to Agency accordingly. In no event shall Design-Builder charge Agency for the amount reduced from the Subcontract.

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DESIGN-BUILD AGREEMENT

EXHIBIT C – PROJECT WAGE RATES

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GENERAL PROVISIONS

SECTION DB110 – ORGANIZATION OF SPECIFICATIONS, CONVENTIONS, ABBREVIATIONS, AND DEFINITIONS

DB110.00 Organization of Specifications –The Specifications are comprised of the DB General Provisions, the DB Standard Technical Specifications, the Accepted RFC Specifications, and such other specifications, if any, that the Agency may authorize via Change Order, together with all provisions of other documents incorporated into the foregoing by reference. When referring to a Subsection, only the number of the Subsection is used; the word Subsection is implied. Where Section and Subsection numbers are not consecutive, the interval has been reserved for use in future expansion of the DB Standard Technical Specifications or DB General Provisions.

(a) DB General Provisions - The DB General Provisions are set forth at Sections DB 110 through DB 199. Part 00100 of the Oregon Standard Specifications for Construction does not apply; instead, Sections DB110 through DB199 apply to the Contract and the Work on this Project. References to Sections or Subsections of the DB General Provisions may or may not include the word “Section” or “Subsection” in front of the Section or Subsection number of the General Provisions, for example "DB150" or "DB150.01".

(b) DB Standard Technical Specifications - The DB Standard Technical Specifications that are applicable to the Contract and the Work on this Project is the ODOT publication titled "Oregon Standard Specifications for Construction" (current edition at the Advertisement Date), Parts 00200 through 03000, modified as follows:

1) Delete the term “Contractor” and replace with “Design-Builder”.

2) Delete the term “Engineer” and replace with “Design-Builder” or “Agency Engineer”, as applicable. (See DB110) Wherever the term “Engineer” is used in the context of a matter or function that is the Design-Builder’s responsibility, “Engineer” shall mean the “Design-Builder”. Wherever else in the Specifications the term “Engineer” is used, including references related to the acceptance of work, it shall be assumed to mean the Agency Engineer. If the Design-Builder does not agree with the assumption in a given context, the Design-Builder shall obtain clarification from the Agency Engineer prior to acting. Additionally, the Agency, without a request from the Design-Builder, may issue a clarification to the Design-Builder. The Agency’s determination will be final.

In all cases in which notice is to be given to the “Engineer” or Design-Builder, it shall also be given to the Agency Engineer.

3) Delete any provisions relating to payment based upon unit of measurement and replace with: “All measurement and pricing will be in accordance with Section DB190.”

4) Delete references to “the Project Manager” and replace with “the Agency Engineer,” where applicable.

Any statements or references within the DB Standard Technical Specifications and the DB Boilerplate Technical Special Provisions related to Pay Items or quantities,

measurement for payment, method of measurement, basis of payment, Extra Work, adjustment of Unit Prices, or similar phrases shall be disregarded and deleted by the Design-Builder unless otherwise specified in Section DB190 or Section DB195. Measurement for payment will be made according to Section DB190. Payment, including any applicable price adjustments, will be made according to Section DB195.

References in the Contract Documents to the Oregon Standard Specifications for Construction, Parts 00200 through 03000, shall mean and shall be read to mean references to the corresponding sections of the DB Standard Technical Specifications (for example: a reference in the DB Standard Technical Specifications Section 00510 of the DB Standard Technical Specification for Construction to 00150.35 of the Oregon Standard Specifications shall mean and shall be read to mean a reference to DB150.35).

(c) DB Boilerplate Technical Special Provisions - The DB Boilerplate Technical Special Provisions available for the Design-Builder's use for this Contract are provided in DB General Provisions, Attachment B – Boilerplate Technical Special Provisions. The same modifications applicable to the DB Standard Technical Provisions set forth in 110.00(b)(1-4) are applicable to the DB Boilerplate Technical Special Provisions.

DB110.05 Conventions Used throughout the Contract Documents Include:

(a) Grammar - The DB General Provisions are written in the indicative mood, in which the subject is expressed. The DB Standard Technical Specifications are generally written in the imperative mood, in which the subject is implied. Therefore, throughout the DB Standard Technical Specifications, and on the Plans:

- The subject, "the Contractor", means "the Design-Builder", and is implied.
- "Shall" refers to action required of the Design-Builder and is implied.
- "Will" refers to decisions or actions of the Agency.
- The following words, or words of equivalent meaning, refer to the action of the Agency, unless otherwise stated: "allowed", "directed", "established", "permitted", "ordered", "designated", "prescribed", "required", "determined".
- The words "approved", "acceptable", "authorized", "satisfactory", "suitable", "considered", and "rejected", "denied", "disapproved", or words of equivalent meaning, mean by or to the Agency, subject in each case to Section DB150.
- The words "as shown", "shown", "as indicated", or "indicated" mean "as indicated on the Plans".
- Any statements or references related to Pay Items or quantities, measurement for payment, method of measurement, basis of payment, Extra Work, adjustment of Unit Prices, or similar phrases shall be disregarded by the Design-Builder unless otherwise specified in Section DB190 or Section DB195. Measurement for payment will be made according to Section DB190. Payment, including any applicable price adjustments, will be made according to Section DB195.

(b) Capitalization of Terms - Capitalized terms, other than titles, abbreviations, and grammatical usage, indicate that they have been given a defined meaning in Section DB110.20 or in the text accompanying the term. Defined terms will always

be capitalized in the Design-Build Agreement and the DB General Provisions. In the DB Standard Technical Specifications defined terms will generally not be capitalized, with the notable exception of “the Contractor”, ”the Agency”, and “the Engineer”.

(c) Punctuation - In the DB General Provisions, the “outside method” of punctuation is employed for placement of the comma and the period with respect to quotation marks. Only punctuation that is part of the quoted matter is placed within quotation marks.

(d) References to Laws, Acts, Regulations, Rules, Ordinances, Statutes, Orders, Environmental Performance Standards Agreements, and Permits - References are made in the text of the Contract Documents to "laws", "acts", "rules", "statutes", “regulations”, and “ordinances” (collectively referred to for purposes of this Subsection as “Law”), and to “orders”, “Environmental Performance Standards agreements”, and “permits” (issued by a governmental or regulatory Authority, whether local, state, or federal, and collectively referred to for purposes of this Subsection as “Permits”). Reference is also made to “applicable laws and regulations”. The following conventions apply in interpreting these terms:

Statutes and Rules - Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) referenced in the Contract Documents are accessible online, including through the Oregon Legislative Counsel Committee website (see DB110.05(e)) and through the Oregon Secretary of State Archives Division website (see DB110.05(e)).

Law - In each case, unless otherwise expressly stated in the Contract Documents, the Law is to be understood to be the current version in effect. This also applies where a specific Law is referenced or cited, regardless of whether the text of the Law has been included in the Contract Documents or not, and regardless of whether the text of the Law has been summarized or paraphrased. In each case the current version of the Law is applicable under any contract. The reader is therefore cautioned to check the actual text of the Law to confirm that the text included in the Contract Documents has not been modified or superseded.

Permits - Orders and permits issued by a government agency may be modified during the course of performing the work under a contract. Therefore, wherever the term “order”, “permit”, or “Environmental Performance Standards agreement” is used in the Contract Documents, it is intended to refer to the then-current version. That version may be embodied in a modified, superseding order, permit, or Environmental Performance Standards agreement, or it may consist of all terms and conditions of prior orders, permits or Environmental Performance Standards agreements that have not been superseded, as well as the additional terms added by amendment or supplement. In certain cases, the orders, permits and/or Environmental Performance Standards agreements are identified by name in the Contract Documents; in other cases, the terms are used in their generic sense. The reader is cautioned to check the text(s) of each order, permit, and Environmental Performance Standards agreement identified either by name or by generic reference.

Applicable Laws and Regulations - Where phrases such as “applicable law”, “applicable laws and regulations”, “applicable legal requirements” or similar phrases appear, they are to be understood as including all applicable laws, acts, regulations, administrative rules, ordinances, statutes, Environmental Performance Standards agreements, and orders and permits issued by a governmental or regulatory authority. The words “law” or “laws” may or may not be capitalized in such phrases.

(e) Reference to Websites - Following is a list of website addresses for the DB General Provisions that reference this Subsection.

- American Traffic Safety Services Association www.atssa.com
- Certification Office for Business Inclusion and Diversity www.oregon.gov/biz/programs/cobid/pages/default.aspx
- DEQ Management Directive on Clean Fill Determinations https://www.oregon.gov/deq/Filtered%20Library/IMDcleanfill.pdf
- FHWA Construction Cargo Preference Requirements www.fhwa.dot.gov/construction/cqit/cargo.cfm
- GSA Section 508 www.section508.gov/create
- Occupational Safety and Health Administration www.osha.gov/
- ODOT ADA Curb Ramp Design Exceptions www.oregon.gov/odot/ADA/Pages/Design-Exceptions.aspx
- ODOT ADA Technical Bulletins and Advisories https://www.oregon.gov/odot/ada/pages/technical-bulletins.aspx
- ODOT Asphalt and Fuel Pricing www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx
- ODOT Construction Section www.oregon.gov/odot/construction/pages/index.aspx
- ODOT Construction Section - Highway Construction Forms www.oregon.gov/odot/Construction/Pages/Forms.aspx
- ODOT Construction Section - Qualified Products www.oregon.gov/ODOT/Construction/Pages/Qualified-Products.aspx
- ODOT Construction Section - Inspector Certification Program www.oregon.gov/ODOT/Construction/Pages/Inspector-Certification-Program.aspx
- ODOT Design Exceptions www.oregon.gov/odot/engineering/pages/design-exceptions.aspx
- ODOT Engineering www.oregon.gov/odot/engineering/pages/index.aspx#standard_drawings
- ODOT Engineering for Accessibility **Error! Hyperlink reference not valid.**www.oregon.gov/odot/engineering/pages/accessibility.aspx
- ODOT ADA Delivery Program

https://www.oregon.gov/odot/ada/pages/ada-infrastructure-program.aspx

- ODOT Engineering – Highway Design Manual - Blueprint for Urban Design
  www.oregon.gov/odot/Engineering/Pages/Hwy-Design-Manual.aspx
- ODOT Engineering – Standard Drawings and Details
  www.oregon.gov/odot/engineering/pages/standards.aspx
- ODOT Engineering Technical Guidance
  www.oregon.gov/odot/Engineering/Pages/Technical-Guidance.aspx
- ODOT Estimating – Steel Material Values
  www.oregon.gov/ODOT/Business/Pages/Steel.aspx
- ODOT Geo-Environmental
  www.oregon.gov/ODOT/GeoEnvironmental/Pages/index.aspx
- ODOT Interchange Design
  https://www.oregon.gov/odot/Engineering/Pages/Interchange-Design.aspx
- ODOT Lab Services
  https://www.oregon.gov/odot/Construction/Pages/Lab-Services.aspx
- ODOT Office of Civil Rights
  http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/Pages/forms.aspx
  https://www.oregon.gov/odot/Business/OCR/Pages/Forms.aspx
- ODOT Office of Civil Rights Discrimination Complaints
  https://www.oregon.gov/odot/business/ocr/pages/ocr_dis_cmplnt_form.aspx
- ODOT Oregon Trucking Online – “Highway Restriction Notice – Size and/or Weight” (Form No. 734-2357)
  www.oregontruckingonline.com/cf/MCAD/pubMetaEntry/restriction/
- ODOT Procurement Office - Conflict of Interest Guidelines and Disclosure Forms
  www.oregon.gov/ODOT/Business/Procurement/Pages/PSK.aspx
- ODOT Procurement Office - Notice of Intent
  www.oregon.gov/ODOT/Business/Procurement/Pages/NOI.aspx
- ODOT Procurement Office - Bid and Award Information
  www.oregon.gov/odot/business/procurement/pages/bid_award.aspx
- ODOT Project Controls Office
  www.oregon.gov/odot/Business/Pages/Project-Letting.aspx
- ODOT Projects and News
  www.oregon.gov/ODOT/Pages/Newsroom.aspxODOT ProjectWise
  www.oregon.gov/ODOT/Business/Pages/ProjectWise.aspx
- ODOT Right-of-Way
  www.oregon.gov/odot/row/pages/index.aspx
- ODOT Right-of-Way Utility Relocation Program
- www.oregon.gov/odot/row/pages/utilities.aspx
- ODOT Standard Specifications
- www.oregon.gov/ODOT/Business/Pages/Standard_Specifications.aspx
- ODOT Traffic Control Plans Unit
- www.oregon.gov/ODOT/Engineering/Pages/Work-Zone.aspx
- ODOT Traffic Standards

- www.oregon.gov/ODOT/Engineering/Pages/Signals.aspx
- Oregon Legislative Counsel
- www.oregonlegislature.gov/lc
- Oregon Secretary of State - State Archives
- sos.oregon.gov/archives/Pages/default.aspx
- U.S. Fish & Wildlife Service – Endangered Species Act
- www.fws.gov/endangered/laws-policies/
- Work Source Oregon
- www.worksourceoregon.org/home/worksourcecenters

(f) Use of Customary ("English") System - Unless otherwise approved by the Agency, Plans and Design-Builder Specifications shall identify dimensions in customary units of measurement, also known as "English units." Only customary units may be used in the Design Documents.

DB110.10 Abbreviations - Following are meanings of abbreviations used in the Contract Documents. Other abbreviations and meanings of abbreviations may be used in the individual Sections of the DB General Provisions to which they apply and in OAR 731-005 and OAR 731-007.

ARR	-	Association of American Railroads
AASHTO	-	American Association of State Highway and Transportation Officials
AC	-	Asphalt Concrete
ACI	-	Asphalt Concrete Institute
ACP	-	Asphalt Concrete Pavement
ACWS	-	Asphalt Concrete Wearing Surface
ADA	-	Americans with Disabilities Act
ADT	-	Average Daily Traffic
AGC	-	Associated General Contractors of America
AIA	-	American Institute of Architects
AISC	-	American Institute of Steel Construction
AISI	-	American Iron and Steel Institute
AITC	-	American Institute of Timber Construction
ANSI	-	American National Standards Institute
AOCIL	-	Association of Oregon Centers for Independent Living
APA	-	Engineered Wood Association
APE	-	Area of Potential Effect
APHIS	-	Animal and Plant Health Inspection Service, USDA
APWA	-	American Public Works Association
AREMA	-	American Railway Engineering and Maintenance-of-Way Association
ASCE	-	American Society of Civil Engineers
ASME	-	American Society of Mechanical Engineers
ASTM	-	American Society for Testing and Materials
ASTV	-	Actual Strength Test Value
ATC	-	Alternative Technical Concept
ATPB	-	Asphalt-Treated Permeable Base
ATR	-	Automatic Traffic Recorders

ATS - Automatic Transfer Switch
ATSSA - American Traffic Safety Services Association
AWG - American Wire Gauge
AWPA - American Wood Protection Association
AWS - American Welding Society
AWWA - American Water Works Association
BAFO - Best and Final Offer
BCM - Bridge CAD Manual (ODOT)
BDM - Bridge Design Manual (ODOT)
BLM - Bureau of Land Management
BLS - Bureau of Labor Statistics
BMP - Best Management Practices
BNSF - Burlington Northern Santa Fe
BOLI - Bureau of Labor and Industries
CAD - Computer Aided Drafting
C&M - Construction and Maintenance
CAE - Agency's Contract Administration Engineer
CAgT - Certified Aggregate Technician
CAT-I - Certified Asphalt Technician I
CAT-II - Certified Asphalt Technician II
CB - Cost Basis
CBM - Certified Ballast Manufacturers
CCO - Contract Change Order
CCT - Concrete Control Technician
CCTV - Closed Circuit Television
CE - Agency's Construction Engineer
CEBT - Certified Embankment and Base Technician
CERCLA - Comprehensive Environmental Response, Compensation and Liability Act
CFR - Code of Federal Regulations
CLSM - Controlled Low-Strength Materials
CMDT - Certified Mixture Design Technician
COBID - Certification Office for Business Inclusion and Diversity
CPF - Composite Pay Factor
CQM - Construction Quality Manager
CRCP - Continuously Reinforced Concrete Pavement
CRSI - Concrete Reinforcing Steel Institute
CS - Commercial Standard, Commodity Standards Division, U.S. Department of Commerce
CSL - Crosshole Sonic Logging
CSTT - Concrete Strength Testing
CUF - Commercially Useful Function
D1.1 - Structural Welding Code – Steel (American Welding Society), current edition
D1.5 - Bridge Welding Code, American Welding Society, current edition
DAHP - Department of Archaeology and Historic Preservation
DB - Design-Build
DBE - Disadvantaged Business Enterprise
dBL - Decibel on linear scale
DEQ - Department of Environmental Quality, State of Oregon
DLCD - Department of Land Conservation and Development, State of Oregon

DOGAMI- Department of Geology and Mineral Industries, State of Oregon
DSHA - Deterministic Seismic Hazard Analysis
DSL - Department of State Lands, State of Oregon
EAC - Emulsified Asphalt Concrete
ECAI - Environmental Compliance Assurance Inspector
ECP - Environmental Compliance Plan
EDMS - Electronic Document Management System
EEO - Equal Employment Opportunity
EPA - U. S. Environmental Protection Agency
ESA - Endangered Species Act
ESB - Emerging Small Business
ESC - Erosion and Sediment Control
ESCP - Erosion and Sediment Control Plan
FAA - Federal Aviation Administration, U. S. Department of Transportation
FAHP - Federal Aid Highway Program
FEIS - Final Environmental Impact Statement
FHWA - Federal Highway Administration, U. S. Department of Transportation
FMV - Fair Market Value
FSS - Federal Specifications and Standards, General Services Administration
FTA - Federal Transit Administration
GDM - Geotechnical Design Manual (ODOT)
GFE - Good Faith Efforts
GSA - General Services Administration
HDM - Highway Design Manual (ODOT)
HDPE - High Density Polyethylene
HDS - Hydraulic Design Series (FHWA)
HPC - High Performance Concrete
HVF - High Visibility Fencing
IA - Independent Assurance
ICEA - Insulated Cable Engineers Association (formerly IPCEA)
IDC - Interdisciplinary Commitments
IES - Illuminating Engineering Society
IGA - Intergovernmental Agreement
IMSA - International Municipal Signal Association
ISO - International Standards Organization
ISSA - International Slurry Surfacing Association
ISTEA - Intermodal Surface Transportation Efficiency Act
ITE - Institute of Transportation Engineers
ITS - Intelligent Transportation Systems
JMF - Job Mix Formula
JV - Joint Venture
kVA - kilovolt amperes
LRFR - Load and Resistance Factor Rating
MACMP- Monthly Asphalt Cement Material Price
MCTD - Motor Carrier Transportation Division, Oregon Department of Transportation
Metro - Metropolitan Service District
MFP - Monthly Fuel Price
MFTP - Manual of Field Test Procedures (ODOT)

MIL - Military Specifications
MOA - Memorandum of Agreement
MOU - Memorandum of Understanding
mph - Miles Per Hour
MSC - Minor Structure Concrete
MSDS - Material Safety and Data Sheet
MSE - Mechanically Stabilized Earth
MUTCD - Manual on Uniform Traffic Control Devices (FHWA)
NCHRP - National Cooperative Highway Research Board
NCI - Nonconforming Issue
NCR - Nonconformance Report
NEC - National Electrical Code
NEMA - National Electrical Manufacturers Association
NESC - National Electrical Safety Code
NEPA - National Environmental Policy Act
NHPA - National Historic Preservation Act
NHS - National Highway System
NIST - National Institute of Standards and Technology
NMFS - National Marine Fisheries Service, National Oceanic and Atmospheric Administration
NOAA - National Oceanic and Atmospheric Administration, U. S. Department of Commerce
NPDES- National Pollutant Discharge Elimination System
NPS - Nominal Pipe Size (dimensionless)
NRCS - Natural Resources Conservation Service, U. S. Department of Agriculture
NTMAG - Nonfield-Tested Materials Acceptance Guide (ODOT)
NTP - Notice to Proceed
OD - Over-Dimension
OAR - Oregon Administrative Rules
ODA - Oregon Department of Agriculture
ODF - Oregon Department of Forestry
ODFW - Oregon Department of Fish and Wildlife
ODOT - Oregon Department of Transportation
OFCCP - Office of Federal Contract Compliance Programs, U. S. Department of Labor
OHW - Ordinary High Water
OHWM - Ordinary High-Water Mark
OJT - On-the-Job Training
OPAL - Official Project Access List
OPRD - Oregon Parks and Recreation Department
ORS - Oregon Revised Statutes
OR-OSHA - Oregon Occupational Safety and Health Division, Department of Consumer and Business Services
OSHA - Occupational Safety and Health Administration, U.S. Department of Labor
OWEB - Oregon Watershed Enhancement Board
OWR - Oregon Water Resources Department
PC - Price Center
PCA - Preconstruction Assessment

PCC - Portland Cement Concrete
PCE - Programmatic Categorical Exclusion
PCEA - Programmatic Categorical Exclusion Approval
PCI - Precast/Prestressed Concrete Institute
PCMS - Portable Changeable Message Sign
PCP - Pollution Control Plan
PDA - Pile Driving Analyzer
PDF - Portable Document Format
PDLT - Project Development Leadership Team
PE - Professional Engineer
PF - Pay Factor of a constituent
PIO - Public Information Officer
PLS - Professional Land Surveyor
PM - Project Manager
PMBB - Plant Mixed Bituminous Base
PPE - Personal Protective Equipment
PTI - Post-Tensioning Institute
PTMS - Portable Traffic Management System
PTR - Permanent Traffic Recorder
PUC - Public Utility Commission, State of Oregon
PVC - Polyvinyl Chloride
QA - Quality Assurance
QC - Quality Control
QCT - Quality Control Technician
QL - Quality Level
QLA - Quality Level Analysis
QPL - Qualified Products List (ODOT)
RAP - Reclaimed Asphalt Pavement
REA - Rural Electrification Administration, U.S. Department of Agriculture
RFC - Readiness-for-Construction
RGS - Rigid Galvanized Steel
RITS - Right-of-Way Information Tracking System
ROE - Right of Entry
ROW - Right-of–Way
RRFB - Rectangular Rapid Flashing Beacon
RSM - Rolling Slowdown Method
RTRC - Reinforced Thermosetting Resin Conduit
SAE - Society of Automotive Engineers
SHPO - State Historic Preservation Office
SI - International System of Units (Système Internationale)
SPCC - Spill Prevention, Control, and Countermeasures
SRCM - Soil and Rock Classification Manual (ODOT)
SSPC - Steel Structures Painting Council
SURL - State Utility and Railroad Liaison
T - Tolerances, AASHTO Test Method
TCD - Traffic Control Devices
TCDE - Traffic Control Design Engineer
TCM - Traffic Control Measure
TCP - Traffic Control Plan
TCS - Traffic Control Supervisor
TERO - Tribal Employment Rights Office

TIMP - Traffic Incident Management Plan
TM - Test Method (ODOT)
TMC - Traffic Management Center
TMOC - Traffic Management Operations Center
TMP - Traffic Management Plan
TOR - Top of Rail
TPAR - Temporary Pedestrian Accessible Route
TSS - Temporary Sign Supports
TV - Target Value
UBC - Uniform Building Code (as adopted by the State of Oregon)
UL - Underwriters Laboratory, Inc.
UPC - Uniform Plumbing Code (as adopted by the State of Oregon)
UPRR - Union Pacific Railroad
US - United States
USACE- United States Army Corps of Engineers
USC - United States Code
USCG - United States Coast Guard
USDA - United States Department of Agriculture
USDI - United States Department of Interior
USDOC - United States Department of Commerce
USDOI - United States Department of Interior
USDOL- United States Department of Labor
USDOT - United States Department of Transportation
USFWS - United States Fish and Wildlife Service
USGS - United States Geological Survey
WAQTC - Western Alliance for Quality Transportation Construction
WBE - Women's Business Enterprise
WBS - Work Breakdown Structure
WCLIB - West Coast Lumber Inspection Bureau
WPF - Weighted Pay Factor
WWPA - Western Wood Products Association

Definitions

DB110.20 Definitions - Following are definitions of words and phrases used in the RFP and Contract Documents. Other definitions may be found in the text accompanying the term to which they apply, and in DB Standard Technical Specifications.

3D Construction Model - Supplemental unstamped 3D model, not furnished by the Agency, that the Design-Builder is required to submit to the Agency Engineer.

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

Acceptance", "upon Agency Acceptance", "for Agency Acceptance" or similar phrases indicating Agency Acceptance is required. With regard to Final Acceptance, see definition. See DB150.37 for Agency response timeframes.

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

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

Actual Strength Test Value (ASTV) - The ASTV at 28 Days is the average compressive strength of the three cylinders tested. All specimens that show definite evidence, other than low strength, of improper sampling, molding, handling, curing, or testing shall be discarded. The average strength of the remaining cylinders shall then be considered the test result.

Advertisement Date - see Design Build Agreement Cover Page.

Agency - The State of Oregon, acting by and through the Oregon Department of Transportation (ODOT).

Agency Engineer - The Chief Engineer for the Agency acting either directly or through authorized Agency representatives. If the Agency has not designated a Chief Engineer, this term denotes the person responsible for administering its public works program. The Agency Engineer is not the Professional of Record, is not the engineer of record, and has no responsibility for the Design-Builder's Design Services.

Agency Project Manager - The Agency Engineer's representative who directly supervises the administration of the Contract.

Agency Region - One of the five geographical regions responsible for developing and managing the construction of transportation projects and maintaining State, Federal, and interstate Highways, and other transportation infrastructure within its boundaries.

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

Aggregate - Rock of specified quality and gradation.

Alternative Technical Concept (ATC) - see Exhibit A-1

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

Attorney-in-Fact - An Entity appointed by another to act in its place, either for some particular purpose, or for the transaction of business in general.

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

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

Baseline Schedule - see DB180.41(g)(3)

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

Blue Sheets - Prequalified products and submittals for qualification of electrical Equipment and Materials.

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

Boulders - Particles of Rock that will not pass a 12-inch square opening.

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

Business Day - Any Calendar Day, excluding Saturdays, Sundays and State-recognized holidays.

Buttress - A Rock fill placed at the toe of a landslide or potential landslide in order to resist slide movement.

Calendar Day - Any Day shown on the calendar, beginning and ending at midnight.

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

Change Order - A written order issued by the Agency to the Design-Builder modifying Work required by the Contract, or adding Work within the scope of the Contract, and, if applicable, establishing the basis of payment for the modified Work, or otherwise modifying the Contract and, when applicable, executed by both the Agency and the Design-Builder, and, when required, approved in writing on behalf of the Agency by the Oregon Department of Justice.

Changed Work - See DB140.30.

Class of Project - A designation based on the Project's funding source, (i.e., State or Federal-aid).

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

Clear Zone - The total roadside border area, starting at the edge of the Traveled Way, available for safe use by errant vehicles. This area may consist of Shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The desired width is dependent upon the traffic volumes and speeds and on the roadside geometry.

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

Coarse Aggregate - Crushed Rock or crushed Gravel retained on a 1/4-inch sieve, with allowable undersize.

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

Commercial Grade Concrete - Concrete furnished according to Design-Builder proportioning, placed in minor Structures and finished as specified.

Contract - The written agreement between the Agency and the Design-Builder, including without limitation all Contract Documents, describing the Work to be completed and defining the rights and obligations of the Agency and the Design-Builder.

Contract Administration Engineer - The Agency representative residing over Agency-level claims review under DB199.40.

Contract Amount - see DB Agreement section 4.1.

Contract Completion Date - DB180.50(h).

Contract Documents – see Article 12.

Contract Time – see DB180.50.

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

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

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

Day - A Calendar Day including weekdays, weekends, and holidays, unless otherwise specified.

DB Boilerplate Technical Special Provisions - See DB110.00.

DB General Provisions - See DB110.00.

DB Standard Technical Specifications- See DB110.00.

Definitive Design.- See Sections DB141 and Section DB155.

Definitive Design Review - See Sections DB141 and Section DB155.

Design Documents - See Sections DB141 and Section DB155.

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

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

Design Unit - see DB155.04 and Exhibit A-1.

Durable Rock - Rock that has a slake durability index of at least 90 percent, based on a two-cycle slake durability test according to ASTM D4644. In the absence of test results, the Agency may evaluate the durability visually.

Electronic Document Management System (EDMS) - see DB170.08, including ProjectWise and DocExpress®.

Emulsified Asphalt - Emulsified asphalt cement.

Emulsified Asphalt Concrete - A mixture of Emulsified Asphalt and graded Aggregate.

Engineering Data - see DB141.10 and Attachment A.

Entity - A natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, for-profit or non-profit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

Equipment - All machinery, tools, manufactured products, and fabricated items needed to complete the Contract or specified for incorporation into the Work.

Establishment Period - The time specified to assure satisfactory establishment and growth of planted Materials, as more particularly identified in the DB Standard Technical Specifications (Sections 01030 and 01040).

Existing Surfacings - Pavements, slabs, curbs, gutters, walks, driveways, and similar constructions of bricks, blocks, Portland cement concrete, bituminous treated materials, and granular Surfacing materials on existing Highways.

Extra Work - See Section DB140 and DB196.

Final Acceptance - see DB190.95.

Final Inspection - The inspection conducted by the Agency to determine that the Project has been completed according to the Contract.

Final Second Notification - see DB180.45(g)(2).

Final Trimming and Cleanup - See DB140.90.

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

First Notification See Section DB180.

Force Account Work - See Section DB196 and DB197.

Governmental Body - Any federal, state, local or foreign government and any political subdivision or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or Entity other than the Agency.

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

Gravel - Particles of Rock, rounded or not, that will pass a 3-inch sieve and be retained on a No. 4 sieve.

Green Sheets - Conditionally prequalified products and submittals for conditional qualification of controller Equipment.

Hazardous Materials - Any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601, et seq.; the Hazardous Materials Transportation Act, 49 USC 5101, et seq.; the Resource Conservation and Recovery Act, 42 USC 6901, et seq.; the Toxic Substances Control Act, 15 USC 2601, et seq.; the Clean Water Act of 1977, 33 USC 1251, et seq.; the Clean Air Act, 42 USC 7401, et seq.; and any other federal, State, or local Law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous product, waste, substance, or material.

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

Hold Point - See Section DB154.

Incidental - A term identifying those acts, services, transactions, property, Equipment, labor, Materials, or other items for which the Agency will make no separate or additional payment.

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

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

Interested Parties - The Project may include the following Interested Parties: (a) the State of Oregon (primarily represented by the Agency), including its subsidiary agencies and departments; (b) FHWA, (c) other states and/or multi-state Authorities directly affected by or cooperating with the development of the Project; (d) federal and State regulatory and permitting agencies having jurisdiction over portions of the Work or Project Site; (e) Native American Tribes and tribal members of Oregon affected by the Project; (f) counties, cities, towns, and villages within the State directly affected by the Project; (g) other public or private Entities impacted or potentially impacted by the Project, such as political subdivisions, Utility Owners, and Railroads; and (h) other Entities specifically identified by the Agency.

Interim Completion Date(s) - See Section DB180.

Interim Design – See Sections DB141 and Section DB155.

Interim Design Review - See Sections DB141 and Section DB155.

Interim Second Notification - See Section DB180.

Key Personnel – See Article 2 and DB180.35.

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

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

Local Agency - The cities, and any other state or local agency owning property within the Project Site or with jurisdiction over any such property, or that otherwise has interfaces with the Project, other than the Agency.

Major Subcontractors - Any Subcontractor that:
(a) That will perform work valued at 15% or more of the original Contract amount,
(b) is the Lead engineering/design firm(s) (if not Principal Participant)
(c) is an engineering/design subconsultant that will perform 20% or more of the Design Services, or
(d) is the Quality Management subcontractor. See Article 2 and DB180.35.

Mandatory Source - A material source provided by the Agency from which the Design-Builder is required to obtain Materials. (see DB160.01(b) and DB160.40.)

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

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

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

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

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

Nondurable Rock - Rock that has a slake durability index of less than 90% based on a two-cycle slake durability test, as tested by ASTM D4644, or Rock that is observed to readily degrade by air, water, and mechanical influence.

Notice to Proceed (NTP) – See Article 3 and DB180.43

On-Site Work - See DB180.40.

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

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

Pass - One movement of a piece of Equipment over a particular location.

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

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

Pay Request - See Section DB180 and DB195.

Payment Bond - See Article 6.

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

Performance Bond - See Article 6.

Planned Right-of Way ("ROW") - Land, property, or property interest the Agency intends to make available for the Project, including Existing ROW as shown in the Survey Data included in DB General Provisions, Attachment A – Engineering Data.

Plans - Agency Accepted RFC Plans.

Preliminary Baseline Schedule - See DB180.41.

Price Center (PC) - See Section DB190 and Exhibit A-2.

Price Items - See Section DB190 and Exhibit A-2.

Price Item Values See Section DB190 and Exhibit A-2.

Principal Participant - (a) each partner or joint venture member of the Proposer or Design-Builder; and (b) each entity holding (directly or indirectly) a 15% or greater interest in the Proposer or Design-Builder. See Article 2 and DB180.35.

Professional of Record - The Design Professional that is assigned to, responsible for, and that seals all Design Documents associated with, a professional discipline within a Design Unit. (See DB155.02.)

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

Programmatic Plans - The Agency Accepted Quality Plan, OEPP, Environmental Compliance Plan, and the Outreach and Recruitment Plan,.

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

Project Records - See Article 8.

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

Project Work Schedule - See DB180.41

Proof of Concept Plans - The Proof of Concept Plans included in DB General Provisions, Attachment C – Reference Documents represent a potential design approach developed by the Agency conceptual design team for selected locations. The Proof of Concept Plans are Reference Documents meant to demonstrate that feasible solutions exist to meet the Project's requirements.

Prospective Source - A Materials source provided by the Agency, from which the Design-Builder has the option of obtaining Materials. (See DB160.01(a) and DB160.40.)

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

Public Works Bond - See Article 6.

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

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

Quality Assurance Program - A program included in section 2 of the MFTP defined as planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality Compliance Documents - Documents specified in the ODOT *Nonfield-Tested Materials Acceptance Guide* (NTMAG), unless otherwise specified in the Contract.

Quality Level Analysis - See DB165.40(c).

Quality Plan - See Section DB154.

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

Readiness-for-Construction (RFC) Plans - The Plans submitted at the Readiness-for-Construction (RFC) Design Review that must be Accepted by the Agency prior to the Design-Builder commencing any of the construction activities represented therein.

Readiness-for-Construction (RFC) Specifications - The Specifications submitted at the Readiness-for-Construction (RFC) Design review that must be Accepted by the Agency prior to the Design-Builder commencing any of the construction activities represented therein.

Red Letter - Notice of Modification of Approach within Project Site and Appeals Options letter to be provided by the Design-Builder to property owners.

Reference Documents - See Section DB141.10 and Attachment C.

Review and Comment - The Agency's reviews, observations, and/or Inspections based solely on information provided by the Design-Builder and the Agency's written response resulting from such Agency actions. The Agency is not required to conduct any independent investigation or inquiry. Review and Comment does not constitute Acceptance and shall not be construed to waive or excuse Contract obligations or relieve the Design-Builder of any aspect of its obligation to perform the Contract according to its terms, provisions and conditions. See DB150.37 for Agency response timeframes.

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

Right-of-Way Services (ROW Services) - The services set forth in DB174.20.

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

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

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

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

Schedule of Prices - See Section DB190.

Schedule of Values - See Section DB190.

Scope of Work - See Section DB140.

Settlement Curb Ramps - Curb ramps locations included in the Project as set forth in the Inventory Matrix.

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

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

Single-Course Construction - A wearing Course only, not including Patching or Leveling Courses or partial-width Base Course.

Slope - Vertical distance to horizontal distance, unless otherwise specified.

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

Solicitation Document - those documents issued by Agency to solicit qualifications and proposals for the Project

Special Services - Work services that the Agency and the Design-Builder agree cannot be satisfactorily performed by the Design-Builder's and Subcontractors' forces (e.g., fabrication and machining work that is most effectively performed away from the Project Site, or rental of operated Equipment as defined in DB180.20(c)).

Specifications - See DB110.00.

State - The State of Oregon.

Structures - Bridges, retaining walls, endwalls, cribbing, buildings, culverts, manholes, catch basins, drop inlets, sewers, service pipes, underdrains, foundation drains, and other similar features which may be encountered or included in the Work.

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

Subcontractor - Any Entity having a direct contract with the Design-Builder or another Subcontractor, at any tier, to perform a portion of the Work.

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

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

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

Supplier - The Entity that furnishes goods to be incorporated into the Work.

Surety - The Entity that issues the bond.

Surfacing - The Course or Courses of Material on the Traveled Way, auxiliary lanes, Shoulder, or parking areas for pedestrian, bicycle or vehicle use.

Temporary Pedestrian Accessible Route - An area within a Work Zone, marked by signing, delineation and TCD, for the use of pedestrians to navigate through or around the work area. The TPAR is included as part of the Traffic Control Plan.

Temporary Pedestrian Accessible Route Plan - A written and drawn plan within the TCP that identifies requirements for providing safe, effective and accessible routes for pedestrians through or around the Work Zone including TPAR details, advance public notification; and construction and maintenance responsibilities.

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

Third Notification - See Section DB180.

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

Ton - One short ton of 2,000 pounds (Ton, ton, Tn, or T).

Topsoil - Soil ready for use in a planting bed.

Traffic Control Devices - Signs, signals, markings, and other devices placed on, over, or adjacent to a Roadway used to regulate, warn, or guide Public Traffic by authority of a public body or official having jurisdiction.

Traffic Control Measures - Elements of the TCP including, but not limited to, TCD, personnel, Materials and Equipment used to control Public Traffic through a Work Zone.

Traffic Control Plan - A written and drawn plan for providing the safe and efficient movement of Public Traffic through or around a Work Zone, while providing protection for workers, incident responders, and Equipment.

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

Traveled Way - That part of the Highway for moving vehicles, exclusive of berms and Shoulders.

Typical Section - That Cross Section established by the Plans which represents in general the lines to which the Design-Builder shall work in the performance of the Contract.

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

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

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

Utility - A line, facility, or system for producing, transmitting, or distributing communications, power, electricity, heat, gas, oil, water, steam, waste, stormwater not connected with highway drainage, or any other similar commodity which directly or indirectly serves the public. The term may also mean the utility company, district, or cooperative owning and operating such facilities, including any wholly-owned or controlled subsidiary.

Utility Owner - Any Utility company inclusive of any substantially owned or controlled subsidiary. The term also includes those Utility-type facilities which are owned or leased by a government agency.

Verification Sampling, Testing, and Inspection - Sampling, testing, and Inspection performed to validate the quality of the Material, product, or Work.

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

Work - Design, construction, and Quality Management, which collectively include the furnishing of all Design Services, Construction Services and all Materials, Equipment, tools, labor, documentation, and Incidentals necessary to successfully complete any individual Contract item or the entire Contract, and the discharge of duties and obligations imposed by the Contract.

Work Product - Definitive Design, Interim Design, Readiness-for-Construction Plans and Readiness-for-Construction Specifications, As-Constructed Plans, Drawings, Plans, Design-Documents and all other documents, analysis, computations, models, computer programs, source documents as defined under Section DB195, testing results, Materials quality documentation and information obtained, prepared, created, developed or under development for the Project or in performance of the Contract, including derivative works and compilations, by the Design-Builder, Subcontractors or consultants, in or capable of being reduced to tangible paper-based, electronic, audio, or video format, whether or not designated as a deliverable under the Contract and every invention, discovery, work of authorship, trade secret, or other tangible or intangible item, and all intellectual property rights therein, created for the Project, whether or not designated as a deliverable under the Contract, and all versions and iterations of the foregoing.

Work Zone - An area within Highway construction, maintenance, or Utility Work activities which extends from the first road Work, Bridge Work, or Utility Work warning sign to the last sign or the last TCD.

Working Drawings - Those Plans prepared by the Design-Builder to specify details and procedures for construction of the Project, including but not limited to the following:

- ADA Working Drawings per Section 00759
- Construction details
- Erection Plans
- Fabrication Plans
- Field design change Plans
- Stress sheets
- Shop Plans
- Lift Plans
- Bending diagrams for reinforcing steel
- Falsework Plans
- Similar Plans or data required for the successful completion of the Work

Yellow Letter - Potential Approach Modification Impacting Your Property letter to be provided by the Design-Builder to property owners.

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SECTION DB140 – SCOPE OF WORK

DB140.05 Project Scope - The Project involves all Work as set forth in the Contract Documents for remediation of Settlement Curb Ramp locations identified in the Inventory Matrix found in DB Contract General Provisions Attachment A (Engineering Data) ("Settlement Curb Ramps") such that each remediated Settlement Curb Ramp location is considered "compliant" for purposes of the Settlement Agreement. The Project also includes temporary traffic control as well as rectifying any infrastructure impacted by the curb ramp work, which may include but is not limited to pedestrian signals (push buttons), excavation, drainage Work, striping, minor retaining walls, aesthetic and historical treatments, landscaping, saw cutting and installation of new pavement, utility coordination and relocation, and illumination Work. The Project is divided into the Geographic Areas of the Price Centers (see Exhibit A-2 and DB 190).

The Settlement Curb Ramp Locations in the Inventory Matrix are non-compliant as currently constructed ("Noncompliant Ramp") or non-compliant because there is not a ramp at that location ("Missing Ramp"). ODOT has obtained Crosswalk Closure Approvals for some of these Settlement Curb Ramp locations (see Inventory Matrix). Additionally, the Design-builder may identify additional crosswalk closures at Settlement Ramp locations which Agency may consider for reasons outlined in the ODOT Traffic Manual under section 310.8. As noted in DB141.21, crosswalk closures requests are to be minimized and will be Approved at the Agency's sole discretion.

The Design Builder shall complete the approved crosswalk closure treatment identified in the closure approval at those locations.

For those locations for which crosswalk closures have not been approved, Design-Builder shall (i) design and rebuild each Non-Compliant Curb Ramp to meet ODOT ADA Curb Ramp Standards or (ii) construct compliant curb ramps for the Missing Ramps at the locations where ramps do not exist. Design Builder shall design and rebuild/construct each Missing or Noncompliant Settlement Ramp so that it will receive a (i) Functional Condition of Good (G) (which requires all applicable boxes to pass or an approved Design Exception addresses any criteria that do not pass) and (ii) Physical Condition Description of Good (G) (which requires that the concrete within the Pedestrian Circulation Area (includes the flares and path back to the existing sidewalk) contains no cracks or deformations) on the applicable ADA Curb Ramp Inspection form. There are seven (7) different ramp styles, each with a corresponding ramp inspection form (Forms 734-5020A-G).

Design-Builder must comply with Technical Services Bulletin RD21-04(B) and all applicable Standards and Manuals set forth in the applicable Performance Standards in designing, constructing and rebuilding ramps. In some cases Design Exceptions may be required, and details of this process and approach (including determining whether technical infeasibilities exist) can be found in DB141.21 and HDM800. An ADA Design exception request form for curb ramps is required (Form 734-5112) .

DB140.30 Agency-Required Changes in the Work - Changes to the scope are inherent in the nature of Design-Build projects and may be necessary or desirable during the course of the Project.

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

- DB Standard Technical Specifications or DB Boilerplate Technical Special Provisions
- Grade and alignment
- Cross Sections and thicknesses of Courses of Materials
- Project Site

or may result in:

- Increases and decreases in quantities
- Elimination of any Work
- Acceleration or delay in performance of Work

Upon receipt of a Change Order, the Design-Builder shall perform the Work as modified by the Change Order. If the Change Order increases the Contract Amount, the Design-Builder shall notify its Surety of the increase and shall provide the Agency with a copy of any resulting modification to bond documents (see Design-Build Agreement, Article 7.2). The Design-Builder's performance of Work according to Change Orders will neither invalidate the Contract nor release the Surety. Payment for changes in the Work will be made in accordance with DB195.20. Contract Time adjustments, if any, will be made according to DB180.80.

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

- **Type 1** - Subsurface or latent physical conditions that differ materially from those indicated in the Contract Documents; or
- **Type 2** - Unknown physical conditions of unusual nature that differ materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

The party discovering such a condition shall promptly notify the other party, in writing, of the specific differing conditions before they are disturbed and before the affected Work is performed. The Design-Builder shall not continue Work in the affected area until the Agency Engineer has inspected such condition according to DB195.30 to determine whether an adjustment to Contract Amount or Contract Time is required.

Payment adjustments due to differing Project Site conditions, if any, will be made according to DB195.30. Contract Time adjustments, if any, will be made according to DB180.80.

DB140.50 Environmental Pollution Changes - ORS 279C.525 will govern any increases in the scope of the Work required as a result of environmental or natural resources Laws enacted or amended after the submission of Proposals for the Contract. The Design-Builder shall comply with the applicable notice and other requirements of ORS 279C.525. The applicable rights and remedies of that statute will also apply.

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

DB140.60 Extra Work - If directed by the Agency Engineer's written order, the Design-Builder shall perform work not included in the Contract. The Design-Builder shall perform this work according to the applicable Specifications.

Payment for Extra Work will be made according to Section DB196. Contract Time adjustments, if any, will be made according to DB180.80.

DB140.65 Disputed Work - The Design-Builder may dispute any part of a Change Order, written order, or an oral order from the Agency Engineer by procedures specified in Section DB199.

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

- The Agency Engineer provides written approval stating that such rental is in the public interest; and
- Rental does not increase the Project cost.

DB140.90 Final Trimming and Cleanup - Before Final Inspection as described in DB150.90 the Design-Builder shall neatly trim and finish the Project and remove all remaining unincorporated Materials and debris. Final Trimming and Cleanup must include without limitation the following:

- The Design-Builder shall re-trim and reshape earthwork, and shall repair deteriorated portions of the Project Site.
- Where the Work has impacted existing facilities or devices, the Design-Builder shall restore or replace those facilities to their pre-existing condition.
- The Design-Builder shall clean all drainage facilities and sanitary sewers of excess Materials or debris resulting from the Work.
- The Design-Builder shall clean up and leave in a neat, orderly condition, Right-of-Way, Materials sites, storage sites, and other property occupied in connection with performance of the Work.
- The Design-Builder shall remove temporary buildings, construction plants, forms, falsework and scaffolding, surplus and discarded Materials, and rubbish.

- The Design-Builder shall dispose of Materials and debris, including without limitation forms, falsework, scaffolding, and rubbish resulting from clearing, grubbing, trimming, clean-up, removal, and other Work. These Materials and debris become the property of the Design-Builder. The Design-Builder shall dispose of these Materials and debris immediately.

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

STATE OF OREGON

SECTION DB141 – PERFORMANCE SPECIFICATIONS

DB141.00 Design Builder Standards and Manuals – Standards and manuals are identified below but not considered a comprehensive lists; others may be required in a Performance Specification other Contract Documents containing design and construction requirements, and it is the Design-Builder's responsibility to identify them. The Design-Builder shall use the current edition of all Standards and Manuals as of the Effective Date, unless otherwise specified in the Contract Documents or modified by Addendum or Change Order. If the Standard or Manual expires during the course of the Project, the Standard or Manual will continue to apply to the Project. However, the Design-Builder shall request in writing, a determination of the applicability of the expired Standard or Manual and request an updated Standard or Manual if the Agency determines the Standard or manual is not to be used. The Agency will respond with the appropriate Standard or Manual to be used; such response shall be in writing within 14 Calendar Days of receipt of request.

- ODOT Highway Design Manual (HDM)
- ODOT Geotechnical Design Manual (GDM)
- ODOT Hydraulics Design Manual
- ODOT Erosion Control Manual
- ODOT Traffic Manual
- ODOT Traffic Sign Design Manual
- ODOT Traffic Signal Design Manual
- ODOT Traffic Structures Design Manual
- ODOT Construction Manual
- ODOT Contract Plans Manual
- ODOT Manual of Field Test Procedures
- ODOT Roadside Development Manual
- ODOT Traffic Line Manual
- ODOT Traffic Control Plan Design Manual
- ODOT Engineering for Accessibility website (see DB110.05(e))
- ODOT Standard Drawings
- ODOT Standard Details
- FHWA Manual on Uniform Traffic Control Devices (MUTCD)
- AASHTO Roadside Design Guide
- Department of Justice 2010 ADA Standards for Accessible Design (28 CFR Part 35.151, 28 CFR Part 36 Subpart D, and 36 CFR part 1191, appendices B and D)
- Department of Transportation 2006 ADA Standards
- US Access Board Architectural Barriers Act Accessibility Guidelines for Outdoor Developed Areas 2013 - 36 CFR Part 1191

- Architectural and Transportation Barriers Compliance Board for Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, 36 CFR Part 1190
- Oregon Transportation Commission Standards for Accessible Parking Places (ORS 447.233)

(a) Design-Build Interpretation - Standards and Manuals typically reflect the design-bid-build delivery method and may not directly apply to the design-build context. In those situations, the following considerations apply:

- Any references related to Pay Items or quantities, measurement for payment, method of measurement, basis of payment, Extra Work, adjustment of Unit Prices, or similar phrases shall be disregarded by the Design-Builder.
- References to the Engineer in the context of provider of compliance judgment may mean an appropriate representative of the Design-Builder, or it may mean an Agency representative, depending on the context, as determined by the Agency in its sole discretion, or as defined in the Contract.
- Where the notes in Requirement or Standards refer to items that are indicated in or required in the Plans or special provisions, those references to Plans or special provisions shall mean the Design-Builder's Plans or the Design-Builder Specifications.
- The Design-Builder shall use forms as required to report the same information and in the same format as the Agency's forms shown in the Requirements or Standards, unless otherwise directed by the Agency in the Contract Documents.
- References to design milestones in the Requirements or Standards shall be construed as follows:
    - Concept and DAP milestones shall be construed to mean Definitive Design
    - Advance and Final milestones shall be construed to mean Interim Design
    - The PS&E milestone shall be construed to mean RFC
- If it is unclear whether specific provisions in the Requirements or Standards are applicable to the Design-Builder, the Design-Builder shall raise the issue with the Agency by submitting its questions in writing and the Agency will make that determination in its sole discretion.

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

Guidelines, bulletins, or directives developed and published by the ODOT shall take precedence over any conflicting Performance Specification, performance requirements or the Standard or manual that controls a particular aspect of the Work. Relevant ADA program guidelines, bulletins and directives can be found at the ODOT ADA Technical Bulletins and Advisories websites (see DB110.05(e)).

DB141.10 Agency-Supplied Project Information:

(1) Engineering Data - Documents provided in or incorporated by reference by DB General Provisions, Attachment A – Engineering Data, shall be used by Design Builder and may be relied on for compliance with the Performance Specifications in performing the Work.

If the Design-Builder relies on Engineering Data provided in DB General Provisions, Attachment A – Engineering Data, the Professional of Record shall note this on the Title Sheet of the Plans with a statement similar to: "…derived from data provided in the following DB General Provisions, Attachment A – Engineering Data document(s)…"

(2) Reference Documents - Documents or information included in DB General Provisions, Attachment C – Reference Documents are provided for the convenience of the Design-Builder for information and reference only and are not to be relied upon by the Design-Builder. The use of such Reference Documents or information by the Design-Builder shall be at the sole risk of the Design-Builder. The Agency makes no guarantee or representation, by implication or otherwise, of the accuracy of such Reference Documents or information.

Reference Documents, and information designated for information only, if any, identified in any Performance Specification or performance requirement are provided for the Design-Builder's convenience for information and reference only and is not to be relied upon by the Design-Builder. The use of such Reference Documents or information designated for information only by the Design-Builder shall be at the sole risk of the Design-Builder.

DB141.12 Geotechnical:

(a) Scope - This Subsection DB141.12 covers: (a) design and construction of all Geotechnical Work associated with the Project, including but not limited to subsurface investigations, analyses, design and construction of all geotechnical elements associated with the Work required for remediation of Settlement Curb Raps (b) geotechnical and structural analysis, design and construction of non-Bridge Structures including retaining walls, and (c) monitoring and control of vibrations caused by the Design-Builder's Work for the Project. The goal of the monitoring and control of vibrations is to protect the public, property, buildings, Structures, and Utilities (Vibration Sensitive Sites).

(b) General - The Design-Builder shall perform all geotechnical design and construction Work in accordance with this Subsection DB141.12 and the DB Standard Technical Specifications.

(1) Standards and Manuals – In addition to the Standards and Manuals listed in DB141.00, additional Standards and Manuals for this Subsection DB141.12 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.)

- ODOT *Geotechnical Design Manual (GDM),* 2024
- ODOT *Soil and Rock Classification Manual*
- *"Geotechnical Instrumentation Reference Manual",* FHWA-HI-98-034, August 1998
- "*Guide to the Evaluation of Human Exposure to Vibration in Buildings*", American National Standard Institute (ANSI) Standard S3.29-1983
- "*Standard Practice for Evaluation of Transportation-Related Earthborne Vibrations*", AASHTO R 8-96, 2015

(2) References:

- *"Training Course in Geotechnical and Foundation Engineering: Subsurface Investigations",* FHWA-HI-97-021, 1997
- *"Evaluation of Soil and Rock Properties",* FHWA-IF-02-034 (GEC 5), 2002
- *"Shallow Foundations",* FHWA-IF-02-054 (GEC 6), 2002
- *"Transportation and Construction Vibration Guidance Manual",* Caltrans, 2013

(c) Project-Specific Technical Requirements - Project-specific technical requirements are as follows:

- Geotechnical explorations, calculations, and documentation are required when a traffic signal pole is being replaced as a part of the Project.
- Geotechnical calculations and documentation are required when the finished grade is lowered more than 6 inches permanently around the signal pole for foundations less than 10 feet or when a potential structural issue is apparent, explorations may be required based on Agency Engineer recommendation.

- Geotechnical calculations and documentation are required when a retaining wall greater than 4 feet is proposed as a part of the Project. Explorations may be required depending on the retaining wall type, soil type, and other relevant factors consistent with requirements in the Geotechnical Design Manual (GDM).
- Work shall not affect verticality of existing poles (e.g., signal, luminaire, pedestrian, sign, etc.) at the Project Site. The Design-Builder shall maintain poles to existing verticality during and after Project Work.

(d) Personnel Requirements - The Design-Builder shall provide a Geotechnical professional consistent with the GDM who shall be the principal lead for all geotechnical design elements of the Project and responsible for ensuring that the overall Project geotechnical investigation and design is completed, design criteria are met, and the design meets or exceeds Contract requirements and the Project goals.

(e) Requirements - The Design-Builder shall perform all geotechnical design and construction Work in accordance with the applicable requirements of the ODOT GDM and in accordance with the Standards and other requirements of this Subsection DB141.12 and the DB Standard Technical Specifications.

The Design-Builder shall provide the Agency supporting geotechnical data, geotechnical design recommendations, calculations, Plans, Design-Builder Specifications, and construction support for all Project elements in accordance with the Standards and other requirements of this Subsection DB141.12 and the DB Standard Technical Specifications. All geotechnical elements of the Readiness-for-Construction (RFC) submittals must be fully supported with geotechnical design recommendations, supporting geotechnical data, calculations, Plans, and Design-Builder Specifications following the requirements set forth in the Standards and other requirements of this Subsection DB141.12 and the DB Standard Technical Specifications.

(1) Geotechnical Reconnaissance - The Design-Builder shall conduct a data review and reconnaissance based on the proposed project design to verify any needs for geotechnical exploration or associated work that may be required. This is to include:

- Evaluate the Project Site for any geologic hazards present
- Identify surface issues that may be indicative of subsurface conditions of concern, as well as past or ongoing geologic processes (e.g., areas of seeps or springs, erosion, unstable slopes, shallow groundwater, roadway settlement, offsets and depressions, existing earthwork performance, exposed Soil, and bedrock units) that may require a modified sidewalk cross section to address.
- Identify Project Site constraints and staging concerns (for exploration and construction)
- Identify potential exploration and monitoring locations
- Locate historical boring locations

If explorations or borings are required, the Design-Builder shall prepare a Geotechnical Exploration Plan and submit it to the Agency Engineer for Acceptance no later than Definitive Design.

The Design-Builder shall not proceed with on-site geotechnical exploration activities until the Agency has Accepted the Geotechnical Exploration Plan.

The Geotechnical Exploration Plan must include, but not be limited to the following information:

- Narrative describing the criteria or rationale used in developing the plan
- Maps or aerial photography that identify the locations of all field investigations, type of exploration, and borings
- Sampling schedule
- Description of both the field and laboratory testing programs.
- Description of all instrumentation to be installed during exploration and a monitoring schedule
- Traffic control plan
- Utility location information
- Safety and hazard analysis plan, including emergency procedures and contacts
- List of all permits and Rights of Entry required to access and perform the geotechnical investigation
- Schedule for completing the plan

For any Design-Builder proposed deviations from the exploration requirements included in the GDM, the Design-Builder shall prepare and submit a written request to the Agency Engineer for Acceptance at least 7 Calendar Days before submitting the Geotechnical Exploration Plan. The request shall be stamped and signed by the Geotechnical Engineer and shall include, but not be limited to, the following information:

- Description of the proposed deviation(s) from the GDM requirements and justification for the deviation(s)
- Description of the effect of the proposed deviation(s)
- Description of the risks, hazards and consequences of the proposed deviation(s)

Acceptance of Design-Builder proposed deviations from the exploration requirements included in the GDM will be at the sole discretion of the Agency, and the Design-Builder shall not assume that a deviation request will be Accepted unless and until the Agency has provided its Acceptance in writing.

The Design-Builder shall be solely responsible for all time and cost impacts associated with the implementation of, or consequences and impacts resulting from the implementation of, all Accepted deviations.

(2) Subsurface Investigation and Data Analysis:

a. General - The Design-Builder shall provide investigations and laboratory work consistent with the GDM.

The Design Builder Shall perform laboratory tests on disturbed and relatively undisturbed Soil samples obtained from explorations in order to:

- Characterize the subgrade and subsurface Soils;
- Develop engineering Soil parameters for signal and sign foundations;
- Assist with determining engineering geologic unit boundaries; and
- Check field Soil classification.

The laboratory testing program must be performed in accordance with standard American Society for Testing and Materials and Agency practices and may include, but not be limited to, the following:

- Moisture/density;
- Atterberg limits; and
- Gradation.

(3) Geotechnical Memorandum - The Design-Builder shall prepare a Geotechnical memorandum according to the GDM criteria for submittal to Agency for review. The Geotechnical memorandum must:

- Include Geotechnical Reconnaissance and any recommendations and conclusions specifically for locations with subgrade issues;
- Summarize the geotechnical design, construction and inspection recommendations;
- Identify general specification criteria for the construction contract and provide recommendations for Special Provisions, if required;
- Bearing resistance for sidewalk and driveways;
- Summarize the results of the geotechnical analyses; and
- Provide design recommendations for the signal, wall, and sign foundations.

The Design-Builder shall prepare foundation data sheets at locations where signal poles are being relocated. The Draft Geotechnical memorandum and data sheets shall be submitted with Definitive Design and final Geotechnical memorandum. Data sheets must be stamped and submitted with RFC.

The Design-Builder shall follow the recommendations in the Geotechnical Memorandum in developing the design of the associated Project elements.

(4) Retaining Wall Design –The Design-Builder shall design permanent retaining wall Structures in accordance with the GDM for all locations impacted by or required as part of the Work required for remediation of Settlement Curb Ramps. The Design-Builder shall evaluate and design retaining walls for site-specific conditions. The Design-Builder shall be responsible for all geometric design, and for evaluating bearing resistance,

settlement, differential settlement, sliding, overturning, eccentricity, overall stability, and internal stability. The Design-Builder shall design walls for AASHTO LRFD Service, Strength and Extreme Load Combination Limit States. Walls must meet the landscape and aesthetic requirements included in DB141.27. The Design-Builder shall determine which wall system type or types are suitable for a given wall location in the Project according to the general selection criteria, and the specific wall type selection criteria provided in the GDM.

a. Design Criteria - The design life of all retaining walls must be a minimum of 75 years. All retaining wall designs must address site-specific seismic hazards. The Design-Builder shall evaluate seismic geologic hazards, including fault rupture, liquefaction, ground failure including flow slides and lateral spreading, ground settlement, and instability of natural slopes and earth structures.

All retaining wall designs must address internal, external and global (overall) stability and settlements (total and differential) of the walls in accordance with the requirements of the GDM.

b. Geometry - Retaining wall layout must address slope maintenance above and below the wall. Final tolerances must be 5/8 inch (0.05 feet) in 10 feet for level and plumb.

The Design-Builder shall provide adequate surface and subsurface drainage in the design and construction of all retaining walls. The Design-Builder shall provide a system to intercept or prevent surface and ground water from entering behind the walls. The Design-Builder shall provide drainage along the retaining wall and into a drain. The Design-Builder shall provide traffic barrier and railing, pedestrian/bicycle railing, and worker fall protection railing as required in the GDM.

The Design-Builder shall conduct an analysis to estimate soil settlement induced by embankment loads, including immediate and long-term settlement. The Design-Builder shall design embankments in order to limit total long-term settlement to 0.5 inches during a period of 5 years after completion of the Pavement construction for the embankment. Differential settlement across fill/Structure interface requirements are provided in the GDM.

The Design-Builder shall incorporate an adequate system of surface and subsurface drainage and surface protection in the design, with sufficient capacity for the design rainfall run-off, so as to prevent (a) erosion of the slopes that could result in erosion rills and gullies and surface sloughing, and (b) build-up of groundwater that could result in slope instability. Notwithstanding the requirements of the relevant Standards, the Design-Builder shall address the long-term performance of the drainage and erosion control system in the design for each embankment or fill under local conditions.

(5) Erosion Control and Slope Drainage Design - The Design-Builder shall evaluate and design erosion control and drainage measures for all new and existing slopes impacted by the Work required for remediation of Settlement Curb Ramps. The Design-Builder shall not construct improvements that would result in a degradation to existing slopes.

(6) Corrosion - The Design-Builder shall design all elements to be resistant to or withstand corrosion for their design life. The Design-Builder shall base corrosion potential on pH and electrical resistivity tests conducted on Soil, Rock, and groundwater samples derived from the Project Site.

(7) Pre-Construction Activities:

a. Pre-Construction Condition and Equipment Survey – Prior to On-Site Work, the Design-Builder shall identify and prepare documentation by video and/or photography of the Project Site, including physical limits and for types of the Work to be performed for the Project. The Design-Builder shall provide written notice to the Agency no less than 7 Calendar Days prior to performing any field documentation of the Project Site. The Design-Builder shall obtain all necessary permission from property owners to enter their property for any documentation of the Project Site.

b. Pre-Construction Condition Survey of Sensitive Sites - At least 14 Calendar Days before performing any of the following construction activities, the Design-Builder shall prepare and submit to the Agency for Review and Comment a Pre-Construction Condition and Equipment Survey for all vibration sensitive sites (including exterior walls, interior walls and foundations) located within a 50 foot radius of the subject activity:

- Vibration-inducing activities
- Placing and compacting embankment
- De-watering
- Activities that could result in physical impact from Equipment or Materials to existing Structures, Signal Poles, Pavement, Utilities, Railroads, or buildings

The Pre-Construction Condition and Equipment Surveys must include, but are not limited to the following:

- High-definition video and digital photography documenting the as-is conditions of Vibration Sensitive Sites as defined in this section and field notes of critical public and private structures and vibration-sensitive equipment that could be affected by the Project, including but not limited to interior sub-grade and above-grade accessible walls, ceilings, floors, roofs, and visible exteriors as viewed from the grade level. Vibration sensitive equipment could include electron microscopes, high resolution lithographic equipment, and other equipment with sensitivity to vibration levels above 60 VdB or 0.01 inches per second.
- Detailed high-definition video and digital photography documentation, and field notes of existing structural, cosmetic, plumbing, or electrical damage.
- Engineered sketches identifying all documented structures and features, address of the residence or location, and dimensions from the vibration-producing Work area.
- A summary of the pre-construction condition of the buildings and features, including identification of areas of concern, including potential hazards (falling debris) and structural elements that may require support or repair.

Vibration Sensitive Sites that are susceptible to or experiencing vibration and categorize the susceptibility as high, moderate or low risk level as defined below:

High sensitivity: An identified receptor has high sensitivity if it has already experienced a significant amount of degradation of its primary structural or nonstructural system, and additional vibrations may further degrade these elements and possibly result in injuries to persons in the building. Identified receptors with loose or unstable elements (such as loose bricks or structurally cracked terra-cotta cornices) are in this category.

Moderate sensitivity: An identified receptor has moderate sensitivity if, although some building deterioration has occurred prior to construction activities, it has not yet experienced a significant degradation of its primary structure or its nonstructural systems that would lead to further building degradation due to construction vibrations. This category includes identified receptors with bricks that may be loose (as determined by visual inspection) and identified receptors with small to moderate quantities of fragile, potentially unstable contents that may be damaged by construction vibrations.

Low sensitivity: An identified receptor has low sensitivity if it is not expected to experience cosmetic cracking when subject to moderate levels of vibrations (such as those permitted by the Office of Surface Mining (OSM) vibration criteria) and if its contents will not be damaged by moderate vibration levels.

(f) Submittals:

(1) Geotechnical

a. Geotechnical Exploration Plan - prior to Definitive Design

b. Geotechnical Memorandum - at Definitive Design and RFC Design Review

c. Pre-Construction Condition and Equipment Survey – Prior to On-Site Work.

d. Pre-Construction Condition Survey of Sensitive Sites – 14 Calendar Days prior to On-Site Work which produces vibration.

e. Revised Geotechnical Memorandum - as required, following construction and as part of the Project Records

DB141.21 Roadway Geometrics:

(a) Scope - This Subsection DB141.21 covers the basic geometric elements to perform Work required for remediation of Settlement Curb Ramps.

(b) General - The Design-Builder shall design Roadway geometrics in accordance with the Standards and other requirements of this Subsection DB141.21 and the DB Standard Technical Specifications.

(1) Standards and Manuals In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.21 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.) Additionally, the ODOT ADA Project Delivery website (see DB110.05(e)) includes information and links to many relevant items, including processes, Standards, and forms.

(a) Curb Ramp Design Requirements :

- DB141.21
- HDM 800 (excluding Appendix G)
- RD21-04(B)
- ODOT ADA Inspection forms

(b) Crosswalk Closures – Approval and Closure Treatments:

- HDM 802.5
- DB141.21(c)(4) including references to:
    - 734-5150 - Crosswalk Closure Approval Request Form
    - ODOT Traffic Manual Section 310.0
- Closure treatment(s) to be installed consistent with:
    - DB141.21(c)(4)
    - Approved Form 734-5150 (Existing Crosswalk Closure Approvals are provided in DB General Provisions, Attachment A – Engineering Data
    - Standard Drawing TM240

(c) Inventory Clarification: It is not anticipated that there will be locations that need further evaluation to determine the need for a ramp. If the Design-Builder identifies a location that warrants additional evaluation, they may submit a request for a crosswalk determination or ramp needs status review consistent with HDM 802.4 and HDM 802.6. It is the Agency's sole discretion as to whether the request forms will be Approved.

(2) References:

- Public Right of Way Accessibility Guidelines (PROWAG) for best practices on parking geometrics on public right of way
- ODOT Project Delivery Leadership Team Operational Notice PD-03 Access Management in the Project Delivery Process.

- Electronic Mapping data (MicroStation basemaps/InRoads terrain models)
- FHWA “Policy on Additional Interchanges to the Interstate System”, 2009
- AASHTO Highway Safety Manual
- AASHTO Guide for the Development of Bicycle Facilities
- NACTO Urban Street Design Guide
- NACTO Urban Bikeway Design Guide
- AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities, 1st Edition, 2004
- NCHRP Report 672 Roundabouts: An Informational Guide
- ODOT Oregon Bicycle and Pedestrian Plan, 2016
- ODOT ADA Transition Plan
- ADA Curb Ramp Design Check List, Form 734-5184,

(b) Requirements:

(1) Accessibility

a. General – The Design-Builder shall provide ADA-compliant pedestrian access routes, meeting the requirements of Agency Design Standards, on pedestrian facilities including but not limited to sidewalk, driveways, accessible parking, transit stops, multi-use paths, trails, alleys, and street crossings. The pedestrian access route on multi-use paths shall be the full width of the facility. The Design-Builder shall not degrade accessibility to existing pedestrian facilities.

The Design-Builder shall maintain existing pedestrian access routes to places of public facilities and public entrances in a condition equal to or greater than the condition of the routes as they existed immediately before NTP.

b. ADA Curb Ramps Requirements – The Design Builder shall design and construct one Curb Ramp (ramp centerline is parallel with intended crosswalk) at each end of a crosswalk unless a Design Exception is approved for a single curb ramp to serve multiple crosswalks. In many instances, this will mean constructing two curb ramps to remediate a single Settlement Curb Ramp.

1. The Design-Builder shall design and construct combination or perpendicular curb ramps when designing new curb ramps unless constrained by site conditions; parallel curb ramps shall only be constructed when site conditions prohibit the use of combination or perpendicular curb ramps.

2. The Design-Builder shall construct accessible route islands as either cut through style on all sides, or median raised crossing on all sides as illustrated in RD710 or RD711. Cut throughs shall have return curbs as the side treatments.

3. Private driveways and alleys with curb ramps shall be evaluated for reconfiguration in coordination with the Access Management Strategy to remove

and reconfigure the Pedestrian Access Route to eliminate the existing curb ramp with Agency Approval.

4. The Work required for remediation of Settlement Curb Ramps shall be limited to curb ramp corners at intersections. Corners with adjacent driveways, stairs, access, walls, or other features shall be reconstructed when required due to Work required for the remediation of Settlement Curb Ramps. Transition panels shall be provided to connect curb ramps to existing sidewalks. Sidewalk improvements beyond the required transition panels are excluded from the Work required for remediation of Settlement Curb Ramps.

5. Ramp Alignment – The Design-Builder shall design curb ramps to provide as straight and direct alignments as practicable with receiving curb ramps for the crosswalk.

c. Reference Documents – The Roadway Reference Document and Evaluation Matrix are included in DB General Provisions, Attachment C – Reference Documents. These documents provide information and guidance on potential design layouts and considerations for the Project.

d. Flares & Return Curbs – When constructing perpendicular or combination curb ramps, the Design-Builder shall include flares wherever possible. Return curbs shall only be used when an obstruction is present that cannot be accommodated in the flare.

e. Detectable Warning Surfaces – The Design-Builder shall install wet-set Detectable Warning Surfaces (Truncated Domes) from the QPL unless approved otherwise by the Agency on permanent curb ramp installations. Asphalt substrate requires a Liquid Applied Detectable Warning Surface treatment in permanent curb ramp locations. Surface Applied Detectable Warning Surfaces shall be installed on Temporary Pedestrian Access Routes.

f. Utility Boxes – The Design-Builder shall coordinate with the utility owner (including ODOT traffic electricians) to minimize impacts to utilities. When a utility box is required to be relocated, consider long-term maintenance needs, minimize right-of-way and landscaping impacts, maintain pedestrian access routes, and reduce potential for future tripping hazards. The Design-Builder shall coordinate with the utility to make sure boxes shall not be placed within detectable warning surfaces. Consistent with HDM800.8, slip resistant ADA compliant covers are required for a pedestrian route and new concrete surfaces shall be considered. See section DB174.10 for additional utility coordination details.

g. Reinforced Concrete – The Design-Builder shall identify locations with surface issues (e.g., tire tracks with cracking) that may indicate the need for reinforced concrete. The Design-builder shall work with the Agency Engineer to determine locations where reinforced concrete may be needed and design the detail with this cross-section.

h. Pedestrian Push Buttons - The Design-Builder shall modify existing push buttons or construct new push buttons as set forth in these Performance Standards when Work required for the remediation of Settlement Curb Ramps impacts the push button or is occurring on the concrete being used to access the push button.

(2) Crosswalk Closures – Every leg of an intersection is a pedestrian crosswalk unless the crosswalk is closed by official action. Refer to the ODOT Traffic Manual section 310.0 on where crosswalks are located on the State Highway System.

a. The Design-builder shall attempt to maintain open crosswalk crossings where possible and as a result minimize the number of crosswalk closure requests. The Agency may at its sole discretion deny a crosswalk closure request.

b. The Design-Builder shall prepare exhibits to demonstrate geometric design or operational condition that significantly degrades pedestrian safety and cannot be reasonably mitigated.

c. The Design-Builder shall submit no more than 10 crosswalk closure requests within a 14 Calendar Days period. When the Design-Builder requests a Potential Crosswalk Closure Workshop, the Design-Builder must provide supporting documents at least 7 Calendar Days prior to the workshop.

d. The Design-Builder shall document and track crosswalk closure discussion and decision using the Agency provided Crosswalk Closure and Pedestrian Push Button Log.

e. The Design-Builder shall complete Crosswalk Closure Approval Request, Form No. 734-5150 for each identified or proposed closure and receive Agency approval prior to RFC and closing crosswalks for each identified or proposed closure. The Design-Builder shall construct requirements contained with the crosswalk closure approval in the geometric design of the curb ramp and plans sheets for the intersection, which includes the location placement of the closure treatment(s)

f. The Agency will respond to draft crosswalk closures requests with a preliminary response within 21 Calendar Days and make a final determination within 70 Calendar Days of final closure request submittal.

g. When placing barricades as the treatment, the Design-Builder shall install crosswalk closure barricades at least 12 inches from face of curb. If crosswalk closure barricades reduce clear width in the Pedestrian Access Route to less than the requirements of the HDM, the Design-Builder shall widen the sidewalk or curb ramp to provide the required clear width.

(3) ADA Curb Ramp Design Exceptions (DEs) - The Design-Builder shall prepare and submit ADA Curb Ramp Design Exception (DE) requests in accordance with Section DB155, and Part 1000 of the Highway Design Manual. For more instructions and training on the ADA Curb Ramp Design Exceptions process, see DB110.05(e).

a. The Design-Builder shall review Standards and historical requirements prior to submitting ADA curb ramp Design Exceptions for Agency approval.

b. The ADA curb ramp Design Exception application process steps during design are outlined below.

Process Step Submittals from the Design-Builder to the Agency	**Deadlines**
1. Identify potential ADA curb ramp Design Exceptions for a workshop with the Agency	As soon as possible in the design process
2.a. Request an ADA curb ramp Design Exception workshop	No less than 10 Calendar Days after identification of a possible ADA curb ramp Design Exception request.
2.b. Submit the alternative design concepts for the proposed ADA curb ramp design exceptions to the Agency	No less than 5 Calendar Days prior to the ADA curb ramp Design Exception workshop
2.c. Submit the Roadway and ADA curb ramp Design Exception Log to the Agency	Within 3 Calendar Days of the ADA curb ramp Design Exception workshop
2.d. Respond to and incorporate review comments, while completing design revisions and any concept feedback	Complete responses and revisions prior to submitting the Draft ADA curb ramp Design Exception Request Form.
3.a. Create and Submit a Draft ADA curb ramp Design Exception Request Form 734-5361 to the Agency in word format	Agency will provide any remaining comments within 21 Calendar Days
3.b. Design-Builder shall incorporate any necessary details or changes from both the draft final and final requests	Following Agency reviews of Draft and Draft Final ADA curb ramp Design Exceptions
3.c. Incorporate comments and submit a draft final ADA curb ramp Design Exception .pdf form for review and comment when requested by the Agency	Prior to submitting the final ADA curb ramp Design Exception request form

4. After final edits are accepted by the Agency, apply the Professional of Record signature and seal on the form digitally	Following the steps in ADA curb ramp Design Exception Request Form
5. Submit the finalized ADA curb ramp Design Exception Request Form electronically to the Agency.	Following application of the Professional of Record signature and seal

(4) Mobility Review Process – For permanent roadway changes that reduce the roadway width or reduce any vertical clearance, Mobility Advisory Committee (MAC) approval may be required. The Design-Builder shall notify the Agency of any potential MAC approvals that would be needed prior to Definitive Design. If approved by the Agency, the Design-builder shall provide all presentation materials as required by the Agency and follow the mobility review process outlined on the ADA program project delivery website. The Design-Builder shall not reduce clearances such that a full MAC approval process is required. See also DB141.31.

(5) Access Management - The Design-Builder shall plan, coordinate, design, and construct accesses to and from the Roadways impacted by Work required for the remediation of Settlement Curb Ramps as described below and in accordance with Agency's PDLT Operational Notice PD-03. Prior to sending any letters as listed below, the Design-Builder shall submit for Acceptance to the Agency.

a. The Design-Builder shall set up sub-team meetings to determine the level of access management work for the Project.

b. The Design-Builder shall provide the Draft Access Management Methodology. A Draft Access Management Methodology letter is included in Attachment C – Reference Documents.

c. The Design-Builder shall provide the Yellow Letter to affected property owners for the project where a potential access modification has been accepted by Agency. A sample Yellow Letter is included in Attachment C – Reference Documents. If requested by property owners, the Design-Builder shall schedule an onsite or virtual meeting within 10 Calendar Days of request from property owner to discuss impact with owners and shall include the Agency. The Design-Builder shall document meeting minutes and implement agreed upon design changes.

d. The Design-Builder shall provide the Red Letter to affected property owners for the project where access is determined by the Agency to be a modification or closure required for the Work required for remediation of Settlement Curb Ramps. A sample Red Letter is included in Attachment C – Reference Documents.

e. The Design-Builder shall prepare the Access Management Strategy (AMStrat) for the project if modifications or closures are pursued. A sample AMStrat is included in Attachment C – Reference Documents.

f. The Design-Builder shall prepare the Official Project Access List (OPAL) for all accesses impacted by the Project and submit the Agency for Approval. The OPAL

shall be prepared per highway per Design Unit. A sample OPAL is included in Attachment C – Reference Documents. Existing access control and permit data shall be requested from the Design-builder to the Agency after the OPAL has been populated.

g. The Design-Builder shall avoid modifications and closures of access. The Design-Builder shall work with the Agency when an access modification may minimize impacts to signals, historic features or would require additional right-of-way to determine if an access modification shall be pursued. It is the Agency's sole discretion to determine if an access modification should be pursued.

h. Refer to Agency's Technical Bulletin AM21-01(B) titled Determination of Approach Modification in a Highway Improvement Project for guidance and additional actions that is deemed a modification. Modifications shall not reduce functionality of an owner's access to the roadway and on-site use required for the designated land-use.

i. The Design-Builder shall include details for new or modified accesses in all Design Review submittals, beginning with Definitive Design. The Design-Builder shall also include with each Design Review submittal any updates to the Access Management Strategy document for Agency Acceptance.

(c) Submittals:

(1) Access Management - The Design-Builder shall submit the Access Management Strategy document and Approach Modification and Closure letters in accordance with this subsection DB141.21.

(2) Design - If Design-Builder requests design exceptions, additional design data may be required for design exceptions submittal and approval.

a. Definitive Design – The Design-Builder's Definitive Design submittal must include, but not be limited to, the following:

- Plans
- Basis of Design
- Truck turning template exhibits where radii has been reduced
- Draft Crosswalk Closure(s)
- Draft ADA Design Exceptions(s)
- Draft general Design Exception(s)
- Engineering software design reports and calculations, electronic files and simulations relevant to the design
- If required, MAC presentation material
- Remediation Status Report in Smartsheet or GIS database:
    a. All ramp identification details
    b. Method proposed for remediation

c. Environmental clearance status
d. ROW details (i.e., existing, permanent, construction easement)
e. If a Design exception needed (and type)

b. Interim Design - Interim design plans may be waived at the Agency's discretion if the following conditions exist:

- No additional ROW is required.
- No Environmental impacts are identified and all PCE approvals have been completed.
- All additional Interim Design items not included in Definitive Design have been accepted or are not required.
- The Agency may still require Interim Design submittals even if the conditions described above are met, depending on the impact from stormwater or utilities.

The Design-Builder's Interim Design submittal must include, but not be limited to, the following:

- Plans
- Updated Basis of Design
- Any relevant design documentation updates

c. Readiness-for-Construction (RFC) - The Design-Builder's RFC submittal must include, but not be limited to, the following:

- Plans
- Final stamped approved design exceptions
- Updated Basis of Design
- Any relevant design documentation updates
- Remediation Status Report in Smartsheet or GIS database:
  a. All ramp identification details
  b. Method proposed for remediation
  c. Environmental clearance status
  d. ROW details (i.e., existing, permanent, construction easement)
  e. If a Design exception needed (and type)
  f. Anticipated date inspection will occur

The ADA Program allows variations in the level of details for construction plans of ADA curb ramps. The RFC package can be considered a working drawing at the Design-Builder's risk. The Design-Builder is solely responsible to correct any issues, problems or deficiencies that may occur as a result of reduced detail design plans at no additional cost to the Agency.

(3) Design-Builder Specifications - Refer to Section DB155.

(4) As-Constructed Plans - Refer to Section DB155.

DB141.22 Drainage:

(a) Scope - This Subsection DB141.22 covers the documentation, design, and construction requirements of Roadway and Pavement drainage and stormwater conveyance systems to collect, convey, treat, store, and discharge the stormwater runoff and surface water without adversely affecting downstream systems or properties. The Design-Builder shall perform all Work necessary to comply with the requirements of this Subsection DB141.22 and the Contract Documents.

(b) Standards and Manuals - The Design-Builder shall design and construct the stormwater drainage systems in accordance with the Standards and other requirements of this Subsection DB141.22 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional Standards and Manuals for this Subsection DB141.22 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other publications.)

- ODOT Stormwater Control Facility Operation and Maintenance Plan Development Drafting Guidance, GE16-01(B)
- ODOT Stormwater Operation and Maintenance (O&M) Manuals – Update, GE16-02(B)
- ODOT Underground Injection Control Systems (UIC) Bulletin, HE24-01B
- ODOT Water Pollution Control Facilities Permit for Class V Stormwater Underground Injection Control Systems
- ODOT Phase 1 MS4 Individual Permit
- ODOT Culvert Renewal Contract Plans CAD Guidance, GE20-02(B)
- ODOT Temporary Water Management (TWM) Plans Drafting Guidance, GE14-01(B)
- ODOT CAD Manual
- ODOT Geo/Hydro CAD Manual
- ODOT Roadway CAD Manual
- ODOT Technical Guidance Documents
- Federal Aid Highway Program Programmatic Biological Opinion

References:

- Oregon Department of Environmental Quality (DEQ) National Pollutant Discharge Elimination System (NPDES) Stormwater Regulations
- Oregon DEQ Post-Construction Stormwater Management Plan Submission Guidelines
- Federal Aid Highway Program Programmatic Biological Opinion User's Guide
- FHWA Hydraulic Design Series (HDS)
- FHWA Hydraulic Engineering Circulars (HEC)
- FHWA HEC-12, Drainage of Highway Pavements

- FHWA HEC-14, Hydraulic Design of Energy Dissipaters for Culverts and Channels
- FHWA HEC-15, Design of Roadside Channels with Flexible Linings
- FHWA HEC-21, Design of Bridge Deck Drainage
- FHWA HEC-22, Urban Drainage Design Manual
- FHWA HEC-24, Highway Stormwater Pump Station Design
- FHWA HDS-04, Introduction to Highway Hydraulics
- FHWA HDS-05, Hydraulic Design of Highway Culverts
- FHWA Stormwater Best Management Practices in an Ultra-Urban Setting: Selection and Monitoring
- AASHTO Highway Drainage Guidelines
- Occupational Safety and Health Administration (OSHA), website (see DB110.05(e))
- ODOT Operation and Maintenance Manual (refer to the specific manual that applies based on the Water Quality Facility that is used)
- ODOT Routine Road Maintenance – Water Quality and Habitat Guide, Best Management Practice

(c) Requirements:

(1) General - The Design-Builder shall design and construct all stormwater drainage systems for locations impacted by Work required for the remediation of Settlement Curb Ramps. All stormwater drainage systems must comply with the requirements in the Standards and include HDM 810.9.7 and other requirements of this Subsection DB141.22. The Design-Builder shall evaluate stormwater drainage systems located in the Project Site that may be directly impacted by Work required for the remediation of Settlement Curb Ramps with a visual inspection during a site visit and document conditions in a Stormwater Memorandum, as noted in this Subsection DB141.22(c)(4) Stormwater Memorandum. (See Stormwater Memorandum Template included in Attachment C – Reference Documents).

The Design-Builder shall address functionality, durability, environmental impact, ease of maintenance, accessibility, safety and aesthetics in the design and construction of all drainage structures, appurtenances, water quality treatment, and flow control facilities impacted by the Work required for remediation of Settlement Curb Ramps.

Drainage improvements must be compatible with existing and proposed drainage systems on adjacent properties and, whenever possible, preserve and perpetuate the existing catchment surface drainage patterns. Where drainage patterns are changed from existing patterns, the Design-Builder shall perform the following prior to commencing construction of any drainage improvements:

- Obtain all permits and approvals from the appropriate agencies.
- Coordinate with the Agency in accordance with Subsection DB174.20 to secure the necessary drainage easements.

New or relocated drainage manholes, inlets, vaults and other junction structures within the Project Site are not allowed to be located within the Traffic Lanes unless otherwise approved by Agency Engineer.

The Design-Builder shall provide bicycle-friendly grates on all grated drainage structures impacted by the Work required for remediation of Settlement Curb Ramps. All new manholes shall be located outside of bike lanes unless otherwise approved by the Agency.

The Design-Builder shall not commence construction activities or connect to any Agency drainage facilities until the Design-Builder has obtained all required permits.

(2) Computer Software – If a hydraulic and hydrologic analysis is required by the design, the Design-Builder shall use the most current version of hydrologic and hydraulic software and design analysis methods described below:

- HEC-RAS: U.S. Army Corps of Engineers Hydrologic Engineering Centers (HEC)-River Analysis System (RAS) software.
- HY-8: FHWA HY-8 Culvert Hydraulic Analysis Program.
- Hydraulic Toolbox: FHWA Hydraulic Toolbox Program is a stand-alone suite of calculators that performs routine hydrologic and hydraulic analysis and design computations.
- HydroCAD®: A proprietary Computer Aided Design tool for modeling stormwater runoff.
- Bentley's Drainage and Utilities module: Provides 3D modeling capability of all underground utilities (stormwater, water, sanitary, communication, electric, gas, etc.) and clash detection. The application performs hydraulics and hydrology of a storm or sanity system using the Rational Method.

Table DB141.22-1
Software Applicability

	Culverts	Roadway/Bridge Deck Drainage	Stormwater Conveyance
HEC-RAS	Yes	No	No
HY-8	Yes	No	No
Hydraulic Toolbox	Yes	Yes	Yes
HydroCAD®	Yes	Yes	Yes
Bentley's Drainage and Utilities	No	Yes	Yes

(3) Personnel - Stormwater Design Engineer - The Design-Builder shall provide a Stormwater Design Engineer, who shall be the Professional of Record for all drainage and stormwater design elements of each Design Unit and shall be responsible for ensuring that the overall Design Unit drainage and stormwater design is completed, design criteria requirements are met, and the design meets or exceeds the Project goals.

The Stormwater Design Engineer shall be a registered Professional Engineer in the State of Oregon and shall have a minimum of 5 years of demonstrated experience in the design and construction of highway-related stormwater elements.

(4) Stormwater Memorandum – The Design-Builder shall prepare and submit to the Agency for Acceptance a Stormwater Memorandum. See Stormwater Memorandum Template, included in Attachment C – Reference Documents. If the Stormwater Memorandum warrants a drainage exhibit to show compliance for stormwater improvements, a Drainage Exhibit Example is shown in DB General Provisions, Attachment C – Reference Documents. If the Work required for remediation of Settlement Curb Ramps is solely for crosswalk closure or minor improvements that do not require demolition and reconstruction, then a Stormwater Memorandum submittal is not required.

(5) Storm Drainage System - The Design-Builder shall not mix or route stormwater from different agencies or watersheds, unless otherwise authorized by the Agency.

a. Connections to Existing Systems - The downstream system or properties must not be negatively impacted by the Project. Drainage improvements must be compatible with existing and proposed drainage systems on adjacent properties and, whenever possible, preserve and perpetuate the existing catchment surface drainage patterns.

The Design-Builder shall not commence construction activities on, or connect to the Agency's or any Governmental Body's drainage facilities until the Design-Builder has obtained all applicable permits.

The Design-Builder shall not use proprietary stormwater treatment products, unless otherwise authorized in writing by the Agency or the owning Governmental Body.

(6) Temporary Stormwater Management - The Design-Builder shall provide a functioning drainage system during each phase of construction, while maintaining connectivity with existing drainage systems.

(d) Submittals - The Design-Builder shall submit the following to the Agency:

(1) Reports and Memorandums

- Stormwater Memorandum – for Agency Acceptance in accordance with DB141.22(c)(4)
- Design Deviations – see Section DB155.

(2) Plans and Specifications - For purposes of this Subsection DB141.22(d)(2), "Drainage" includes but is not limited to roadway drainage features, flow control facilities, stormwater conveyance systems, water quality facilities, infiltration facilities, culverts, temporary water management features, and facility identification markers.

- Temporary Water Management Plan(s) – with Readiness-for-Construction Design Review submittals

- Pipe Data Sheets - with Readiness-for-Construction Design Review submittals
- Drainage Plans - with Readiness-for-Construction Design Review submittals
- Drainage Profiles - with Readiness-for-Construction Design Review submittals
- Drainage Details - with Readiness-for-Construction Design Review submittals
- Design-Builder Specifications for Drainage – see Section DB155

DB141.24 Highway Illumination and Electrical:

(a) Scope - This Subsection DB141.24 covers the design and installation or construction, as applicable, to illumination and electrical infrastructure within the Project area when impacted by the Work required for remediation of Settlement Curb Ramps. This may include but is not limited to the electrical power service connections and distribution systems to support illumination, intelligent transportation system (ITS) Equipment, traffic signals and other electrical equipment provided and installed with the Project.

(b) Standards and Manuals - The Design-Builder shall design and install or construct, as applicable, all illumination, power service entrance and distribution cabinets, raceways, conduits, junction boxes, light poles, luminaires, and related Equipment in accordance with the Standards and other requirements of this Subsection DB141.24 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.24 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.)

- National Fire Protection Association National Electrical Code (NEC)
- Institute of Electrical and Electronics Engineers National Electrical Safety Code (NESC)
- ODOT Lighting Policy and Guidelines, available on the ODOT Engineering Illumination website (see DB110.05(e))
- ODOT Traffic Signal Policy & Guidelines, available on the ODOT Engineering Signals website (see DB110.05(e))
- ODOT Traffic Signal Design Manual, available on the ODOT Engineering Signals website (see DB110.05(e))
- ODOT Traffic Signal Drafting Manual, available on the ODOT Engineering Signals website (see DB110.05(e))
- ODOT Blue Sheets for Submittals on Electrical Equipment and Materials, available on the ODOT Engineering Illumination website (see DB110.05(e))
- IES Roadway Lighting, 2018([ANSI/IES] RP-8-18)
- National Electrical Manufacturers Association (NEMA) Standards and Technical Publications
- International Electrotechnical Commission Standards

References:

- AASHTO Roadway Lighting Design Guide
- FHWA Lighting Handbook
- Illuminating Engineering Society of North America Lighting Handbook

- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals
- AASHTO Roadside Design Guide
- Existing Electrical Service Agreements
- Service Agreement Checklist

(c) Requirements:

(1) Project-Specific Illumination Systems - The Design-Builder shall provide modifications to illumination infrastructure when the Work required for remediation of Settlement Curb Ramps impacts existing illumination infrastructure. When existing illumination infrastructure does not follow ODOT Standards, the Design-Builder shall work with the Agency and Local Agencies to determine what the appropriate Standards are for the impacted location.

(2) Other Agencies with Project Illumination and Electrical System Work - The Agency Engineer will perform coordination activities with other agencies that have illumination and electrical system Work included with the Project. Contacts will be provided for each Local Agency, and the Agency Engineer will establish the communication protocols. The Design-Builder shall refer any questions regarding Work performed on Local Agency illumination and electrical systems to the Agency Engineer, unless otherwise directed.

(3) Materials - The Design-Builder shall use new Materials meeting the requirements of all Standards, this Subsection DB141.24 and the DB Standard Technical Specifications unless existing materials can be salvaged and/or refurbished. Salvaged materials must retain their original structural integrity and aesthetic. For materials in disrepair, the Design-Builder may refurbish materials back to their original condition for use in the Project with Agency approval.

(4) Design and Construction:

a. Illumination - The Design-Builder shall develop illumination Plans for each location requiring illumination in accordance with Section DB155, Standards and the requirements of this Subsection DB141.24.

- The Design-Builder shall keep existing illumination operational at all times during construction unless new illumination is provided to cover the affected area prior to opening for pedestrian use. The Design-Builder shall notify the Agency Engineer 14 Calendar Days prior to removing existing illumination systems or disrupting power to any illumination system.
- The Design-Builder shall repair to the Agency's satisfaction any damage to the existing illumination systems caused by the Design-Builder's actions at no additional cost to the Agency, prior to the hours of darkness on the following day that the damage occurred.
- The Design-Builder shall install all lighting conductors in conduits containing only lighting electrical conductors, except that lighting circuits may be installed

in the same conduit with traffic signal circuits for signalized intersections with existing combined signal and illumination systems.

- The Design-Builder shall keep any new lighting conduit and junction box systems separated from the ITS conduit, junction box, pull box and cable vault system. A shared trench, shared power service and shared cabinet may be used.
- The Design-Builder shall install illumination and electrical systems so conduits, raceways and junction boxes only have conductors from a single derived power source. When impacted by the Work required for remediation of Settlement Curb Ramps, a change in the permanent light pole location that is greater than 15 feet from their existing location requires a lighting analysis to be conducted to ensure light levels at the intersection and Roadway segment do not fall below existing levels.
- The Design-Builder shall coordinate with the Utility companies to determine the separation requirements between overhead Utilities and illumination structures. The Design-Builder shall maintain a minimum circumferential clearance to all power lines as required by the Utility Owner and owning agency, including the neutral line.

Photometric Analysis - The Design-Builder shall use the AGI32 software to complete a photometric analysis for all locations where an existing light pole is moved more than 15 feet from its current location. The Design-Builder's photometric analysis shall include, but not be limited to, the following:

- Minimum average maintained horizontal lighting intensities (footcandles); maximum uniformity ratio (average/minimum) and maximum veiling luminance ratio (maximum veiling luminance/average luminance); light pole locations and heights; luminaire types, distributions, and wattage; and quantities of each.
- Consideration of Roadway safety, ease and cost of maintenance, consistency with adjacent Roadway lighting designs, annual energy costs, provision for future lighting needs and local planning policies.
- Lighting contours for nighttime illumination shall show the distances from the light source at lighting levels 1.0, 0.5, and 0.2 foot candle. Lighting contours of 0.1 and 0.05 foot candle shall be provided for permanent surfaces adjacent to sensitive areas such as nearby streams and rivers. Topographic plan features shall be shown at least 250 feet beyond the illumination contours.
- Lighting calculation grid spacing shall be five feet by five feet for Roadway and adjacent sensitive areas.

The Design-Builder shall consider the three-dimensional aspects of the Roadway with respect to the positioning of the illumination assemblies. The analysis may be presented using two-dimensional computer modeling for areas where vertical considerations are minimal, and the analysis shall consider using three-dimensional computer modeling where elevated ramps, bridges and retaining walls impact lighting of the adjacent or below Roadways.

b. Electrical Systems - The Design-Builder shall design and construct any impacted electrical systems consistent with Standards and the DB Standard Technical Specifications.

1. Electrical Service Coordination and Agreements - The Design-Builder shall prepare and provide to the Agency Engineer the technical information necessary for requesting the removal or modification of existing electrical services, and installation of new electrical services prior to developing agreements and coordinating with Utilities. Such information shall include, but not be limited to, location of services and required service voltage and amperage.

a) Electrical Service Agreements - The Design-Builder shall coordinate with the Agency Engineer to request and obtain any new or modified Service Agreements from the electrical Utility Owner that are required for the Project. The Agency will be responsible for paying any agreement costs and the monthly electric bills.

2. Permanent Electrical Service – The Design-Builder shall design and construct permanent electrical service connection points utilizing ODOT service cabinets with electrical meters, or as required by the agency that owns the corresponding equipment and the electrical Utility Owner, with metering, circuit protection, voltage transformation and distribution systems as needed for any electrical systems impacted by Work required for remediation of Settlement Curb Ramps.

3. Temporary Electrical Service - The Design-Builder shall maintain electrical power to all existing illumination systems, ITS systems and traffic signals during construction of the Project, unless otherwise approved in writing by the Agency Engineer.

The Design-Builder shall design and construct temporary electrical service in accordance with Standards and the DB Standard Technical Specifications as required to keep illumination, signals, ITS, and other services functional during Project Work and transition to permanent power.

The Design-Builder shall include drawings and details for temporary electrical service systems in Design Review submittals for Agency Acceptance.

4. Service Cabinets and Equipment - The Design-Builder shall furnish and install all Agency owned electrical service cabinets, transformers and associated Equipment when required as a result of Work required for remediation of Settlement Curb Ramps. Existing service cabinets and equipment, if replaced, shall be removed in accordance with this Subsection DB141.24.

5. General Requirements:

a) Electrical Service Branch Circuits - Electrical services shall be provided and installed by the Design-Builder for all electrical systems when existing Electrical services to those systems are impacted by Work required for remediation of Settlement Curb Ramps. Electrical services must meet Agency and all relevant standards.

The Design-Builder shall route all distribution conduits and conductors to transformers, contactor cabinets, ITS cabinets, illumination Standards, traffic signals, and other equipment utilizing the electrical service underground.

The Design-Builder shall evaluate existing electrical services that are modified or have the electrical loads increased using the requirements corresponding to the relevant utility.

The Design-Builder shall provide electrical services that offer sufficient access for the owning agency and comply with the requirements of the serving Utility.

b) Conduit System – The Design-Builder shall install all underground cables and conductors in conduit. The Design-Builder shall follow the relevant Agency or Local Agency standard depending on roadway jurisdiction.

Existing conduit under pavement may be reused if the existing pavement remains, provided the conduit is free of debris, is in good repair, and is proofed, cleaned, and mandrel tested in accordance with the respective DB Standard Technical Specifications.

The minimum allowable size of conduit for illumination systems is 2 inches in diameter, with the following exceptions. The Design-Builder shall install 1 inch conduit between the light standard and the first junction box unless where conduit fill calculations require a greater diameter.

c) Junction Boxes - Where possible, junction boxes located in the ground shall not be located within paved areas. The Design-Builder shall coordinate with the Agency and the respective owning agency when considering installation of heavy duty junction boxes. The Design-Builder shall not install junction boxes in the traveled way or auxiliary lanes.

If the Design-Builder uses an existing junction box installed by others, the Design-Builder shall clean and adjust the junction box to grade. The existing junction boxes used by the Design-Builder must meet all requirements included in this Subsection DB141.24 and the Standards.

New junction boxes outside of paved areas shall be provided with non-metallic lids. Existing metallic junction box lids that are to remain shall be grounded. Utility junction boxes removed from existing concrete surfaces shall be replaced with new.

d) Conductors, Cables, and Wiring - All conductors for Agency owned electrical systems, shall be copper, rated for 600 volts, and shall be in accordance with the Standards. For Local Agency owned systems, all conductors shall be in accordance with the applicable agency Standards.

e) Electrical Equipment - The Design-Builder shall design, furnish, and install all electrical equipment, including but not limited to power cabinets, lighting contactor cabinets, lighting control cabinets, raceways, conduits, terminal/junction boxes, switches, receptacles, cables, conductors, and wiring. Separation

between the electrical components shall be in accordance with the Standards and the NEC.

f) Power Panel Boards - The Design-Builder shall design, furnish, and install power panel boards as necessary due to impacts from Work required for remediation of Settlement Curb Ramps. The power panel boards shall be consistent with Agency Standards or owning agency service cabinet standards, as appropriate.

All panel boards and circuit breakers (including spare circuit breakers) shall be labeled.

g) Delivery of New Illumination and Roadway Electrical Equipment - Initial delivery, storage and movement of illumination and Roadway electrical components from one location to another during the course of the Work shall be the responsibility of the Design-Builder. The Design-Builder shall supply all equipment and personnel needed to load, transport, and unload all components required herein.

c. Design Coordination:

1. Coordination with Other Disciplines - The Lead Illumination and Electrical Design Engineer shall coordinate with the ITS and traffic signals designers to determine cabinet locations and approximate loads. The Lead Illumination and Electrical Design Engineer shall coordinate with the Roadway designers for required Equipment space and staging considerations. Where practical, and as acceptable to agencies involved, the Design-Builder shall combine power service for street lighting and traffic signals into one cabinet.

2. Aesthetic Coordination – The Design-Builder shall provide aesthetic illumination designs in accordance with DB141.27.

3. Field Review and As-Constructed Verification - The Design-Builder shall be responsible for field verifying any as-constructed information for existing ODOT and owning agency electrical systems and shall identify and document all existing electrical equipment, by design area, impacted by construction that is not otherwise documented.

(5) Testing of Illumination and Electrical Systems - The Design-Builder shall provide at least 21 Calendar Days' notice to the Agency Engineer before performing any required testing of illumination or electrical systems Work. The Agency Engineer will coordinate with the necessary Agency personnel to witness the testing. The Design-Builder shall perform all such testing in the presence of the Agency personnel as identified by the Agency Engineer. The Design-builder shall allow a minimum of 7 Calendar Days' notice for changes in schedule to be accommodated.

(6) Illumination and Electrical System Acceptance - The Design-Builder shall notify the Agency Engineer in writing when all illumination and electrical systems requirements have been met for an electrical system. Within 21 Calendar Days of such

request, the Agency will perform the inspection for electrical work conducted as part of the Project.

(d) Submittals:

(1) Photometric Analysis – The Design-Builder shall submit an electronic copy of the photometric analysis for Agency Review and Comment with the Definitive Design and Interim Design Review submittals in AGI32 and PDF formats, with the photometric data files in IES standard format for the luminaires.

(2) Illumination and Electrical Plans - The Design-Builder shall submit illumination and electrical plans with each design submittal.

The Plans shall include, but are not limited to, the following items:

- Existing Utilities;
- Location of light standards, service cabinets, conduits and junction boxes required for installation;
- Luminaire schedule specifying mounting height, luminaire type, distribution, lamp, voltage, wattage, station and offset, and service number;
- Location and identification of receiving lighting control cabinet, ITS cabinet, traffic signal cabinet, or cabinets within the design Area.
- A one-line schematic diagram (or diagrams) for electrical distribution from the service cabinet to the receiving lighting control cabinet, ITS cabinet, traffic signal cabinet, or cabinets within the design Area. The one-line shall identify the number and size of conductors, the size and type of conduit serving the receiving cabinet(s) and the main breaker size in each receiving cabinet.
- Electrical service location(s) within the design area, including the location and identification of the entrance cabinet, the service voltage, metering, and service agreement number.
- Identification of existing illumination to remain; and
- All identified non-standard design items, if any.

(3) Shop Drawings - The Design-Builder shall prepare and submit shop drawings and Working Drawings in accordance with the DB Standard Technical Specifications and the Accepted Design-Builder Specifications. Shop drawings and product data shall include, but are not limited to, the following:

- Light Poles and mast arms for each type and size;
- Light pole foundations for each type;
- Light-pole height verification for each pole;
- Luminaires and LED lamps;
- LED Drivers and photoelectric controls;
- Architectural lighting luminaires, controllers, and contactors;
- Wiring diagrams;

- Service cabinets;
- Enclosed circuit breaker safety disconnect switches;
- Electrical panels;
- Circuit breakers;
- Lighting contactors, relays, and other protective devices;
- Conduits;
- Grounding and lightning protection equipment;
- Concrete for foundations;
- Junction boxes; and,
- Conductors, cables, and wiring.

DB141.25 Permanent Traffic Control:

(a) Scope - This Subsection DB141.25 covers the design and installation or construction, as applicable, of permanent traffic-control devices, including signs, traffic Structures, Pavement markings, and traffic signals (including ramp meters, automatic traffic recorders, and intersection traffic signals) along the Project corridor.

(b) Standards and Manuals - The Design-Builder shall design and install or construct, as applicable, all signing, traffic signals, Pavement markings, traffic Structures, and related Equipment in accordance with the Standards and other requirements of this Subsection DB141.25 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.25 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.)

- FHWA Manual on Uniform Traffic Control Devices for Streets and Highways
- Oregon Supplements to the Manual on Uniform Traffic Control Devices
- Oregon Department of Transportation (ODOT) *Sign Policy and Guidelines*
- ODOT Sign Design Manual
- ODOT Bicycle and Pedestrian Design Guide
- ODOT Blue Sheets for Submittals on Electrical Equipment and Materials
- ODOT Green Sheets for Submittals on Controller Equipment
- ODOT Traffic Signal Policy and Guidelines
- ODOT Traffic Signal Design Manual
- ODOT Traffic Signal Drafting Manual
- ODOT Traffic Line Manual
- ODOT Pavement Marking Design Guidelines
- ODOT R2 Striping Strategy
- ODOT Traffic Structures Design Manual
- ODOT Standard Plans
- Permanent Traffic Local Agency Standards – included in Attachment A – Engineering Data

References:

- AASHTO, "A Policy on Geometric Design of Highways and Streets" (Green Book)
- AASHTO Roadside Design Guide
- AASHTO A Policy on Geometric Design of Highways and Streets
- Electrical Industries Alliances Standards and Technical Publications
- ITE Traffic Control Devices Handbook

- FHWA Traffic Control Systems Handbook
- Institute of Transportation Engineers (ITE) Traffic Engineering Handbook
- Institute of Electrical and Electronics Engineers National Electrical Safety Code
- National Fire Protection Association/
- National Electrical Code (NECI)
- AASHTO Standard Specifications for Structural Supports for Highway Signs, Luminaires, and Traffic Signals, latest edition adopted by owning jurisdiction
- Transportation Research Board Highway Capacity Manual
- FHWA Standard Highway Signs and updates
- Oregon Travel Experience Business Traveler information Signing Program

(c) Requirements:

(1) General - The Design-Builder shall provide modifications to permanent traffic control elements when impacted or required by Work required for remediation of Settlement Curb Ramps. Refer to DB141.24 for additional information related to obtaining power connections for relevant permanent traffic control elements.

All intelligent transportation system (ITS) infrastructure Equipment shall be protected in place with the exception of minor adjustments to communication wires and conduits such that they do not impact the operations of the ITS network.

(2) Design and Construction:

a. Signs - The Design-Builder shall develop signing Plans for each Design Unit for all locations that are necessary due to impacts from Work required for the remediation of Settlement Curb Ramps. Signing plans may be combined with pavement marking plans. Combined signing and pavement marking plans must include the title block add-on information for signing and the project “V” number according to the ODOT CAD Manual.

The Design-Builder shall include signing Plans for Agency Acceptance with the Interim Design Review and Readiness-for-Construction (RFC) Design Review submittals.

The Design-Builder shall install signs according to the Accepted RFC Plans and Specifications and in compliance with the Standards and other requirements of this Subsection DB141.25 and the DB Standard Technical Specifications. The Design-Builder shall provide lateral clearance for all signs in accordance with the requirements of the owning jurisdiction's design Standards.

b. Pavement Markings - The Design-Builder shall develop a Pavement Marking Plan for each Design Unit at all locations that are necessary due to impacts from the Work required for remediation of Settlement Curb Ramps. Pavement marking plans are not required when pavement marking is included on the sign plans. Pavement markings shall match existing, or for relocated crosswalks match existing type of

pavement markings following the ODOT Region 2 Striping Strategy**,** included in Attachment A - Engineering Data.

Beginning with the Definitive Design Review submittal, the Design-Builder shall include Pavement markings plans with all Design Review submittals.

The Design-Builder shall install permanent Pavement markings according to the Accepted RFC Plans and Specifications and the Standards.

c. Traffic Signals – The Design-Builder shall develop their ADA curb ramp design to minimize impacts to existing traffic signal systems. Full signal replacement must be avoided, and mast arm pole and strain pole replacement will require Agency approval. An initial evaluation of potential traffic signal related work that may be required due to the Work required for remediation of Settlement Curb Ramps is included in DB General Provisions, Attachment C – Reference Documents and includes the following documentation:

- Signal Evaluation Matrix
- Signal Field Notes

The Design-Builder shall provide modifications to traffic signals in compliance with Standards and other requirements of this Subsection DB141.25 and the DB Standard Technical Specifications. Deviations from the standards will be considered by the Agency under the following conditions:

- The deviation will result in minimizing impacts to property owners
- The deviation will result in avoidance of a historic property
- The deviation will result in minimizing signal impacts

The Design-Builder shall develop a Traffic Signal Plan for each location requiring a modified traffic signal including pedestrian push button and vehicle detection adjustments or installations.

The Design-Builder shall include plans, details, and Operations Approval requests for traffic signals with the Definitive Design Review submittals. See also DB155.08.

The Design-Builder shall not allow vehicle and pedestrian detection (when present) to be out of service. The Design-Builder shall install any new required permanent vehicle detection prior to beginning any curb ramp work unless otherwise approved by the Agency at signalized intersections.

The Design-Builder shall provide audible push buttons within the following city limits where existing push buttons exist when impacted by the Work required for remediation of Settlement Curb Ramps:

- Salem

- Springfield
- Corvallis
- Newberg
- Independence

For all modified traffic signals where vehicle detection is impacted by the Work required for remediation of Settlement Curb Ramps, the Design-Builder shall replace impacted detection with the existing detection method or the owning agency jurisdictional standard.

The Agency will develop signal timing for all signals impacted by the Work required for remediation of Settlement Curb Ramps when necessary. The Design-Builder shall provide at least 72 hours of advance notification to coordinate with the Agency Engineer and Region Electrical Manager for any traffic signal timing changes required in accordance with the Accepted RFC Plans and Specifications.

The Design-Builder shall notify in writing, the Agency Engineer a minimum of 7 Calendar Days before removing any existing signal cabinet Equipment.

d. Rectangular Rapid Flashing Beacons (RRFBs) – The Design-Builder shall modify RRFBs when impacted by the Work required for remediation of Settlement Curb Ramps.

Modified RRFB systems shall provide the same power connection as existing and be in accordance with the manufacturer's recommendations.

The Design-Builder shall provide RRFBs in compliance with Standards and other requirements of this Subsection DB141.25 The Design-Builder shall include drawings, details, and Operations Approval requests for RRFBs with the Definitive Design Review submittals for each location requiring a modified RRFB. See also DB155.08.

e. Flashing Beacons – If the Work required for remediation of Settlement Curb Ramps impacts flashing beacons, the Design-Builder shall modify the flashing beacons consistent to provide an equal or better system.

The Design-Builder shall include drawings, details, and Operations Approval requests for flashing beacons with the Definitive Design Review submittals. See also DB155.08.

f. Traffic Structures – When traffic Structures are impacted by the Work required for remediation of Settlement Curb Ramps, the Design-Builder shall modify traffic Structures to current Standards. Traffic Structures include but are not limited to minor sign and luminaire supports.

The Design-Builder shall provide and install 12 gauge, 2.5-inch perforated steel square tube post for minor sign supports unless wind load calculations require larger supports.

The Design-Builder shall account for the placement of traffic Structure supports on or adjacent to retaining walls. The Design-Builder shall isolate Highway traffic Structure loads from all wall systems except for cast-in-place concrete retaining walls.

(d) Submittals - The Design-Builder shall submit the following to the Agency Engineer:

(1) Sign and Permanent Pavement Marking Plans:

- Preliminary Plans– with Definitive Design Review submittals
- Final Plans, including sign panel shop drawings for non-standard signs – with RFC Design Review submittals

(2) Traffic Signal, RRFB and Flashing Beacon Plans:

- Wheelchair diagrams – with Definitive Design Review submittals
- Preliminary Traffic Signal Plans – with Definitive Design Review submittals
- Advance Traffic Signal Plans and Cabinet Prints with applicable ODOT Region Traffic Engineer and State Traffic-Roadway Engineer approval request – with Interim Design Review submittals
- Final Plans – with RFC Design Review submittals

(3) Traffic Structures Plans:

- Preliminary Plans – with Definitive Design Review submittals
- Advance Plans – with Interim Design Review submittals
- Final Plans – with RFC Design Review submittals
- Working Drawings – prior to construction (see Section DB155)

(4) Traffic Quality Checklist: with RFC (Form 764-5372) signed by the Design Quality Lead.

DB141.26 Pavement:

(a) Scope - This Subsection covers the design and installation or construction, as applicable, of Pavements and preservation of Pavements for areas impacted by the Work required for remediation of Settlement Curb Ramps.

(b) Standards and Manuals - The Design-Builder shall install or construct, as applicable, all Pavement in accordance with the Standards and other requirements of this Subsection DB141.26 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional Standards and Manuals for this Subsection DB141.26 are listed below. (This is not a comprehensive list. Other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify them.)

- ODOT *Pavement Design Guide*
- ODOT Design-Builder Mix Design Guidelines for Asphalt Concrete
- AASHTO *1993 Guide for the Design of Pavement Structures*
- AASHTO Mechanistic-Empirical Pavement Design Guide
- Technical Advisory CO23-01(A), included in DB General Provisions, Attachment A – Engineering Data.

References:

- Distress Manual for the Long-Term Pavement Performance Project, SHRP P-338, SHRP Program, NRC, Washington D.C.

(c) Requirements:

(1) Agency Pavement Design – The Design-Builder shall provide Pavement in accordance with the Technical Advisory CO23-01(A), for all locations within the Project Site.

a. Materials - The Design-Builder shall base the selection of Materials on the requirements of the ODOT Pavement Design Guide and *Technical Advisory C023-01(A)*. Materials must meet or exceed the Standards and other requirements of this Subsection DB141.26 and the DB Standard Technical Specifications.

- The Design-Builder shall submit all mix designs to the Agency for Acceptance according to the *Design-Builder Mix Design Guidelines for Asphalt Concrete*.

(d) Submittals – The Design-Builder shall prepare all submittals in accordance with the requirements of this Subsection DB141.26, *Technical Advisory CO23-01(A)*, and the ODOT *Pavement Design Guide*. The Design-Builder shall submit the following to the Agency for Acceptance:

- Pavement Plans (typical sections and details) where relevant and Design-Builder Specifications - with the Interim Design Review submittal

- Pavement Mix Designs - At least 30 Calendar Days prior to the scheduled date of installation for each affected Pavement section according to the *Design-Builder Mix Design Guidelines for Asphalt Concrete*.

DB141.27 Landscape and Aesthetics:

(a) Scope - This Subsection DB141.27 covers the requirements for design and construction of landscape and aesthetic elements impacted by or the Work required for remediation of Settlement Curb Ramps. The Design-Builder shall conduct Work necessary to design and construct the landscape, and overall aesthetic treatments for the Project to bring items impacted in-kind or to current standards and install new landscaping when required by Subsection DB141.27. For the purposes of this Subsection DB141.27, the term "architectural" includes aesthetic treatments of Structures, such as treatment of walls, rails, ramps, and pavements. For the purposes of this Subsection DB141.27, the terms "landscape" and "landscaping" include Soil preparation, planting, seeding, irrigation, weed control, and plant establishment.

(b) Standards and Manuals - The Design-Builder shall design and construct architectural and landscape elements in accordance with the Standards and other requirements of this Subsection DB141.27 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.27 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.)

- ODOT *Roadside Development Manual*

References:

- (ANSI) American Nursery & Landscape Association American Standard for Nursery Stock, ANSI Z60.1-2004

(c) Requirements:

(1) General - The Design-Builder's architectural and landscape design for the Project shall address details including but not limited to materials, scale and dimensions, form, texture, and colors of the architectural and landscape design elements. The Design-Builder shall perform the following:

- Provide a record, using photographic and written documentation, of all existing architectural and landscape conditions prior to demolition activity. This includes, but is not limited to, identification of all existing plant material by species and size.
- Coordinate with the Agency for replacement of all disturbed existing and new architectural and landscape elements.
- Identify any new locations that may need landscaping treatments due to design from the Work required for remediation of Settlement Curb Ramps.

Replace in-kind all disturbed architecture and landscape, as approved by the Agency and Local Agency, to match existing architecture and landscape. This includes, but is not limited to, the repair and replacement of any disturbed existing irrigation systems, and watering during construction as needed to keep all impacted planting alive and in a healthy condition.

(2) Design - The Design-Builder shall:

- Minimize impacts to landscaping and aesthetic treatments due to the Work required by remediation of Settlement Curb Ramps
- Shall not narrow pedestrian pathways by increasing landscaping areas
- Softscaping or bark mulch should be avoided in newly created landscaping areas, this could be avoided by the use of ADA flares or another treatment approved by general design exceptions.
- Shall use landscaping consistent with Agency, Local Agency, or private owner guidelines when in an area with aesthetic and landscaping requirements (see Landscape and Aesthetics Memo, included in Attachment C – Reference Documents for examples)

a. General – The Design-Builder shall provide landscaping that does not require irrigation systems for survival, with the exception of in-kind repair and replacement or as required by the Local Agency. Refer to Subsection DB141.22 for additional requirements pertaining to stormwater facilities.

b. Seeding - The Design-Builder shall use a site-appropriate seed mix.

c. Replacement Tree and Plant Material - The Design-Builder shall replace existing disturbed tree, shrub and groundcover planting with the same species or as approved by the Agency. The Design-Builder shall replace all plant material with the following minimum sizes:

- Deciduous tree replacement with 1-inch minimum caliper, unless otherwise required by the Local Agency.
- Conifer tree replacement with 5-6-foot height, unless otherwise required by the Local Agency.
- Replacement of shrubs taller than 36-inches with minimum 5-gallon container, unless otherwise required by the Local Agency.
- Replacement of shrubs shorter than 36-inches with minimum 1-gallon container unless otherwise required by the Local Agency.
- Replacement of groundcover with minimum 1-gallon containers at spacing that will achieve 100% coverage within three growing seasons, unless otherwise required by the Local Agency.

d. Tree Preservation - The Design-Builder shall limit the removal of existing trees from the Project Site.

The Design-Builder shall mark trees and other vegetation to be saved prior to the start of Project construction activities, as well as those to be removed. The Design-Builder

shall show trees to be removed and trees to be saved, and provide tree protection Best Management Practices on the landscape Design Documents.

Existing trees shall be protected from all activities within the tree root protection zone that would cause damage to the tree, including its roots as a result of Soil compaction within the tree's root zone. Heavy construction equipment, vehicles and materials shall not be stored within a tree's root protection zone.

Designs that propose new surface within the root protection zone of an existing tree with 6-inch DBH or greater shall be reviewed by an arborist prior to submitting RFC. The tree root protection zone is defined by 1 foot of radius per 1 inch diameter at breast height (DBH) measured from the edge of the tree trunk. If construction impacts cannot be avoided within the root protection zone of an existing tree with 6-inch DBH or greater, an arborist shall be present during construction activities to monitor and provide recommendations if significant tree limbs and or roots are damaged. Designs that propose new pavement within the root protection zone of an existing tree with 6-inch DBH or greater shall be reviewed by an arborist prior to approval for construction. Any required permits or coordination with the corresponding local agency shall occur prior to construction in the area.

e. Seeding Establishment and Plant Establishment – The Design-Builder shall perform seeding establishment and planting establishment in accordance with the DB Standard Technical Specifications.

(d) Submittals - The Design-Builder shall prepare and submit the following documents in accordance with Section DB155 and with each Design Review submittal package:

- Architectural Design
- Landscape Design

The Design-Builder shall submit any required samples, such as color verification samples, and information with the Definitive Design Review submittal.

The Design-Builder shall submit As-Constructed Plans in accordance with Section DB155.

DB141.28 Surveying and Mapping:

(a) Scope - This Subsection DB141.28 covers the requirements for land surveying and mapping for the Project.

The Design-Builder shall conduct all Work necessary to complete the land surveying and mapping for the Project in accordance with the requirements of this Subsection DB141.28. This work includes, but may not be limited to:

- Verification of Agency provided survey
- Gathering of any additional survey that they determine is needed for the Project
- Survey work associated with legal descriptions
- Survey required for utility identification
- Pre and post Construction survey Work
- ROW Monumentation
- Records of survey
- Any other types of surveys necessary to complete the Project.

(b) Standards and Manuals – The Design-Builder shall perform land surveying and mapping services in accordance with the Standards and other requirements of this Subsection DB141.28 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.28 are listed below. These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other publications.

- ODOT *Survey Policy and Procedure Manual* (SPPM)
- ODOT *Construction Surveying Manual for Design-Builders*
- ODOT *Manual for Survey Control Data Sheets for Construction Plans*
- ODOT *Survey Filing Map Standards: Control, Recovery and Retracement Surveys*
- ODOT *Survey Filing Map Standards: Right of Way Monumentation*
- ODOT *Survey Control Data Sheets for Construction Plans*

References:

- ODOT Right of Way Engineering Manual
- ODOT History of State Highways
- ODOT GNSS Guidelines
- ODOT OCRS Handbook & User Guide
- ODOT RITS Metadata Worksheet
- ODOT Approved Easements List

(c) Requirements:

(1) General - The Agency does not warrant the accuracy of the survey information provided, except as described in this Subsection DB141.28. Any discrepancies between the Design-Builder's survey data and the survey information provided by the Agency shall be brought to the Agency's attention immediately by the Design-Builder. The Design-Builder shall be solely responsible for verifying the accuracy of all survey information provided.

The Design-Builder shall prepare survey Work that is suitable for preparation of Design Documents and Readiness-for-Construction Plans, and which meets the requirements of the Contract Documents and complies with DB Standard Technical Specifications and Oregon Revised Statutes

All electronic mapping file submittals must be compatible with the Agency's current version of MicroStation and Open Roads.

The Design-Builder shall obtain all required permits and issue all required public notifications for access and rights of entry prior to beginning field Work.

a. Personnel Qualifications - The Design-Builder shall designate a Survey Manager for the Project. The Survey Manager shall be registered as a Professional Land Surveyor in the State of Oregon. The Survey Manager shall be the single point of contact for all survey activities.

All survey Work must be prepared by, or under the direct supervision of, a registered Oregon Professional Land Surveyor.

(2) Control - Project Survey Control information is included in the Survey Data in Attachment A – Engineering Data.

The Design-Builder shall notify the Agency immediately if any ambiguities or conflicts in the primary survey control are discovered. If additional survey control is established for the Project, the Design-Builder shall follow all current Agency procedures and submit all required documentation to the Agency for Review and Comment within 21 Calendar Days after the completion of the field survey.

(3) Mapping – Agency-provided mapping is provided as described below:

Mobile LiDAR data has been collected throughout the Project. Basemap models of curb ramps and adjacent roadway included in the Project scope have been created for some locations based on the LiDAR data. No effort has been made to fill in obscured areas or include subsurface utilities. The mapping data can be found in Survey Data, included in Attachment A – Engineering Data.

a. The Design-Builder shall revise, supplement, or update the Agency-provided mapping data as necessary to meet the requirements of all Standards. The Design-Builder shall submit all revised, supplemental, or updated mapping to the Agency for Review and Comment within 21 Calendar Days after the completion of the field survey.

(4) Additional Requirements:

a. General – The Design-Builder shall maintain detailed survey records, including a description of the survey Work performed on each shift, methodology, and control points used. Survey records must include but are not limited to graphical notes depicting control points used and relationship to other control points or reference points, monument descriptions, coordinates, and location description. Permanent and temporary benchmarks must also have approximate geodetic coordinates or graphical notes depicting description. In addition, elevation, coordinates, and location description must be notes. A raw data printout from the data collection software is not considered an adequate or acceptable survey record for submittal to the Agency.

The Design-Builder shall submit the required construction survey records and reports to the Agency for each week of work by the end of the following week.

Design-Builder shall perform survey activities including, but is not limited to, the following:

- Verifying survey data furnished by the Agency and notify the Agency immediately if any ambiguities or conflicts are discovered in the Agency-provided mapping;
- Establishing additional permanent secondary survey control as needed, using the record primary survey control as a basis. Permanent survey control shall be referenced to the finalized Right-of-Way centerline alignment and labeled as such on the Control, Recovery, and Retracement survey filing map and also on the Right-of-Way monumentation survey filing map;
- Locating all existing public or private survey monuments within the Project Site not previously located or mapped by the Agency; and
- Providing construction staking and layout, as necessary, to adequately locate, construct or check all construction activity.

b. ROW Survey Engineering – The Design-Builder shall:

- Determine the necessary ROW to accommodate the construction (see DB174.20);
- Participate in the ROW Design/Layout meeting to obtain Agency concurrence on the ROW Design/Layout Map prior to preparing legal descriptions, sketches, and/or addenda or ROW Information Tracking System (RITS) data sheets;
- Develop a ROW Basemap at the detail needed for construction;
- Prepare Survey Filing Map (ORS 209) prior to the RFC Plan submittal for a Design Unit;
- Prepare written property description and addenda or RITS data sheets based on the Agency-accepted ROW Design/Layout Map;
- Prepare legal descriptions and accompanying sketch map(s) consistent with the ODOT ROW Engineering Manual;
- Support the Project ROW acquisition with staking as needed;

- Map the existing highway accesses within the Project Area as required for changes in access control as needed; and
- Finalize the ROW/Design Layout Map as a ROW acquisition map in a format acceptable by ODOT's Maps and Plans.

The Design-Builder shall develop legal descriptions for all ROW requests. The person conducting legal descriptions shall have attended and completed an ODOT-provided legal description training course provided by Agency staff no less than 6 months prior to beginning Work within time to conduct legal descriptions. Legal descriptions shall be based on the accepted ROW Design/Layout Map (see DB174.20(c)(9).

The Design-Builder shall submit draft legal descriptions in Word format, sketch maps in PDF format, and ROW Design/Layout Map and the associated RITS metadata sheet or addendum for Review and Comment by corridor. The Design-Builder shall submit final legal descriptions in PDF format. No more than 20 files shall be submitted for review within 14 Calendar Days. The files shall follow the ODOT ROW Engineering Manual and must be submitted and labeled by the Design Unit.

The Design-Builder shall place stakes as needed for appraisals and landowner negotiations or at other times at Agency Engineer request. This effort may include existing ROW, proposed ROW, proposed easement(s), proposed environmental mitigation sites, construction grades, slope staking, utility locations, and utility relocations.

c. Right-of-Way Monumentation - The Design-Builder shall complete a ROW Monumentation Survey in accordance with the ODOT *Survey Policy and Procedure Manual* and ORS 209.140 through 209.155. The Design-Builder shall perform all ROW monumentation survey Work under the direction and supervision of a Professional Land Surveyor registered in the State of Oregon.

If a preconstruction survey has been provided by the Agency, the Design-Builder shall verify that all survey monuments which could be disturbed or destroyed during the Contract are perpetuated according to ORS 209.140 through 209.155. The Design-Builder shall provide documentation showing compliance with ORS 209.140 through 209.155 to the Agency at least 21 Calendar Days before the start of any activity which could disturb or destroy a survey monument.

If a preconstruction survey has not been provided by the Agency, the Design-Builder shall document and perpetuate all public and private survey monuments, which could be modified, disturbed, or destroyed during the Contract, with a Control, Recovery and Retracement Survey Filing Map, in accordance with the ODOT *Survey Policy and Procedure Manual*, the ODOT Survey Filing Map Standards, ROW Monumentation Surveys Manual, and ORS 209.140 through 209.155 prior to construction for a Design Unit.

Upon completion of the Project, the Design-Builder shall prepare a minimum of one ROW Monumentation Survey Filing Map in accordance with ORS 209.155. All survey monuments removed, replaced, or set during the Project shall be documented on the

ROW Monumentation Survey Filing Map. The Design-Builder shall finalize the ROW map for ODOT Maps and Plans Center.

The ROW Monumentation Survey shall fully mark the Highway ROW within the Project and comply with ORS 209.155(2). The Design-Builder shall provide copies of the ROW Monumentation Survey Filing Map to the Agency for Review and Comment prior to filing with the county. After Review and Comment and filing with the county, the Design-Builder shall provide the Agency Engineer with PDF copies of the final filed survey.

The Design-Builder shall "Deed Record" the ROW map per the ROW Engineering Manual, add reference(s) of the recorded monumentation survey filing map, and submit the final ROW map to the ODOT Maps and Plans Center.

(d) Submittals:

(1) Survey Records and Submittals - The Design-Builder shall deliver electronic files of the survey records to the Agency within 30 Calendar Days after Final Second Notice. The electronic files must follow the format for the software programs provided in Section DB155.

(2) ROW Engineering – The Design-Builder shall submit the following:

- Survey filing map (ORS 209) prior to the RFC Plan submittal for a Design Unit;
- Written property description and addenda or RITS data sheets based on the Agency-accepted ROW Design/Layout Map submitted by corridor;
- Draft legal descriptions and accompanying sketch map (Word);
- Final legal descriptions and accompanying sketch map (PDF); and
- ROW acquisition maps for Review and Comment.

(3) Right-of-Way Monumentation Survey – The Design-Builder shall conduct a ROW Monumentation Survey in accordance with the requirements of the SPPM, the ODOT Survey Filing Maps Standards, and applicable county Standards. The Design-Builder shall submit a draft copy of the ROW Monumentation Survey in both paper and electronic formats to the Agency for Review and Comment prior to submitting to the county for recording.

The ROW monumentation survey filing map must include, but is not limited to, the following:

- County recording number;
- All survey monuments which have been disturbed or destroyed by construction activities, with an indication showing which survey monuments have been replaced;
- All permanent horizontal and vertical control points within the Project, with an indication showing which control points have been destroyed by construction.

The Design-Builder shall submit an ODOT Survey Mark Report, form 734-2802, for all control points that have been destroyed by construction;

- All new or remaining survey monuments (non-control), shall be labeled with station and offset from the record ROW centerline alignment; and
- All monuments set in compliance with ORS 209.155(2), fully marking the Highway ROW within the Project.

The Design-Builder shall provide an electronic file (in both MicroStation DGN and PDF formats) of the filed copy of the ROW monumentation survey to the Agency within 180 days after Final Second Notification. The Design-Builder shall also provide a certification, stamped, and signed by the Design-Builder's Survey Manager, stating that the ROW monumentation survey complies with the required Standards.

(4) As-Constructed Plans – See Section DB155.

DB141.31 Temporary Traffic Control:

(a) Scope - The Design-Builder shall conduct all Work necessary to meet the requirements of this Subsection DB141.31. The Design-Builder shall prepare Traffic Control Plans (TCPs) including a Temporary Pedestrian Accessible Route (TPAR) Plans and conduct all on-site activities relating to traffic maintenance in accordance with this DB141.31 required to construct all Work required by remediation of Settlement Curb Ramps.

The Design-Builder shall provide Temporary Traffic Control and effective Traffic Control Measures (TCMs) throughout the Project Site to provide for the reasonably safe and effective movement of road users (motor vehicles, bicyclists and pedestrians) through or around the Work Zone while reasonably protecting road users and workers. The Design-Builder shall develop and implement Work Zone strategies to balance Work Zone safety and the efficient movement of road users to minimize construction impacts to residents, commuters, and businesses; and to provide a safe working environment for construction employees. The Design-Builder shall coordinate all local temporary traffic control with local agencies and Utility companies. The Design-Builder shall coordinate all temporary traffic control with the temporary traffic control planned or implemented on adjacent or overlapping projects.

The Design-Builder shall coordinate with local road Authorities and property owners regarding projects in the vicinity that may impact Project activities or be impacted by Project Work (see DB150.56). The Design-Builder shall provide lane closure schedules, detours, and construction staging schedules and other impacts that may affect the operation of the local road authority within their Project Schedule and Three Week Look Ahead schedule, and in accordance with DB Standard Technical Specifications, Subsection 00220.03.

All references to the TCP or TCPs throughout the Contract shall be interpreted to include the associated TPAR Plan or Plans.

(b) Standards and Manuals - The Design-Builder shall plan, design, and implement the TCP and corresponding TCM in accordance with the Standards and other requirements of this Section DB141.31 and the DB Standard Technical Specifications.

In addition to the Standards listed in DB141.00, additional applicable Standards and Manuals for this Subsection DB141.31 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work, and it is the Design-Builder's responsibility to identify such other applicable publications.)

- Current adopted version of the *Manual on Uniform Traffic Control Devices* (MUTCD) and Oregon Supplements
- FHWA *Standard Highway Signs*
- American Association of State Highway and Transportation Officials (AASHTO) *A Policy on Design Standards Interstate System*
- AASHTO A Policy on Geometric Design of Highways and Streets

- ODOT *Traffic Control Plans Design Manual* and applicable Technical Bulletins
- ODOT Oregon Temporary Traffic Control Handbook for Operations of 3 Days or Less (only for mobile Pavement marking operations or surveying Work)
- ODOT Traffic Line Manual
- ODOT Sign Policy and Guidelines for the State Highway System
- ODOT Oregon Portable Changeable Message Sign (PCMS) Handbook
- ODOT Transportation Management Plan (TMP) Project-Level Guidance Manual
- ODOT Mobility Procedures Manual
- ODOT Mobility Review Process – ADA Legal Settlement Projects for ADA Program Projects
- ODOT Work Zone Traffic Analysis Manual
- ODOT Operational Notice PD-16 – Highway Mobility
- ODOT Mobility Meeting Guidelines
- American Traffic Safety Services Association Quality Guidelines for Temporary Traffic Control Devices and Features

References:

- FHWA Manual for Assessing Safety Hardware (MASH)
- AASHTO Roadside Design Guide
- Transportation Research Board Highway Capacity Manual (HCM)
- Institute of Transportation Engineers Traffic Control Devices Handbook
- FHWA Traffic Control Systems Handbook
- FHWA Traffic Monitoring Guide
- FHWA Final Rule on Work Zone Safety and Mobility (23 CFR 630 Subparts J and K)
- FHWA Pedestrians and Bicycle Accommodations and Projects 23 United States Code Highway Section 2–7 - Chapter 2 Other Highways – 2018

(c) Requirements:

(1) General –. The following documents have been developed by the Agency to provide background on how the requirements were developed by the Agency for the temporary traffic control strategies and measures for the Project:

- Lane Closure Restrictions, included in Attachment A – Engineering Data
- Preliminary Mobility Considerations Checklist, included in Attachment C – Reference Documents
- Temporary Traffic Control Reference Document, included in Attachment C – Reference Documents)

The Design-Builder shall meet with the Agency at least 20 Calendar Days prior to submittal of the Definitive Design to discuss the Design-Builder's traffic control

concepts. The meeting agenda shall include discussion topics including but not limited to the following:

- Design-Builder's presentation of the TCPs concepts and strategies for the Project
- Design-Builder's plan to minimize length of TPAR detours
- Staging of curb ramp construction and plan to minimize closure times for ramps
- Analysis requirements and tools where necessary

The Agency's Review and Comment of the information presented by the Design-Builder at the meeting and any associated discussions between the Agency and Design-Builder related to the meeting do not constitute or guarantee Agency Acceptance of any subsequent Design-Builder temporary traffic control submittals.

For coordination related to other projects in the surrounding area, see DB150.55 and DB150.56.

(2) Construction– The Design-Builder shall perform construction support activities, including but not limited to the following:

- Performing management, inspection, maintenance and protection of traffic control activities and devices
- Maintaining safe and efficient traffic control within the Project Site during construction and periods of Suspension of Work, particularly at intersections with State or local Highways
- Providing TCMs relating to Access to private and public property within the Project Site, as well as protection and mobility for bicycles and pedestrians, while meeting current ADA requirements
- Submit to the Agency Engineer, in writing, for approval, all proposed closure schedules as follows (also see DB Standard Technical Specifications, Subsection 00220.03(b)):

    - **Bus stops or routes** – a minimum of 30 Calendar Days before bus stops or routes are closed or impacted.
    - **Driveways** – a minimum of 90 Calendar Days before driveways are closed or impacted.
    - **Access Impacts** – a minimum of 90 Calendar Days before an adjustment in impacts to accesses**.**
    - **Reduction or modification of parking –** a minimum of 14 Calendar Days before parking is impacted.

The Design-Builder shall include all traffic control activities in the Three Week Look Ahead and any Roadway closures shall be included in the Project Schedule and Three Week Look Ahead.

(3) Personnel and Work Zone Inspection – The Design-Builder shall provide the following personnel for traffic control management, development, implementation and maintenance for the duration of the Project.

a. Traffic Control Manager – The Design-Builder shall provide a Traffic Control Manager meeting the requirements of DB180.35. The Traffic Control Manager shall be responsible for ensuring overall Project traffic management meets all Contract requirements and that the TCP and methods of handling traffic are designed, implemented, evaluated, revised and maintained to ensure maximum safe and efficient flow of traffic through the Project area. The Traffic Control Manager shall oversee the activities of the Traffic Control Design Engineer (TCDE) and Traffic Control Supervisor (TCS).

The Traffic Control Manager shall submit each week to the Agency Engineer a weekly schedule identifying the specific TCS personnel to be on-site, including multiple TCS per shift or per 24-hour period, when applicable. The Design-Builder shall submit TCS schedules one week in advance of the identified work shifts.

The Design-Builder shall provide an available TCS for every construction work shift, on call at all times, and available at the Agency's request. As necessary, the Design-Builder shall appoint a certified Traffic Control Technician to perform TCS duties in the temporary absence of the TCS. Refer to DB180.35(a)(2) for additional requirements regarding availability and location requirements.

b. Traffic Control Design Engineer (TCDE) – The Design-Builder shall provide a TCDE to perform or directly oversee the development and engineering for the TPAR Designs and TCPs. The TCDE shall attend ODOT training, ODOT - ENG - Traffic Control Plans Design and the ODOT - ETSB - Temporary Pedestrian Accessible Route (TPAR) Design Training, within six months of starting work on this project. The TCDE shall oversee the design and implementation of the TCPs and any modifications to the TCPs, as needed during construction of the Project.

The TCDE responsibilities and TCPs shall include but not be limited to the following:

- Act as the Design-Builder's point of contact with the Agency Engineer for all TCP traffic management related issues and design coordination
- Oversee and approve the design of the TCP for each construction sequence
- Confirm TCP requirements and details with the Agency Engineer
- Identify TCP deficiencies and report findings to the Design-Build Project Manager and the Agency Engineer
- Make necessary corrections to the TCP prior to implementation.
- Attend all Project meetings where TCP and construction staging are discussed

The TCDE responsibilities during construction shall include but not be limited to the following:

- Review implementation of the TCP and consistency with Project requirements.

- Attend Project meetings where TCP and construction staging are discussed.
- Coordinate TCP deficiencies and report findings to the Design-Build Project Manager and the Agency Engineer.
- Make necessary corrections to the TCP.

The TCDE shall possess and maintain the following attributes, certifications and registrations for the duration of the Project:

- A Professional Engineer registered in the State of Oregon; and
- Minimum of 3 years' experience in designing and implementing TCPs and TPAR Designs. Experience total must be within 10 years prior to the starting date of the Project.

c. Traffic Control Supervisor (TCS) - The Design-Builder shall provide TCS equipped in accordance with DB Standard Technical Specifications, Section 00223.

The TCS shall provide Work Zone traffic control management on-site while temporary traffic control measures and devices are being set up, taken down, in need of adjustment, or for other Work Zone activities as identified by the Design-Builder or by the Agency.

The TCS responsibilities for each construction work shift shall serve as the Design-Builder's point of contact with the Agency for all TCP field coordination.

The TCS shall have appropriate resources, ability, and authority to make minor changes in the field, or to de-mobilize any construction operation that is causing excessive delays to traffic or creating an unsafe condition. The TCS shall report all changes to the TCDE within 24 hours after the change.

The TCS shall have at least 3 years of demonstrated Work Zone safety supervision experience, and shall meet certification and qualification requirements in accordance with the DB Standard Technical Specifications, Section 00223. The TCS shall have taken ODOT's training, ODOT - ETSB - Temporary Pedestrian Accessible Route (TPAR) Design Training within six months of beginning Work on this Contract.

A TCS is required to be within 30 miles of each individual Project Site during Project Work hours and be on the Project Site or available as necessary to fulfill the obligations of their position under the Contract and to address any issues as required by the Agency.

d. Flaggers – The Design-Builder shall provide and equip flaggers in accordance with DB Standard Technical Specifications, Section 00223.

e. Work Zone Inspection – The Design-Builder shall Inspect the Work Zone, in the daytime and at night, and at a minimum, check the quality, placement, visibility, and effectiveness of the following devices at the frequency shown, or immediately if safety or operational concerns arise:

Table DB141.31-1	
Traffic Control Device (TCD)	**Inspection Frequency**
Pavement Markings	Weekly
Temporary Signs (post/structure-mounted)	Weekly
Signs on Temporary Sign Supports (TSS)	Daily
Channelizing Devices	Beginning and end of shift, and as directed or as needed
Temporary Traffic Signals	Daily/Nightly
Temporary Concrete Barrier and Guardrail	Weekly
Temporary Impact Attenuators	Daily
Temporary Roadway Lighting	Nightly
Electrical Signs (PCMS, Sequential Arrows, Radar Speed Trailers)	Daily/Nightly

The Design-Builder shall provide documentation of the inspection weekly. The Design-Builder shall immediately repair or replace damaged or malfunctioning TCD.

(4) Traffic Incident Management - The Agency and Local Agencies will perform incident management on facilities open to Public Traffic. Immediately upon detection, the Design-Builder shall notify the Dispatch at 1-888-275-6368 of any vehicles blocking Traffic Lanes, disabled vehicles on Shoulders, or any Roadway debris that may present a traffic hazard to the public or cause traffic to deviate from normal traffic patterns.

Although not required to provide additional Equipment or personnel to the Agency's Incident Response Team, the Design-Builder shall make Materials and Equipment available on-site as requested by the Agency or Oregon State Police.

(5) Traffic Control Plan (TCP) & Temporary Pedestrian Access Route (TPAR) Plan - The Design-Builder shall prepare and provide a TCP or revised TCP to the Agency Engineer for Acceptance prior to commencing construction activities associated with or covered by the TCP. The Design-Builder shall not install temporary TCD or begin construction activities until the associated TCP has been Accepted by the Agency.

The Design-Builder shall develop Project-specific TCP sheets when Standard Drawings are not being used. When Standard Drawings are being used, the standard drawing number must be listed on the design sheets.

When developed, the TCP sheets must show construction staging on-site diversions; identify road closures and detours; and other temporary traffic control measures, as needed. The Design-Builder shall develop plan sheets to indicate temporary intersection changes, changes to Traffic Lane configurations and traffic signal layouts. The Design-Builder shall develop plan sheets to provide additional information, as needed, to adequately communicate other Project-specific construction details not otherwise shown on the Plans or Standard Drawings.

The Design-Builder shall provide at least one ADA-compliant temporary pedestrian accessible route, meeting the requirements of applicable Agency Design Standards, from site arrival points, including but not limited to accessible parking, sidewalk, public transit stops, and building entrances. The Design-Builder shall provide ADA-compliant temporary pedestrian access routes, meeting the requirements of applicable Agency Design Standards, to elements located within the public right-of-way, including but not limited to signal push buttons, drinking fountains, benches, kiosks, residential mailbox delivery units and other public services. The Design-Builder shall maintain existing pedestrian accessible routes to public facilities and public entrances in a condition equal to or greater than the condition of the routes as they existed immediately before NTP.

The TCP must identify the sequence for mobilization, construction staging, and diversion of traffic (if necessary) for the Work Zone and each corridor.

The Design-Builder shall include in the Design-Builder Specifications a description of any Access limitations for residents or business owners, including business hours, delivery schedules, or special circulation patterns. No full Access closures are allowed.

The Design-Builder shall coordinate temporary Access modifications and closures with businesses and residences. The Design-Builder shall maintain a record of communications with affected businesses and residences. Prior to Acceptance of Definitive Design, the Design-Builder shall submit to the Agency Engineer, the record of communications and any written documentation that supports resident or business owner approval to temporarily modify or close a current driveway or Access.

a. Temporary Pavement Markings - All temporary Pavement markings in the travel lanes must be installed prior to opening any sections of Roadway to traffic.

b. Design Vehicle and Design Speed – The Design-Builder shall use an AASHTO "WB-67" vehicle as the Design Vehicle unless otherwise approved by the Agency. The Design-Builder shall evaluate traffic vehicle classifications for other local Roadway facilities to determine the appropriate design vehicles for those facilities.

The Design-Builder shall use the pre-construction posted speed limit as the minimum design speed for the TCP design.

c. Business Access Signing - The Design-Builder shall include temporary "BUSINESS ACCESS" signs in the TCP as shown in Chapter 6 of the ODOT Sign Policy and Guidelines when existing Accesses are disrupted or temporarily modified due to construction staging. The Design-Builder shall install BUSINESS ACCESS signs on single-post TSS as shown on the Standard Drawings.

d. Access Requirements - The Design-Builder shall design and maintain private driveways and business Accesses consistent with DB Standard Technical Specification 00220 unless approved by the Agency.

The Design-Builder shall maintain Access for essential non-emergency services, including trash collection, mail delivery, and school buses. The Design-Builder shall install Type "B" "BUSINESS ACCESS" (CG20-11-610) signs and TCD on Oregon

State Highways as described in the ODOT Sign Policy and Guidelines and the ODOT Standard Drawings.

(6) TCP Processes - The Design-Builder shall prepare and include a TCP with all Design Review submittals, beginning with the Definitive Design Review.

The Design-Builder shall submit proposed TCP revisions to the Agency Engineer for Acceptance a minimum of 30 Calendar Days before implementing the revisions. Under emergency circumstances, the Design-Builder may implement necessary TCP modifications to maintain traffic and worker safety, and immediately provide the associated TCP changes to the Agency Engineer.

The Design-Builder shall identify all affected property owners and tenants. The Design-Builder shall make adjustments to the TCP necessary to address specific Access issues.

The Design-Builder shall maintain Access at all times to all businesses, residences, institutions, and properties adjacent or in close proximity to the Work Zone, except as allowed or otherwise indicated in DB Standard Technical Specifications, Section 00220.

The Design-Builder shall install advance notification and detour route signing for all scheduled road closures a minimum of 14 Calendar Days in advance of the closure. The Design-Builder shall keep detour route signing covered until the date of the closure. The Design-Builder shall provide appropriate, accurate and sufficient signing for detours and closures.

(7) TCP & TPAR Compliance - The Design-Builder shall be responsible for TPAR and TCP compliance and implementation. The Agency Engineer may suspend all or part of the Design-Builder's operations for failure to implement and comply with the TPAR or any TCP. The Agency Engineer may also suspend all or part of the Design-Builder's operations for failure to immediately initiate corrective measures for unsafe traffic conditions and to complete their implementation in the shortest practicable time. If the Design-Builder does not promptly take appropriate action to bring the deficient condition(s) into compliance or to correct unsafe traffic conditions, the Agency Engineer may proceed with corrective action, using Agency forces or other forces, and deduct such costs from monies due or to become due the Design-Builder under the Contract.

The Design-Builder shall immediately notify the Agency upon receiving any ADA complaints or comments pertaining to the TPAR. The Design-Builder shall document all ADA concerns and requests on ODOT's Comments, Questions, Concerns and Request (CQCR) form (see DB110.05(e)) by Design-Builder within 24 hours after receiving any such complaints, requests or comments. The Design-Builder shall coordinate with the Agency to seek resolution of CQCRs based on the timelines and processes established by the Agency.

(8) Technical Requirements and Limitations - The Design-Builder shall account for and develop the Project-level TPARs and the TCPs in accordance with the Project-specific requirements and limitations as provided in the Temporary Traffic Control Reference Document, included in Attachment C – Reference Document and this Contract.

(9) Restrictions and Closures - All detours, lane restrictions and Roadway closures are subject to Agency Acceptance.

Except as allowed in Lane Closure Restrictions, included in Attachment A – Engineering Data, the Design-Builder shall maintain the number, width and configuration of existing Traffic Lanes at all times for the duration of the Project, unless otherwise approved by the Agency Engineer.

The Design-Builder may propose additional Traffic Lane closure times and Lane configuration modifications to those allowed in the Lane Closure Restrictions, included in Attachment A – Engineering Data. When the Design-Builder requests closures outside the allowable closures, the Design-Builder shall conduct the traffic analysis for construction in accordance with the *Transportation Management Plan Project Level Guidance Manual* and the *Work Zone Traffic Analysis Manual*. The traffic analysis shall include:

- Intersection delay at intersections with collector or arterials roads impacted by temporary traffic control
- Queues and delays at locations where queues may back-up to other intersections or ramps
- Impacts to other agency roads where detours are implemented

The Design-Builder shall provide mitigation measures for Traffic Lane closures resulting in average delays of 20 minutes or more, including but not limited to Smart Work Zone queue warning systems and traveler information systems.

Closures that continue beyond the dates or times shown will be subject to Liquidated Damages according to Section DB180.

TPAR Restrictions:

- The Design-Builder shall not cumulatively close a ramp for longer than 21 days for signalized intersections and 14 days for other areas unless approved by the Agency.
- The Design-Builder shall minimize the number of ramps in construction that have not had completed inspection. The Design-Builder shall provide inspection forms within 10 business days of removing a TPAR.
- The Design-Builder shall minimize the distance a TPAR results in out-of-direction travel. The Design-Builder shall maintain pedestrian continuity and a pedestrian Access route. The TPARs shall include accessibility of temporary routes to people with disabilities, appropriate directional and information signage, appropriate training of contractors and others involved in the construction process, advance notice of TPARs must be provided a minimum of 14 calendar days prior to installation.
- Crosswalks cannot be closed in a school zone while school is in session.

a. Detours and Alternative Routes - Detours and alternate routes are defined as any state, County or City Roadway used to carry traffic diverted from the existing Roadway

for the purpose of facilitating staged construction on the existing Roadway. The Design-Builder shall provide detour routes for all Highway, Roadway and sidewalk closures.

The Design-Builder shall not close the Highway, Roadway or sidewalk until all temporary detour signing and TCD are in place according to the TCP. If closing more than one Highway, Roadway or sidewalk at the same time, the Design-Builder shall show all detour routes in the same plan.

The Design-Builder shall assess and determine if projects on adjacent local facilities will have detours in place concurrent to this Project that may conflict with Project detours. If so, the Design-Builder shall coordinate with the local agencies to ensure continuity in lane configurations, closure schedules, and detour routes, where applicable.

The Design-Builder shall coordinate Highway, Roadway and sidewalk closures with any adjacent or adjoining Agency projects to ensure consecutive on or off-ramps are not closed simultaneously or result in conflicting or overlapping detours.

b. Holidays – The Design-Builder shall keep all Traffic Lanes open during holidays in accordance with DB Standard Technical Specifications, Section 00220.

c. Special Events - The Design-Builder shall keep all Traffic Lanes open during special events in accordance with Design Builder Specifications, Section 00220.

d. Shoulder Closures - Shoulder closures, including shoulder closure tapers, at individual street corner or mid-block crossings, will be permitted adjacent to curb removal and Project Sites for the duration of Work activities at those locations.

e. Local Road Closures – The Design-Builder shall provide notification to the Agency Engineer a minimum of 30 Calendar Days before impacting local (non-Agency) road facilities. The impacts (closures, restrictions, or detours) must be consistent with the Accepted Readiness-for-Construction Plans and Specifications.

Local Agency streets in the Work Zone may be closed if all of the following conditions are met:

- The Design-Builder's TCP and associated Readiness-for-Construction Plans and Specifications have been Accepted by the Local Agency in writing.
- Closures do not create traffic or operational conflicts with other concurrent project closures.
- Public Traffic Access, including bicycles and pedestrians, to all local businesses and residences is maintained during all closures using existing accesses or by providing temporary alternative Access.
- All appropriate transit agencies, including school buses, have been contacted and affected bus routes, schedules and stops have been mitigated to their satisfaction.
- Local system connectivity for bicycles and pedestrians is maintained, or a reasonable alternate route is designated, for each closure.
- Written approval from effected Local Agencies.

(10) Construction Requirements - The Design-Builder shall plan, manage, supervise, maintain and perform all temporary traffic control activities required to support the Work using only Design-Builder labor, Equipment, and Materials (except when such labor, Equipment, or Materials are to be provided by Agency as specifically identified herein).

(11) Traffic Queuing - The Design-Builder shall monitor the length of traffic queues, and if extended traffic queues develop during construction activities, protect traffic by providing appropriate advance warning signing, including the use of additional PCMS(s), upstream of where the end of the queue is anticipated (based on traffic engineering data or previous observations) or observed in the field. For all non-freeway applications, in addition to monitoring traffic queue lengths, the Design-Builder shall provide extended traffic queue signing and Advance Flaggers according to the "Extended Traffic Queues for Advance Flagging" shown on the ODOT/APWA Standard Drawing TM850.

If necessary, the Design-Builder shall relocate the initial advance warning sign (e.g., ROAD WORK AHEAD, BRIDGE WORK AHEAD, etc.) so it is the first sign visible to oncoming traffic. The sign must be located at least 1000 feet upstream of the anticipated traffic queue.

The Design-Builder shall operate all PCMSs in accordance with the Oregon PCMS Handbook.

(12) Freight Mobility - Design-Builder proposed changes to the Traffic Lane closure restrictions and minimum clearance requirements, the ODOT *Mobility Procedures Manual*, the *Mobility Meeting Guidelines*, the ODOT *Mobility Considerations Checklist*, ADA Program Projects Modifications to the Mobility Review Process and Operational Notice PD-16. The Design-Builder shall prepare all required documentation and support information for Mobility Advisory Committee approval for Design-Builder proposals under Agency consideration at the direction of the Agency Engineer. A Preliminary Mobility Considerations Checklist is included in Attachment C – Reference Data.

(13) Traffic Control Task Force Meetings - The Design-Builder shall organize and implement monthly Traffic Control Task Force meetings with the Agency during construction.

- Effectiveness of current TCP and TPARs
- Traffic incident reviews

(d) Submittals – In addition to the requirements of Section DB155, the Design-Builder shall submit the following to the Agency Engineer:

- Conceptual TCP - with Definitive Design Review submittal(s)
- Draft TCP – with Interim Design Review submittal(s)
- Final TCP - with Readiness-for-Construction Design Review submittal(s)

- Proposed revisions to the TCP - at least 30 Calendar Days in advance of implementation of revisions
- Updated Mobility Consideration Checklist
- Weekly TCS Schedule identifying specific TCS on-duty during each work shift of the coming week – one week prior to the first work shift shown on the schedule
- Temporary Pavement Marking Plans - submitted as part of the TCP packages for the phase in which the temporary Pavement marking Plans will be required

DB141.51 Environmental Compliance:

(a) Scope - This Subsection DB141.51 covers requirements applicable to environmental Work, including requirements for: preparing or obtaining studies, mitigating impacts, clearances and approvals, and monitoring activities. It also covers the required content of the Environmental Compliance Plan (ECP) that the Design-Builder is required to develop and implement. The Design-builder shall identify the final Area of Potential Impact (API) for locations without a Programmatic Categorical Exclusion Approval (PCEA). All work done by the Design-builder shall fall within the approved API and PCEA requirements in additional the requirements of this Contract.

The Design-Builder shall conduct all Work necessary to complete the Project while protecting and enhancing the environment. At a minimum, elements of the Work shall include the following:

- Certifying that all outstanding environmental permits and approvals required to complete the construction are obtained and updating existing permits and approvals consistent with the Design-Builder's design in the Agency Accepted Readiness-for-Construction Plans and Specifications.
- Avoiding impacts to the community and to all cultural and natural resources beyond those already approved by Federal, State, and local regulatory agencies. If new impacts are unavoidable, the Design-Builder shall coordinate with the Agency to ensure that every practicable effort is made to minimize the unavoidable impacts. The Design-Builder shall mitigate new, unavoidable impacts.
- Fostering good relationships with Federal, State, and local agencies, tribes, and Interested Parties by ensuring that the commitments the Agency has made are reflected in the Project's final design and are fulfilled during construction. The Design-Builder shall accomplish this by meeting or exceeding all environmental requirements and commitments listed in the Contract, permits, environmental documents, and regulatory agency concurrence letters.
- Ensuring all design and construction requirements have been met and are consistent with the approved plans and commitments.

Complying with all Federal, State, and local laws, regulations, and ordinances (collectively referred to in this DB141.51 as "regulations"), and permit requirements.

(1) Definitions - The following definitions apply to this Subsection DB141.51:

a. Archaeological Resources - Any material remains of past human life or activities which are of archaeological interest and are 50 years of age or older. Artifacts, sites and features shall include but not be limited to pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Non-fossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered Archaeological Resources, under this paragraph, unless found in an archaeological context; however, they must be protected and evaluated in the same manner.

b. Best Management Practices (BMPs) - Measures that represent commonly accepted practices that improve the overall stewardship of the resource, including enhanced protection of the environment or improved resource agency relationships, and create opportunities for innovation.

c. Cultural Resources - Physical evidence or place of past human activity: site, structure, landscape, object or natural feature; or a site, structure, landscape, object or natural feature of significance to a group of people traditionally associated with it. These resources may include historic buildings, historic archaeological sites, prehistoric and ethnohistoric Native American archaeological sites, and elements or areas of the natural landscape that have traditional cultural significance.

d. Erosion and Sediment Control - This category of environmental protection prevents pollution by keeping Soil in place and preventing dislodged sediment from leaving the Project Site as dust or as turbid water entering waterways.

e. Historic Property - As used in the National Historic Preservation Act (NHPA), any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

f. Natural Resources - Biotic (from living and organic material; e.g., animals, plants, fossil fuels) and abiotic (from non-living non-organic material; e.g., air, land, water) components of the environment that occur naturally.

g. Visual Resources - As described in Federal Highway Administration's (FHWA) Guidelines for the Visual Impact Assessment of Highway Projects, these resources are views and scenic resources integral to the character of a region or community as seen both by people traveling on a road and by Interested Parties adjacent to it.

(b) Standards, Environmental Permits, Programmatic Permits, Agreements, Orders, Opinions, Clearances, Authorizations and Studies - In addition to the Standards listed in DB141.00, the Design-Builder shall perform all environmental work in accordance with the requirements of this Subsection DB141.51, the DB Standard Technical Specifications, and all Standards and documents, which include, but are not limited to, the following:

- ODOT PDLT Notice 02 – Project Development Decision Structure;
- ODOT Project Delivery Leadership Team (PDLT) Notice 04 – Environmental Guidance;
- ODOT PDLT Notice 05 – Water Quality Mitigation;
- ODOT PDLT Notice 10 – Disposal of Excess Excavation Materials;
- ODOT Air Manual;
- ODOT NEPA Manual and associated required Forms/Templates;
- ODOT Noise Manual;
- ODOT Roadside Development Manual;
- ODOT Water Resources Specialist Manual;

- ODOT Policy ENV 16-01 Hazardous Materials and Waste Policy;
- ODOT Policy ENV 16-02 Hazardous Materials Procedure for Transportation Projects;
- ODOT HazMat Program Manual;
- ODOT Technical Services Advisory GE08-01(A);
- ODOT Federal Aid Highway Program Programmatic (FAHP) Users Guide;
- ODOT FHWA Programmatic Categorical Exclusion (PCE) Agreement;
- ODOT Migratory Bird Treaty Act (MBTA) Highway Division Directive;
- ODOT Bulletin - GE11-01(B) Evaluating Compensatory Mitigation Site Locations and Site Restoration to Minimize Conflicts with Highway Operations and Maintenance;
- ODOT Bulletin – GE14-03(B) Qualification Program for Endangered Species Act (ESA) Compliance is available at the following U.S. Fish & Wildlife Service – Endangered Species Act website (see DB110.05(e
- ODOT Bulletin - GE07-03(B) Underground Injection Control Systems (UICs).

(c) Requirements:

(1) NEPA Approval Documents - The Agency's Programmatic and Project NEPA documents, the Inventory Matrix, and Project Commitments List provide are included in DB General Provisions, Attachment A – Engineering Data. These documents include specific design and construction requirements related to NEPA.

The Programmatic Categorical Exclusion Approval (PCEA) for a majority of the Project Sites was obtained prior to the Effective Date of this Contract (see DB General Provisions, Attachment A – Engineering Data for ramp locations included in this approval). The Design-Builder shall ensure that its design and construction meet all commitments within the approval and shall work with the Agency to obtain the remaining PCEAs.

(2) Design Development and Innovation - The Design-Builder shall provide the Area of Potential Impact (API) to initiate any remaining Determinations of Effects (DOEs) and Finding of Effects (FOEs) at Definitive design to the Agency. APIs shall be provided in shapefile and KMZ format. The Design-Builder shall assume a minimum of 160 Calendar Days for the Agency to complete environmental clearances once the data has been Accepted by the Agency. When requested, the Design-builder shall provide the Agency with additional design details needed to finalize any remaining PCEAs or update any changes in the approved PCEAs. The Design-builder shall use the Basis of Design memorandum to document any relevant information to support the Agency in initiating the PCEAs.

Design units shall be developed such that all environmental clearances are provided for all Project Sites within a Design Unit prior to submitting RFC.

Refer to DB155.10 for requirements for Design-Builder proposed modifications to the Project design that impact environmental clearances. When developing a detailed proposal in accordance with DB155.10(a), the Design-Builder shall coordinate with the

Agency to request a determination if the proposed design, work area, or design change would require updates to the PCE approval.

The Design-Builder shall avoid or minimize impacts to parks, recreational facilities, historic properties, and other environmental resources in accordance with the Program and Project NEPA documents, included in Attachment A – Engineering Data. Built Environment and Park Clearance guidance documents are provided in Attachment C – Reference Documents to provide potential guidance to minimize impacts that may have the potential for more environmental resource impacts.

The Design-Builder shall provide a design that does not trigger formal consultation with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS); or programmatic Endangered Species Act (ESA) Section 7 consultation through the FAHP Programmatic.

(3) Regulatory Authority Communications - The Design-Builder and its Subcontractors shall not contact regulatory Authorities before Agency Acceptance of the ECP without prior approval of the Agency Engineer. All substantive contact with regulatory Authorities by the Design-Builder shall be conducted by the appropriately qualified environmental task lead or the Environmental Compliance Manager (ECM).

(4) Communicating with Regulatory Authority Liaisons - Discussions with any level of the regulatory Authority organization above the liaison occur only with prior authorization from the Agency and shall include the liaison. Only technically proficient environmental staff experienced in environmental subject matter and with the specific regulatory Authority shall communicate with the liaisons.

(5) Regulatory Authority Contacts - Contact personnel for regulatory Authorities will be provided to the Design-Builder by the Agency upon the Agency's Acceptance of the ECP.

(6) Studies - The Agency has developed Baseline Reports providing relevant environmental data which are included in Attachment A – Engineering Data.

(7) Permits and Approvals - The Design-Builder shall apply for and obtain all necessary environmental permits not previously obtained by the Agency. The Design-Builder shall provide a copy of all permit applications to the Agency for Review and Comment at least 15 Calendar Days before submitting to the regulatory Authority. In addition, the Design-Builder shall submit to the Agency copies of all permits, orders, clearances, and authorizations obtained from regulatory Authorities upon receipt.

A list of the permits obtained, to be obtained in the future, and additional permits required for the Project is provided below. The Design-Builder shall obtain all environmental permits and approvals required to complete the Project including but not limited to those identified in Table 141.51-1.

Table DB141.51-2 Summary Of Design-Builder Provided Permits and Approvals, if necessary				
Appendix	**Governmental Body**	**Permit/Approval**	**Status**	**Date**
	DEQ	National Pollutant Discharge Elimination System (NPDES) 1200-C	TBD	
	DEQ	Solid Waste Letter of Authorization	TBD	
	DEQ	Hazardous Waste/ Resource Conservation and Recovery Act Site ID Number	TBD	
	DEQ	Beneficial Use Determination	TBD	
	DEQ	UIC	TBD	

(8) Protected Resources - The environmental documents listed in Attachment A – Engineering Data contain the Project ADA Programmatic Prospectus and ADA Program Programmatic Determination of No-Effect related to protected resources. The ECM shall ensure that the design and construction meet these document requirements as outlined.

a. Parks - The Design-Builder shall avoid or minimize impacts to parks. Impacts to the parks shall be consistent with the Programmatic and Project NEPA (see Attachment A – Engineering Data). No staging is allowed within parks.

b. Migratory Birds - The Design-Builder shall comply with the MBTA 16 703-712), which protects from harm most species of birds in Oregon and prohibits the disturbance of nests if they contain eggs or dependent young (i.e., an active nest). The Design-Builder shall take all practicable measures to prevent harm to migratory birds and shall utilize the Agency to coordinate with United States Department of Agriculture Animal and Plant Health Inspection Service o assist with migratory bird management.

The Design-Builder shall avoid tree and shrub or structure removal activities during the migratory bird nesting period; the nesting period is March 1 through August 31. If tree and shrub removal is necessary during this time, the Design-Builder shall comply with the MBTA 16 U.S.C. 703-712.

If migratory bird nesting activity is observed within the Project area that impact construction activities, the Design-Builder shall contact the Agency Environmental Coordinator to coordinate with Wildlife Services personnel assisting with the Project to prevent active nests. If an active nest is encountered, the Design-Builder shall stop all actions that may disrupt the nest and contact the Agency Engineer. Any due diligence regarding nests shall be done by Agency Environmental Coordinator, APHIS Wildlife Services, or Agency-authorized consultant approved by USFWS Migratory Bird Office. Disruptive actions include prolonged activity near any active nest that might prevent parent birds from

adequately caring for eggs and chicks. Following an active nest discovery, the Design-Builder shall meet with the Agency Engineer to discuss options. The Design-Builder shall not resume work that may disrupt nesting until approved by the Agency Engineer. Only Wildlife Services personnel are permitted to remove active nests on the Project if necessary.

The Design-Builder shall submit a Migratory Bird Protection Plan for review and approval at least 10 Calendar Days before the first pre-construction conference. The Design-Builder shall not commence construction activities until the Migratory Bird Protection Plan and its implementation schedule are approved. The Plan must describe the following:

- Measures and schedule to avoid disturbance to nesting migratory birds and their nesting habitat (vegetation, structures) from March 1 through August 31 of each year if complete avoidance is not feasible, a description of measures, methods, and schedule for APHIS Wildlife Services to take to prevent migratory birds from nesting on structures that must be removed or repaired and on trees or shrubs that must be cut, removed or damaged.

In the event the Design-Builder fails to prevent migratory bird nesting conflicts with the Project as described in the approved Migratory Bird Protection Plan, the Agency Engineer may suspend the Work according to DB180.70.

c. Endangered Species - ESA documentation in the form of a No-Effect Memo has been completed by the Agency. The Design-Builder shall prepare the Design-Builder Specifications to address all ESA terms and conditions included in the ADA Program Programmatic Determination of No-Effect, included in Attachment A – Engineering Data.

d. Cultural Resources - The Design-Builder shall comply with all provisions of any NHPA Section 106 Findings of Effect (FOE) documentation, or any relevant Project Programmatic Agreement (PA), Memorandum of Agreement (MOA), Memorandum of Understanding (MOU), Intergovernmental Agreement (IGA), or other document.

The Design-Builder shall ensure compliance with protection of cultural resources, protection of sensitive cultural sites, and archaeological monitoring practices in accordance with the DB Standard Technical Specifications, Subsections 00290.50 and 00290.51, and the ODOT Construction Manual, Chapter 32 – Protection of Cultural Resources. The Design-Builder and Agency staff shall discuss location of archaeological sites and high probability areas, prior to commencing construction activities within each Work Location. Work will be consistent with the Inadvertent Discovery Plan (IDP) for archaeological resources, included in DB General Provisions, Attachment A - Engineering Data. Design-Builder shall accommodate all archaeological monitoring activities required by the Agency at any Work Location.

The Agency Architectural Historian is responsible for consultation/coordination with the SHPO and local agencies regarding historic built environment resources. The Design-Builder shall comply with conditions identified in FOEs or any IGAs, MOUs, etc. related to historic resources. The Design-Builder must coordinate with the Agency Architectural Historian if any activities or materials are proposed that do not comply

with the conditions provided in the relevant documents prior to any corresponding construction. This may require additional consultation with SHPO, local agencies, and other community partners.

(9) General Project Commitments - The Design-Builder shall comply with all State and Federal environmental regulations as well as Project commitments made through the NEPA phase to protect and prevent degradation of the environment including but not limited to air, surface water, groundwater, land, cultural resources, and the health and safety of people.

The Design- Builder shall ensure and provide documentation that the Work complies with all Project Commitments included in Attachment A – Engineering Data into project design. The Design-Builder shall update the Project Commitments List, included in Attachment A – Engineering Data as the Project progresses to reflect any future commitments resulting from permits or approvals obtained by the Agency or the Design-Builder for the Project. Within 90 Calendar Days after NTP and every 90 Calendar Days thereafter, the Design-Builder shall submit an updated Project Commitments List to the Agency for Review and Comment. The Design-Builder shall incorporate Project commitments into the work.

a. Construction Noise and Deliverables - The Design-Builder shall comply with all local jurisdictional, county, and State limitations on maximum noise levels and construction hours. The Design-Builder shall obtain noise variances or exemptions from local jurisdictions, as required, and shall comply with all conditions within the local jurisdiction's approval.

The Design-Builder shall submit to the Agency all supporting documentation that is submitted to the local jurisdiction(s) for variance approval and the approved variance within 7 days of Local Agency approval.

b. Hazardous Materials, Worker and Public Health and Safety - Hazardous or contaminated materials may be present within the Project impact area. Refer to the Hazardous Materials Corridor Studies included in Attachment A – Engineering Data.

The Design-Builder shall provide details for the removal, handling, reuse, recycling and disposal of hazardous or contaminated material identified in the Corridor Study Hazardous Materials Corridor Study and in the Design-Builder's Contaminated Media Management Plan in accordance with the Contract requirements and 40 CFR 112.

The Design-Builder shall conduct all Work in a manner appropriate to avoid impacts to the environment by mishandling or tracking potential contaminants offsite. The Design-Builder shall ensure that contaminant and waste sources are identified and sampled in accordance with regulatory guidance and every practicable effort is made to minimize the exacerbation of existing contamination within the Project impact area, or adjacent properties.

The Design-Builder shall be responsible for verifying, identifying, and managing any known, suspected, or unanticipated contaminated media and wastes generated during construction in accordance with state and Federal rules and laws.

Regulated systems that may require decommissioning, including but not limited to:

- Underground Storage Tanks (USTs) and ancillary piping;
- Underground Injection Controls (UICs);
- Septic Systems

c. Worker and Public Health and Safety - The Design-Builder shall prepare and submit to the Agency for Review and Comment a Worker Health and Safety Plan at least 10 Calendar Days before the first preconstruction conference.

The Worker and Public Health and Safety Plan must include, but not be limited to, the following information:

- Anticipated worker health and safety hazards and mitigation;";
- Required personnel training;
- Required use of personal protection equipment;
- Measures the Design-Builder will take and procedures the Design-Builder will follow to minimize the effects of identified and unanticipated hazards including Hazardous Materials from contaminated environmental media and construction activities;
- Design-Builder response procedures for instance when unidentified hazardous or contaminated materials are encountered;
- Design-Builder contingency plans; and,
- Secondary containment methods for Hazardous Materials encountered, generated, or stored at the site.

d. Contaminated Media Management Plan (CMMP) - The Design-Builder shall develop a CMMP to address any contaminated Soil and/or groundwater that may be encountered, generated, or spilled during construction of the Project in accordance with all Contract requirements and 40 CFR 112 Findings on contaminated Soil potential are provided in the Hazardous Materials Corridor Study, included in Attachment A – Engineering Data. The Design-Builder shall submit the CMMP to the Agency for Review and Comment at least 30 Calendar Days prior to the start of construction activities.

e. Pollution Control Plan (PCP) - The Design-Builder shall prevent, control, and abate pollution of the environment in accordance with all Contract requirements and 40 CFR 112. The Design-Builder shall comply with new or amended environmental pollution Laws, in effect as of the Advertisement Date, according to DB140.50 and ORS 279C.525.

The Design-Builder shall develop and submit a PCP to the Agency in accordance with DB Standard Technical Specifications Subsection 00290.30(b) as modified by the Accepted Design-Builder Specifications at least 10 Calendar Days before the preconstruction conference. The Design-Builder shall maintain a copy of the PCP on-

site at all times during construction activities, readily available to employees and inspectors. The Design-Builder shall ensure that all employees comply with the provisions of the PCP.

f. Erosion and Sediment Control (ESC) - The Design-Builder shall prepare, implement, and maintain an ESC Plan that describes measures to minimize erosion and prevent sediment from leaving the Project Site during all phases of construction activities and to provide permanent stabilization of disturbed Soil at Project completion. The ESC Plan must include measures to minimize the release of dust into the air from construction activities or from exposed Soils.

The Design-Builder shall evaluate and design erosion control measures for all new and existing slopes to reduce maintenance issues and stability problems on slopes. (See also DB141.12.)

The Design-Builder shall prepare the ESC Plan in accordance with the ODOT *Erosion Control Manual* and all applicable permit requirements.

The Design-Builder shall provide a certified ESC manager who shall implement, inspect, and provide documentation on the effective functioning of ESC BMPs weekly or as required due to a rain event using ODOT's current Erosion Control and Monitoring (ESCM) form. The ESC manager shall have the authority to mobilize crews to address ESC issues as required by regulations. The ESC manager shall have, and maintain for the duration of the Project, a current Certificate of Training in Construction Site Erosion and Sediment Control from a course approved by the Agency. The Design-Builder shall provide a copy of the course certificate or other documentation verifying completion of the certification course within 30 Calendar Days after NTP.

If the Design-Builder chooses to use a staging yard greater than 1 acre, they will be required to obtain a 1200C permit.

The Agency's NPDES 1200CA Permit is not applicable to the Project such that staging and work areas remain less than 1 acre. The Design-Builder shall obtain a 1200C permit at their cost and schedule impacts if they proposed staging areas are greater than 1 acre.

g. Erosion Control at Temporary Drainage Facilities - The Design-Builder shall consider potential volumes and velocities of stormwater runoff in the design, installation and maintenance of erosion and sediment control measures on slopes, ditches and channels used to convey stormwater during construction in order to prevent erosion during construction and to prevent storm water from leaving the Project Site without treatment. Erosion control measures must not impede hydraulic function of drainage facilities or divert stormwater into Highway Traffic Lanes. The Design-Builder's ESC Plan shall include maintenance plans for erosion and sediment control features in existing drainage features and new drainage features that will become active during the Contract to ensure the drainage structures continue to function through Project completion.

h. Best Management Practices - The Design-Builder shall select, install, Inspect, and maintain all erosion and sediment control BMPs in accordance with the requirements described in the DB Standard Technical Specifications (choosing the most stringent BMPs). The Design-Builder shall not use experimental BMPs unless they have been approved by the Agency prior to their use.

i. Slope Revegetation - Where slopes can be made to support vegetation, the Design-Builder shall prepare and amend slopes for seeding and seed with context-appropriate seed mix (see DB141.27) to establish root systems to stabilize the surface of the slope and prevent deterioration of the slope. The Design-Builder shall design and provide systems to prevent erosion and stabilize slopes during seed germination and establishment using fully biodegradable (not photo-degradable) woven blankets or biodegradable hydraulically applied matting to temporarily hold seeding in place and minimize erosion to the extent practicable until vegetation is established.

After the Agency's Acceptance of permanent stabilization in accordance with DB Standard Technical Specifications Section 00280, the Design-Builder shall remove all erosion and sediment control BMPs that are not fully biodegradable and intended to be incorporated into the permanent landscape. The Design-Builder shall remove all temporary BMPs from the Right-of-Way and repair any damage to the Project Site resulting from BMP removal in accordance with the Project Commitments List, included in Attachment A - Engineering Data.

j. Monitoring and Inspection – Unless otherwise directed by the Agency, the Design-Builder shall Inspect all on-site erosion, sediment and dust control BMPs, at a minimum, in accordance with the ESC Plans and DB Standard Technical Specifications Section 00280 as modified by the Accepted Design-Builder Specifications. The Design-Builder shall provide required maintenance on erosion control facilities and correct damaged or inadequate ESC BMPs immediately. The Design-Builder shall complete Erosion and Sediment Control Inspection Forms for each Inspection in accordance with the ESC Plan and DB Standard Technical Specifications Section 00280 as modified by the Accepted Design-Builder Specifications.

k. Fugitive Dust Control and Air Pollution Control Measures – The Design-Builder shall prepare and submit to the Agency for Review and Comment as part of the ECP a Fugitive Dust Control Plan and Air Pollution Control Measures Plan to reduce short-term construction impacts to air quality. The Design-Builder's Fugitive Dust Control Plan and Air Pollution Control Measures Plan must include and address all Contract requirements pertaining to air quality and fugitive dust, including but not limited to those contained in the DB Standard Technical Specifications Section 00290, permit requirements and other Project commitments.

(10) Environmental Compliance Plan - The Design-Builder shall prepare and implement an ECP. Part I of the plan shall be submitted within 60 Calendar Days after NTP for *R*eview and Comment. Readiness-for-Construction shall not be submitted for any design units prior to acceptance of Part I of the ECP. Part II of the plan shall be submitted a minimum of 60 Calendar Days prior to the first preconstruction meeting. No preconstruction meetings shall be scheduled until Part II of the ECP has been Accepted. The plan shall update the plan as needed to reflect Work progress or changes.

No field investigations or other construction-related Work may occur prior to the ECP being submitted to the Agency. The Design-Builder shall incorporate all permits, clearances, and approvals into the ECP and the Quality Plan as they are issued by the regulatory Authorities. New or modified information, mitigation plans, and compliance strategies developed throughout the term of the Contract and added to the ECP must also be formally Accepted by the Agency through the submission of an updated Quality Plan. A hard copy of the ECP must be maintained at the Design-Builder's construction office and at the Project Site.

The ECP must include, but not be limited to, the following information:

a. Part I: Environmental Personnel, Communications, Compliance, and Training

1. Environmental Compliance Personnel - The Design-Builder shall list key environmental compliance personnel roles and responsibilities including an ECM. The ECM must be on-site full-time for the duration of the Project. The Agency may require replacement of the ECM if during the course of the Contract the Agency finds that the ECM is not ensuring full environmental compliance with all permits, provisions, and policies.

2. Environmental Communications - The Environmental Communications Protocol must describe internal and external communication processes to be used for noncompliance reporting, inadvertent archaeological discoveries, spills, personnel roles, procedures for internal and external communications, and communications with the Agency and regulatory Authorities.

3. Cultural Resources Coordination: - The Design-Builder shall work with the Agency to develop the strategy for coordinating with the Agency on Cultural Resources documentation for archaeological/historic clearances at each Work Location and preparation of the necessary documentation for submittal to FHWA for Section 4(f) approval (if needed) and to SHPO for concurrence. Documentation of the agreed-upon process shall be included within the ECP.

4. Required Environmental Documentation - The Design-Builder shall list and include all documents associated with environmental permits, approvals, clearances, authorizations, and plans required for the Project. This includes the ESC Plan; Spill Prevention, Control, and Countermeasure (SPCC) Plan; a CMMP; a Fugitive Dust Control Plan; an Inadvertent Archaeological Discovery Plan/Treatment Plan; a Planting Work Plan; and all other environmental plans address in this document. The Design-Builder shall identify the issuing regulatory Authority and contact information. The Design-Builder shall identify whether the Agency or the Design-Builder is responsible for each required document and the date the document was obtained or must be obtained.

5. Compliance - The Design-Builder shall document how they will meet the environmental requirements including but not limited to the following:

- ESA No- Effect Programmatic
- Programmatic Prospectus and PCEA(s)

- Project Commitments List
- Inadvertent Archaeological Discovery Plan/Treatment Plan
- Erosion and Sediment Control Plan
- CMMP

b. Part II: Environmental Plans and Compliance Strategies – Part II of the ECP is due a minimum of 60 Calendar Days before the first preconstruction conference and includes the following requirements:

1. Regulatory Requirements - The Design-Builder shall list all regulatory compliance requirements for all environmental permits, approvals, clearances, and authorizations required for the Project.

2. Compliance Actions - The Design-Builder shall provide strategies, plans and schedules for all actions necessary to achieve 100% environmental compliance (i.e., traffic detours and traffic impacts). The Design-Builder shall include key construction dates.

3. Noncompliance - The Design-Builder shall describe procedures to identify and resolve environmental noncompliance issues; include communication protocols with the Agency and regulatory authorities and timeframes. The Design-Builder shall describe follow-up procedures and documentation of implementation of corrective action.

4. Mitigation - The Design-Builder shall provide plans for mitigating and remediating Project impacts on all affected natural resources and a strategy for coordination with the Agency on mitigation/remediation. Mitigation/remediation plans must include strategies for site restoration including but not limited to seeding of Project sites and the long-term success of plant establishment.

5. Emergencies - The Design-Builder shall describe response procedures (i.e., Emergency Response Plan) in the event of an environmental emergency. The Design-Builder shall include the names of the Design-Builder and regulatory authority emergency response contacts. The Design-Builder shall provide office, 24-hour and mobile telephone numbers and e-mail and work addresses for each contact.

6. Environmental Monitoring, Tracking and Documentation - Environmental monitoring is required to determine potential effects of the Project (including air, noise, and hazmat effects) on natural, cultural, and visual resources present in the Project area. The Design-Builder shall describe monitoring and tracking procedures, such as construction Inspections, and schedule to ensure that all regulations, approvals, and environmental Performance Specifications are being fulfilled; describe procedures to document and communicate to the Agency environmental compliance during the Project.

(11) Environmental Compliance Meetings

The Design-Builder shall coordinate with the Agency and regulatory Authorities to ensure adequacy of environmental compliance submittal materials. Coordination efforts must include a mandatory ECP review meeting and pre-application submittal meetings, as necessary. The Design-Builder shall prepare and distribute meeting minutes to all attendees and the Agency Engineer's designated recipients within 7 Calendar Days of the meetings.

a. Environmental Compliance Plan Review Meeting - The Design-Builder shall schedule a meeting with the Agency for the purpose of presenting the overall environmental compliance strategy contained within the draft ECP, including the determination of the appropriate number and timing of construction Inspections related to environmental. The meeting must be held within 5 Business Days of draft ECP submittal. The Design-Builder shall ensure that the following team members participate in the meeting:

- Design-Build Project Manager;
- Design Manager;
- Construction Manager;
- Environmental Compliance Manager; and
- Project Quality Manager.

b. Permit Pre-Application Submittal Meetings – In the case that there are pre-application meetings required, the Design-Builder shall schedule a meeting with the appropriate regulatory Authority personnel, liaisons, and the Agency for the purpose of ensuring that application submittal materials must comply with the necessary requirements. The Design-Builder shall record regulatory Authority comments at the meeting and include a log describing how each comment was resolved in the submitted application materials. The Design-Builder shall ensure the following team members participate in the meeting:

- Environmental Compliance Manager; and
- Relevant Environmental Technical Lead, if different than the Environmental Compliance Manager.

c. Environmental Task Force Meetings - The ECM shall organize and implement monthly Environmental Task Force meetings during design and construction to ensure that the Project design meets the Project commitments, and to identify which construction elements such as locations, Work activities, weather conditions and times of day present the greatest risk to the environment. The ECM shall also review BMPs at the meetings to avoid and minimize risk. The Design-Builder shall invite the Agency to attend the meetings. The ECM shall use the Project Commitments List, included in Attachment A - Engineering Data and the construction schedules to identify Project commitments pertaining to upcoming Work activities. The Design-Builder shall prepare and distribute meeting minutes to all attendees and the Agency Engineer's designated recipients within 7 Calendar Days of the meeting.

(d) Submittals - The Design-Builder shall submit the following to the Agency for Review and Comment and Acceptance, and to appropriate regulatory agencies as required for approval:

- ECP
- ESCM Forms – submitted weekly during construction
- A minimum of 10 calendar days prior to pre-construction conferences, the following must be submitted:
  - ESC Plan
  - Migratory Bird Protection Plan
  - SPCC Plan
  - CMMP
  - Fugitive Dust Control Plan
  - Air Pollution Control Measure
- Inadvertent Archaeological Discovery Plan/Treatment Plan
- Planting Work Plan
- Copies of all permit applications and permits received by the Design-Builder - permit applications at least 15 Calendar Days prior to submittal to the regulatory Authority and permits upon receipt by the Design-Builder
- Worker Health and Safety Plan - at least 10 Calendar Days before the first preconstruction conference
- Environmental Compliance Meeting Minutes
- Environmental Task Force Meeting Minutes

DB141.57 Maintenance During Construction:

(a) Scope - This Subsection DB141.57 requires operation, maintenance, and repair of the existing Facilities impacted by the Work required by remediation of Settlement Curb Ramps in addition to Facilities constructed under the Contract For purposes of this Subsection DB141.57, “Facilities” means items including, but not limited to the following:

- Highways, Roadways, Shoulders, accesses, Pavements, and other facilities provided for vehicular traffic, including emergency services vehicles
- Local roads and streets
- Sidewalks, multi-use paths, and other facilities provided for pedestrian traffic and bicycle traffic
- Drainage facilities
- Fencing
- Landscaping

The Design-Builder shall maintain all Facilities within the Project Site, unless otherwise specified in the Contract Documents. The Design-Builder shall also maintain Facilities outside the Project Site while such facilities are being used for detours or diversions related to the Work. The Design-Builder shall keep each Work Location and its vicinity free from accumulation of waste materials and rubbish.

The Design-Builder shall perform maintenance in a timely, safe, reasonable, and prudent manner. The Design-Builder shall furnish all labor, Materials, Equipment, and necessary services in connection with maintenance Work. The Design-Builder shall provide written notification to the Agency Engineer for all maintenance Work completed. The frequency of such notifications shall be as agreed upon by the Agency Engineer.

The Design-Builder shall provide maintenance, Inspections, and repairs in accordance with the Standards and other requirements listed in this Subsection DB141.57 and the DB Standard Technical Specifications and in a manner acceptable to the Agency.

(b) Standards and References:

(1) Requirements and Standards - In addition to the Standards listed in DB141.00, additional applicable Standards for this and Manuals for this Subsection DB141.57 are listed below. (These are not comprehensive lists; other applicable publications may be required to complete the design and construction Work.)

- ODOT Routine Road Maintenance Water Quality and Habitat BMP Guide
- ODOT Erosion Control Field Manual
- ODOT Traffic Line Manual
- FHWA *Manual on Uniform Traffic Control Devices* (MUTCD)
- ODOT Manual on Uniform Traffic Control Devices – Oregon Supplement

(2) References:

- ODOT Guidelines for the Operation of Variable Message Signs on State Highways
- ODOT Guidelines for Removing Personal Property from Illegal Camping on State Highway Rights of Way
- ODOT Operational Notice MG-133-03: Accessing Private Property to Assess or to Remove a Hazard Tree
- ODOT Maintenance Guide
- ODOT Integrated Vegetation Management Statewide Plan

(c) Requirements:

(1) General - The Design-Builder shall maintain existing Facilities within the Project Site that are to remain to a condition equal to or better than the condition existing when the Design-Builder's maintenance responsibilities begin. See also DB Standard Technical Specifications, Subsection 00220.60.

The Design-Builder shall begin maintenance of Facilities at the time of any ground disturbing activity for the Project Site area. Maintenance must be consistent with a condition which complies with the applicable Contract requirements under which they are constructed. The Design-Builder shall ensure that the existing level of access to items needing maintenance by ODOT, Local Agencies, Utilities, Railroads, businesses, and other entities is maintained in order that the Agency or responsible Governmental Body may continue to operate and maintain those facilities during construction.

The Design-Builder's maintenance responsibilities shall include satisfactory and safe conditions for vehicular traffic, bicycle traffic, pedestrian traffic, and emergency responses to ensure public safety in all areas open to traffic in accordance with the requirements of this Subsection DB141.57, DB150.75 and the Contract Documents. If the Agency determines the Design-Builder has failed to provide adequate routine maintenance, emergency and operational response, or Inspections and repairs, the Agency will issue a verbal notification of the deficiency to the Design-Builder. The Agency will follow the verbal notification with a written notification to commence correction of the deficiency.

Failure by the Design-Builder to correct the stated deficiency within 24 hours of the verbal notification may result in the Agency performing the Work without prejudice to other remedies the Agency may have. In such a case, the Agency will deduct the cost of correcting deficiencies from payments due to the Design-Builder. If payments then or thereafter due are not sufficient to cover the cost of correcting the deficiencies, the Design-Builder shall pay the difference to the Agency upon demand.

Temporary traffic control devices may need to be modified periodically in order for the Agency to perform routine and emergency maintenance operations. The Design-Builder shall cooperate with the Agency to make adjustments within timeframes needed to ensure traffic flows safely and efficiently. The Agency or Governmental Body responsible for maintenance will take no special measures to protect temporary traffic control devices, stockpiled Materials or Equipment the Design-Builder has stored.

The Design-Builder shall ensure that the public, including persons who may be non-English speaking or may not be able to recognize potential safety and health hazards within the Project area, are not harmed by the Design-Builder's activities.

The Design-Builder is responsible for maintenance within the Project Site area indicated by a Design Unit until Acceptance of the following documents for that portion of the Project Site:

- ODOT ADA Inspection Form 734-5020A-through H as applicable. All ADA curb ramps shall be remediated per the Monthly Remediation Status Report (see Section DB156.30(a)).
- Monitoring Report (see Section DB141.51)

All permanent elements within the Project area are complete, which include but are not limited to, the following:

- Permanent striping
- Permanent asphalt
- Permanent signing
- Any permanent landscaping or hardscaping

(2) Maintenance Requirements:

a. Health Hazards - The Project area may contain biological and physical hazards such as medical and human waste (e.g., used hypodermic needles, drug paraphernalia, animal, or human excrement), broken glass or other debris. Other areas may also be impacted. See Sections DB141.51 and Section DB170 for health and safety requirements.

b. Personal Property - The Design-Builder shall search the Project area 21 Calendar Days prior to beginning construction activities at any location within the Project area for evidence of personal property which may be evidence of illegal or unauthorized camping (e.g., tents, makeshift dwellings, sleeping bags, cooking utensils, tarps, medication, personal papers, backpacks, and clothing). In the event illegal or unauthorized camping is encountered within the Project Site, the Design-Builder shall notify the responsible law enforcement agency for assistance in providing security for the Design-Builder personnel when removing the personal property. The Design-Builder shall notify the Agency prior to contacting law enforcement. The initial contact shall be with the corresponding Assistant District Manager from the Region 2 Outreach Contact List, included in Attachment C – Reference Documents**.**

The Design-Builder shall schedule a place, date, and time to meet with the Agency and the local law enforcement agency to coordinate the removal of personal property from the Project Site.

The Design-Builder shall work with the Agency to identify a location to store personal property removed from the Project Site for at least 30 days.

The Design-Builder shall release the personal property in accordance with the Guidelines for Removing Personal Property Directive, included in Attachment A – Engineering Data.

c. Site Maintenance - Prior to commencement of the construction Work, the Design-Builder shall perform an initial cleanup of the Project area, including all preparatory Work required to make the Project area sanitary and safe in accordance with applicable laws and the health hazards plan, and to address all biological and physical hazards present. The Design-Builder shall conduct necessary training of personnel, on-site and off-site preparations and provide safety equipment to complete the initial cleanup and disposal of the biological and physical hazards.

d. Periodic Site Maintenance - If the Project area becomes unsanitary or unsafe due to biological and physical hazards after the Design-Builder prepares the site for the construction activities, the Design-Builder shall perform additional site maintenance and take additional measures as needed to protect the public and the personnel of the Agency and the Design-Builder. On a daily basis and prior to performing any Work in areas where pedestrians may be present, the Design-Builder shall verify that the Work area is cleared of all persons not associated with the Project. The Design-Builder shall not assume that loud construction noise will provide adequate warning of Work in the area.

e. Restoration of Property and Landscape - The Design-Builder shall restore, at no additional cost to the Agency, property and landscaping that is damaged as a result of the Design-Builder's activities to a condition similar, equal, or better to that existing before the damage occurred by repairing, replacing in kind, rebuilding, replanting, or compensating the property owner.

f. Maintenance of Transit Systems - The Design-Builder shall not interrupt revenue service without the impacted transit agency and Agency approval. Transit agency contacts are in the Region 2 Outreach Contact List, included in Attachment C – Reference Documents. Any communication with Local Agencies shall include the Agency. The Design-Builder shall provide access for the transit agency to prepare for revenue service. The Design-Builder shall allow for transit agencies maintenance of the transit infrastructure after the start of revenue service.

g. Snow and Ice Operations - The Agency will perform any snow and ice removal as part of the Agency's snow removal program. The Design-Builder shall remove the Work Zone(s) and all other obstructions in the Roadway for the Agency's snow and ice removal program. The Design-Builder may at their own cost remove snow and ice within the Project to facilitate the Work.

h. Emergency Response:

1. Cooperation - The Design-Builder shall cooperate with law enforcement, ODOT Incident Response and other emergency response agencies in response to accidents, fires, spills, or other emergencies in any area affected by the Project, including the Project area and Public Traffic Lanes. The Design-Builder shall

cooperate in all Agency or Governmental Body investigations of accidents and other incidents within the Project area. (See DB141.31 and Section DB170 for additional requirements regarding emergency response.)

2. Emergency Access - The Design-Builder shall coordinate with emergency service providers to address their concerns about emergency access to and through the Project corridor. (See DB141.31 for additional emergency access requirements.)

3. Notification - The Design-Builder shall notify the Agency, the Oregon State Police, and all emergency service providers in the affected area in writing of any access closures at the construction site. Notification shall include the names and telephone numbers (business, residence and cellular) of Project personnel to contact in case of emergencies. In cases of hazardous spills, the notification shall also include pertinent details about the nature of the spill (material type and volume) and the estimated timeline for cleanup.

4. Use of Design-Builder Resources - The Design-Builder shall make personnel and Equipment available to respond to all emergencies, except when the emergency is life-threatening to the personnel. (See also DB141.31 and DB141.51.)

i. Monumentation - The Design-Builder shall witness or reference land monument and property marker locations by a Land Surveyor licensed in the State of Oregon before moving, disturbing, or damaging any property. (See DB141.28 for additional requirements regarding monumentation and surveying.)

j. Suspension of Work - During periods of suspension of the Work, the Design-Builder shall continue to be responsible for performing maintenance according to this Subsection DB141.57 and DB180.70.

k. Reporting - Following the transition of the first maintenance area to the Design-Builder, the Design-Builder shall prepare and submit to the Agency a Monthly Maintenance Report detailing all maintenance activities performed during the previous month.

l. Access - The Design-Builder shall provide access to the Agency for inspections to existing Bridges.

m. Video Documentation of Pre-Existing Conditions - The Design-Builder shall make a video record of the existing conditions of all Highways, roads, streets, and public Facilities located within the Project Site 30 Calendar Days prior to starting construction Work. The Design-Builder shall provide a copy of the video recording to the Agency within 60 Calendar Days after NTP.

The Design-Builder shall make a video record of the pre-existing conditions of all Highways, roads, streets, and public Facilities on detour routes located outside the Project Site within 7 Calendar Days before implementing the detour. The Design-Builder shall provide a copy of the video record to the Agency within 7 Calendar Days after implementing the detour.

n. Weed Control - The Design-Builder shall perform weed control for the Project in accordance with the requirements of DB Standard Technical Specifications, Subsections 01030.42(a) through 01030.42(d).

o. Roadway Sweeping - The Design-Builder shall maintain all paved areas within the Project Site to prevent the accumulation of dirt and gravel. The Design-Builder shall periodically, and when directed by the Agency, perform sweeping or other best management practices to remove debris from the Roadway and Shoulders. The Design-Builder shall take measures to prevent spillage on haul routes. If spillage occurs, the Design-Builder shall remove it and clean the area within 1 hour of observation or verbal notification from the Agency. Tracking of dirt and gravel from the Work Zone is prohibited. The Work shall be performed in accordance with the Fugitive Dust Control Plan described in Subsection DB141.51.

p. Roadway Debris - The Design-Builder shall maintain the Project Site free of debris, included but not limited to minor Roadway debris such as plastic sheeting, tarps, garbage cans and tires, which may cause traffic to slow below the posted speed limit, present a traffic hazard to the public or cause traffic to deviate from normal traffic patterns. In the event these conditions occur, the Design-Builder shall remove the debris within 30 minutes of observation by the Design-Builder or verbal notification from the Agency. Design-Builder shall notify dispatch if they see debris near the Project Site that may trigger the need for Agency maintenance to address.

q. Traffic Control Devices - The Design-Builder shall be responsible for maintaining active travel lanes free from traffic control devices such as traffic barrels, cones, and other devices.

All traffic control devices shall be placed behind barriers or guardrails away from traffic when not in use. In areas where traffic control devices cannot be placed behind barrier or guardrail, the devices may be placed on the Shoulder of the Roadway when the Shoulder width is 5 feet or greater. When the Shoulder width is less than 5 feet, the Design-Builder shall place the devices off the paved Shoulder and a minimum of 8 feet from the traveled lanes. The Design-Builder shall locate traffic control devices so as not to block any existing sidewalks or bicycle trails, and to leave adequate space for wheelchairs. The Design-Builder shall move traffic control devices stored within the Right-of-Way (ROW) within 48 hours after Agency notice when Agency maintenance activities will occur in the area where the devices are being stored.

r. Guardrail, Concrete Barrier, and Attenuators - Except for narrow site impact attenuators, the Design-Builder shall replace or repair any impact attenuators that become damaged by the public or by the Design-Builder's operations within 24 hours unless otherwise directed by the Agency. The Design-Builder shall replace or repair any narrow site impact attenuators that become damaged by the public or by the Design-Builder's operations within 6 hours unless otherwise directed by the Agency. The Design-Builder shall repair or replace damaged attenuators with Materials and Equipment that meet current National Cooperative Highway Research Program and Agency Standards. The Design-Builder shall provide and use direct replacement parts as required by the manufacturer for repairs to damaged attenuators.

The Design-Builder shall replace or repair any guardrail or concrete barriers that become damaged by the public or by the Design-Builder's operations within 14 Calendar Days unless otherwise directed by the Agency. Where required, the Design-Builder shall replace damaged guardrail and concrete barriers with Materials that meet current Agency Standards.

The Design-Builder shall take appropriate measures, in accordance with Standards and subject to Agency approval, to protect damaged impact attenuators, guardrail or concrete barriers until the replacement or repairs have been completed.

The Design-Builder shall cooperate in Agency or law enforcement investigations of property damage.

s. Protection of Existing Infrastructure - The Design-Builder shall not conduct operations that would negatively impact current stormwater management, existing drainage structures, signs, ITS Equipment, and existing electrical boxes and equipment.

t. Access to Public and Private Facilities - Business access signing within the Project Site shall be provided by the Design-Builder in accordance with Subsection DB141.31. The Design-Builder shall maintain access to all public and private facilities affected by the Project in accordance with Subsection DB141.31.

u. Electrical:

1. **Signals** - Existing signals which are retained in place will be maintained and operated by the Agency or responsible Governmental Body. New, modified or relocated traffic signal Equipment within the Project Site will be operated by the Agency or responsible Governmental Body. New, modified or relocated traffic signal Equipment within the Project Site shall be maintained by the Design-Builder, at no additional cost to the Agency in accordance with Subsections DB141.25 until written Acceptance of the electrical system by the Agency (see DB141.24(c)(6).

   The Design-Builder shall obtain written approval from the Agency and, if applicable, the responsible Governmental Body prior to taking an existing traffic signal out of service.

v. Temporary Fencing - The Design-Builder shall furnish and install temporary fencing at locations where construction impacts private property, and the removal of the existing fence or sound barrier exposes the property to any ROWs (including Highways, local streets, or trails) within the Project Site.

(d) Submittals - The Design-Builder shall submit the following to the Agency for Review and Comment or as otherwise specified:

- Video Record of Pre-existing Conditions – for Review and Comment
- Monthly Maintenance Reports – for Review and Comment

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SECTION DB150 – CONTROL OF WORK

DB150.00 Authority of the Agency Engineer - The Agency Engineer is not the Professional of Record, is not the engineer of record, and has no responsibility for the Design-Builder's Design Services. Notwithstanding the foregoing, the Agency Engineer's determination for the Owner will be final on all matters, including but not limited to the following:

- Quality and acceptability of Materials and workmanship
- Measurement of unit price Work
- Timely and proper prosecution of the Work
- Interpretation of Contract Documents
- Payments due under the Contract

The Agency Engineer's decision is final and, except as provided in DB180.80 for adjustments of Contract Time, and Section DB199 for claims for additional compensation, may be challenged only through litigation.

Work performed under the Contract will not be considered complete until it has passed Final Inspection by the Agency Engineer and has been Accepted in writing by the Agency.

DB150.01 The Agency Project Manager's Authority and Duties - The Agency Engineer will designate an Agency Project Manager (PM) as its representative on the Project with authority to enforce the terms, provisions and conditions of the Contract.

When the Agency Engineer has designated an Agency PM, the Design-Builder shall direct all requests for clarification or interpretation of the Contract, in writing, to the Agency PM. The Agency PM will respond in writing within a reasonable time. Contract clarification or interpretation obtained from persons other than the Agency PM will not be binding on the Agency.

The Agency Engineer may designate a consultant(s) to assist the Agency with administration of the Contract. If the Agency Engineer designates a consultant, the authority of the consultant on this Project will be as designated in the official "Consultant Agreement" for this Project, and as designated by the Agency Engineer. This does not include authority to approve Contract changes or semifinal and Final Inspection of the Project.

The Agency PM will have the authority to appoint Agency Inspectors and other personnel as required to assist in the administration of the Contract.

Interim approvals issued by the Agency PM, including but not limited to Third Notification, will not discharge the Design-Builder from responsibility for errors in prosecution of the Work, for improper fabrication, for failure to comply with Contract requirements, or for other deficiencies, the nature of which are within the Design-Builder's control.

DB150.02 The Agency Inspector's Authority and Duties - For purposes of this Section DB150, "Agency Inspectors" means the representatives of the Agency Engineer authorized to Inspect and report on Contract performance. To the extent delegated under DB150.01,

Agency Inspectors will be authorized to represent the Agency Engineer and the Agency PM to perform the following:

- Inspect Work performed and Materials furnished, including without limitation, the preparation, fabrication, or manufacture of Materials to be used;
- Orally reject defective Materials and to confirm such rejection in writing;
- By oral order, temporarily suspend the Work for improper prosecution pending the Agency's decision, and
- Exercise additional delegated authority.

The Agency Inspectors are not authorized to:

- Accept Work or Materials.
- Alter or waive terms, provisions or conditions of the Contract.
- Give instructions or advice inconsistent with the Contract Documents.

DB150.03 Responsibility of the Design-Builder - The Design-Builder shall:

(a) Provide all required Design Services, as set out in the Contract Documents, to complete the Project according to the terms, provisions and conditions of the Contract.

(b) Perform all Construction Services required to complete the Project according to the terms, provisions and conditions of the Contract.

(c) Diligently pursue progress of the Work according to the schedule requirements of Section DB180.

(d) Perform Quality Management according to the terms, provisions and conditions of the Contract.

(e) Prepare and provide Readiness-for-Construction Plans and Specifications necessary to complete the Project as developed, in accordance with all Contract requirements.

(f) Cooperate with the Agency, Utilities and Railroads, and coordinate all Work needed to accomplish Utility relocation and Railroad permitting.

(g) Contact the Agency Engineer for clarification of the Contract. Reduce oral clarification to writing and deliver it promptly to the Agency Engineer for signature confirmation.

(h) Reduce all oral orders to writing and deliver them promptly to the Agency Engineer for signature confirmation.

(i) Perform all survey Work under the direction of an appropriate Design Professional and as described in DB141.28. The Design-Builder shall review data provided by the Agency and provide complete field surveys suitable for use in documents prepared for the Contract and meeting applicable requirements of the Oregon State Board of Examiners for Engineering and Land Surveying.

(j) Maintain a diary of all Work performed by the survey crew. The survey diary must constitute a Project Record. The survey diary must contain the date, survey crew names, type and location of Work, and Work accomplished. The Design-Builder shall furnish the originals of the survey diary to the Agency Engineer at the end of the Project in accordance with DB141.28.

(k) Unless otherwise specified in the Contract, provide at least 24 hours' advance notice, or such other notice to which the Parties have agreed, before beginning Work on any activity not shown on the current Design-Builder Three Week Look-Ahead Schedule and before resumption of Work on an item after an extended break in the Work.

(l) Perform such other Work as may be necessary to complete the Project according to the terms, provisions and conditions of the Contract.

DB150.20 Inspection and Testing - The Design-Builder shall be responsible for Inspection and testing of all Work through its Quality Management Team in accordance with the Accepted Quality Plan and Sections DB154, DB155, DB156 and DB165. The Quality Management Team is not authorized to alter or waive any terms, provisions or conditions of the Contract.

(a) Inspection by the Agency Engineer - The Agency Engineer may test Materials furnished and inspect Work performed by the Design-Builder to ensure Contract compliance including all Work and Materials, including Material production, fabrication, and manufacture.

The Agency's Inspections and tests are for the sole benefit of the Agency and do not constitute any of the following:

- Relief of the Design-Builder's responsibility for providing adequate Quality Management
- Relief of the Design-Builder's responsibility for damage to the Work or damage to or loss of the Materials before Final Acceptance
- Interim or Final Acceptance of the Work or Materials
- Waiver of any Contract obligation or relief from performance of the Contract in accordance with its terms, provisions and conditions, including but not limited to the Design-Builder's obligations and responsibilities for Inspection and testing

All Materials and each part or detail of the Work will be subject to Inspection by the Agency representatives. The Agency Engineer and staff shall be allowed full access and shall be furnished with necessary information and assistance by the Design-Builder to make a complete and detailed Inspection.

At the Agency Engineer's direction, any time before Final Acceptance, the Design-Builder shall uncover portions of the completed Work for Inspection. After Inspection, the Design-Builder shall restore these portions of Work to the standard required by the Contract. If the Agency Engineer determines that the Materials or workmanship of the uncovered

Work are not in compliance with all Contract requirements, or if the Design-Builder performed such Work without providing sufficient advance request for Inspection to the Agency Engineer, uncovering and restoring the Work shall be at no additional cost to the Agency. If the Agency Engineer determines that the uncovered Work is in compliance with all Contract requirements, and the Design-Builder performed the Work only after providing the Agency Engineer with sufficient advance notice, the costs of uncovering and restoring the Work will be paid for by the Agency according to DB195.20.

(b) Inspection Facilities - The Design-Builder shall furnish walkways, railings, ladders, shoring, tunnels, platforms and other facilities necessary to permit the Agency Engineer to have safe access to the Work to be inspected. The Design-Builder shall require producers and fabricators to provide safe access for Inspection as requested by the Agency Engineer.

(c) Sampling - The Design-Builder shall furnish the Agency Engineer with samples of Materials that the Agency Engineer will test. All of the Design-Builder's costs related to this required sampling are Incidental.

(d) Inspection by Third Parties - When a Governmental Body, Utility Owner, Railroad, or other third party is to pay a portion of the cost of the Work covered by this Contract, the Design-Builder shall provide reasonable access to such Entities for purposes of inspecting the Work. Such inspection does not make the unit of government, political subdivision, Utility Owner, or Railroad a party to this Contract, and will not interfere with the rights of the Design-Builder or the Agency under the Contract. Where third parties have the right to inspect the Work, the Design-Builder shall coordinate with the Agency Engineer and shall provide safe inspection access.

(e) The Design-Builder's Duty to Make Corrections - The Design-Builder shall perform all Work according to the Contract Documents. The Design-Builder shall correct Work that does not comply with the Contract at no additional cost to the Agency. Inspection and testing of the Work by the Agency does not relieve the Design-Builder of responsibility for improper prosecution of the Work.

(f) Requirement for Independent Entities. To comply with the objectivity and independence requirements of ORS 279C.307, the Design-Builder or any affiliate of Design-Builder shall not provide commissioning, monitoring, inspections (including special inspections), and testing or evaluation services described thereunder, and in no event shall Design-Builder or its affiliates provide (i) any commissioning, monitoring, inspections (including special inspections) testing or evaluation services, which are required to be provided by an independent entity pursuant to the applicable governing authority or building code, or (ii) those services which necessarily require an objective, independent entity to provide oversight or inspection of Design-Builder's Work. Unless otherwise directed by Owner in writing, Owner shall obtain such commissioning, monitoring, inspections and testing services, including special inspections, with an independent entity ("Independent Entity"). In the event a question arises as to whether services should be performed by an Independent Entity, Owner's direction controls.

i. Cooperation with Independent Entities. Design-Builder shall promptly furnish, without additional charge, all facilities, labor and material necessary in order to enable the commissioning, monitoring, inspection

(including special inspections), and testing services as may be required by Owner or the Independent Entity. The Design-Builder shall, without charge, conform its design and construction services to requirements identified by the Independent Entity, and otherwise replace or correct Work found by Owner not to conform to the identified requirements.

ii. Utilization of an Independent Entity does not relieve Design-Builder from compliance with any Contract requirements or of any responsibility for providing adequate quality control, or for any damages including loss of material. Completion or performance of services by an Independent Entity does not constitute or imply Owner acceptance of Work or affect the rights of Owner before or after acceptance of the completed Work.

DB150.25 Acceptability of Materials and Work - All Work that does not conform to all Contract requirements will be considered unacceptable unless otherwise determined Accepted by the Agency.

Unacceptable Work, whether caused by poor workmanship, defective Materials, design, damage through carelessness, or any other cause found to exist prior to Final Acceptance, shall be removed immediately and replaced at the Design-Builder's sole expense in an acceptable manner irrespective of the presence of, or lack of, an Agency representative at the time the Work was originally completed. This clause will have full effect regardless of the fact that the defective Work may have been done or the defective Materials used with the full knowledge of the Agency's representative. The fact that the Agency representative, including the Agency Engineer, may have previously overlooked such defective Work will not constitute Final Acceptance of any part of it.

For Work that does not conform to the requirements of the Contract, but is Accepted by the Agency in the Agency's full discretion, the Agency will Accept the Materials or Work as suitable for the intended purpose, adjust the amount paid to account for diminished cost to the Design-Builder or diminished value to the Agency, document the adjustment, and provide written documentation to the Design-Builder regarding the basis of the adjustment. In such cases, the Professional of Record shall first evaluate how the nonconforming work affects the performance, suitability, safety, durability, long-term maintenance and the life of the item of Work and provide a recommended payment reduction amount. The Design-Builder shall submit this written evaluation, stamped and signed by the Professional of Record, to the Agency Engineer for consideration in determining whether to Accept the nonconforming work.

The Agency Engineer's decisions concerning acceptability of Materials or Work will be final.

DB150.30 Delivery of Notices - Written notices to the Design-Builder by the Agency Engineer or the Agency will be delivered:

- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested), to the current office address as shown in the records of the Agency; or

- By overnight delivery service of a private industry courier, to the current office address as shown in the records of the Agency.

Notices shall be considered as having been received by the Design-Builder:

- At the time of actual receipt when delivered in person;
- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

Written notices to the Agency Engineer or the Agency by the Design-Builder shall be delivered to the Agency address shown in the Design-Build Agreement, Article 3.2, unless a different address is agreed to by the Agency Engineer, and shall be delivered:

- In person;
- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Notices will be considered as having been received by the Agency:

- At the time of actual receipt when delivered in person;
- At the time of actual receipt or 7 Calendar Days after the postmarked date, when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

For purposes of this Subsection, the time zone is Pacific Standard Time (PST) to determine time of receipt of notices and other documents. For purposes of this Subsection, non-business days are Saturdays, Sundays and legal holidays as defined by ORS 187.010 and 187.020.

Following Notice to Proceed, all notices and other documents submitted to the Design-Builder by the Agency, or to the Agency by the Design-Builder, electronically under DB170.08:

- If recorded in the Electronic Document Management System (EDMS) as received before 5:00 p.m. PST on a business day, it shall be considered as received on the Business Day on which it was actually received in the EDMS.
- If recorded in the EDMS as received on a non-Business Day, or after 5:00 p.m. PST on a Business Day, it shall be considered as received at 8:00 a.m. PST on the next Business Day.

Claims must be submitted on paper documents according to Section DB199.

DB150.35 Plans, 3D Engineering Models, Working Drawings, and 3D Construction Models:

(See DB150.37 and Section DB155).

DB150.37 Equipment Lists and Other Submittals - The Design-Builder shall submit Equipment lists, and other required submittals for Review and Comment, Acceptance or approval, as applicable. The Agency Engineer will respond to requests for Review and Comment, Acceptance or approval within 21 Calendar Days after receipt by the Agency Engineer unless otherwise specified below or in the Section of the Specifications requiring such Review and Comment, Acceptance or approval.

Submittals must include an additional 7 Calendar Days of review and response time if they fall within the review period of the following holidays:

- New Years Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Christmas Day

DB150.40 Cooperation, Management, and Superintendence by the Design-Builder - The Design-Builder is responsible for full management of all aspects of the Work, including superintendence of all Work by Subcontractors, Suppliers, and other providers.

(a) Design-Build Management Personnel - The Design-Builder shall furnish all required management personnel, as specified in the Contract Documents, and as required to perform the Work.

(b) Replacement of Design-Build Personnel - If the Agency reasonably determines any of the Design-Builder's management personnel, employees, Subcontractors, Suppliers, other providers or agents are unqualified, do not perform satisfactory Work, or whose conduct interferes with the progress of the Work, the Design-Builder shall replace such management personnel, employee, Subcontractor, Supplier, provider or agent upon the request of the Agency. The Design-Builder shall provide the Agency at least 14 Calendar Days prior written notice of the proposed replacement personnel and request the Agency's authorization. (See DB180.35(c) for replacement of Design-Builder Key Personnel and DB180.35(d) for replacement of Major Subcontractors.)

(c) Superintendence - The Design-Builder shall cooperate with the Agency personnel in prosecution of the Project. The Design-Builder shall appoint a single Superintendent and may also appoint alternate Superintendents as necessary to control the Work. With the Agency Engineer's consent, the Design-Builder may appoint more than one Superintendent for the Project, depending upon the nature of the Work. The Superintendent(s) shall report directly to the Construction Manager. The form of appointment of the alternate shall state, in writing, the alternate's name, duration of appointment in the absence of the Superintendent, and scope of authority. The Design-Builder shall provide for the cooperation and superintendence on the Project by:

- Furnishing the Agency Engineer all data necessary to determine the actual cost of all or any part of the Work, added Work, or Changed Work.

- Allowing the Agency Engineer reasonable access to the Design-Builder's books and records at all times. To the extent permitted by public records laws, the Agency Engineer will make reasonable efforts to honor the Design-Builder's request for protection of confidential information.
- Keeping one complete set of Contract Documents on the Project Site at all times, available for use by all the Design-Builder's own organization, and by the Agency Engineer if necessary.
- Keeping one set of applicable Contract Documents in the possession of the Design-Builder's Superintendent at each Work Location when Work is being performed, which shall be available for use by all the Design-Builder's own organization, and by the Agency Engineer if necessary.
- Unless otherwise provided, requiring all Subcontractors, Suppliers, and other individuals, agents or Entities performing or furnishing any of the Work to formally communicate with the Agency through the Design-Builder only.
- Appoint a single Superintendent (or multiple Superintendents, with the Agency Engineer's consent), and any alternate Superintendent, who shall report directly to the Construction Manager and shall meet the following qualifications:
- Appointees shall be competent to manage all aspects of the Work associated with Construction Services.
- Appointees shall be from the Design-Builder's own organization.
- Appointees shall have performed similar duties on at least one previous project of the size, scope and complexity as the current Contract.
- Appointees shall be experienced in the types of work associated with Construction Services under the Contract.
- Appointees shall be capable of reading and thoroughly understanding the Contract Documents.
- The appointed single Superintendent (or multiple Superintendents, with the Agency Engineer's consent), or any alternate Superintendent, shall:
- Be present for all On-Site Work, regardless of the amount to be performed by the Design-Builder, Subcontractors, Suppliers, or other providers, unless the Agency Engineer provides prior approval of the Superintendent's or alternate Superintendent's absence.
- Be equipped with a two-way radio or cell phone capable of communicating throughout the Project during all the hours of Work on the Project Site and be available for communication with the Agency Engineer.
- Have full authority and responsibility to promptly supply the Materials, Equipment, labor, and Incidentals required for performance of Construction Services.
- Coordinate and control all Construction Services performed under the Contract, including, without limitation, the Work performed by Subcontractors, Suppliers, and owner/operators.
- Cooperate in good faith with the Agency Engineer, Agency Inspectors, Agency Quality Assurance personnel, the Design-Builder's Quality Management Team and other contractors in performance of Construction Services.

- Provide all assistance reasonably required by the Agency Engineer to obtain information regarding the nature, quantity, and quality of any part of the work associated with Construction Services.
- Provide access, facilities and assistance to the Agency in establishing such lines, grades and points as the Agency requires.
- Carefully protect and preserve the Agency's marks and stakes.

Any Superintendent or alternate Superintendent who repeatedly fails to follow the Agency Engineer's written or oral orders, directions, instructions, or determinations, shall be subject to removal from the Project in accordance with DB150.40(b) and DB180.30.

If the Design-Builder fails or neglects to provide a Superintendent, or an alternate Superintendent, and no prior approval has been granted, the Agency Engineer has the authority to suspend the Work according to DB180.70. Any continued Work by the Design-Builder, Subcontractors, Suppliers, or other providers may be subject to rejection and removal. The Design-Builder's repeated failure or neglect to provide the superintendence required by these provisions constitutes a material breach of the Contract, and the Agency Engineer may impose any remedies available under the Contract, including, but not limited to, Contract termination.

DB150.50 Cooperation with Utilities - See DB174.10.

DB150.55 Cooperation with Other Contractors on Agency Controlled Projects - The Agency reserves the right to perform other work on or near the Project Site, including without limitation any Materials site, with forces other than those of the Design-Builder. This work may be done with or without a contract.

The Design-Builder's coordination of the Work for the Project shall be taken into account by the Design-Builder as part of the site investigations in accordance with DB141.12 and any resulting costs shall be Incidental and included within the Contract Amount.

If such work will or may take place on or near the Project Site, the Design-Builder shall have the following obligations:

(a) The Design-Builder shall coordinate Work with all other contractors or forces.

(b) The Design-Builder shall cooperate in good faith with all other contractors or forces.

(c) The Design-Builder shall perform the Work set forth in the Contract in a way that will minimize interference and delay for all other contractors or forces involved.

(d) The Design-Builder shall place and dispose of the Materials being used so as not to interfere with the operations of all other contractors or forces.

(e) The Design-Builder shall join the Work with that of all other Design-Builders or forces in a manner acceptable to the Agency and shall perform it in the accepted sequence with the work of all other contractors or forces.

(f) The Design-Builder shall coordinate its Design Services with the design professionals providing the design for any other work that may be on or near the Project Site.

The Agency Engineer will resolve any disagreements that may arise among the Design-Builder and other contractors or forces, or between the Design-Builder and the Agency. The Agency Engineer's decision in these matters is final, as provided in this Section DB150.

When the schedules for Work of the Design-Builder and the work of other contractors or forces overlap, the Agency will require that each contractor or force involved submit to the Agency Engineer a current, realistic Baseline Schedule. Before the Agency Engineer accepts the schedule, each party shall have the opportunity to review all schedules. After this review and any necessary consultations, the Agency Engineer will determine acceptable schedules.

The Design-Builder shall waive any right it may have to make claims against the Agency for any damages or claims that may arise because of inconvenience, delay, or loss due solely to the presence of other contractors or forces working on or near the Project Site.

If the Contract provides notice of work to be performed by other contractors or forces that may affect the Design-Builder's Work under the Contract, the Design-Builder shall include any costs associated with coordination of the Work in the appropriate Price Item or as a portion of a Price Item.

In an emergency, the contractor most able to immediately respond shall repair a facility or Utility of another contractor in order to prevent further damage to the facility, Utility, or other Structure as a result of the emergency.

Work for Agency controlled projects, including but not limited to projects provided in the Overlapping Projects document included in DB General Provisions, Attachment A – Engineering Data and available plans of the Overlapping Projects are provided in Attachment C – Reference Data

DB150.56 Cooperation with Other Contractors on Non-Agency Controlled Projects - The Design-Builder shall coordinate Work for the Project with all development, planning, design, and construction efforts for adjacent properties, and work with and monitor such adjacent work, performed by another Governmental Body, community groups, landowners, Railroads, Utility Owners, Utility Owner's consultants and contractors, resource agencies, environmental groups, or any other person. The Design-Builder shall be responsible for reviewing work plans for adjacent work and providing the Agency Engineer with written comments on adjacent work that may result in potential impacts on the Project. The Agency will compile Design-Builder and Agency review comments on the adjacent work and transmit the compiled comments to the Entity that supplied the adjacent work plans. The Design-Builder shall immediately notify the Agency Engineer upon the Design-Builder's receipt of any report or plan associated with adjacent work. The Agency Engineer will establish required review periods for each specific report, map, or plan on a case-by-case basis after discussing acceptable review periods with the Design-Builder.

The Design-Builder shall identify and examine features of any adjacent work outside of the Planned ROW Limits and demonstrate full compatibility in horizontal and vertical alignment and other pertinent technical data between the Design-Builder's Work and adjacent work. The Design Documents must resolve any inconsistencies or design conflicts between adjacent work and the Project in a manner mutually acceptable to the Agency Engineer and the Design-Builder.

Non-Agency controlled projects that may affect this Project, include but are not limited to the projects provided in the Overlapping Projects provided in DB General Provisions, Attachment A – Engineering Data and available plans of the Overlapping Projects are provided in Attachment C – Reference Data.

DB150.60 Construction Equipment Restrictions:

(a) Load and Speed Restrictions for Construction Vehicles and Equipment - The Design-Builder shall comply with legal weight and speed restrictions when moving Materials or Equipment beyond the limits of the Project Site.

The Design-Builder shall control vehicle and Equipment loads and speeds within the Project Site according to the following restrictions:

(1) The Design-Builder shall restrict loads and speeds as necessary to avoid displacement or loss of Materials on Subgrades and Aggregate Bases.

(2) The Design-Builder shall restrict weights to legal loads and shall travel at speeds of no more than 45 mph or the posted construction speed, whichever is less, on treated Bases, Pavement, or wearing Courses.

(3) The Design-Builder shall not cross Bridges or other Structures with Equipment or vehicles exceeding the legal load limit without prior written permission of the Agency Engineer. The Design-Builder shall make any such request in writing, describing the loading details and the arrangement, movement, and position of the Equipment on the Structure, and provided signed and stamped engineering documents and calculations showing that the Structure can withstand the proposed loading without damage. The Design-Builder shall comply with any restrictions or conditions included in the Agency Engineer's written permission.

(4) No existing weight restrictions applicable to the Project at the time construction Work begins thereon can be changed, suspended, or disregarded without the express written authorization of the Agency Engineer.

(b) Protection of Buried Items - The Design-Builder shall use temporary fill or other methods to avoid overload of pipes, box culverts, and other items that are covered, or to be covered, by fill or backfill.

(c) Responsibility for Damages - The Design-Builder shall assume responsibility for damages caused by excessive Equipment speed or loads while performing the Work, both inside and outside the Project Site. The Agency Engineer's permission to cross Bridges and other Structures according to Subsection DB150.60(a) will not relieve the Design-Builder from responsibility for load-caused damages.

DB150.70 Detrimental Operations - The Design-Builder shall avoid operations whose methods, conditions, or timing may injure people or damage property or the Work. Damage may include without limitation, staining surfaces with mud or asphalt or damaging Utilities and foundations. (See also DB150.60, DB150.75, and Section DB170.)

When any such damage occurs, the Agency Engineer will determine if it is to be corrected by repair, replacement, or compensatory payment by the Design-Builder. If compensatory

payment is required, the Agency Engineer will determine the amount. Compensatory payment will be deducted from monies due or to become due to the Design-Builder under the Contract.

DB150.75 Protection and Maintenance of Work During Construction - The Design-Builder shall protect and maintain the Work during construction and until Third Notification has been issued, unless otherwise provided in the Contract. For the purposes of this Subsection, “maintenance” shall include measures to prevent deterioration of Roadway and Structures at the Project Site, and to keep them in good condition at all times during the prosecution of the Work. The Design-Builder shall continuously allocate sufficient Equipment and workers to achieve such maintenance.

If the Contract requires the placement of a Course upon a previously constructed Course or Subgrade, the Design-Builder shall maintain the previous Course or Subgrade during all construction operations.

For additional maintenance requirements during construction see DB141.57.

The Design-Builder shall include costs of protecting and maintaining the Work during construction in the Price Items for the various Price Centers. The Design-Builder shall not be paid an additional amount for this Work, unless otherwise specified.

The Agency Engineer will notify the Design-Builder of the Design-Builder’s noncompliance with this Subsection. If the Design-Builder fails to remedy unsatisfactory protection or maintenance within 24 hours after receipt of such notice, the Agency Engineer may proceed to remedy the deficiency, and deduct the entire cost from monies due or to become due the Design-Builder under the Contract.

DB150.80 Removal of Unacceptable and Unauthorized Work - The Design-Builder shall correct or remove unacceptable Work and remove unauthorized work, as directed by the Agency Engineer in writing. The Design-Builder shall replace such work with Work and Materials conforming to the requirements of the Contract.

For the purposes of this Subsection, “unauthorized work” shall include without limitation the following:

Work that extends beyond lines shown on the Plans or otherwise established by the Agency Engineer;

- Work that is contrary to the Agency Engineer’s instructions; and
- Work that is conducted without the Agency Engineer’s written authorization

The Agency will not pay the Design-Builder for unacceptable Work, except as provided in DB150.25, or for unauthorized work. The Agency Engineer may issue a written order for the correction or removal of such work at the Design-Builder’s sole expense.

If, when ordered by the Agency Engineer, the Design-Builder fails to correct or remove unacceptable Work or remove unauthorized work, the Agency Engineer may have the correction, removal or removal and replacement, done by other forces and deduct the entire cost from monies due or to become due the Design-Builder under the Contract.

DB150.90 Final Inspection:

(a) On-Site Work - The Agency Engineer will inspect the Project at a time close to the completion of the On-Site Work.

When all On-Site Work on the Project is completed, including but not limited to Change Order Work and Extra Work, except for seeding establishment, plant establishment and Punch-List Items, the Agency Engineer will issue Interim and Final Second Notification as specified in DB180.50(g).

Within 15 Calendar Days after the Agency Engineer receives the Design-Builder's written notification that all On-Site Work, including, but not limited to Punch-List Items, final trimming, and cleanup according to DB140.90 has been completed, the Agency Engineer will review the Project and notify the Design-Builder that all On-Site Work is complete, or give the Design-Builder written instruction regarding incomplete or unsatisfactory On-Site Work.

(b) All Contract Work - The Agency Engineer will issue the Third Notification when the Design-Builder has satisfactorily accomplished all of the following:

(1) The Design-Builder has completed all On-Site Work and Punch-List Items required under the Contract;

(2) The Design-Builder has removed all Equipment, other than that incorporated into the Work;

(3) The Design-Builder has completed all Design, Construction and Quality Management Services and submitted all required Documents, certifications, bills, forms, warranties, and other document, including all Quality Management documentation and documentation that all Settlement Ramps are completed and compliant (Inspection Forms 734-5020A-H).); and

(4) The Design-Builder has delivered to the Agency a complete listing of all required warranties, if any.

DB150.91 Post-Construction Review - The Design-Builder or the Agency Engineer may request a Post-Construction Review meeting, to be held at a time prior to issuance of Third Notification but not earlier than 45 Calendar Days following the date of Final Second Notification. The meeting may be held if agreed to by both parties. The party making the request will conduct the meeting and will announce the time and place of the meeting at least 15 Calendar Days prior to the meeting date. The purpose of this meeting is to examine the Project for possible process improvements that may benefit future projects.

DB150.95 Final Acceptance - After the Agency Engineer completes Final Inspection of all Work and sends Third Notification to the Design-Builder, the Agency will acknowledge Final Acceptance. The Agency will notify the Design-Builder in writing of the date of Final Acceptance within 7 Calendar Days after final payment or as soon thereafter as is practicable.

DB150.96 Maintenance Warranties and Guarantees - Prior to Third Notification, the Design-Builder shall transfer to the Agency all unexpired manufacturers' warranties and

guarantees for Materials and Equipment installed on the Project. Such warranties and guarantees must recite that they are enforceable by the Agency.

DB150.97 Responsibility for Materials and Workmanship:

(a) The Design-Builder shall perform the Work according to the Accepted Readiness-for-Construction Plans and Specifications and other Contract requirements.

(b) Whether before or after the Agency's Final Acceptance of the Work, the Design-Builder shall be responsible for:

(1) Correcting or repairing any defects in, or damage to, the Work that results from the use of improper or defective design, materials or workmanship;

(2) Replacing, in its entirety, the Work affected by the use of improper or defective design, materials or workmanship;

(3) Correcting or repairing any Work, Materials, Structures, Existing Surfacings, Pavement, Utilities, or sites, including, without limitation, Wetlands, damaged or disturbed in that correction, repair, or replacement (See Section DB170); and

(4) Providing documentation demonstrating that all Settlement Ramps were completed and compliant (Inspection Forms - 734-5020A-H),.

(c) Full or partial termination of the Contract under DB180.90 shall not relieve the Design-Builder of responsibility for completed or performed Work or relieve the Design-Builder's Surety of the obligation for any just claims arising from the completed or performed Work.

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SECTION DB154 – QUALITY PLAN REQUIREMENTS

DB154.10 General Requirements - The Design-Builder shall establish and implement a Quality Plan. The purpose of the Quality Plan is to:

- Ensure that the Design-Builder provides the Agency a completed Project that complies with Contract requirements;
- Prevent the occurrence of nonconformance, in both design and construction, through active and effective monitoring of processes; and
- Ensure that the Design-Builder manages the Work such that the Agency has the ability to substantiate that the requirements of the Contract are being met and substantiate that appropriate payments for the Work are made.

The Quality Plan must be implemented at all levels of the Design-Builder's and its Subcontractors' organizations for both design and construction functions (including those that supply labor only).

The Design-Builder's Quality Plan must detail how the Design-Builder shall establish and operate its Quality Management Team (as defined in DB154.20) independent from design and construction production and document its procedures pertaining to all aspects of the Work. The Design-Builder shall develop and maintain the Quality Plan such that it provides an Agency-auditable system that ensures that the Design-Builder's organization complies with Contract requirements.

The Design-Builder may submit the Quality Plan in two components. The first component must fully address the following topics pertaining to Design Services:

- Project administration
- Quality Management
- Tracking of estimated (planned) and completed-to-date quantities of Work
- Design Services
- Project progress (scheduling)
- Plan for compliance with environmental items in design
- Plan for tracking quality of legal descriptions and proposed ROW
- Utility coordination and relocation integration from quality team in design
- Compliance with Programmatic Plans
- Document control and maintenance
- Quality Management Team organizational structure, qualifications and communication protocols

The second component of the Quality Plan must fully address the following topics pertaining to Construction Services:

- Construction services plan for tracking work associated with needed ROW

- Work Zone safety
- Real-time close out process for ramps and design-units
- Inspection staffing plan
- Inspection process plan for ADA inspection forms
- Contract payments (monthly Pay Requests) including tracking of estimated quantities and how they will be prepared and presented
- Process for tracking and monitoring concrete curing process
- Process for navigating non-conformance issues
- Process for inspecting drainage
- Plan for tracking environmental compliance in construction
- Plan for tracking of ADA ramp inspection forms
- Compliance with Programmatic Plans
- Document control and maintenance
- Quality Management Team organizational structure, qualifications and communication protocols

The Design-Builder shall include any necessary updates to the Design Services component of the Quality Plan with the submittal of the Construction Services component.

The Construction Services component of the Quality Plan must be Accepted by the Agency prior to the commencement of construction Work.

The Quality Plan must establish the organization of the Quality Management Team personnel and the implementation of all Quality Management activities applicable to the above areas of Work. The Quality Plan must also include and describe processes and procedures for independent auditing by the Quality Management Team and the Project Quality Manager to assess and verify that Work performed by the Design-Builder is compliant with Contract requirements.

The submitted Quality Plan must document the following activities, procedures and protocols:

- Contract Administration;
- Organization of the Quality Management Team;
- Independence of the Project Quality Manager, Construction Quality Manager and Design Quality Manager from the Design-Build Project Manager and production team; and
- Processes, procedures and protocols the Quality Management Team and the Project Quality Manager will use to ensure compliance with the quality requirements for the Contract.

The Agency will review the Design-Builder's Quality Plan to evaluate whether it complies with the guidelines and minimum Contract requirements. However, the Agency's review and Acceptance of the Quality Plan will not constitute the Agency's agreement that it meets these criteria or relieve the Design-Builder of its sole responsibility for the quality and workmanship of the Work performed.

The Agency retains the right to perform quality Inspections and audits of the Design-Builder's management, design, construction, and maintenance activities; the Design-Builder's Quality Management activities; the quality of Materials and fabricated products; and the quality of workmanship of the completed Project.

The construction portion of the Quality Plan must include, but not be limited to, requirements for Design-Builder review, Inspection, documentation and oversight consistent with those indicated in the ODOT *Construction Manual* and the ODOT *Inspector's Manual*. The Design-Builder's Quality Inspectors must be certified in accordance with the Agency Inspection Certification Program and Section DB156.

The Quality Plan must require Materials quality and documentation consistent with the requirements in the ODOT *Manual of Field Test Procedures* (MFTP), the ODOT *Quality Control Compliance Specialist Handbook* (QCCS Handbook), the ODOT *Nonfield-Tested Materials Acceptance Guide* (NTMAG), the ODOT *Qualified Products List* (QPL), and the DB Standard Specifications.

The ODOT *Construction Manual*, ODOT *Inspector's Manual*, MFTP, QCCS Handbook, NTMAG, and QPL are available on the ODOT Construction Section website (see DB110.05(e)).

(a) Quality Plan Submittal Except as provided below, the Design-Builder shall not proceed with any Work before submitting the Design Services component of the Quality Plan, approved and signed by all Key Personnel, to the Agency for Acceptance. The Design-Builder may proceed with the following Work prior to submitting aforementioned Design Services Quality Plan component

- Baseline Schedule
- Surveying and Mapping
- Utility Coordination
- Design Services

The Design-Builder shall not submit anything for agency Acceptance or Approval prior to the Quality Plan approval by the Agency.

The Design-Builder shall coordinate with the Agency and shall produce the Quality Plan, including any necessary changes pursuant to the Agency's review, so that it is acceptable to the Agency within 60 Calendar Days of initial submittal of the Quality Plan to the Agency, or all Work shall be stopped.

The Agency Engineer will be available to meet with the Design-Builder immediately following NTP to discuss the Quality Plan requirements.

(b) Quality Plan Reviews and Updates - The Design-Builder shall conduct ongoing management reviews of its Quality Plan throughout the term of the Contract.

As Work progresses, the Design-Builder shall update the Quality Plan to reflect current conditions and shall make such revisions as are necessary to meet the quality Standards

and requirements established in the Contract Documents. Additionally, the Agency Engineer may identify the need for revisions to the Quality Plan and will notify the Design-Builder accordingly.

The Design-Builder shall submit to the Agency Engineer for Acceptance a conformed copy of each updated Quality Plan, approved and signed by all Key Personnel, within 30 Calendar Days of identification of the need for an update or revision.

The Design-Builder's Key Personnel shall conduct a review of the Quality Plan at least annually (within 12 months of receipt of last Acceptance from the Agency Engineer), and more frequently if numerous nonconformance reports (NCRs) and Nonconforming Issues (NCIs) have been identified. This review shall ensure the Quality Plan's ongoing suitability and effectiveness in satisfying the requirements of the Contract. The Design-Builder shall invite the Agency Engineer to participate in the reviews. Upon completion of the review, the Design-Builder shall submit to the Agency Engineer either: (a) an updated Quality Plan for Agency Acceptance, or (b) a narrative statement that no updates or revisions have been made to the Accepted Quality Plan during that review period, and that all current processes, procedures and protocols are functioning as intended.

The Design-Builder shall include a summary of revisions in tabular format with each Quality Plan update submittal. The summary must include all revisions made subsequent to the Agency's Acceptance of the original Quality Plan.

DB154.15 Communication – The Design-Builder and its Quality Management Team shall direct all Quality Management communication and submittals covered under Sections DB154, DB155 and DB156 to the Agency Engineer. The Design-Builder and its Quality Management Team shall submit Quality Management deliverables, excluding claims, via the Electronic Document Management System (EDMS) established for the Project.

The Design-Builder and its Quality Management Team shall comply with requirements for EDMS usage according to DB170.08.

To the extent possible, all transmittals from Design-Builder and its Quality Management team to the Agency must include the Contract Number, Project name and the Agency's key number. The key number must be used as part of the EDMS established for the Project.

For submittals specific to the EDMS, Design-Builder shall comply with naming conventions, drawer structure, and other instructions as specified in the Agency's current user guide for the ODOT EDMS or as otherwise agreed by the Agency Engineer.

DB154.20 Quality Management Team – The Design-Builder shall establish and provide a Quality Management Team, supervised and directed by the Project Quality Manager and comprised of independent Quality Management personnel including but not limited to the following personnel:

- Project Quality Manager
- Design Quality Manager
- Construction Quality Manager
- Design-Builder Quality Control Compliance Specialist

- ADA Curb Ramp Lead Inspector
- Construction quality control inspectors
- Environmental construction inspectors
- Materials Quality Control testing technicians
- Personnel performing documentation compliance activities

Unless otherwise approved in writing by the Agency Engineer, personnel performing documentation compliance activities must be employed by one of the following:

An Entity that is not performing any Work on the Project, other than either Quality Management activities or Design Services, provided that the Entity:

- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and
- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder).

Personnel performing documentation compliance activities shall not perform any Work on the Project, other than Quality Management activities.

See DB156.20 and DB180.35 for additional Quality Management Team personnel requirements.

All members of the Quality Management Team shall have and exercise the authority to stop Work as appropriate to address nonconformance.

The Design-Builder and its Quality Management Team, through the Project Quality Manager, shall provide leadership, direction and control of all Quality Management activities.

The Quality Management Team shall operate as a distinct and separate quality unit reporting directly to the Project Quality Manager. The Quality Management Team shall be responsible for obtaining all documentation and certifications necessary for approval and acceptance of Materials, ensuring that all required materials testing is completed, and ensuring that all test results meet the Contract requirements. The Quality Management Team shall inspect all Work and ensure that sufficient and appropriate Quality Management Team personnel are present to determine whether the Work complies with Contract requirements and the approved Quality Plan.

Upon the Agency's request, the Quality Management Team shall provide to the Agency Engineer access to, copies of, or both, all documentation, certifications, reports and any other Project Records produced by, obtained by, under the control or in the possession of the Quality Management Team.

The Project Quality Manager shall:

Manage all functions required under the Quality Plan Direct the Quality Management Team with regard to overall Quality Management activities and team meetings. Maintain liaison, communication and coordination between the Quality Management Team, the Agency, and the Design-Builder to facilitate timely, efficient operations for all involved.

(a) Organizational Requirements - The Project Quality Manager shall be responsible for overseeing Quality Management relating to both design and construction, and for the preparation, implementation and maintenance of the Quality Plan.

The Design Quality Manager and Construction Quality Manager shall report directly to, and be directly supervised by, the Project Quality Manager.

The Project Quality Manager shall visit the Project Site on a regular basis and be available for consultation with the Agency Engineer and other Agency staff on an on-call basis throughout the term of the Contract (also see availability and location requirements in DB180.35(a)(2)). The Project Quality Manager shall attend all weekly progress meetings as detailed in the Quality Plan or as required by the Agency, and such other meetings as the Agency Engineer may request, including individual meetings between the Project Quality Manager and Agency staff.

The Project Quality Manager shall be the primary point of contact to the Agency for all issues relating to the Design-Builder's Quality Plan, including preparation, review, implementation, and revisions.

(b) Independent Authority and Responsibilities - The Project Quality Manager shall have and exercise authority to stop Work until the Work is made to conform to Contract requirements.

The Project Quality Manager shall provide independent reports to the Agency Engineer.

The Design-Builder shall not place any restriction on the Quality Management Team that limits complete and full communication with the Agency Engineer. The Agency reserves the right to communicate directly with the Quality Management Team.

(c) Reporting - The Project Quality Manager shall provide verbal and written reports to both the Agency Engineer and the Design-Builder. The Project Quality Manager shall:

(1) Provide a written monthly report to both the Agency Engineer and the Design-Builder senior management, which must include but not be limited to the following topics:

- Assessment of the performance and effectiveness of the Quality Plan
- Summary of new NCRs and NCIs logged during the month
- Summary of corrective actions in progress
- Summary of recommendations (e.g., production rate adjustments) made by the Quality Management Team to the Design-Builder during the month

(2) Meet at least monthly with the Agency Engineer separate from any Design-Builder personnel, to discuss:

- The Quality Plan
- Corrective actions in progress
- Monthly written reports

- Monthly certification Pay Request
- Other appropriate topics

(3) Prepare and maintain a written summary of all disagreements (DB199.10) and written protests filed by the Design-Builder in accordance with DB199.20. The summary must include a description of current status or resolution for each disagreement and each filed protest. The summary must be updated monthly and submitted to the Agency with the Design-Builder's monthly Pay Request in accordance with DB180.45.

The Project Quality Manager shall include other members of the Quality Management Team in the meetings as appropriate or as required by the Agency.

DB154.30 Quality Task Force - The Agency Engineer and the Design-Builder will jointly form a quality task force team. The task force meetings will address and rectify issues relating to Inspection, substandard Materials quality, inadequate Quality Management processes that need to be adjusted, test results that are out of tolerance, disparity between Design-Builder and Agency test data, future quality concerns, disputes regarding remediation of NCRs and NCIs, and any issues that the Agency Engineer and the Design-Builder may have regarding quality of the Project.

The Design-Builder shall assign all Quality Management Team personnel and any other personnel the Design-Builder acknowledges as having quality-related concerns to the quality task force team. The Agency Engineer may assign similar Agency personnel related to the Project or having Project quality concerns to the quality task force team.

The Design-Builder shall schedule the quality task force meetings, develop the meeting agendas, document the meeting minutes, and distribute minutes to attendees. The Design-Builder shall coordinate with the Agency Engineer to schedule the meetings at a mutually agreed time. At the start of the design and construction phases, meetings shall be held weekly to discuss quality issues. The meeting frequency may decrease as quality issues decrease. In the event that Contract performance becomes substandard, the Agency Engineer will require that the quality task force meet more frequently.

The Design-Builder shall review all of the current and unresolved NCRs and NCIs at each meeting, and discuss or address the following:

- Action taken by the Quality Management Team – How will the Quality Management Team ensure the NCR/NCI will not be repeated? How has this action been addressed in the Quality Plan?
- Resolution of the initial issue that caused the NCR/NCI – How was it corrected?
- How to prevent the issue from recurring

Example topics for a weekly quality task force meeting include but are not limited to the following:

- Safety
- Schedule
- Review of previous action items from prior meetings

- Design quality
- Current and upcoming activities
- Quality Inspections and testing
- Open NCRs and NCIs
- New issues

DB154.40 Nonconforming Work - The Quality Management Team shall identify and document all elements of Work that have not, or are believed to have not, been performed in accordance with the Contract Documents, and the reason for nonconformance in an NCR. The NCR shall be submitted to the Agency Engineer in writing, with a copy to the Design Manager, within 24 hours of identification.

The Agency retains the right to identify and document instances of nonconforming work, based on the Agency's observance of the Work and Agency audits. The Agency will document such nonconformance in an audit finding or a written NCI notification to the Design-Builder. The Design-Builder shall log, review, and adhere to the same remediation process requirements described below for NCIs and audit findings as for NCRs.

For every instance of nonconforming work that is cited by the Design-Builder and its Quality Management Team or by the Agency Engineer, the Design-Builder shall perform remediation to bring the Work into compliance with the Contract Documents, except as otherwise allowed by the Agency under DB150.25. The remediation method selected by the Design-Builder must be contractually compliant.

The Professional of Record shall evaluate the effect the nonconforming work and the Design-Builder's selected remediation have on the performance, suitability, safety, durability, long-term maintenance and the life of the item of Work. The Design-Builder shall submit this written evaluation, stamped and signed by the Professional of Record, to the Agency Engineer for Acceptance. The Design-Builder shall not commence the Work required for remediation of Settlement Curb Ramps in the field until the submittal has been Accepted.

If the remediation of Settlement Curb Ramps involves Work in the field, the Design-Builder shall submit an advance copy of the stamped and signed remediation plan to the Agency Engineer for Review and Comment at least 24 hours prior to starting the remediation. The Design-Builder shall adhere to the same Quality Management processes for Design Documents that are prepared as a result of nonconforming work, including remediation plans, as are required for all other Design Documents in accordance with the Quality Plan and Contract Documents.

The Design-Builder shall submit copies of a Nonconformance Closure Report to the Agency Engineer for Review and Comment within 7 Calendar Days after completing the nonconforming work remediation. The report must include, but not be limited to the following:

- A copy of the Accepted Professional of Record's remediation evaluation
- Signed and stamped remediation plan, if applicable
- Signed and stamped certification from the Construction Quality Manager, stating that the remediation Work has undergone Inspection and testing as required by the Contract Documents

The Design-Builder shall maintain a log of all NCRs, NCIs, and audit findings. The log must include a unique record number assigned to each nonconformance, a brief description of the nonconformance and the current remediation status.

DB154.50 Hold Points – The Design-Builder shall identify Hold Points in the Quality Plan where critical characteristics are to be measured and maintained, and at points where it is impractical to determine the adequacy of either Materials or workmanship once Work proceeds past this point.

The Design-Builder shall provide the Agency Engineer with advance notice of at least 3 Calendar Days before each Hold Point. Agency representation is required at all Hold Points identified as Agency Hold Points. At the Agency Engineer's discretion, the Agency may have representatives present at Hold Points identified as Design-Builder Hold Points. Work subject to a Hold Point shall not proceed until the Hold Point activity or Inspection is performed and a written authorization to proceed with the Work is issued by the identified owner of the Hold Point (either the Agency Engineer or the Design-Builder's Quality Management Team).

Pre-activity conferences and meetings described and required in the DB Standard Technical Specifications must be included in the Design-Builder's Quality Plan as Hold Points. These conferences and meetings may include, but are not limited to the following:

- Structural steel prefabrication conferences
- Precoating conferences
- Prepaving conferences
- Curb ramp preplacement conferences
- Pre-striping conferences
- Retaining wall preconstruction conferences
- Pre-welding conferences

Any stages identified in the DB Standard Technical Specifications where Inspection or approval is required before Work can proceed must be included in the Design-Builder's Quality Plan as Hold Points.

The Design-Builder shall identify and include a listing of all applicable Hold Points with each Readiness-for-Construction submittal.

At a minimum, the Quality Plan must establish Hold Points at the stages listed below in Table DB154.50-1. The Design-Builder shall identify any additional Hold Points necessary to ensure compliance with the Quality Plan and Contract Documents. The following Hold Points are not intended to limit or reduce the Design-Builder's responsibility to Inspect all Work.

Table DB154.50-1 Summary of Required Hold Points		
	Hold Point Owner	
Hold Point Description	Design-Builder's Quality Management Team	Agency Engineer
All pre-activity conferences and meetings described and required in the DB Standard Technical Specifications or Design-Builder Specifications	X	
All stages identified in the DB Standard Technical Specifications or Design-Builder Specifications where inspection or approval is required before Work can proceed	X	
Utility Relocations		
Prior to any relocation of existing Utilities	X	
Temporary Erosion & Settlement Control		
After installation of High Visibility Fencing for No Work Zones and Disturbance Limits		X
After installation of Temporary Erosion and Sediment Control devices and prior to any construction operations, and before major construction stage changes		X
Prior to any Temporary Water Management dewatering operations		X
Embankment & Backfill		
Prior to constructing foundations or Structures supported in or on the embankment or backfill	X	
Structures (including Bridges, Walls, Major Sign Structures, and ITS Structures)		
After containment installation and before commencing Structure removal and demolition activities		X
Before concrete placement of any subsurface element including concrete for cast-in-place piles and drilled shafts, with formwork, inserts, conduit and reinforcement in place	X	
After installation of grout pad or anchor bolts prior to setting bearings/beams/girders	X	
After completion of soil foundation and before the placement of the leveling pad of a structural earth wall or the foundation of any other type of retaining wall	X	
Before concrete placement of cast-in-place retaining walls with formwork, inserts, and reinforcement in place	X	
After completion of drainage systems behind walls and fully connecting the drainage line behind the wall and before backfill of wall	X	

Table DB154.50-1 Summary of Required Hold Points		
Stormwater Facilities		
After layout of stormwater facility	X	
After excavation and prior to installation of drainage structures	X	
Prior to operation of facility	X	
In-Water Work		
Before conducting any in-water construction activities and prior to operating any equipment below the ordinary high-water mark. This includes Work in wetlands, streams, irrigation canals or mitigation sites		X
Culvert replacement, removal, and extensions		X
Grade Verification Points		
After completion of subgrade / prior to Aggregate Base	X	
After completion of Aggregate Base / prior to Paving	X	
Electrical, Intelligent Transportation Systems, and Illumination		
After excavating trenches and installing conduit / prior to backfilling trenches	X	
Landscaping and Aesthetics		
Plant inspection prior to planting any plant material	X	
Performing/Implementing State's Obligations (Right-of-Way)		
Staking of available Right-of-Way		X
Work within any Local Agency Right-of-Way		X
Environmental		
Prior to subgrade work within a historic or archeological area		X
Inspection		
Prior to beginning any ADA inspection forms		X

DB154.60 Quality Plan Requirements - The Design-Builder's Quality Plan shall provide complete information and documented Quality Management procedures and protocols for all relevant aspects of the Work. The Quality Plan must be organized in accordance with, and must include the information set out in the following outline:

(a) General:

(1) Table of Revisions and Approval Signatures from all Key Personnel

(2) Introduction and Original Approval Signatures from all Key Personnel

(3) Pre-Activity Conferences and Meetings: Listing of all pre-activity conferences and meetings to be held as part of the Project, including the minimum time requirements for notification to the Agency and for meeting occurrence in advance of the subject Work activity

(4) Quality Assurance Task Force: Description of how the Design-Builder shall comply with the requirements included in DB154.30

(5) Nonconforming Work: Description of how the Design-Builder shall comply with the requirements included in DB154.40

(6) Quality Plan Reviews and Updates: Description of how the Design-Builder shall comply with the requirements included in DB154.10(c)

(b) Quality Management Team:

(1) Organization: Organizational chart of the Quality Management Team (QMT) that indicates:

- Lines of authority
- Reporting responsibilities
- Interaction with other Design-Builder Key Personnel

(2) Project Quality Manager: Identification of the Project Quality Manager and description of how the Project Quality Manager's qualifications, roles, and responsibilities meet the Contract requirements

(3) Design Quality Manager: Identification of the Design Quality Manager and description of how the Design Quality Manager's qualifications, roles, and responsibilities meet the Contract requirements

(4) Construction Quality Manager: Identification of the Construction Quality Manager and description of how the Construction Quality Manager's qualifications, roles, and responsibilities meet the Contract requirements

(5) Design-Builder Quality Control Compliance Specialist: Identification of the Design-Builder Quality Control Compliance Specialist (QCCS) and description of how the Design-Builder QCCS's qualifications roles, and responsibilities meet the Contract requirements, including copies of all applicable certifications

(6) Construction Quality Control Inspectors: Identification of the construction quality control inspectors, including the ADA Curb Ramp Lead Inspector, and description of how the construction quality control inspectors' qualifications, roles, and responsibilities meet the Contract requirements

(7) Environmental Construction Inspectors: Identification of the environmental construction inspectors and description of how the environmental construction inspectors' qualifications, roles, and responsibilities meet the Contract requirements.

(8) Materials Quality Control Testing Technicians: Identification of the Materials quality control testing technicians and description of how the Materials quality control testing technicians' qualifications, roles, and responsibilities meet the Contract requirements.

(9) Communications: Description of the Quality Management Team's communications tools, processes, protocols and procedures, including but not limited to:

- Communications internal to Quality Management Team and the Project Quality Manager
- Communications between the Design-Builder and the Quality Management Team and the Project Quality Manager
- Communications between the Agency Engineer and the Quality Management Team and the Project Quality Manager

(10) Stop Work Authority: Acknowledgement that all members of the Quality Management Team have authority to stop Work, in accordance with DB154.30

(c) Design Quality:

(1) General: Description of how the Design-Builder shall comply with the requirements included in Section DB155.

(2) Agency Design Reviews: Description of how the Design-Builder shall comply with the requirements for Agency Design Review submittals included in Section DB155, including but not limited to advance notification, review durations, and tracking and resolution of Agency comments.

(3) Design Review Plan: See DB155.03.

(4) Design Checks: Description of how the Design-Builder shall comply with the requirements included in DB155.11, including applicable checklists and forms.

(5) Design Validation: Description of how the Design-Builder shall validate design calculations performed by computer software.

(6) Quality Management for Design Changes: Description of the Design-Builder's Quality Management processes and procedures for design changes occurring after Acceptance of Readiness-for-Construction Plans and Specifications, including but not limited to compliance with the requirements of Section DB155, tracking, and classifying changes

(7) Working Drawings and 3D Construction Model Data: Description of the Design-Builder's Quality Management processes and procedures for Working Drawings and 3D Construction Model data, including but not limited to the following:

- A complete listing of all Working Drawings and 3D Construction Model data that are required for the Project
- Compliance with the requirements of Section DB155
- Tracking processes and procedures

(8) As-Constructed Documentation: Description of how the Design-Builder shall comply with Contract requirements to prepare and submit As-Constructed Plans and Design-Builder Specifications, including Quality Management processes and procedures

(9) Document and Data Management: Description of the Design-Builder's document and data management systems, processes and procedures pertaining to Design Services, including but not limited to the following:

- Description of how the Design-Builder's document and data management systems shall comply with Contract requirements (see also DB170.08)
- Listing of the metadata that will be included and tracked by the Design-Builder for all documents submitted and received
- Description of the Design-Builder's tracking and logging processes and procedures for all documentation and data types
- Description of how the Design-Builder shall comply with digital stamping and signature requirements included in Section DB155

(10) Design Quality Forms and Checklists: Template forms and checklists to be used by the Design-Builder as part of the Quality Management activities for Design Services

(d) Materials Quality:

(1) General: Description of how the Design-Builder shall comply with Materials Quality Management requirements included in Sections DB156 and DB165, the MFTP and the NTMAG

(2) Materials Quality Control Plan: A Materials Quality Control Plan prepared by the Design-Builder in accordance with the MFTP, Section 2 Appendix B (Contractor Quality Control Plan)

(3) Quality Control Personnel and Materials Form: A completed Proposed Quality Control Personnel and Materials form (ODOT Form 734-2602), or a Design-Builder form that includes, but is not limited to, all the information included on ODOT Form 734-2602 and expanded as necessary to include all anticipated technicians, laboratories, quality control personnel and Materials that may be used on the Project

(4) Materials Quantities Tracking and Reporting: Description of how the Design-Builder shall comply with the requirements included in DB156.50 for providing projected Materials placement quantities and for tracking and reporting quantities of Materials placed each shift

(5) Document and Data Management: Description of the Design-Builder's document and data management systems, processes and procedures pertaining to Materials, including but not limited to the following:

- Description of how the Design-Builder's document and data management systems shall comply with Contract requirements (see also DB170.08)
- Listing of the metadata that will be included and tracked by the Design-Builder for all documents submitted and received
- Description of the Design-Builder's tracking and logging processes and procedures for all documentation and data types

(6) Materials Quality Forms and Checklists: Template forms and checklists to be used by the Design-Builder as part of the Quality Management activities for Materials, both field-tested and nonfield-tested

(e) Construction Quality:

(1) General: Description of how the Design-Builder shall comply with the construction Quality Management requirements included in Section DB156

(2) Coordination with the Agency: Description of the Design-Builder's processes and procedures for coordinating and communicating with the Agency for activities including but not limited to the following:

- Materials receiving schedules
- Materials sources
- Off-site fabrication Inspection
- Agency quality assurance

(3) Pay Requests, Source Documents and Price Adjustments: Description of how the Design-Builder shall comply with requirements included in Section DB195 to prepare, verify, certify and submit monthly Pay Requests, source documents and price adjustments

(4) Materials on Hand: Description of how the Design-Builder shall comply with Contract requirements for advance allowance payment requests for Materials on hand

(5) Materials Quantities Tracking and Reporting: Description of how the Design-Builder shall comply with the requirements included in DB156.30 for tracking and reporting quantities of Materials placed each shift

(6) Hold Points: Description of how the Design-Builder shall comply with DB154.50, including a list of all Hold Points

(7) Document and Data Management: Description of the Design-Builder's document and data management systems, processes and procedures pertaining to Construction Services, including but not limited to the following:

- Description of how the Design-Builder's document and data management systems will comply with Contract requirements (see also DB170.08)
- Listing of the metadata that will be included and tracked by the Design-Builder for all documents submitted and received
- Description of the Design-Builder's tracking and logging processes and procedures for all documentation and data types

(8) Construction Quality Forms and Checklists: Template forms and checklists to be used by the Design-Builder as part of the Quality Management activities for Construction Services.

(f) Project Closeout: Description of how the Design-Builder shall comply with DB154.80.

(g) Appendices:

(1) Quality Management Team Resumes, Certifications, and Contact Information

(2) Working Drawings and 3D Construction Model Data Table

(3) Design Quality Forms and Checklists

(4) Materials Quality Forms and Checklists

(5) Construction Quality Forms and Checklists

DB154.70 Support for Project Records Requests – The Design-Builder and its Quality Management Team shall identify, assemble, review and provide access to Project Records in the Design-Builder's possession or control to the Agency and support the Agency in responding to public records requests and other Project Records requests.

The Design-Builder shall not provide any records in response to public records requests or other Project Records requests without approval from the Agency Engineer.

DB154.80 Project Close-out and Submittal of Final Project Documentation – The Design-Builder and its Quality Management Team shall complete interim and final on-site Inspections and submit all Project Records required for final payment and Project Acceptance.

The Design-Builder shall notify the Agency when all On-Site Work is completed in accordance with Sections DB150, DB180, and the ODOT *Construction Manual*, Chapter 13 – Contract Time.

The Design-Builder and its Quality Management Team shall:

- Participate in Project close-out coordination meetings with the Agency.
- Participate in the Project Final Inspection with the Agency within 15 Calendar Days after receiving notice from the Design-Builder that all punch list items, final trimming and cleanup according to the Specifications have been completed.

- Once the punch list items have been corrected, meet at Project site with the Agency for a follow-up to the Final Inspection.
- Organize and submit the final Project quality and quantity compliance documentation to the Agency Engineer according to the Semi-Final Documentation Submittal (form 734-2706) associated with the Project and as detailed in the ODOT *Construction Manual*, Chapter 37 – Submittal of Final Project Documentation.
- Review all documentation with the Agency Engineer as information is submitted within the EDMS. Address and correct all deficiencies and nonconformances identified in documentation reviews with the Agency Engineer.
- Upon the Agency's issuance of Final Second Notification, work with the Agency to perform a final review of all the Project quality and quantity documentation. Address and correct all deficiencies and nonconformances identified in the final documentation review with the Agency Engineer.
- Within 14 Calendar Days after the plant establishment Work has been completed, complete any quality compliance and quantity documentation associated with plant establishment Work and submit the documentation within the EDMS for the Agency Engineer's review and documentation Acceptance.
- Provide notification to the Agency Engineer that all quality, quantity, and semi-final documentation has been submitted within the EDMS (Refer to the ODOT *Construction Manual*, Chapter 37 – Submittal of Final Project Documentation). If satisfactory, the Agency Engineer will initiate steps to engage the ODOT Construction Section, Contract Administration Unit for review, Final Acceptance and archiving of the Contract documentation. The Design Builder and the Quality Management Team shall coordinate with the Agency Engineer concerning certain documentation that must be provided in paper format (e.g., weigh memos).

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SECTION DB155 – DESIGN MANAGEMENT AND DESIGN QUALITY MANAGEMENT

DB155.01 Design-Builder Responsibilities:

(a) General - The Design-Builder shall ensure that all Design Services and Design Documents comply with all design quality and other requirements and Standards included or incorporated in the Contract. The Agency reserves the right to conduct verification oversight audits for conformance with the Contract requirements.

(b) Design-Builder Responsibilities - It shall be solely the Design-Builder's responsibility to provide Design Services and Design Documents of such a nature to deliver the finished construction Work in accordance with all Contract requirements and standards. Neither the Agency's Review and Comment (nor the Agency's lack of comment) nor the Agency's Acceptance of such Design Documents will relieve the Design-Builder of that responsibility.

The Design-Builder shall not proceed with Design Services for Readiness-for-Construction Plans and Specifications or Construction Services for a Design Unit prior to receiving written notification from the Agency that the National Environmental Policy Act (NEPA) review process has been fully completed for that Design Unit. (See DB140.51)

Readiness-for-Construction Plans and Specifications that have been Accepted by the Agency shall not thereafter be amended or altered without the prior approval of the Design-Builder's Professional of Record, completion of the necessary Design Review processes set out herein, certification of the Design Quality Manager and Acceptance by the Agency.

The Design-Builder shall perform each of the following:

- Manage the Design Services and design quality of the Work;
- Coordinate with and obtain necessary approvals from Authorities, Governmental Bodies, Utilities, and Railroads regarding temporary road diversions and detours, shutdowns, temporary traffic diversions, Utility relocations, temporary sidewalk closures, pedestrian and bicycle detours and all other matters for which authorization may be required;
- Ensure that each Professional of Record and the Design Manager complete the necessary reviews, evaluations and design checks in accordance with the procedures set out herein, and provide the appropriate documentation and certifications; and
- Ensure that the Design Quality Manager certifies that quality procedures have been followed for all Design Documents in accordance with Contract requirements and the Quality Plan.

The Design-Builder's processes and procedures for checking the design of permanent components of each of the Design Units shall also apply to checking the design of major temporary components for each Design Unit, including but not limited to temporary Bridges, temporary Structures, temporary water management, and temporary traffic control that could affect the safety, quality or durability of the Project components or construction sequences of the Work.

References in this Section DB155 to performance of Contract obligations by the "Design Firm", "Design Manager", "Professional of Record", "Design Quality Manager" or other personnel shall mean performance by the Design-Builder by and through the specified personnel.

(c) Electronic Documents, Digital Seal and Signature – The Design-Builder shall use ODOT's ProjectWise Network for electronic submittal and receipt of files in accordance with DB170.08. All final documents identified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, must bear the digital seal and signature of the Oregon registered professional under whose supervision and control they were prepared. Documents must be submitted in the format specified in the Contract for each deliverable and must comply with OAR 804-030, OAR 806-010, OAR 809-050 and OAR 820-025 requirements, as applicable, for digital seal and signature capable of independent verification, final and draft documents, modifications to designs, and dual stamping of documents.

The Design-Builder shall submit 3D Construction Model data in LandXML format or as otherwise directed by the Agency Engineer.

DB155.02 Design-Builder's Design Organization and Functions:

(a) Design-Builder's Design and Design Quality Personnel:

(1) Design Firm - The Design-Builder's organization shall include a suitably qualified and experienced Design Firm to lead the Design-Builder's performance of the Design Services for the Project. The Design Firm, through the Design Manager, shall determine and certify completeness of design.

The Design Firm must be a separate Entity from the Design-Builder. As defined in DB110.20, the "Design Firm" is a Subcontractor. However, if the Design-Builder is a joint venture or partnership, and a professional design Entity is a joint venture member or partner of the Design-Builder, that professional design Entity, if qualified, may serve as the Design Firm.

(2) Design Manager - The Design Firm's designated Design Manager shall manage all Design Services including, without limitation, determining and certifying completeness of design.

(3) Professionals of Record - The Design Firm shall designate and assign a Professional of Record responsible for the Design Services for each professional discipline included within a Design Unit. The Professionals of Record shall place their official professional seal and signature on all documents submitted to the Agency that are prepared by the Professional of Record, or under their direct supervision, that require such seal and signature, including design drawings and reports, Plans, Working Drawings, and Design-Builder Specifications, as well as any other Work Products specified.

Work shall be performed by licensed engineers, land surveyors, geologists, landscape architects, and photogrammetrists under the following Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR):

- ORS 537: Certified Water Rights Examiners
- ORS 671: Architect; Landscape Professions and Business
- ORS 672: Professional Engineers; Land Surveyors, Photogrammetrists; Geologists
- OAR 804: Landscape Architect Board
- OAR 809: Board of Geologist Examiners
- OAR 820: Board of Examiners for Engineering and Land Surveying

Work Products required to be sealed by licensed professionals under Oregon statutes, rules, and the licensing board rulings, legal opinions and pursuant to technical guidance shall be prepared by, or under the responsible charge of, qualified licensed professionals. The Agency will issue and maintain technical guidance that lists specific Work Products that require the seal of a qualified professional.

Each licensed professional who seals a Work Product shall be the Professional of Record for the Work Product bearing the seal. A change or modification to a Work Product that requires a Professional of Record's seal must be approved by the Professional of Record or an authorized licensed professional who will be responsible for the change. Changes not requiring approval of a licensed professional are not covered under this requirement.

(4) Design Quality Manager - The Design-Builder shall provide a Design Quality Manager as part of the Quality Management Team to be responsible for independently reviewing Design Documents received from the Design Manager prior to requesting Review and Comment or Acceptance from the Agency. The Design Quality Manager shall evaluate design development processes and procedures and Design Documents in accordance with the Quality Plan and shall certify to the Design-Builder and to the Agency that the design complies with all Contract requirements. The Design Quality Manager shall coordinate with the Project Quality Manager to modify the Quality Plan as necessary and in accordance with Section DB154 to ensure that the plan is effective.

(b) Design-Builder's Design and Design Quality Personnel Functions:

(1) Design Manager Responsibilities - The Design Manager shall be responsible for the supervision and quality of all Design Services and design processes, including but not limited to the following:

- Accuracy
- Adequacy
- Conformance to professional standards of care
- Compliance with all legal requirements, contractually mandated Standards and other Contract requirements
- Life cycle cost effectiveness (e.g., design, construction, maintenance, operations and replacement costs)
- Quality
- Fitness for purpose and function as specified or implied in the Contract

- Constructability of design
- Maintainability of design
- Certification of completeness of design

a. The Design Manager's certification of completeness of design evaluation shall include, but is not limited to the following:

- Dimensions of all elements
- Geotechnical memorandums
- Durability and maintainability requirements
- Details of required Quality Management procedures, monitoring, and controls
- Design criteria
- Design Exceptions
- Design Deviations
- Agency concurrence to Design-Builder Specifications
- Traffic Operations Approvals
- Permits
- Contaminated media management plans
- Photometric analysis
- Stormwater memorandums
- Conformance with Project Commitments
- Conformance with Construction Interdisciplinary Commitments
- Compatibility with previously completed Project Work
- Conformance with implemented risk management strategies
- Compliance with all Legal Requirements and contractually mandated Standards and other Contract requirements
- All such other analysis as may be necessary

b. Scope of Review - The Design Manager shall review for Contract conformance and completeness the Design-Builder's Work Products and documents, including but not limited to the following:

- Design reports
- Analytical approach
- Drawing details
- Design-Builder Specifications
- Definitive Design, Interim Design, Readiness-for-Construction Plans and Specifications, Working Drawings, and 3D Construction Model data
- Major temporary components' effect on permanent components
- Field-proposed design changes
- Design approvals for Materials, Equipment, and procedures

- As-Constructed Plans for conformance with Readiness-for-Construction Plans and Specifications, Working Drawings, and 3D Construction Model data

(2) Design Quality Manager Responsibilities:

a. The Design Quality Manager shall conduct independent quality reviews for each of the following:

- Design of permanent and major temporary components
- Changes in design of permanent components
- Definitive Design, Interim Design, Readiness-for-Construction Plans and Specifications, Working Drawings, and 3D Construction Model data
- Design reports and calculations
- The Design Manager's certification of completeness of design
- As-Constructed Plans and Specifications

b. The Design Quality Manager shall also perform, monitor and report on the following:

- Identify and report nonconformance
- Track, monitor, and report on status of outstanding design-related nonconformance reports
- Work with Agency staff during the design audit process to address nonconformance reports and nonconformance issues.
- Prepare and submit monthly Design Quality Management status reports (see DB155.13(b)(2).)
- Verify all required Design Manager certifications are complete, submitted and filed

c. The Design Quality Manager shall independently review and issue a written certification to the Agency Engineer that each of the following conditions have been met for all Readiness-for-Construction Plans and Specifications:

- Design checks have been completed;
- The design conforms to all legal requirements and other Contract requirements and standards;
- All applicable Design Exceptions, Design Deviations, and Operations Approvals have been approved in writing by the Agency;
- All required written concurrences from Agency Technical Resources have been obtained for modified DB Boilerplate Technical Special Provisions or additional Design-Builder Specifications, as described in DB155.19;
- Design Quality Management procedures have been complied with in accordance with Contract requirements and the Quality Plan; and
- All outstanding issues and comments from the Design Review have been resolved.

(c) Location of Design-Builder's Design Personnel - The Design-Builder shall require the Design Firm to have or establish an office within 50 miles of Salem, Oregon and maintain adequate staffing throughout the term of the Contract to enable the Design-Builder to meet Project Work Schedule performance deadlines.

Professionals of Record shall be available to meet at the Project Site as necessary to coordinate the Work and to attend applicable design review meetings.

DB155.03 Design Review Plan - As part of the Quality Plan, the Design-Builder shall prepare and submit to the Agency Engineer for Review and Comment a written Design Review Plan.

The Design Review Plan must describe the quality review responsibilities of the Design Manager and the independent responsibilities of the Design Quality Manager. The Design Review Plan must describe the level of design completion that the Professional of Record shall accomplish for each of the planned stages of design development and must include a description or checklist for each Design Unit, clearly identifying the design packages that will be reviewed. Statements of percent complete will not be acceptable.

The Design Review Plan must include detailed procedures the Design-Builder shall follow to document all steps of the quality review process for each Work Product, including documentation of all reviewer comments and the resulting determinations made or actions taken in response to the comments.

Refer to Section DB141 for additional details of the Work Products required to be submitted with each design development milestone (Definitive Design, Interim Design, Readiness-for-Construction, and As-Constructed Plans) for Agency Review and Comment or Agency Acceptance.

DB155.04 Design Units - The Design-Builder has identified Design Units which are described in Exhibit A-1 (DB Technical Approach) and align with the Form SP (Schedule of Prices available in Exhibit A-2). Design Builder shall package Definitive Design, Interim Design and Readiness-for-Constructions Plans and Specifications for the Work into those Design Units.

Within 30 Calendar Days after NTP, and prior to the design mobilization meeting, the Design-Builder shall provide to the Agency Engineer a written Design Unit Report for each Design Unit. The submitted Design Unit Report shall include, but not be limited to, the following information:

- Design Unit description, including scope of design Work within each Design Unit, including limits and interface points
- Planned Design Unit review schedule, including specific information to be reviewed and percent complete represented by each review
- Professionals of Record assigned to each Design Unit
- Locations where design Work will be performed

The Design-Builder shall submit any proposed revisions to the Design Unit Report in writing to the Agency Engineer concurrent with the Monthly Progress Report.

DB155.05 Finalization of Design Units Meetings - Prior to the commencement of design, the Design-Builder shall schedule a design development meeting with the Agency Engineer to finalize the Design Unit breakdown (set forth in Exhibit A-1), content, and submittal schedule.

DB155.06 Design Mobilization Meeting - Within 45 Calendar Days after NTP, the Design-Builder shall arrange and attend a design mobilization meeting to familiarize the Design Firm's personnel, Agency review personnel and Interested Parties (if invited by the Agency) with issues, status, and review processes and procedures. The meeting agenda must include, but not be limited to, the following:

- Review and verify the Project Requirements and other constraints included in the Contract Documents prior to development of further design work;
- Developing agreements regarding time to be allowed for design reviews, including time necessary to accommodate reviews by Governmental Bodies, Tribes, Railroads and Utility Owners;
- Design Review Plan and Design Quality Management;
- Processes related to the Design Exceptions, Design Deviations, and Operations Approvals;
- Processes related to the required Agency concurrence for Design-Builder Specifications;
- Review of permit requirements and Project Commitments List;
- Design Unit Report; and
- Design development, review and submittal schedules, including the review timelines.

The Agency and the Design-Builder shall jointly develop the agenda of the meeting and determine how it will be organized. The Design-Builder shall distribute the final version of the agenda to all meeting attendees at least 24 hours in advance of the meeting. The Design-Builder shall prepare meeting minutes and distribute the minutes to all meeting attendees within 3 Calendar Days after the meeting.

The Design-Builder shall prepare meeting minutes, documenting all agreements, schedules, and understandings reached during the design mobilization meeting. The Design-Builder shall provide the meeting minutes to all meeting attendees within 7 Calendar Days after the meeting.

DB155.07 Stages of Design Development - The Design-Builder shall conduct a single comprehensive design check and Design Review for each Design Unit at each of the following stages of design development:

- Definitive Design
- Interim Design
- Readiness-for-Construction Plans and Specifications
- As-Constructed Plans

The Design-Builder shall also conduct design checks and other Quality Management activities as described in the Quality Plan for all Working Drawings and 3D Construction Model data as they become available for each Design Unit.

DB155.08 General Design Exceptions, and Operations Approvals:

(a) General Design Exceptions (non-ADA) – The Design-Builder shall prepare and submit any relevant General Design Exception requests to the Agency Engineer for Review and Comment not later than the Definitive Design Review. The Design-Builder shall prepare General Design Exception requests in accordance with the ODOT *Highway Design Manual* and shall include a report detailing justifications for retaining a non-standard or substandard feature, or for providing an improvement that does not result in the feature meeting all requirements of current Standards.

Upon receipt of Agency comments on the Design-Builder's submitted General Design Exception request, the Design-Builder shall address the comments and submit the final Design Exception request to the Agency Engineer for approval. The Design Quality Manager shall not certify the subject Readiness-for-Construction Plans and Design-Builder Specifications and the Design-Builder shall not commence construction until the Agency has issued written approval for all associated and required Design Exception requests.

Approval of all Design Exception requests will be at the sole discretion of the Agency, and the Design-Builder shall not assume that a Design Exception request will be approved unless the Agency has specifically stated so in writing.

Design-Builder Design Exception requests will require an iterative process between the Design-Builder and the Agency. This iterative process should be expected to include, but not be limited to, the need for meetings between the Design Firm and the Agency and the preparation of additional documentation in support of the request.

(b) RESERVED

(c) Operations Approvals - The Design-Builder shall prepare and submit any relevant Operations Approval requests to the Agency Engineer for Review and Comment not later than the Definitive Design Review. The Design-Builder shall prepare Operations Approval requests in accordance with ODOT standards.

Upon receipt of Agency comments on the Design-Builder's submitted Operations Approval request, the Design-Builder shall address the comments and submit the final Operations Approval request to the Agency Engineer for approval. The Design Quality Manager shall not certify the subject Readiness-for-Construction Plans and Design-Builder Specifications and the Design-Builder shall not commence construction until the Agency has issued written approval of the Operations Approval request.

Approval of all Operations Approvals requests will be at the sole discretion of the Agency, and the Design-Builder shall not assume that an Operations Approvals request will be approved unless the Agency has specifically stated so in writing.

(d) ADA Curb Ramp Design Exceptions – The Design-Builder shall prepare and submit any relevant ADA Curb Ramp Design Exception requests to the Agency Engineer for Review and Comment consistent with DB141.21.

DB155.09 Revisions to Design - If the design is amended subsequent to the Definitive Design Review, the Design-Builder shall re-check and re-certify the design as an additional Definitive Design Review. Changes to Plans initiated by the Design-Builder and already checked by the Professional of Record and certified by the Design Quality Manager shall be subjected to the Design Review process as an entirely new design. The Design-Builder shall not be entitled to any increase in Contract Amount or additional Contract Time for the re-check and re-certification, except when the amended design results from a Change Order initiated by the Agency for reasons other than design or Contract noncompliance.

All design changes requiring alteration of Readiness-for-Construction Plans and Specifications subsequent to their release for construction shall undergo all review procedures required in the Design-Builder's Quality Plan and herein for original Design Documents, including re-check and re-certification.

DB155.10 Design-Builder Standards and Requirements– The Design-Builder shall perform all Design Services and prepare all Design Documents in conformance with all Contract requirements including but not limited to the following:

- Existing Project permits or NEPA approval document(s), including but not limited to those included or described in the following locations:

  DB General Provisions, Attachment A – Engineering Data

  DB141.51
- Project Commitments, included in DB General Provisions, Attachment A – Engineering Data
- The following documents and requirements included in DB General Provisions, Attachment A – Engineering Data:

  Inventory Matrix

  Permanent Traffic Local Agency Standards

  Technical Advisory C023-01(A)

  Programmatic Categorical Exclusion (PCE) Programmatic Prospectus

  PCE Determination

  PCE Approval and supporting documents

  Programmatic ESA No Effect

DB155.11 Schedule for Design Checks and Design Reviews:

(a) Schedule - The Design-Builder shall include the Design Review schedule for all Design Units in the Baseline Schedule (see DB180.41). The Design Review schedule must indicate all design checks and independent Design Reviews required to be performed by the Design Quality Manager prior to milestone design reviews with the Agency.

(b) Design Review Notices - The Design-Builder shall provide written notice of scheduled design review meetings to the Agency Engineer at least 10 Calendar Days prior to the meeting.

The Design-Builder shall not schedule Agency design reviews such than more than two design review submittal packages are concurrently under Agency review.

DB155.12 Design Checks, Certifications and Reviews:

(a) Design Checks and Reviews by the Design-Builder:

(1) Design Checks - The Design Manager shall perform design checks on all Design Documents, including but not limited to Readiness-for-Construction Plans and Specifications, Working Drawings, 3D Construction Model data, As-Constructed Plans, As-Constructed Design-Builder Specifications, calculations, memoranda and design reports. The Design Manager shall perform design checks on the subject documents as they are produced to confirm compliance with all Contract requirements.

The Design Manager shall certify in writing that the subject documents have been checked per Contract requirements and the Quality Plan.

(2) Independent Peer Review – The Design-Builder's Design Review shall include independent peer review on Readiness-for-Construction Plans and Specifications for permanent components and major temporary components and for impacts of temporary components on the permanent components. Such independent peer reviews shall review and assess elements of work to meet the performance requirements of the work element, and shall be performed by expert reviewers who are not involved in the production of the Design Documents being reviewed, and who have qualifications and experience equivalent to the Professional of Record for the design being checked. Reviewers conducting independent peer reviews may be part of the Design Firm's own organization who are not involved in the production of the Design Documents being reviewed.

(3) Discipline-Specific Design Checks – The Design-Builder shall develop and include design Quality Management processes and procedures in the Quality Plan for each technical discipline as follows:

- **Geotechnical Engineering and Engineering Geology** - The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Geotechnical Design Manual.*
- **Hazardous Materials -** The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Hazmat Program Manual, Appendix A: Quality Control of Hazmat Products.*
- **Land Surveying -** The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Land Surveying Quality Control and Quality Assurance (QC/QA) Plan.*

- **Environmental -** The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *NEPA Manual 453 PCE/CE Quality Assurance & Control.*
- **Pavements -** The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Pavement Design Guide*.
- **Right-of-Way** - The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Right of Way QC/QA Manual.*
- **Roadway** - The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Roadway Quality Control Plan*.
- **Traffic** - The Design-Builder's Quality Management processes and procedures shall include, but not be limited to, requirements similar to those included in the ODOT *Traffic Engineering Quality Control (QC) Plan*.

(b) Design Quality Reviews and Certifications by Design Quality Manager - The Design Quality Manager, in accordance with the requirements specified herein and in the Quality Plan, shall conduct all necessary reviews to enable issuance of written certification of compliance for Readiness-for-Construction Plans and Specifications, Working Drawings, and 3D Construction Model data.

(c) Design Reviews with the Agency:

(1) Meeting Location and Participants - Design reviews with the Agency shall be conducted by the Design Manager. Design review meetings shall be held in the offices of the Design Firm or the Design-Builder in the Project vicinity. The Design Quality Manager, the Professionals of Record and any specialists having significant input into the design or review shall be present. The Agency may also invite Interested Parties to attend.

(2) Documentation to be Provided - The Design-Builder shall submit all Design Documents (e.g., drawings, copies of calculations, reports, computer models, certifications and other information) pertinent to the design review to the Agency Engineer at least 7 Calendar Days before the scheduled review meeting, unless otherwise agreed by the Agency Engineer. The Design-Builder shall include with the submittal a log of all prior comments and actions resulting therefrom, as set out herein.

The Design-Builder shall provide the hazards log to the Agency during the Design Review process as required by Section DB170.

(3) Design-Builder Action Required - The Design-Builder shall address and resolve the Agency's design review comments in consultation with the Agency. Interested Party comments, if any, will be forwarded to the Design-Builder by the Agency and shall also be addressed by the Design-Builder. The Design-Builder shall resolve all comments to the Agency's satisfaction, correct any identified nonconformance and resubmit the subject documents to the Agency Engineer in accordance with the comment resolution procedures in DB154.40 and DB155.14.

(4) Time and Cost Impacts Borne by Design-Builder - The Design-Builder's time and cost impacts arising from the Agency's participation in design reviews, the Agency's Review and Comment, and any revisions required due to the Design-Builder's noncompliance with Contract requirements shall be at no additional cost to the Agency, to the extent not prohibited by ORS 279C.315.

(5) Design-Builder Continuing Responsibility - The Agency's participation in Design Reviews will not relieve the Design-Builder of its responsibility for the satisfactory completion of the Work in accordance with all Contract requirements.

Governmental Bodies may impose additional requirements after completion of their review of the Design-Builder's design. The Design Builder shall promptly notify the Agency of any additional Governmental Body requirements that may arise.

(6) Stages of Design Review - Design Reviews shall be conducted at each of the stages, for the following:

a. Definitive Design Review - The Definitive Design Review will be the first Design Review requiring participation of the Agency, and is intended to verify that the design concepts included in the DB Technical Approach (Exhibit A-1) meet all Contract requirements. The Design Quality Manager shall verify prior to the Definitive Design Review submittal that:

- All Contract requirements applicable to the concepts, including all Standards and legal requirements, have been identified, and the proposed concepts are in compliance
- The concepts are substantiated and justified by adequate site investigations and analyses conducted by the Design-Builder
- Right-of-Way requirements have been identified
- The proposed Contract Baseline Concepts are constructible and maintainable
- Required Materials and Equipment are available within the timeframe needed to support the Design-Builder's schedule
- The Contract Baseline Concepts meet all quality requirements, and all required design Quality Management procedures have been followed

The Design-Builder shall include from the Design Quality Manager a written certification of the foregoing with the Definitive Design Review submittal to the Agency.

b. Interim Design Review – The Interim Design Review will occur after Definitive Design Acceptance and prior to Readiness-for-Construction submittal. The review is intended to focus on updates or adjustments made in response to the Definitive Design Review, conflict remediation, modified or additional specification language as described in DB155.19, and milestone-specific requirements described in Section DB141. The Design-Builder shall also use Interim Design Reviews to verify that the concepts and parameters established and represented by Definitive Design are being followed, and that all Contract requirements continue to be met. The Design-Builder shall specifically highlight, check, and bring to the attention of the

Agency any information differing from or supplemental to that presented at the Definitive Design Review.

Significant changes to the Definitive Design will require a re-submittal and Agency review and Acceptance, after the Design-Builder has completed a re-check and re-certification in accordance with DB155.09, prior to the submittal of the Readiness-for-Construction Plans and Specifications.

The Design-Builder shall coordinate with the Agency to determine the appropriate time to conduct the Interim Design Review, following independent review by the Design Quality Manager.

c. Readiness-for-Construction Design Review - The Design-Builder shall use the Readiness-for-Construction Design Review to verify that the concepts and parameters established and represented by Definitive Design and Interim Design Review are being followed and that all Contract requirements continue to be met.

The Design-Builder shall specifically highlight, check, and bring to the attention of the Agency any information differing from or supplemental to that presented at the Definitive Design Review. Prior to scheduling the Readiness-for-Construction Design Review with the Agency, the Design Quality Manager's independent review shall have been completed.

d. Design-Builder Specifications - The Design-Builder shall be responsible for demonstrating that any proposed Design-Builder Specifications meet or exceed the minimum Contract requirements, as determined by the Agency in its sole discretion, and are suitable and appropriate to control the Work. The Agency will determine, in its sole discretion, if Design-Builder Specifications meet all Contract requirements and are otherwise suitable and appropriate.

The Design-Builder shall obtain written concurrence from Agency Technical Resources for modified or non-standard specification language as described in DB155.19.

e. Working Drawings Design Review - The Design-Builder shall be solely responsible for providing Working Drawings and 3D Construction Model data of such a nature as to develop a finished Project in accordance with the Readiness-for-Construction Plans and Specifications, and all Contract requirements. The Design-Builder shall verify pertinent dimensions in the field prior to conducting a Working Drawings or 3D Construction Model data Design Review.

The Design-Builder shall check, review, and certify Working Drawings and 3D Construction Model data as specified herein and according to the Quality Plan, prior to issuing the subject documents for construction. This process shall include Design Firm, Design Manager, and Design Quality Manager reviews, approvals and certifications. Subsequent modifications shall be processed through the Design-Builder's Design Review and certification process and Agency Review and Comment prior to being issued for construction. The Agency Engineer may opt to waive the requirement for Agency Review and Comment on subsequent modifications if the Agency did not participate in the original review of the subject documents.

The Design-Builder shall invite the Agency Engineer to participate, at the Agency Engineer's discretion, in all Design Reviews for Working Drawings and 3D Construction Model data and to provide Agency Review and Comment. The Agency may invite Interested Parties to attend reviews for Working Drawings and 3D Construction Model data. The Design-Builder shall allow at least 7 Calendar Days for Agency Review and Comment on Working Drawings and 3D Construction Model data, unless otherwise agreed by the Agency Engineer.

f. Design Review of Major Temporary Components - The Design Manager shall conduct a Design Review of Design Documents for major temporary components, as described in DB155.01(b), that could affect the safety, quality or durability of the Project components or construction sequences of the Work.

g. Additional Design Reviews - The Agency Engineer, with Interested Party involvement (if invited by the Agency), may require such additional design reviews as the Agency considers necessary to monitor continued and uniform consistency in the quality and effective incorporation of design revisions into Design Documents. The Design-Builder may also conduct additional design reviews it deems necessary to facilitate release of Readiness-for-Construction Plans and Specifications.

h. As-Constructed Design Review - The Design-Builder shall submit the As-Constructed Plans and as-constructed Design-Builder Specifications for each Design Unit to the Agency for review and Acceptance within 90 Calendar Days after issuance of Final Second Notification by the Agency. As-Constructed Plans and as-constructed Design-Builder Specifications must thoroughly identify all as-constructed modifications to the Accepted Readiness-for-Construction Plans and Specifications. The Design-Builder shall make all corrections noted in Agency comments, if any, resulting from the Agency's review, and shall resubmit the corrected version to the Agency Engineer for review and Acceptance.

(7) Design Review Process - The Design-Builder shall provide a detailed description in the Quality Plan of the Design Review process. The Design-Builder shall fully describe internal Design Review processes and the interfaces between and among the Design-Builder, the Design Firm, the Quality Management Team and the Agency during the development of Design Documents at each of the stages of review, including, Contract Baseline Concepts, Definitive Design, Interim Design, Readiness-for-Construction Plans and Specifications and As-Constructed Plans.

DB155.13 Design Documentation:

(a) Progress Tracking - The Design-Builder shall include engineering and design progress and changes in the Monthly Progress Schedule submittals (see DB180.41). The Design-Builder's progress tracking for design shall reflect the current Design Unit Report and a mutually agreed-upon percent complete for milestones achieved.

(b) Design Quality Records - The Design-Builder shall maintain an auditable record of compliance with all procedures described in the Quality Plan. An independent auditor must be able to determine by reviewing the documentation if all procedures included in the Quality Plan and required herein have been followed. The Design-Builder shall submit

all monitoring reports and records of checks and reviews within 7 Calendar Days of the completion of the subject review.

(1) The Design Manager shall be responsible for preparing and maintaining the following design quality records:

- Monitoring reports of all design nonconformance reports, nonconformance issues and review comments resulting from audits, design checks and design reviews, and final resolution of those issues and comments.
- A log of design nonconformance reports and nonconformance issues indicating date issued, reasons, status or resolution, and date of resolution.
- Daily records of design activities, using a format acceptable to the Agency.

(2) The Design Quality Manager shall be responsible for preparing and maintaining the following design quality records:

a. Monthly Design Report - on the same day each month, but no later than the 5th day of each month, or such other day of each month as agreed upon by the Design-Builder and Agency Engineer, that includes each of the following:

- Summary of Design Reviews conducted;
- Nonconforming Work and current status and disposition (based on design-related nonconformance items in the Design-Builder's nonconformance log); and
- Submissions from the Design-Builder and status.

b. Final Design Report - Upon completion of the Readiness-for-Construction Plans and Specifications for each Design Unit, including all its components and elements, the Design Quality Manager shall submit a Final Design Report to the Design-Builder, with a copy to the Agency Engineer. The report must include, but not be limited to, a complete summary of the final resolution or disposition for all review comments (both Design-Builder and Agency), monitoring report issues and non-conformance issues that were identified during the development and review of the Plans and Specifications.

DB155.14 Comment and Nonconformance Resolution - All Design Reviews shall include a comment and nonconformance resolution process, whereby unresolved comments and instances of nonconformance are discussed and a written action plan and schedule for resolution is developed. The Design Manager shall lead the process.

(a) Comments - Agency and Interested Party comments from Design Reviews will be transmitted to the Design-Builder. The Design-Builder shall record its response and proposed resolution for each comment and meet with the Agency to resolve outstanding comments and proposed resolutions. The Design-Builder shall document final resolution of all Agency and Interested Party comments.

(b) Nonconformance Issues - If an Agency audit or design review reveals a nonconformance with Contract or Quality Plan requirements, the Agency will issue a nonconformance issue notification to the Design-Builder.

The Design-Builder shall log the nonconformance issue, make all required corrections and return to the Agency Engineer documentation of the corrective action taken within 7 Calendar Days after receiving the nonconformance issue notification from the Agency.

DB155.15 Design Review Submittals - The Design-Builder shall submit to the Agency Engineer with the written notice of scheduled Design Review a copy of the Design Documents to be reviewed.

(a) Definitive Design - For Definitive Design Reviews, the Design-Builder shall submit to the Agency Engineer for Acceptance the Definitive Design package and the draft Basis of Design Memorandum.

The Definitive Design submittal must include preliminary plans sufficient to depict the design concepts and the spatial setting (including site-specific characteristics) for major Design Unit components.

The draft Basis of Design Memorandum must identify and describe the design alternatives considered, as well as Materials and means and methods evaluated and selected for the Definitive Design. The Basis of Design Memorandum may include preliminary reports on additional site investigations, geotechnical reports, hydraulic reports, stormwater reports, environmental findings, etc., applicable to the Design Unit and in support of the design decisions made.

The Basis of Design Memorandum shall include, but is not limited to:

- Temporary traffic control recommendations beyond approved parameters
- Any Design-Builder proposed additional right-of-way
- List of all requested Design Exceptions, Design Deviations and Operations Approvals.
- Design Exception Logs
- Verification of work within API and APE or locations where work will occur outside of API or APE
- Status of NEPA Approvals included in the Design Unit
- Summarize how the Design Unit shall meet the following:
  - Follow CFR 24.102 related to ROW;
  - Have logical termini as defined by federal standards;
  - Have a minimum of 15 Settlement Curb Ramps; and
  - Have no more than 400 Settlement Curb Ramps.

The Agency will respond to the Design-Builder's Definitive Design submittals within 21 Calendar Days after receipt by the Agency Engineer.

(b) Interim Design - For Interim Design Reviews, the Design-Builder shall submit to the Agency Engineer the Interim Design Plans for Acceptance and other applicable design documents, including but not limited to those required under DB155.19, Section DB141 and Section DB174.

The Agency will respond to the Design-Builder's Interim Design submittals within 14 Calendar Days after receipt by the Agency Engineer.

(c) Readiness-for-Construction - For Readiness-for-Construction Design Reviews, the Design-Builder shall submit the documentation identified below to the Agency Engineer for Acceptance.

- Readiness-for-Construction Plans and Specifications
- Final Basis of Design Memorandum
- Estimated quantities (see DB190.10)
- Updated Form TSE, if applicable (see DB195.12(c))
- Estimated quantities for liquid asphalt (see DB195.10)
- ODOT Fuel Escalation Form, or alternatively, calculations for the estimated fuel usage quantities for all major fuel usage items in a format approved by the Agency Engineer (see DB195.11(d))
- Proposed Schedule of Values for Price Items associated with construction Work for the RFC submittal (see DB190.10(a)(4))
- List of applicable Hold Points (see DB155.40)
- Additional Agency-required documentation or data, including but not limited to the required documentation included in Section DB141

The final Basis of Design Memorandum must include the required written certifications from both the Design Manager and the Design Quality Manager.

The Agency will respond to the Design-Builder's Readiness-for-Construction submittals within 21 Calendar Days after receipt by the Agency Engineer.

(d) Working Drawings or 3D Construction Model – The Design-Builder shall submit Working Drawings and 3D Construction Model data to the Agency for Review and Comment, in accordance with DB155.12(c)(6)(e).

DB155.16 Conditions to be Met Prior to Commencement of Construction - The Design-Builder shall not commence construction activities on any Design Unit until the applicable design checks, Design Reviews, and Design Manager and Design Quality Manager's certifications have been completed, design-related nonconformance reports have been addressed and resolved to the satisfaction of the Agency, Agency comments have been resolved, and the Agency's Acceptance of the Readiness-for-Construction Plans and Specifications for the Design Unit has been delivered to the Design-Builder. All of the following must also have occurred:

(a) The Readiness-for-Construction Plans and Specifications have been signed and stamped by the Professional(s) of Record. For those drawings and documents and other Design Documents included in the submittal that are prepared by a manufacturer or Supplier or other persons not under their direct supervision, the Professional(s) of Record shall affix a stamp that indicates the design shown on the sheet or document conforms to the overall design and all Contract requirements.

(b) The Design Manager has completed their checks and reviews in accordance with DB155.12(a), and has issued a written certification that each of the following conditions have been met:

(1) All design checks Documents have been checked per Contract requirements and the Quality Plan.

(2) The Design-Builder has conducted a constructability review of the design and the design is constructible as represented in the Readiness-for-Construction Plans and Specifications;

(3) Readiness-for-Construction Plans and Specifications for the portion of the Project to be constructed are complete and checked in accordance with this Section DB155;

(4) The design and drawings for the Traffic Control Plan and temporary erosion control and environmental requirements applicable to the Work have been properly completed; and

(5) Adequate survey control has been established on the Project Site.

(c) The Design Quality Manager has conducted their independent design quality review and has issued a written certification that each of the following conditions has been met:

(1) Design checks have been completed;

(2) The design conforms to all legal requirements and other Contract requirements;

(3) All applicable Design Exceptions, Design Deviations, and Operations Approvals have been approved in writing by the Agency;

(4) All required written concurrences from Agency Technical Resources have been obtained for modified DB Boilerplate Technical Special Provisions or additional Design-Builder Specifications, as described in DB155.19;

(5) Design Quality Management activities have been performed in accordance with the Quality Plan; and

(6) All outstanding issues and comments from the Design Review have been resolved.

(7) The applicable Design-Build Utility Certification has been Accepted by the Agency in accordance with DB174.10(c)(4)a.

(d) All design nonconformance issues and review comments issued by the Design Quality Manager or the Agency have been addressed and resolved by the Design-Builder to the satisfaction of the Agency.

(e) All requirements included under DB180.40(b) have been met.

DB155.17 Design Support During Construction - The Design Manager and Design Quality Manager shall verify during construction that the Working Drawings, 3D Construction model data, and Accepted Readiness-for-Construction Plans and Specifications properly

account for site conditions. The Design Manager and Design Quality Manager shall also verify that the construction Work performed is consistent with the applicable Design Documents.

If the site conditions are not properly accounted for, or the Work cannot be performed consistent with the relevant Readiness-for-Construction Plans and Specifications, Working Drawings, or 3D Construction model data, the Design Manager shall prepare any necessary adjustments in such Plans and Specifications. The Design Manager shall ensure the appropriate checks, certifications, reviews, and Agency approvals are conducted and obtained in accordance with the Contract requirements and the Quality Plan, and the Design Quality Manager shall certify that the adjustments in the Plans and Specifications comply with all Contract requirements and Standards. The Design-Builder shall be responsible for the cost of obtaining any permits, authorizations, or other agreements, if any, that may be required as a result of the changes.

All time and cost impacts arising from the changes or adjustments shall be at no additional cost to the Agency, to the extent not prohibited by ORS 279C.315.

DB155.18 Quantity Estimates - The Design-Builder shall prepare and maintain documentation of estimated Work quantities and actual Work quantities in order to:

- Facilitate progress measurement;
- Determine sampling and testing requirements;
- Provide quantities for determining the escalation/de-escalation calculations described in DB195.10, DB195.11, and DB195.12 according to DB190.10(c); and
- Calculate price adjustments.

The Design-Builder's quantity estimates must be in units that facilitate sampling and testing, i.e., the units must be consistent with the units used to determine frequency of sampling and testing. For example, if "X" numbers of compaction tests are specified to be taken for every "Y" cubic yards of embankment, the quantity estimate would need to be in cubic yards of embankment.

The Design-Builder shall measure construction progress in accordance with the Quality Plan and as necessary to support the Project Quality Manager's certification of the monthly Pay Request as required under Section DB195.

DB155.20 CAD Standards - CAD formatting for Design Documents, including Definitive Design, Interim Design, Readiness-for-Construction Plans, and As-Constructed Plans, shall conform to the following:

- ODOT *CAD Manual*
- *RD210-04(B) for approved reduction in CAD standards that can be applied for curb ramp design*
- ODOT *Geo, Hydro and Environmental CAD Manual*
- ODOT *Pavement Marking Design Guide*

- ODOT *Roadway CAD Manual*
- ODOT *Sign Design Manual*
- ODOT *Stormwater Control Facility Operation and Maintenance Plan Development Drafting Guidance*
- ODOT *Survey Control Sheets for Construction Plans*
- ODOT *Temporary Water Management Plans Drafting Guidance*
- ODOT *Traffic Control Plan Design Manual*
- ODOT *Traffic Signal Drafting Manual*

DB155.30 As-Constructed Plans and Specifications – The Design-Builder shall submit As-Constructed Plans and Specifications within 90 Calendar Days after issuance of Final Second Notification by the Agency.

The Design-Builder's As-Constructed Plans must incorporate any changes made to the Readiness-for-Construction Plans subsequent to the Readiness-for-Construction Design Review.

The Design-Builder's as-constructed Design-Builder Specifications must incorporate any changes made to the Design-Builder Specifications subsequent to the Readiness-for-Construction Design Review.

As-Constructed Plans and as-constructed Design-Builder Specifications must be reviewed and approved by the Professional of Record and the Construction Manager prior to submittal to the Agency.

The Design-Builder shall prepare As-Constructed Plans in accordance with the ODOT *CAD Manual*, and the following requirements:

(a) Roadway Plans - As-Constructed Plans with a V-number must conform to the ODOT *CAD Manual,* the ODOT *Roadway CAD manual* and the ODOT *Contract Plans Development Guide, Vol. 1.*

The Design-Builder's As-Constructed Plans for all ADA curb ramps must include the curb ramp style, Linear Reference Method (LRM), milepoint, corner number, ramp number, associated crossing closure number(s), cross street, associated Design Exception number(s), ODOT curb ramp detail sheets BC series and general construction sheet series and Oregon Standard Drawings series RD900 effective at the Advertisement Date.

The Design-Builder shall upload the MicroStation and PDF files to the appropriate Agency ProjectWise folders.

The Design-Builder shall notify the Agency-Engineer and the Agency Roadway Section (EngineeringTechnologyAdvancement@odot.oregon.gov) in writing after uploading the files to the appropriate Agency ProjectWise server. The Design-Builder shall include a hyperlink to the uploaded file in the email notification.

(b) Traffic Plans:

- **Traffic Signal Plans** – As-Constructed Plans for traffic signal Plans must conform to the ODOT *Signal Design Manual*
- **Sign Plans** - As-Constructed Plans for signing Plans must conform to the ODOT *Traffic Sign Design Manual.* The Agency, at its sole discretion, may approve the sign plans to be combined with the pavement marking plans or construction drawings.
- **Pavement Marking Plans –** As-Constructed Plans for pavement marking Plans must conform to the ODOT *Pavement Marking Design Guidelines.* The Agency, at its sole discretion, may approve the sign plans to be combined with the pavement marking plans or construction drawings.
- **Illumination Plans** – The Design-Builder shall follow the same requirements and file naming conventions as Signals and Signs, except use "IL" extension (e.g., "10104TR.IL1"). The Agency, at its sole discretion, may approve the sign plans to be combined with the pavement marking plans or construction drawings.

The Design-Builder shall include the following with the Traffic Plans As-Constructed Plans package:

- MicroStation files
- PDF file (11 inch x 17 inch) that includes all red-line as-constructed markups of plan sheets

The Design-Builder shall upload the MicroStation and PDF files to the appropriate Agency ProjectWise folders.

The Design-Builder shall notify the Agency-Engineer and the Agency Traffic Section (TEOS.info@odot.oregon.gov) in writing after uploading the files to the Agency ProjectWise server. The Design-Builder shall include hyperlinks to the uploaded files in the email notification.

(c) Reserved:

(1) Geotechnical Engineering Plans:

- **Geotechnical Plans** – As-Constructed Plans for Geotechnical Data must conform to the ODOT CAD Manual and the ODOT GHE CAD Manual.
- **Retaining Wall/Sound Wall Plans** – As-Constructed Plans for Retaining Walls and Sound Walls must conform to the ODOT CAD Manual and the ODOT GHE CAD Manual.

The Design-Builder shall include the following with the Geotechnical Engineering As-Constructed Plans package:

- MicroStation files
- PDF file (11 inch x 17 inch) that includes all red-line as-constructed markups of plan sheets
- PDF file of the Final Geotechnical Memorandum or Report if required

The Design-Builder shall upload the MicroStation and PDF files to the appropriate Agency ProjectWise folders.

The Design-Builder shall notify the Agency-Engineer and the Agency Senior Geotechnical Engineer (odot.geoadminworkord@odot.state.or.us) in writing after uploading the files to the Agency ProjectWise server. The Design-Builder shall include hyperlinks to the uploaded files in the email notification.

DB155.40 Additional Final Project Documentation Submittals - The Design-Builder shall submit additional final project documentation within 90 Calendar Days after issuance of Final Second Notification by the Agency.

The submitted final project documentation must include, but not be limited to, all final design reports, design calculations, warranties, operation & maintenance manuals and special instructions.

Refer to the ODOT *Construction Manual*, Chapter 37 – Submittal of Final Project Documentation, for additional requirements and instructions.

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SECTION DB156 – CONSTRUCTION WORKMANSHIP AND MATERIALS QUALITY MANAGEMENT

DB156.10 General - The Design-Builder shall ensure that all Construction Services and Materials comply with all quality and other requirements and Standards included or incorporated in the Contract. The Agency reserves the right to conduct verification oversight Inspections, audits, sampling and testing, and Independent Assurance (IA) activities.

DB156.20 Construction Quality Organization:

(a) Construction Quality Manager - The Design-Builder shall provide a Construction Quality Manager (CQM) to oversee, manage, certify and perform construction Quality Management activities as specified herein and in other Contract Documents and the Design-Builder's Quality Plan. The CQM shall report directly to the Design-Builder's Project Quality Manager.

Unless otherwise approved in writing by the Agency Engineer, the Construction Quality Manager must be employed by one of the following:

- An Entity that is not performing any Work on the Project, other than Quality Management activities or Design Services, provided that the Entity:
- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and
- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder)

The Construction Quality Manager shall not perform any Work on the Project, other than Quality Management activities.

See Section DB154 and DB180.35 for additional CQM requirements.

The CQM must have a General Construction Inspection certification through the ODOT Inspection Certification Program. Construction Quality Control inspectors must have a General Construction Inspection certification and must also be certified in additional disciplines when performing specific inspection duties as outlined in the ODOT Inspection Certification Program.

The Design-Builder's Quality Plan must fully outline the organization, certifications, authority levels, and responsibilities for the CQM and supporting personnel.

(b) Design-Builder Quality Control Compliance Specialist (QCCS) - The Design-Builder shall provide a Design-Builder Quality Control Compliance Specialist (QCCS) that is certified in all areas of Materials testing required to perform the QCCS role, as outlined in the ODOT Quality Assurance Program and the ODOT *Quality Control Compliance Specialist Handbook* (QCCS Handbook). The Design-Builder QCCS role may be performed by either the CQM or by one separate qualified individual.

The Design-Builder QCCS must not be employed by an Entity that is performing Materials testing quality control Work. Unless otherwise approved in writing by the Agency Engineer, the Design-Builder QCCS must be employed by one of the following:

An Entity that is not performing any Work on the Project, other than Quality Management activities (that do not include Materials testing quality control Work) or Design Services, provided that the Entity:

- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and
- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder)

The Design-Builder QCCS shall not perform any Work on the Project, other than Quality Management activities.

Materials testing certifications required to perform the role of a QCCS include, but are not limited to, the following:

- Certified Aggregate Technician (CAgT)
- Certified Embankment and Base Technician (CEBT)
- Certified Density Technician (CDT)
- Certified Asphalt Technician I (CAT-I)
- Quality Control Technician (QCT)

The Design-Builder QCCS shall maintain certification in these Materials testing disciplines throughout the duration of all the construction activities on the Project. The Design-Builder QCCS shall follow the requirements of the ODOT Quality Assurance Program included in Section 2 of the ODOT *Manual of Field Test Procedures* (MFTP) and the roles and responsibilities outlined in the QCCS Handbook.

The QCCS Handbook is available on the ODOT Construction Section website (see DB110.05(e)).

(c) Construction Quality and Construction Quality Control (QC) Inspectors – The Design-Builder shall provide construction QC inspectors to Inspect all construction processes, procedures, and workmanship.

Unless otherwise approved in writing by the Agency Engineer, Design-Builder construction QC inspectors must be employed by one of the following:

- An Entity that is not performing any Work on the Project, other than Quality Management activities or Design Services, provided that the Entity:
- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and

- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder)

Design-Builder construction QC inspectors shall not perform any Work on the Project, other than Quality Management activities.

The Design-Builder's construction Inspection shall include the observations, measurements, and documentation specified in the Design-Builder's Quality Plan and the Contract Documents. The Design Builder shall document all Inspection, observations, verification of conformance to specified requirements, measurements, results, nonconformance, and required corrective actions on the forms provided by the Agency or on the Design-Builder's forms acceptable to the Agency. Inspection, observation and documentation shall include descriptions of construction activity and location.

The Design-Builder shall maintain a list of all construction QC inspectors for the duration of the Project. The list must include, but not be limited to, the following information for each construction QC inspector:

- Construction QC inspector name and telephone number(s)
- Construction QC inspector's certifications with attached copies

This list shall be updated and submitted to the Agency Engineer before new construction QC inspectors begin performing Inspection on the Project or when any other required information included on the list changes.

The Design-Builder shall ensure that all construction QC inspectors have the proper certifications at the time the Inspection is performed.

Construction QC Inspection, testing, and documentation procedures shall be consistent with the ODOT *Construction Manual*, the MFTP, the *ODOT Nonfield-Tested Materials Acceptance Guide (*NTMAG*)* and the ODOT *Inspector's Manual*. The ODOT *Construction Manual*, MFTP, NTMAG, and the ODOT *Inspector's Manual* are available on the ODOT Construction Section website (see DB110.05(e)).

The construction QC inspectors shall monitor and enforce Contract requirements for work zone safety and temporary traffic control measures. The construction QC inspectors shall monitor the Design-Builder's production personnel to ensure the associated documentation is completed and submitted according to Contract requirements, including but not limited to temporary protection and direction of traffic reports. If the Contract requirements are not being met, the construction QC inspectors and the Project Quality Manager shall take appropriate action, including stopping the Work, to require compliance by the Design-Builder's production personnel.

Construction QC inspectors shall be certified in accordance with the ODOT Inspection Certification Program. The Agency Inspection Certification Program includes, but is not limited to, the following certifications:

- Certified General Inspector (CGI)
- Certified Bridge Construction Inspector (CBCI)

- Certified Environmental Construction Inspector (CECI)
- Certified Traffic Signal Inspector (CTSI)
- Certified Asphalt Concrete Pavement Inspector (ACP)
- Certified Drilled Shaft Inspector (CDSI)
- Certified ADA Inspector (ADAI)

ODOT Inspection Certification Program information, including requirements and training schedules, is available on ODOT's Construction Section Inspector Certification Program website (see DB110.05(e)).

(d) Environmental Construction Inspectors – The Design-Builder shall provide environmental construction inspectors to Inspect all On-Site Work.

Unless otherwise approved in writing by the Agency Engineer, Design-Builder environmental construction inspectors must be employed by one of the following:

- An Entity that is not performing any Work on the Project, other than Quality Management activities or Design Services, provided that the Entity:
- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and
- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder)

Design-Builder environmental construction inspectors shall not perform any Work on the Project, other than Quality Management activities.

Inspection by the environmental construction inspectors shall include the observations, measurements, and documentation specified in the Design-Builder's Quality Plan and the Contract Documents. The Design-Builder shall document all Inspection, observations, verification of conformance to specified requirements, measurements, results, nonconformance, and required corrective actions on the forms provided by the Agency or on the Design-Builder's forms approved by the Agency. Inspection, observation and documentation shall include descriptions of construction activity and location.

The Design-Builder shall maintain a list of all environmental construction inspectors for the duration of the Project. The list must include, but not be limited to, the following information for each environmental construction inspector:

- Environmental construction inspector name and telephone number(s)
- Environmental construction inspector's certifications with attached copies

This list shall be updated and submitted to the Agency Engineer before new environmental construction inspectors begin performing Inspection on the Project or when any other required information included on the list changes.

Environmental construction Inspection, testing, and documentation procedures shall be consistent with the ODOT *Construction Manual* and the ODOT *Inspector's Manual*, which are available on the ODOT Construction Section website (see DB110.05(e)).

The environmental construction inspectors shall monitor and enforce Contract requirements for all environmental compliance issues, including but not limited to permit compliance, erosion and sediment control, and turbidity monitoring. The environmental construction inspectors shall monitor the Design-Builder's production personnel to ensure the associated documentation is completed and submitted according to Contract requirements, including but not limited to erosion control monitoring reports and turbidity monitoring reports. If the Contract requirements are not being met, the environmental construction inspectors and the Project Quality Manager shall take appropriate action, including stopping the Work, to require compliance by the Design-Builder's production personnel.

Environmental construction inspectors shall have a current Certified Environmental Construction Inspector certification in accordance with the ODOT Inspection Certification Program. The Design-Builder shall ensure that all environmental construction inspectors have the proper certifications at the time the Inspection is performed.

ODOT Inspection Certification Program information, including requirements and training schedules, is available on the ODOT Construction Section's Inspector Certification Program website (see DB110.05(e)).

(e) Materials Quality Control Testing Technicians - The Design-Builder's Materials QC testing technicians shall perform sampling and testing of field-tested Materials in accordance with the MFTP and the Quality Plan.

Unless otherwise approved in writing by the Agency Engineer, the Design-Builder's Materials QC testing technicians must not be employed by the same Entity that employs the Design-Builder Quality Control Compliance Specialist.

Materials QC testing technicians must be certified in accordance with the ODOT Technician Training and Certification Program (identified in the MFTP), to the level appropriate for the Work being sampled and tested, and shall test only those Materials for which they are certified. The following are the approved Technician Certifications currently in place in the Agency Technician Training and Certification Program:

- Certified Aggregate Technician (CAgT)
- Certified Embankment and Base Technician (CEBT)
- Certified Density Technician (CDT)
- Certified Asphalt Technician I (CAT-I)
- Certified Asphalt Technician II (CAT-II)
- Certified Mix Design Technician (CMDT)
- Quality Control Technician (QCT)
- Concrete Control Technician (CCT)
- Concrete Strength Testing Technician (CSTT)

The Design-Builder shall maintain a list of all Materials QC testing technicians for the duration of the Project. The list must include, but not be limited to, the following information for each construction QC inspector:

- Materials QC testing technician name and telephone number(s)
- Materials QC testing technician certifications with attached copies

This list shall be updated and submitted to the Agency Engineer before new Materials QC testing technicians begin performing testing on the Project or when any other required information included on the list changes.

The Design-Builder shall ensure that all Materials QC testing technicians have the proper certifications at the time testing is performed.

The frequency of QC sampling and testing shall be consistent with the MFTP, the Specifications, and the Quality Plan.

References in the Contract to an Oregon test method or test designation of the American Association of State Highway and Transportation Officials (AASHTO), ASTM, or any other recognized national organization, shall mean the latest version of that test method or Specification for the Work in effect on the Advertisement Date, unless otherwise directed by the Agency in writing. Unless otherwise directed by the Agency in writing, the Design-Builder shall comply with the published version of the MFTP in effect on the Advertisement Date.

(f) Certified Testing Laboratory - Quality Control (QC) laboratory testing of field-tested Materials shall be conducted by testing laboratories that are certified by the Agency for the applicable tests. This certification must be in accordance with the ODOT Quality Assurance Program requirements. Laboratories performing QC testing may be the Design-Builder's own, the Material Supplier's, or an independent testing laboratory.

Agency Quality Assurance testing laboratories will perform Independent Assurance and Verification tests of field-tested Materials in coordination with the QC laboratories performing QC tests of Materials on behalf of the Design-Builder. This provides the Agency with an independent analysis of the QC tests to ensure that the test results are valid. Quality Assurance (QA) laboratories will usually be Agency Region laboratories, but may also be the Agency's Central Laboratory or an Agency-contracted independent testing laboratory. The Agency's Central Laboratory will certify all QA laboratories for those test methods necessary to perform QA tests of Materials.

(g) Third Party Dispute Resolution - Third party resolution testing shall be performed by an Agency-certified dispute resolution laboratory.

The Agency's Central Laboratory will perform third party dispute resolution regarding the Agency's verification sampling and testing results and the Design-Builder's QC test results, except when the dispute involves testing for which the Agency's Central Laboratory performs the primary testing on behalf of the Agency (e.g., Asphalt testing).

When the dispute involves testing for which the Agency's Central Laboratory performs the primary testing on behalf of the Agency, the dispute will be resolved by test results

obtained from a certified third-party dispute resolution laboratory agreed upon by the parties. The services of the third-party dispute resolution laboratory may be requested by either the Agency or the Design-Builder.

The sampling and testing results determined by the third-party dispute resolution laboratory, or the Agency's Central Laboratory, as applicable, will be final and binding on both parties and not subject to dispute resolution under Section DB199. The party whose sampling and testing results are not confirmed or supported by the third-party dispute resolution laboratory (i.e., the unsuccessful party) shall be responsible for payment for the third-party dispute resolution laboratory services. If the Design-Builder is the unsuccessful Party, the cost of the third-party dispute resolution laboratory services may be deducted from monies due or to become due the Design-Builder under the Contract.

DB156.30 Construction Quality Management: The Quality Management Team shall monitor and inspect all construction activities during the Project to document Contract compliance. The Quality Management Team shall document all noncompliance through nonconformance reports (NCRs), in accordance with Section DB154 and the Quality Plan.

The Quality Management Team shall:

- Coordinate closely with Design-Builder to ensure on-site inspections are coordinated with the construction schedule.
- Perform construction QC Inspections in accordance with the Accepted Quality Plan, the ODOT *Construction Manual* and the ODOT *Inspector's Manual*.
- Prepare general daily progress reports of construction activities for days when On-Site Work is performed by the Design-Builder.
- Take photos of the various construction activities and keep a current digital photo-log of critical construction activities on the EDMS. The photo-log must be kept up to date throughout construction and available for review by the Agency.

(a) ADA Curb Ramp and Push Button Inspection - The Design-Builder shall provide ODOT ADA Certified inspection personnel as part of the Quality Management Team to Inspect all curb ramp, push button, and other associated accessibility construction Work. The Quality Management Team shall utilize and comply with the requirements of the ODOT curb ramp and push button inspection guides, forms and procedures including but not limited to the following:

- Pre-closeout, Second Notification, Curb Ramp Inspection included in DB General Provisions, Attachment A – Engineering Data
- ADA Curb Ramp and Push Button Inspection Form Submittal Guide
- Curb Ramp Inspection Standard Comments

For each curb ramp, crosswalk closure treatment, or push button constructed or modified under the Contract, the Quality Management Team shall submit a passing ODOT Curb Ramp Inspection form (Inspection Forms 734-5020A thru 734-5020H) to the Agency via email, in accordance with the ADA Curb Ramp Inspection Form Submittal Guide, within 5 Calendar Days after the final passing inspection for the curb ramp has been completed.

The Quality Management Team shall attach photos and Plans with the submitted ODOT Curb Ramp Inspection Form according to the ADA Curb Ramp Inspection Form Submittal Guide. The Quality Management team shall send a copy of the submitted form and photos to the Agency Engineer. The Quality Management Team is responsible for notifying the Design-Builder when the curb ramp does not pass inspection and shall not submit forms for curb ramps that do not pass inspection.

ADA curb ramp deficiencies that are identified and corrected prior to the submission of a passing inspection form to the Agency are not considered NCRs. The Quality Management Team shall document compliance deficiencies using the inspection forms and keep a tracking log of all such deficiencies. The log must include the date the inspection was requested by the Design-Builder, the date the ramp was inspected, reasons for non-compliance, anticipated response to correct the deficiency, and any other relevant notes. This log must be kept up to date, by the Quality Management Team and made available to the Design-Builder and Agency at all times.

The Quality Management Team shall:

- Attend all preplacement meetings as required in the DB Standard Technical Specifications, Section 00759
- Perform ADA ramp Inspections according to the ADA Curb Ramp Inspection forms (ODOT Forms 734-5020 A-G), as applicable.
- Submit monthly an update to the Remediation Status Report (developed as part of DB141.21) once construction begins. The updates shall include the status of each Settlement curb ramp and ADA Inspection Forms. The Remediation Status Report must include at minimum, how the curb ramp is being remediated (not needed, closure treatment, or retrofit type), date of Remediation submittal, anticipated inspection date (if required). Once inspection forms have been submitted, the Remediation Status Report shall include the date a passing form was submitted to the Agency and the date of acceptance once accepted by the Agency.

The ADA Curb Ramp Inspection forms and ADA Push Button Inspection forms and instructions are available on the ODOT Engineering for Accessibility website (see DB110.05(e)).

DB156.40 Environmental Compliance and Mitigation Monitoring – The Quality Management Team shall conduct regular environmental Inspections during the construction phase of the Project, to document compliance with the environmental permits, including effectiveness of best management practices, avoidance and minimization measures, challenges encountered and corrective actions. The Quality Management Team shall perform the following:

- Perform compliance and mitigation monitoring related to environmental conservation measures agreed upon with State and Federal regulatory agencies through permit conditions and as included in the Contract.

- Conduct site environmental Inspections to assist the Design-Builder and the Agency in maintaining compliance with issued regulatory permits and the Specifications.
- Provide documentation of the construction process relative to this environmental compliance.
- Coordinate and schedule monitoring visits to coincide with activities that have significant environmental components.
- Evaluate onsite conditions and construction techniques during environmental Inspections to assess compliance with Project permits, the Pollution Control Plan, the Erosion and Sediment Control Plan, proposed site rehabilitation measures, and general environmental conservation measures.
- Identify nonconformance, deficiencies and potential permit compliance issues and provide guidance to the Design-Builder and the Agency to aid in avoiding potential regulatory agency involvement or violations.
- Provide input and clarifications during construction activities to facilitate biological functioning as outlined in Project permits, based on the Project's significant site rehabilitation measures (to offset Project impacts)

In the event that a nonconformance or deficiency is noted, Quality Management Team shall immediately bring the issue to the attention of the Design-Builder and the Agency Engineer and document the issue in a NCR. The Quality Management Team shall recommend a corrective course of action to comply with environmental regulations, performance standards, and permit conditions.

The Quality Management Team shall review the Design-Builder's environmental compliance Work Products for Contract and permit compliance, including but not limited to the following:

- Temporary Water Management Plan (TWMP)
- Work Containment Plan and System (WCP/WCS)
- Erosion and Sediment Control Plan (ESCP)
- Pollution Control Plan (PCP)
- Weed Control Work Plan (WCWP)

DB156.50 Materials Quality and Quality Documentation Management - The Quality Management Team shall:

- Review and monitor the Design-Builder's documentation for the quality of all Materials incorporated into the Project.
- Verify that all Materials furnished and placed on the Project comply with the Contract requirements.
- Certify that the documentation confirms that all Materials comply with Contract requirements.
- Maintain the Test Summary for Non-Field Tested Materials and Field-Tested Materials (Test Summary "A," "B," and "B-QA") in accordance with the ODOT *Construction Manual*, Chapter 12B - Quality.
- Require that proper Materials testing frequencies and procedures are being followed. Monitoring must be performed by Quality Management Team staff experienced in all

areas of field testing and documentation and certified by ODOT's Technician Training and Certification Program for the specific tests being monitored.

- Take appropriate action if proper testing frequencies and procedures are not being followed.
- Obtain, review and compile all required Project quality documentation in accordance with the ODOT *Construction Manual* and the Contract requirements.
- Compare Design-Builder's QC test results to the Agency's QA test results to verify they are within IA parameters.
- Take appropriate action and work with the Agency to resolve any discrepancies between Design-Builder's QC test results and the Agency's verification test results.
- Prepare quality price adjustments as necessary for Materials.

(a) Field-Tested Materials - The Design-Builder shall provide Quality Control sampling and testing through the Quality Management Team, furnish Materials of the quality specified, and furnish Quality Level Analysis (QLA) during production when required by the MFTP. The Design-Builder's Materials QC testing technicians shall perform sampling and testing for process control and QC consistent with the MFTP and the Specifications. The Design-Builder shall obtain Agency concurrence for any requested deviations from the sampling and testing methods and frequencies indicated in the MFTP or the Specifications prior to commencing the subject Work. If a discrepancy exists between the Specifications and the MFTP, the more stringent requirements shall apply unless otherwise agreed to in writing by the Agency.

(b) Non-Field Tested Materials - The Design-Builder shall provide Materials meeting all Contract requirements, along with all Materials conformance and Quality Compliance Documents. The Design-Builder shall provide Quality Compliance Documents in the form of test results certificates, quality compliance certificates, and Equipment lists and drawings. Non-field tested Materials will be accepted for use according to the NTMAG, unless otherwise specified in the Contract. The version of the NTMAG in effect on the Advertisement Date shall be used.

The Quality Management Team shall document Non-Field tested Materials incorporated into the Project by completing Field Inspection Reports (FIRs) as required by the ODOT *Construction Manual* and the NTMAG. The Quality Management Team shall log the FIRs and other supporting quality documentation into the applicable Test Summary on the EDMS. The Quality Management Team shall maintain the Non-Field-Tested Materials Test Summary (Test Summary "A") according to the requirements included in the ODOT *Construction Manual*.

The Design-Builder shall have documentation that Materials and Equipment conform to all Contract requirements available at the Project Site no less than 24 hours prior to installation or use of such Materials or Equipment. This documentation shall be retained at the Project Site.

(c) Quality Assurance - The ODOT Quality Assurance Program defines the responsibilities and roles of both the Design-Builder for QC and IA activities and the Agency for QA activities. The ODOT Quality Assurance Program is contained in the MFTP.

The Design-Builder shall perform Materials QC sampling and testing, and provide Materials of the quality specified. The Agency will perform such QA of field-tested Materials through Verification and IA as it may deem appropriate and at a frequency not less than the minimums established in the MFTP. The Design-Builder's Materials QC test results will be used for Acceptance of Materials quality only if verified by tests performed by the Agency.

If the Agency's QA test results verify the Design-Builder's results, the Materials will be analyzed for Acceptance according to one of the methods defined in DB165.40.

If the Agency's QA testing does not verify the Design-Builder's results, the Agency may perform additional testing to determine whether the Materials meet Specifications. If the Materials do not meet the requirements of the Specifications, the Design-Builder shall reimburse the Agency for the cost of the additional testing, which may be deducted from monies due or to become due the Design-Builder under the Contract.

(1) Verification - Verification Sampling, Testing and Inspection will be performed by the Agency, or by an Agency-contracted independent certified Entity.

Verification samples will be taken randomly (minimum 10% of the specified QC frequency) and tested by the Agency to verify that products, Materials, and the Work meet Specifications. Quality Control samples will not be used for verification.

(2) Independent Assurance - The Agency's Independent Assurance Program uses a combination approach requiring laboratory certification, technician certification, proficiency samples and where possible, split samples of verification or QC tests.

The Design-Builder shall notify the Agency in writing by Friday noon of each week of planned construction activities, including fabrication, for the following 2 weeks. For activities occurring out of the immediate Project area (beyond 100 miles from the Project Site), the Design-Builder shall give the Agency at least 21 Calendar Days' notice of planned Work. The Design-Builder shall notify the Agency at least 48 hours in advance of any change to the schedule.

The Design-Builder shall provide estimated Materials placement quantities to the Agency Engineer's designated representative at least 48 hours before placement to allow for timely and independent scheduling of Verification and Independent Assurance testing. Additionally, the Design-Builder QCCS shall report the quantities of all Materials placed during each shift to the Agency Engineer's designated representative no later than the middle of the following shift.

(d) Agency Central Laboratory Quality Assurance Testing - The Agency will perform QA testing for acceptance of all source/compliance tests of Aggregate and those nonfield-non-field tested items associated with construction products produced in outside facilities, including but not limited to asphalt, emulsion, and emulsified asphalt tack.

(e) Materials Quality Team Meetings - The Agency and the Design-Builder will jointly form a Materials Quality Team to meet regularly. The team meetings will address and rectify issues relating to Inspection, substandard Materials quality, inadequate Design-Builder QC processes that need to be adjusted, test results that are out of tolerance,

disparity between QC and QA test data, future quality concerns, and any issues that the Agency and the Design-Builder may have regarding quality of the Project.

At a minimum, the Design-Builder shall assign the following personnel to the Materials Quality Team:

- Project Quality Manager or Construction Quality Manager
- Design-Builder personnel in charge of Materials QC activities
- Superintendent(s)
- Any other Design-Builder or Subcontractor personnel the Design-Builder acknowledges as having quality-related concerns

The Agency may assign similar personnel related to the Project or others having quality concerns on the Project to the Materials Quality Team.

The Project Quality Manager or the CQM shall be responsible for setting the meeting schedule and agenda, documenting the meeting minutes, and distributing meeting minutes to attendees. At the start of the construction phase, Materials Quality Team meetings shall be held weekly to discuss quality issues. The meeting frequency may decrease with the Agency Engineer's concurrence and as quality issues decrease. In the event that Contract performance becomes substandard, the Agency will require that the Materials Quality Team meet more frequently.

The Design-Builder shall review all of the current and unresolved Materials-related NCRs and Nonconforming Issues (NCIs) during the Materials Quality Team meetings. For each Materials-related NCR and NCI, the Design-Builder shall address the following items at the Materials Quality Team meetings:

- Corrective action taken by the Quality Management Team
- Resolution of the initial issue that caused the NCR/NCI – how was it corrected?
- How will the Quality Management Team ensure that the NCR/NCI will not be repeated?
- Is a change to the Quality Plan required?

Example topics for Materials Quality Team meetings include, but are not limited to the following:

- Safety
- Schedule
- Review of previous action items from prior weeks
- Current and upcoming activities, including quantity estimates for QA and QC scheduling
- QA/QC inspections and test results review
- Substandard Materials
- Test results that are outside of Specifications or IA parameters

- Future quality concerns
- Review of statistical Materials evaluation
- Open NCRs/NCIs
- New issues

For each meeting discussion item, the Design-Builder shall record clear action items, due dates and responsibilities in the meeting minutes. The Design-Builder shall distribute meeting minutes to the Materials Quality Team within 3 Calendar Days after the meeting.

The Design-Builder, with the Agency Engineer's concurrence, may combine the Materials Quality Team Meeting with the quality task force meeting required under DB154.30.

DB156.60 Construction and Materials Quality Documentation – The Design-Builder shall prepare and provide construction and Materials quality and quantity documentation in accordance with the *ODOT Construction Manual* Chapter 12, MFTP, the QCCS Handbook, and the *ODOT Inspector's Manual*. The Design-Builder shall collect and preserve all required documentation as Project Records, all of which must be in a form acceptable to the Agency.

Daily manpower and Equipment reports for the Design-Builder and each Subcontractor for construction-related activities shall be prepared by the Design-Builder's construction QC inspectors and maintained by the CQM, using the forms provided by the Agency or other forms with a format acceptable to the Agency Engineer.

For Utility-related Work, such data shall be maintained separately for each Utility facility. For Work required for remediation of Settlement Curb Ramp locations containing Hazardous Materials, such data shall be maintained separately for each remediation site.

Records shall document all daily Work on the Project, the Quality Management operations, Inspections, reviews, all internal and external PQM audits, monitoring of performance of Work, including the Work of Subcontractors, and tests performed. The Design-Builder may use the forms provided by the Agency or forms developed by the Design-Builder containing equivalent information and Accepted by the Agency.

The Design-Builder's Project Records must document all work that does not conform to Contract requirements, together with the corrective actions taken to remediate such work. The Design-Builder's Project Records must also document all delays encountered, including descriptions of what Work activities were delayed, the cause of delay, and the Design-Builder's remedial actions taken to mitigate the delay.

The Design-Builder's construction and Materials quality records must identify the inspector, date of testing or Inspection, product, Material, or Work tested or Inspected, test method used, testing laboratory used, inspector's certification number, inspector's signature and the results of each test or Inspection. The records must also include, for each documented QC activity, the qualifications of the QC and testing personnel and, where applicable, the testing Equipment used.

The Quality Management Team shall keep quantity documentation current at all times and available for Agency review upon request.

In the event of a finding of nonconformance, the Design-Builder shall document the source of the nonconformance or the Contract provision or Specification with which the product, Material, or work fails to comply.

The Agency will perform periodic and final reviews on all Project quality and quantity documentation. The Quality Management Team shall work with the Agency Engineer to resolve all documentation deficiencies noted during the periodic reviews prior to the next scheduled review.

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SECTION DB160 – SOURCE OF MATERIALS

DB160.01 Notification of Source of Supply and Materials:

(a) All Materials - The Design-Builder shall notify the Agency Engineer in writing of all proposed Materials sources of supply, including without limitation any steel or other fabricators, within the following time frames:

- At least 15 Calendar Days before using or fabricating Materials, if the source is within the State; or
- At least 45 Calendar Days before using or fabricating Materials, if the source is outside the State

The Design-Builder shall identify if the Material source is a DBE or non-DBE. For DBE suppliers, the Design-Builder shall identify an estimated value of the Materials to be supplied. For any committed DBE supplier, the Design-Builder shall submit a copy of the Materials purchase order or supply agreement. For non-committed DBE's, when the estimated value is over $10,000, the Design-Builder shall submit a copy of the Materials purchase order or supply agreement.

For this purpose, a committed DBE firm is one that was identified by the Design-Builder to meet an assigned DBE goal, including DBE firms substituting for DBE firms committed as a condition of Contract Award, (see DB Agreement Exhibit B-5).

(b) Prospective Source Materials - When given an option to use Prospective Sources of Materials to be incorporated into the Work, the Design-Builder shall notify the Agency Engineer in writing of the option selected within 15 Calendar Days from date of Notice to Proceed. Otherwise, such Materials sources may become unavailable. The Agency makes no guarantee or representation, by implication or otherwise, of the land use status, quantity, quality, or acceptability of Materials available from it, except as may be stated in the DB Special Provisions.

(c) Approval Required - Before allowing production or delivery of Materials to begin from any source, the Design-Builder shall obtain the Agency Engineer's approval. Approval to use any source does not imply that Materials from that source will be accepted. If approved sources do not provide Materials that meet Specifications, the Materials will be rejected. The Design-Builder will then be responsible for locating other sources and obtaining the Agency Engineer's approval.

(d) Terms Required - The Design Builder shall comply with Section DB170.

DB160.05 Qualified Products List (QPL) - The QPL is a listing of manufactured products available on the market (shelf items) that the Agency has evaluated and found suitable for a specified use in highway construction. The QPL is available on ODOT's Construction Section website (see DB110.05(e)).

The most current published Portable Document Format (PDF) version of the QPL on ODOT's Construction Section website as of the Advertisement Date is the version in effect for the Project. When the Contract specifies the use of the QPL, unless specified as the subject of

an exemption per ORS 279C.345, the Agency may approve for use a conditionally qualified product, or a product qualified for inclusion in a later edition of the QPL, or equivalent product that meets the requirements of the QPL, following Standard Guidelines for Product Review, if the Agency finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Design-Builder shall install all products as recommended by the manufacturer. The Design-Builder shall replace qualified products not conforming to all Contract requirements or not properly handled or installed at no additional cost to the Agency.

DB160.07 Electrical Equipment and Materials - The Blue Sheets and Green Sheets are a listing of manufactured products available on the market (shelf items) that ODOT has evaluated and found suitable for use as electrical and controller equipment and materials for highway construction. The Blue Sheets and Green Sheets are available on the ODOT Traffic-Standards website (see DB110.05(e)). The most current version of the Blue Sheets and Green Sheets on the Advertisement Date is the version in effect for the Project.

When the Contract specifies the use of the Blue Sheets and Green Sheets, unless specified as the subject of an exemption per ORS 279C.345, the Agency may approve for use a product qualified for inclusion in a later edition of the Blue Sheets and Green Sheets or other equivalent product that meets the requirements of the Blue Sheets, following the Blue Sheet Qualification/Specification Information, or the Green Sheets, following the Green Sheet Qualification/Specification Information, if the Agency finds the product acceptable for use on the Project.

Use of listed products shall be restricted to the category of use for which they are listed. The Design-Builder shall install all products as recommended by the manufacturer. The Design-Builder shall replace qualified products not conforming to the Specifications or not properly handled or installed at no additional cost to the Agency.

DB160.10 Ordering, Producing, and Furnishing Materials - The Design-Builder is cautioned not to place orders for or produce full quantities of Materials anticipated to be required to complete the Work until the Work has advanced to a stage that allows the quantities to be determined with reasonable accuracy.

(a) Design-Builder's Duties - In purchasing, producing, or delivering Materials, the Design-Builder shall take into account the following:

- Kind of work involved;
- Amount of work involved;
- Time required to obtain Materials;
- Status of design completion; and
- Other relevant factors.

(b) Quantity of Materials Ordered - The Design-Builder is responsible for payment for excess Materials delivered to the Project Site or storage sites. Unless otherwise specified in the Contract, the Agency will not be responsible for:

- Materials the Design-Builder may deliver or produce in excess of Contract requirements;
- Extra expense the Design-Builder may incur because Materials were not ordered or produced earlier; or
- The Design-Builder's expenses related to Materials ordered by the Design-Builder that are not subsequently approved for use.

Excess Materials ordered or produced by the Design-Builder may be purchased by the Agency at the sole discretion of the Agency. (See DB195.80.)

DB160.20 Preferences for Materials:

(a) Buy America - If $500,000 or more of federal highway funds are involved on the Project, the Design-Builder shall limit the quantity of foreign Materials incorporated into the Work as follows. Section 635.410 of Title 23, Code of Federal Regulations, and the Intermodal Surface Transportation Efficiency Act require that all iron or steel manufacturing processes, including, without limitation, the casting of ingots, for iron or steel Materials permanently incorporated into the Project shall occur in the United States, unless the cost of foreign-origin iron or steel Materials does not exceed one-tenth of one percent (0.1%) of the Contract Amount or $2,500, whichever is greater. Buy America requirements apply to any steel or iron component of a manufactured product regardless of the overall composition of the manufactured product (e.g., Buy America applies to the steel wire mesh or steel reinforcing components of a precast reinforced concrete pipe). The Design-Builder shall not incorporate foreign-origin iron or steel Materials in excess of this amount into the Project. All foreign-origin iron or steel Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic iron or steel Materials at the Design-Builder's expense. For purposes of this Specification, the cost of foreign-origin iron or steel Materials shall be the value of the iron or steel products as of the date they are delivered to the Project Site.

Manufacturing processes include without limitation the casting of ingots and the application of coatings to finished iron or steel products or components. Coatings include epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the steel or iron product or component. The Design-Builder shall provide the Agency Engineer with a Certificate of Materials Origin, on a form furnished by the Agency Engineer, before incorporating any iron or steel products into the Project. Unless a Certificate of Materials Origin has been provided to the Agency Engineer, the Materials shall be considered of foreign origin.

The Design-Builder shall retain manufacturers' certificates verifying the origin of all domestic iron or steel Materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Agency Engineer upon request.

The Design-Builder shall include this provision in all subcontracts.

(b) Buy Oregon - According to ORS 279A.120, the Design-Builder shall give preference to goods or services produced in Oregon if price, fitness, availability, and quality are equal. This provision does not apply to contracts financed wholly or in part by federal funds.

(c) Recycled Materials - According to ORS 279A.010, ORS 279A.125, ORS 279A.145, ORS 279A.150, and ORS 279A.155, and subject to the approval of the Agency Engineer, the Design-Builder shall use recycled products to the maximum extent economically feasible.

(d) Build America Buy America Act Requirements - If federal highway funds are involved on the Project, the Design-Builder shall comply with the Build America Buy America Act and implementing regulations (Infrastructure Investment and Jobs Act ("IIJA"), Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, Sections 70901-70941).

The Build America Buy America Act requirements apply to construction materials permanently incorporated in the Project. All construction materials permanently incorporated in the Project must be produced in the United States.

Construction materials include an article, Material, or supply that is or consists primarily of only one of the following, with the standard for the material to be considered ''produced in the United States'':

- **Non-ferrous metals -** All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
- **Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables)** - All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
- **Glass (including optic glass)** - All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- **Fiber optic cable (including drop cable)** - All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- **Optical fiber** - All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- **Lumber** - All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- **Drywall** - All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- **Engineered wood** - All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

The classification of an article, material, or supply as construction material is based on its status at the time it is brought to the work site for incorporation in the Project. In general, the work site is the location of the Project at which the construction materials will be incorporated.

Manufactured products assembled outside the Project Site are not subject to the Build America Buy America requirements. Manufactured products means articles, materials, or supplies that have been:

- Processed into a specific form and shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.

The USDOT issued a Public Interest Waiver for De Minimis Costs and Small Grants. The final waiver can be viewed here: https://www.federalregister.gov/documents/2023/08/16/2023-17602/waiver-of-buy-america-requirements-for-de-minimis-costs-and-small-grants and this waiver applies to Materials covered by the Build America Buy America Act.

The public interest waiver is for manufactured products and construction materials for which:

- The total value of the non-compliant products (foreign or unknown origin) is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project*; or
- The total amount of Federal financial assistance applied to the project, through awards or subawards, is below $500,000.

*The “total value of the non-compliant products” includes construction materials only. The “total applicable costs” includes construction materials, iron and steel, and manufactured products. The value of materials are the actual cost of the materials, not the anticipated cost of materials. Furthermore, this bullet does not apply to iron and steel subject to the requirements of 23 U.S.C. 313. The de minimis threshold in 23 CFR 635.410(b)(4) continues to apply for steel and iron. (See DB160.20(a).)

Strict compliance with the Build America, Buy America domestic preferences is required, except to the extent the above public interest waiver applies. The Design-Builder shall not incorporate construction materials in excess of this amount into the Project. All foreign origin construction Materials incorporated in the Project in excess of the amount indicated above shall be removed and replaced with domestic construction Materials at the Design-Builder's expense.

The Design-Builder shall provide the Agency Engineer with a Certificate of Materials Origin, on a form furnished by the Agency Engineer, before incorporating any applicable construction materials into the Project. Unless a Certificate of Materials Origin has been provided to the Agency Engineer, the products and Materials shall be considered of foreign origin.

The Design-Builder shall retain manufacturers' certificates verifying the origin of all applicable construction materials for 3 years after the date of final payment for the Project, and shall furnish copies to the Agency Engineer upon request.

Iron and steel Materials and manufactured products that are predominately iron or steel are subject to DB160.20(a).

The Design-Builder shall include this provision in all subcontracts.

DB160.21 Cargo Preference Act Requirements - If federal highway funds are involved on the Project, the Design-Builder shall comply with the Cargo Preference Act and implementing regulations (46 CFR Part 381) for use of United States flag ocean vessels transporting materials or equipment acquired specifically for the Project. Strict compliance is required, including but not limited to the clauses in 46 CFR 381.7(a) and (b) which are incorporated by reference. The Design-Builder shall also include this provision in all subcontracts.

Additional information for cargo preference requirements and questions and answers may be available at the FHWA Construction Cargo Preference Requirements websites (see DB110.05(e)).

DB160.40 Agency-Furnished Sources - The Agency may list in the DB Special Provisions, or show on the Plans, Borrow pits or Aggregate sources from which the Design-Builder may, or shall, obtain Materials. These sources will be identified and referred to as Prospective or Mandatory Sources. A development plan will be included in DB Special Provisions Section 00235 when such sources are shown on the Plans.

The Agency-furnished Sources for this Project are listed in DB Special Provisions Section 00235.

(a) Working in a Different Area of the Materials Source - If the Design-Builder desires to work in a different area of the Materials source than that shown on the development plan, the Design-Builder shall submit a written request stating the reasons for the requested change. If a new land use permit, development plan, or reclamation plan is needed, the Design-Builder shall submit it and obtain approval from the Agency Engineer before starting work in any area other than that shown on the original Plans. Approval for work in a different area will not entitle the Design-Builder to any added compensation or adjustment of Contract Time.

The Agency will not be responsible for the availability of sources other than as stated in DB Special Provisions. If the Design-Builder has given notice to use but does not use the source(s) on the Project, the Design-Builder shall reimburse the Agency for any costs the Agency incurs in making such source(s) available.

(b) Cost of Sources - Unless otherwise specified, any Prospective or Mandatory Source will be provided by the Agency for use without payment of royalty or other charge. (See DB160.50.)

(c) Exhaustion of Sources - If the Agency Engineer determines that the quantities of specified Materials that can be produced from a Mandatory Source are insufficient for the Work, and it becomes necessary to move to another source, the Agency, unless otherwise specified in DB Special Provisions Section 00235, will pay for the reasonable cost, as determined by the Agency, of moving mixing plants, rock crushers, or other Equipment to, and erecting it at, a new approved source from which specified Materials can be produced.

Adjustments in hauling costs, other costs, and Contract Time will be determined as provided in DB140.30.

No allowance, reimbursement, compensation, or adjustment will be made for changes in the use of sources, or for moving from one source to another, except as provided above.

DB160.50 Agency-Controlled Land; Limitations and Requirements:

(a) General - The Design-Builder shall have no property rights in, or right of occupancy on, Agency-Controlled Land. Nor shall the Design-Builder have the right to sell, use, remove, or otherwise dispose of any material from Agency-Controlled Land, areas, or property, except as specified or by the written authorization of the Agency Engineer.

Unless authorized in the Contract Documents, the Design-Builder shall not disturb any material within Rights-of-Way without written authorization from the Agency Engineer.

Unless otherwise specified in the Contract Documents, the ownership of all Materials originating on Agency-Controlled Lands will at all times vest in, and remain within the control of, the Agency

(b) Waste, Excess, and By-Product Materials - All waste, excess, and by-product materials, collectively referred to in this Subsection as “By-Products”, from the manufacture or production of Aggregate Materials from Agency-Controlled Lands shall remain Agency property. Unless otherwise ordered by the Agency Engineer in writing, By-Products shall be placed as required by the Agency-provided Materials Source Development Plan and Conditions of Use:

In stockpiles at designated locations;

- At locations and in shapes that are readily accessible; and
- In such a manner as to avoid fouling areas containing useable materials or interfering with future plant setups to use materials from the property.

The Agency will not compensate the Design-Builder for handling and stockpiling By-Products in accordance with the Materials Source Development Plan and Conditions of Use requirements. If by written order the Agency Engineer directs the Design-Builder to stockpile or place designated By-Products at alternate sites, the By-Products designated shall be loaded, hauled, and placed as directed, and this work will be paid for according to DB195.20.

DB160.60 Design-Builder-Furnished Materials and Sources:

(a) General - The Design-Builder shall furnish, at its own expense, all products and Materials required for the Project from sources of its own choosing, unless such sources have been designated in the DB Special Provisions as Prospective or Mandatory Sources.

(b) Acquisition of Sources - The Design-Builder shall acquire, at its own expense, the right of access to, and the use of, all sources the Design-Builder chooses that are not Agency-controlled and made available by the Agency to the Design-Builder.

(c) Additional Requirements - Except for continuously operated commercial sources, Materials will not be authorized for incorporation into the Project by the Agency Engineer, until the Design-Builder has:

(1) Given the Agency Engineer a copy of permits from, or written proof that permits are not required from:

- The Department of Geology and Mineral Industries, as required under ORS 517.790;
- The Department of State Lands, as required under ORS 196.815 (when removing material from the bed or banks of any waters or from any Wetland); and
- Local governmental Authorities having jurisdiction over land use at the source location.

(2) Furnished to the Agency Engineer written approval of the property owner, if other than the Design-Builder, for the Design-Builder's proposed plans of operation in, and reclamation of, the source.

DB160.70 Requirements for Plant Operations - Before operating mixing plants, rock crushers, or other Equipment, the Design-Builder shall provide the Agency Engineer copies of all applicable discharge permits for noise, air contaminants, and water pollutants from the Oregon Department of Environmental Quality (DEQ) or applicable local Authority, or a letter from the DEQ or local jurisdiction stating that no permits are required for the use of the Equipment and sites.

DB160.80 Requirements for Sources of Borrow and Aggregate - The Design-Builder shall conduct operations according to all applicable Laws (including without limitation ORS Chapter 517 and OAR 632-030) when developing, using, and reclaiming all sources of Borrow Material and Aggregate. The Design-Builder shall provide erosion control at all Borrow sources. The Design-Builder shall not operate in Wetlands except as allowed by permit. The Design-Builder shall comply with all requirements for pollution and sediment control, including without limitation the National Pollutant Discharge Elimination System (NPDES), where applicable.

Except for continuously-operated commercial sources and Agency provided sources, the Design-Builder shall also conform to the following:

(a) If a natural growth of trees or shrubs is present, preserve a border of such to conceal land scars.

(b) Excavate Borrow sources and Aggregate sources, except for those in streams and rivers to provide:

- Reasonably uniform depths and widths;
- Natural drainage so no water stands or collects in excavated areas, when practicable;
- Slopes trimmed to blend with the adjacent terrain upon completion of operations;

- Slopes covered with native Soil, or acceptable plant rejects to support plant growth, if required by Contract Specifications, Plans, or permits; and
- A vegetative cover that blends with the adjacent natural growth.

(c) Excavate in quarries so that:

- Faces will not be steeper than vertical (no overhang);
- Vertical faces conform to Oregon OSHA standards, Division 3, and as shown on an approved development plan;
- Floors or benches are excavated to a uniform Slope free of depressions and will drain and not interfere with the down-land owner's property; and
- Upon completion, the quarry is left appearing neat and compatible with surrounding terrain.

(d) Obliterate haul roads specifically built for access to sources and restore the areas disturbed by these roads as nearly as practicable to the conditions that existed before the roads were built, unless otherwise directed by the landowner or regulatory body.

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SECTION DB165 – QUALITY OF MATERIALS

DB165.00 General - The Design-Builder shall incorporate into the Work only Materials conforming to all Contract requirements and approved by the Agency Engineer. The Design-Builder shall incorporate into the Work only manufactured products made of new Materials unless otherwise specified in the Contract. The Agency may require additional testing or retesting to determine whether the Materials or manufactured products meet Contract requirements.

Materials or manufactured products not meeting Contract requirements at the time they are to be used are unacceptable and must be removed immediately from the Project Site, unless otherwise directed by the Agency Engineer.

DB165.01 Rejected Materials - Either the Design-Builder or the Agency Engineer may reject any Materials that appear to be defective (see DB150.25) or that contain asbestos. The Design-Builder shall not incorporate any rejected Materials into the Work. Rejected Materials whose defects have been corrected may not be incorporated into the Work until the Design-Builder and the Agency Engineer have approved their use. Either the Design-Builder or the Agency Engineer may order the removal and replacement by the Design-Builder, at the Design-Builder's expense, of defective Materials. (See also DB150.20.)

DB165.02 Materials Conformance and Quality Compliance Documents - For purposes of this Section, "Materials Conformance Documents" means the Design-Builder's Quality Control (QC), the Agency's verification, and the Independent Assurance (IA) test results, and identity of the testing facility, as specified in the ODOT *Manual of Field Test Procedures* (MFTP), section 2, Quality Assurance Program, unless otherwise specified in the Contract.

For purposes of this Section, "Quality Compliance Documents" means those documents specified in the ODOT *Nonfield-Tested Materials Acceptance Guide* (NTMAG), unless otherwise specified in the Contract.

DB165.03 Testing by Agency - When testing Materials, the Agency will conduct the tests in its central laboratory, field laboratories, or other laboratories designated by the Agency Engineer, even though certain AASHTO, ASTM, and other materials specifications may require testing at the place of manufacture. Results of the Agency's tests will be made available to the Design-Builder.

DB165.04 Costs of Testing - When the Contract requires that the Agency perform the testing, the testing will be at the Agency's expense. The Agency will pay the cost of the Design-Builder-requested source-review tests on unprocessed Aggregates from no more than two sources for each Project, and on no more than three unprocessed samples from each source. Additional source-review tests performed at the Design-Builder's request will be at the Design-Builder's expense.

Unless otherwise provided in the Contract, all testing required to be performed by the Design-Builder will be at the Design-Builder's expense.

DB165.10 Materials Acceptance Guides - Unless otherwise specified elsewhere in the Contract Documents, Materials will be accepted according to the following guides:

(a) Field-Tested Materials - Field-tested Materials will be accepted according to the MFTP. The MFTP is published once per year and is available from the ODOT Construction Section; 800 Airport Road SE; Salem, OR 97301-4798; phone 503-986-3000. The MFTP is also available on the ODOT Construction Section web site (see DB110.05(e)). The most current version of the MFTP on the Advertisement Date is the version in effect for the Project.

For the purposes of this Contract, all references contained within the MFTP to "Section 00165", "Section 165", "00165", "165", or any Subsection within those references, shall refer to and shall be read to mean "Section DB165" or the corresponding Subsection contained within Section DB165.

(b) Non-Field-Tested Materials - Non-Field-tested Materials will be accepted according to the NTMAG, unless otherwise specified in the Contract. The NTMAG is available on the ODOT Construction Section web site (see DB110.05(e)). The most current version of the NTMAG on the Advertisement Date is the version in effect for the Project.

For the purposes of this Contract, all references contained within the NTMAG to "Section 001XX", "Section 1XX", "001XX", "1XX", or any Subsection within those references, shall refer to and shall be read to mean "Section DB1XX" or the corresponding Subsection contained within Section DB1XX.

DB165.20 Materials Specifications and Test Method References - References to materials Specifications and test methods of ODOT, WAQTC, AASHTO, ASTM, other governmental agencies, or other recognized organizations mean those officially adopted and in current use by the Agency or organization on the Advertisement Date.

(a) If there are conflicting references, or if no reference is made to materials Specifications, sampling and testing frequencies or test method, the Agency Engineer will resolve any discrepancies between these documents in the following order of precedence:

(1) Field-Tested Materials:

- Contract Change Orders;
- Accepted Design-Builder Specifications;
- DB Special Provisions;
- ODOT Laboratory Manual of Test Procedures;
- MFTP; and
- DB Standard Technical Specifications.

(2) Nonfield Tested Materials:

- Contract Change Orders;
- Accepted Design-Builder Specifications;
- DB Special Provisions;
- ODOT Laboratory Manual of Test Procedures; and
- DB Standard Technical Specifications.

(3) Material test methods:

- ODOT;
- WAQTC;
- AASHTO;
- ASTM;
- Other recognized national organizations, such as ANSI, AWPA, IMSA, ISSA, and UL; and
- Industry standards in the location where the Work is being performed.

(4) Sampling and testing frequencies:

- Contract Change Orders;
- Accepted Design-Builder Specifications;
- DB Special Provisions;
- MFTP; and
- DB Standard Technical Specifications.

If the Design-Builder identifies conflicting references or if no reference is made, the Design-Builder shall immediately request clarification from the Agency Engineer.

DB165.30 Field-Tested Materials - The Design-Builder shall furnish Materials of the quality specified.

(a) Design-Builder's Duties - The Design-Builder shall:

- Furnish Materials of the quality specified in the Contract;
- Provide and administer a quality control program as described in the Accepted Quality Plan; and
- Perform other testing as required by the Contract.

(b) Types of Tests - The types of tests and testing methods generally required by the Agency are described in the MFTP.

(c) Acceptance of Field-Tested Materials - The Design-Builder's test results for field-tested Materials will be verified by the Agency according to the Quality Assurance Program in the MFTP. If the Agency's QA test results verify the Design-Builder's results, the Materials will be analyzed for the Design-Builder's acceptance according to one of the following methods before the Agency Engineer will accept them for incorporation into the Work:

- Statistically, according to DB165.40, to determine "Pay Factors" for produced Aggregate;
- Statistically, according to DB165.40, to determine "Composite Pay Factors" for mixtures; or

- Other methods determined by the Design-Builder and authorized by the Agency.

If the Agency's QA verification test results do not verify the Design-Builder's test results, the Agency may require additional testing to determine whether the Materials meet Contract requirements. The Design-Builder shall perform additional testing, or provide samples to the Agency for testing as directed. If the Materials do not meet Contract requirements, the Design-Builder shall reimburse the Agency for the cost of the additional testing, which may be deducted from monies due or to become due the Design-Builder under the Contract. Incorporated Materials that do not meet the Contract requirements will be evaluated according to DB165.01 and DB150.25. If the Materials meet Contract requirements the Agency will pay the cost for the additional testing.

DB165.35 Non-Field-Tested Materials - The Design-Builder shall furnish Materials meeting the Contract requirements, along with all Materials Conformance and Quality Compliance Documents.

Materials will be subject to acceptance testing, if either the Design-Builder or the Agency Engineer elects. The Design-Builder shall reject damaged or non-specification materials regardless of the Materials Conformance Documents furnished.

(a) Test Results Certificate - The certificate must:

- Be from the manufacturer verifying that the Material furnished has been sampled and tested, and that the test results meet the Contract requirements.
- Include, or be accompanied by, a copy of the specified test results (ODOT, AASHTO, ASTM, UL, or other).
- Identify the testing agency and the representative responsible for the test results.
- Permit positive determination that Material delivered to the Project Site is the same Material covered by the test results.
- Be delivered to the Design-Builder with the shipment of the Material.

(b) Quality Compliance Certificate - The certificate shall be from the manufacturer and shall:

- Verify that the Material meets the Contract requirements, and identify by number the specified test methods used (ODOT, AASHTO, ASTM, UL, or other).
- Permit positive determination that Material delivered to the Project Site is the same Material covered by the certificate.
- Be delivered to the Design-Builder with the shipment of the Material, or be an identification plate or mark, decal, sticker, label, or tag attached to the container or Material.

(c) Equipment List and Drawings - These consist of lists of proposed Equipment and Materials, such as:

- Shop drawings
- Material lists
- Equipment lists
- Catalog description sheets
- Manufacturer's brochures

(d) Certificate of Origin of Steel Materials - When a certificate of material origin for steel or iron Materials is specified, complete ODOT Form 734-2126 as required by DB160.20(a) for Federal-aid projects.

(e) Certificate of Origin of Construction Materials - When a certificate of material origin for construction materials is specified, complete ODOT Form 734-5378b as required by DB160.20(d) for Federal aid projects.

DB165.40 Statistical Analysis - When DB165.30(b) or DB165.50 applies, the Design-Builder shall divide the Materials into lots and sublots, randomly sample and test them as required, and analyze the results statistically to determine whether the Materials conform to Contract requirements.

All acceptance test results of lots and sublots shall be analyzed collectively using the Quality Level Analysis procedure set out in this Subsection. This procedure shall not be used for a lot with less than three sublots. Sampling of Material for a lot that contains two or fewer sublots shall be increased to obtain at least three sublots. Both the Design-Builder and the Agency Engineer have discretion to either accept or reject lots originating with two or fewer sublots, even after sampling is increased.

(a) Lot - A lot is the quantity of Materials produced by a single process or job mix formula that is sampled, tested, and statistically evaluated as specified in this Subsection.

(b) Sublot - A sublot is a portion of a lot for which a sample test value may be normally obtained.

(c) Quality Level Analysis - Quality Level Analysis is a statistical procedure to determine, for each lot:

- The percentage of each constituent of the Materials meeting Contract requirements;
- The Pay Factor for each constituent; and
- The Composite Pay Factor, when specified.

(d) Pay Factor and Composite Pay Factor Computation - Procedures for determining the percent meeting Specifications, Pay Factors, and Composite Pay Factor for a lot of Materials are as follows:

(1) Compute lot arithmetic mean ($\bar{X}$) for each constituent:

$$\bar{X} = \frac{\sum X}{n}$$

Where ΣX = summation of sample test values
n = total number of samples

(2) Compute standard deviation (sd) for each constituent:

$$sd = \sqrt{\frac{\Sigma X^2 - n\overline{X}^2}{n-1}}$$

Where ΣX^2 = summation of the squares of each sample test value
$\overline{X}^2$ = square of the lot arithmetic mean

(3) Compute the upper quality index (Q_U) for each constituent:

$$Q_U = \frac{USL - \overline{X}}{sd}$$

Where USL (upper Specification limit) is the target value plus allowable tolerance

(4) Compute the lower quality index (Q_L) for each constituent:

$$Q_L = \frac{\overline{X} - LSL}{sd}$$

Where LSL (lower Specification limit) is the target value minus allowable tolerance.

(5) From Table DB165-1, for each constituent, determine the percent within the upper Specification limit (P_U) which corresponds to a given Q_U. If USL is 100% or is not specified, P_U will be 100.

(6) From Table DB165-1, for each constituent, determine the percent within the lower Specification limit (P_L) which corresponds to a given Q_L. If LSL is 0 or not specified, P_L will be 100.

(7) Compute the quality level, or total percent within Specification limits (P_T), for each constituent:

$$P_T = (P_U + P_L) - 100$$

(8) Using the P_T from Step 7, determine the Pay Factor (PF) from Table DB165-2 for each constituent tested. A minimum PF of 1.00 will be used when all sublot test values are within the upper and lower Specification limits, regardless of the calculated PF.

(9) Compute the Weighted Pay Factor (WPF) for each constituent:

$$WPF = (PF) \times (f_i)$$

Where f_i = weighting factor listed in the Specifications for each constituent tested.

(10) Compute the Composite Pay Factor (CPF) for the lot and report the results to three decimal places.

$$CPF = \frac{\sum WPF}{\sum f_i}$$

Where $\sum WPF$ = sum of the weighted pay factors for each constituent

$\sum f_i$ = sum of the weighting factors listed in the Specifications

Table DB165-1

QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD								
P_U or P_L PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF Q_U or Q_L	UPPER QUALITY INDEX Q_U OR LOWER QUALITY INDEX Q_L							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to n = 11
100	1.16	1.50	1.79	2.03	2.23	2.39	2.53	2.65
99	-	1.47	1.67	1.80	1.89	1.95	2.00	2.04
98	1.15	1.44	1.60	1.70	1.76	1.81	1.84	1.86
97	-	1.41	1.54	1.62	1.67	1.70	1.72	1.74
96	1.14	1.38	1.49	1.55	1.59	1.61	1.63	1.65
95	-	1.35	1.44	1.49	1.52	1.54	1.55	1.56
94	1.13	1.32	1.39	1.43	1.46	1.47	1.48	1.49
93	-	1.29	1.35	1.38	1.40	1.41	1.42	1.43
92	1.12	1.26	1.31	1.33	1.35	1.36	1.36	1.37
91	1.11	1.23	1.27	1.29	1.30	1.30	1.31	1.31
90	1.10	1.20	1.23	1.24	1.25	1.25	1.26	1.26
89	1.09	1.17	1.19	1.20	1.20	1.21	1.21	1.21
88	1.07	1.14	1.15	1.16	1.16	1.16	1.16	1.17
87	1.06	1.11	1.12	1.12	1.12	1.12	1.12	1.12
86	1.04	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.03	1.05	1.05	1.04	1.04	1.04	1.04	1.04
84	1.01	1.02	1.01	1.01	1.00	1.00	1.00	1.00
83	1.00	0.99	0.98	0.97	0.97	0.96	0.96	0.96
82	0.97	0.96	0.95	0.94	0.93	0.93	0.93	0.92
81	0.96	0.93	0.91	0.90	0.90	0.89	0.89	0.89
80	0.93	0.90	0.88	0.87	0.86	0.86	0.86	0.85
79	0.91	0.87	0.85	0.84	0.83	0.82	0.82	0.82
78	0.89	0.84	0.82	0.80	0.80	0.79	0.79	0.79
77	0.87	0.81	0.78	0.77	0.76	0.76	0.76	0.75
76	0.84	0.78	0.75	0.74	0.73	0.73	0.72	0.72
75	0.82	0.75	0.72	0.71	0.70	0.70	0.69	0.69
74	0.79	0.72	0.69	0.68	0.67	0.66	0.66	0.66
73	0.76	0.69	0.66	0.65	0.64	0.63	0.63	0.62
72	0.74	0.66	0.63	0.62	0.61	0.60	0.60	0.59
71	0.71	0.63	0.60	0.59	0.58	0.57	0.57	0.57
70	0.68	0.60	0.57	0.56	0.55	0.55	0.54	0.54
69	0.65	0.57	0.54	0.53	0.52	0.52	0.51	0.51
68	0.62	0.54	0.51	0.50	0.49	0.49	0.48	0.48
67	0.59	0.51	0.47	0.47	0.46	0.46	0.46	0.45
66	0.56	0.48	0.45	0.44	0.44	0.43	0.43	0.43
65	0.52	0.45	0.43	0.41	0.41	0.40	0.40	0.40
64	0.49	0.42	0.40	0.39	0.38	0.38	0.37	0.37
63	0.46	0.39	0.37	0.36	0.35	0.35	0.35	0.34
62	0.43	0.36	0.34	0.33	0.32	0.32	0.32	0.32
61	0.39	0.33	0.31	0.30	0.30	0.29	0.29	0.29
60	0.36	0.30	0.28	0.27	0.27	0.27	0.26	0.26
59	0.32	0.27	0.25	0.25	0.25	0.24	0.24	0.24
58	0.29	0.24	0.23	0.22	0.21	0.21	0.21	0.21
57	0.25	0.21	0.20	0.19	0.19	0.19	0.18	0.18
56	0.22	0.18	0.17	0.16	0.16	0.16	0.16	0.16
55	0.18	0.15	0.14	0.14	0.13	0.13	0.13	0.13
54	0.14	0.12	0.11	0.11	0.11	0.11	0.10	0.10
53	0.11	0.09	0.08	0.08	0.08	0.08	0.08	0.08
52	0.07	0.06	0.06	0.05	0.05	0.05	0.05	0.05
51	0.04	0.03	0.03	0.03	0.03	0.03	0.03	0.03
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: For negative values of Q_U or Q_L, P_U or P_L is equal to 100 minus the table value for P_U or P_L. If the value of Q_U or Q_L does not correspond exactly to a figure in the table, use the next higher figure.

Table DB165-1

QUALITY LEVEL ANALYSIS BY THE STANDARD DEVIATION METHOD							
P_U or P_L PERCENT WITHIN LIMITS FOR POSITIVE VALUES OF Q_U OR Q_L	UPPER QUALITY INDEX Q_U OR LOWER QUALITY INDEX Q_L						
	n = 12 to n = 14	n = 15 to n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = ∞
100	2.83	3.03	3.20	3.38	3.54	3.70	3.83
99	2.09	2.14	2.18	2.22	2.26	2.29	2.31
98	1.91	1.93	1.96	1.99	2.01	2.03	2.05
97	1.77	1.79	1.81	1.83	1.85	1.86	1.87
96	1.67	1.68	1.70	1.71	1.73	1.74	1.75
95	1.58	1.59	1.61	1.62	1.63	1.63	1.64
94	1.50	1.51	1.52	1.53	1.54	1.55	1.55
93	1.44	1.44	1.45	1.46	1.46	1.47	1.47
92	1.37	1.38	1.39	1.39	1.40	1.40	1.40
91	1.32	1.32	1.33	1.33	1.33	1.34	1.34
90	1.26	1.27	1.27	1.27	1.28	1.28	1.28
89	1.21	1.22	1.22	1.22	1.22	1.22	1.23
88	1.17	1.17	1.17	1.17	1.17	1.17	1.17
87	1.12	1.12	1.12	1.12	1.12	1.13	1.13
86	1.08	1.08	1.08	1.08	1.08	1.08	1.08
85	1.04	1.04	1.04	1.04	1.04	1.04	1.04
84	1.00	1.00	1.00	1.00	0.99	0.99	0.99
83	0.96	0.96	0.96	0.96	0.95	0.95	0.95
82	0.92	0.92	0.92	0.92	0.92	0.92	0.92
81	0.88	0.88	0.88	0.88	0.88	0.88	0.88
80	0.85	0.85	0.85	0.84	0.84	0.84	0.84
79	0.81	0.81	0.81	0.81	0.81	0.81	0.81
78	0.78	0.78	0.78	0.78	0.77	0.77	0.77
77	0.75	0.75	0.75	0.74	0.74	0.74	0.74
76	0.71	0.71	0.71	0.71	0.71	0.71	0.71
75	0.68	0.68	0.68	0.68	0.68	0.68	0.67
74	0.65	0.65	0.65	0.65	0.65	0.64	0.64
73	0.62	0.62	0.62	0.62	0.62	0.61	0.61
72	0.59	0.59	0.59	0.59	0.59	0.58	0.58
71	0.56	0.56	0.56	0.56	0.56	0.55	0.55
70	0.53	0.53	0.53	0.53	0.53	0.53	0.52
69	0.50	0.50	0.50	0.50	0.50	0.50	0.50
68	0.48	0.48	0.47	0.47	0.47	0.47	0.47
67	0.45	0.45	0.45	0.44	0.44	0.44	0.44
66	0.42	0.42	0.42	0.42	0.41	0.41	0.41
65	0.39	0.39	0.39	0.39	0.39	0.39	0.39
64	0.37	0.37	0.36	0.36	0.36	0.36	0.36
63	0.34	0.34	0.34	0.34	0.33	0.33	0.33
62	0.31	0.31	0.31	0.31	0.31	0.31	0.31
61	0.29	0.29	0.28	0.28	0.28	0.28	0.28
60	0.26	0.26	0.26	0.26	0.26	0.25	0.25
59	0.23	0.23	0.23	0.23	0.23	0.23	0.23
58	0.21	0.21	0.20	0.20	0.20	0.20	0.20
57	0.18	0.18	0.18	0.18	0.18	0.18	0.18
56	0.15	0.15	0.15	0.15	0.15	0.15	0.15
55	0.13	0.13	0.13	0.13	0.13	0.13	0.13
54	0.10	0.10	0.10	0.10	0.10	0.10	0.10
53	0.08	0.08	0.08	0.08	0.08	0.08	0.08
52	0.05	0.05	0.05	0.05	0.05	0.05	0.05
51	0.03	0.03	0.03	0.03	0.03	0.03	0.02
50	0.00	0.00	0.00	0.00	0.00	0.00	0.00

NOTE: For negative values of Q_U or Q_L, P_U or P_L is equal to 100 minus the table value for P_U or P_L. If the value of Q_U or Q_L does not correspond exactly to a figure in the table, use the next higher figure.

Table DB165-2

PAY FACTOR	REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR							
	n = 3	n = 4	n = 5	n = 6	n = 7	n = 8	n = 9	n = 10 to n = 11
1.05	100	100	100	100	100	100	100	100
1.04	90	91	92	93	93	93	94	94
1.03	80	85	87	88	89	90	91	91
1.02	75	80	83	85	86	87	88	88
1.01	71	77	80	82	84	85	85	86
1.00	68	74	78	80	81	82	83	84
0.99	66	72	75	77	79	80	81	82
0.98	64	70	73	75	77	78	79	80
0.97	62	68	71	74	75	77	78	78
0.96	60	66	69	72	73	75	76	77
0.95	59	64	68	70	72	73	74	75
0.94	57	63	66	68	70	72	73	74
0.93	56	61	65	67	69	70	71	72
0.92	55	60	63	65	67	69	70	71
0.91	53	58	62	64	66	67	68	69
0.90	52	57	60	63	64	66	67	68
0.89	51	55	59	61	63	64	66	67
0.88	50	54	57	60	62	63	64	65
0.87	48	53	56	58	60	62	63	64
0.86	47	51	55	57	59	60	62	63
0.85	46	50	53	56	58	59	60	61
0.84	45	49	52	55	56	58	59	60
0.83	44	48	51	53	55	57	58	59
0.82	42	46	50	52	54	55	57	58
0.81	41	45	48	51	53	54	56	57
0.80	40	44	47	50	52	53	54	55
0.79	38	43	46	48	50	52	53	54
0.78	37	41	45	47	49	51	52	53
0.77	36	40	43	46	48	50	51	52
0.76	34	39	42	45	47	48	50	51
0.75	33	38	41	44	46	47	49	50
REJECT	QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75							

NOTE: If the computed QUALITY LEVEL does not correspond exactly to a figure in the table, use the next lower value.

Table DB165-2

	REQUIRED QUALITY LEVEL FOR A GIVEN SAMPLE SIZE (n) AND A GIVEN PAY FACTOR						
PAY FACTOR	n = 12 to n = 14	n = 15 to n = 18	n = 19 to n = 25	n = 26 to n = 37	n = 38 to n = 69	n = 70 to n = 200	n = 201 to n = ∞
1.05	100	100	100	100	100	100	100
1.04	95	95	96	96	97	97	99
1.03	92	93	93	94	95	95	97
1.02	89	90	91	92	93	94	95
1.01	87	88	89	90	91	93	94
1.00	85	86	87	89	90	91	93
0.99	83	85	86	87	88	90	92
0.98	81	83	84	85	87	88	90
0.97	80	81	83	84	85	87	89
0.96	78	80	81	83	84	86	88
0.95	77	78	80	81	83	85	87
0.94	75	77	78	80	81	83	86
0.93	74	75	77	78	80	82	84
0.92	72	74	75	77	79	81	83
0.91	71	73	74	76	78	80	82
0.90	70	71	73	75	76	79	81
0.89	68	70	72	73	75	77	80
0.88	67	69	70	72	74	76	79
0.87	66	67	69	71	73	75	78
0.86	64	66	68	70	72	74	77
0.85	63	65	67	69	71	73	76
0.84	62	64	65	67	69	72	75
0.83	61	63	64	66	68	71	74
0.82	60	61	63	65	67	70	72
0.81	58	60	62	64	66	69	71
0.80	57	59	61	63	65	67	70
0.79	56	58	60	62	64	66	69
0.78	55	57	59	61	63	65	68
0.77	52	56	57	60	62	64	67
0.76	51	55	56	58	61	63	66
0.75	51	53	55	57	59	62	65
REJECT	QUALITY LEVELS LESS THAN THOSE SPECIFIED FOR A 0.75						

NOTE: If the computed QUALITY LEVEL does not correspond exactly to a figure in the table, use the next lower value.

DB165.50 Statistical Acceptance Sampling and Testing - The Design-Builder shall sample and test Materials for acceptance, as required by the Contract. The Design-Builder may statistically evaluate test results for purposes of quality control, or to predict a Pay Factor or Composite Pay Factor. The following apply:

(a) Statistical Acceptance - The Design-Builder shall perform statistical analysis according to DB165.40 for acceptance and to determine a Pay Factor (PF) or Composite Pay Factor (CPF). The Design-Builder's determination of the PF or CPF will not be controlling except upon Agency concurrence.

(b) Pay Adjustments - As an incentive to produce quality Materials, the Agency Acceptance will be based upon the following:

(1) Specification Materials - For Materials accepted by a PF, when all constituents of a Material have a PF of 1.00 or greater, that Material will be considered specification Materials. For Materials accepted by a CPF, all Materials with a CPF of 1.0000 or greater will be considered specification Materials. Materials with a CPF greater than 1.0000, when specified, may earn a CPF adjustment of greater than 1.0000, up to a maximum of 1.0500.

(2) Non-Specification Materials - For Materials accepted by a PF, when any constituents of a Material have a PF of less than 1.00, that Material will be considered non-specification Materials. For Materials accepted by a CPF, all Materials with a CPF less than 1.0000 will be considered non-specification Materials. A lot containing non-specification Materials will be evaluated as described in DB165.50(c).

(c) Non-Specification Materials:

(1) Isolation of a Partial Sublot - The Design-Builder may isolate from a sublot or adjoining sublots any Material that the Design-Builder's test results show the Material to be non-specification. The Design-Builder shall perform additional testing or provide samples to the Agency as directed. The Agency Engineer will Accept or reject the Material according to DB150.25.

(2) Isolation of an Entire Sublot - The Design-Builder may isolate a sublot or series of sublots in which the Design-Builder's test results show the Material to be non-specification. The Design-Builder shall perform additional testing or provide samples to the Agency as directed. The isolated Material will be evaluated as a separate lot. The Agency Engineer will Accept or reject the Material according to DB150.25.

(3) A Lot-in-Progress - The Design-Builder shall shut down production when any of the following occurs:

- The CPF for a lot-in-progress drops below 1.0000, and the Design-Builder is taking no corrective action;
- The CPF is less than 0.7500; or
- Any constituent test is continually out of Specification limits, regardless of whether or not the CPF is below 0.7500.

The Design-Builder shall not resume production until the Agency Engineer has received confirmation that Specification Materials can be produced, and has given authorization to resume.

(4) An Entire Lot - Either the Design-Builder or the Agency Engineer may reject an entire lot of Materials with a CPF between 0.7500 and 1.0000, or may take action in accordance with DB150.25.

For a lot of Material with a CPF below 0.7500, the Design-Builder, subject to concurrence by the Agency Engineer, shall take one or more of the following actions:

a. Remain in Place - Allow Materials to remain in place with an appropriate price reduction that may range from 25% to 100% (no payment);

b. Corrective Work - Require corrective work, at the Design-Builder's expense, with an appropriate price reduction that may range from zero (full payment) to 100% (no payment); or

c. Remove and Replace - Require complete removal and replacement with Specification Materials. No payment will be made for the rejected Materials, the cost of removal, or for the costs of sampling and testing.

DB165.70 Use of Materials without Acceptable Materials Conformance Documents:

(a) General - The Design-Builder shall not incorporate Materials into the Project prior to obtaining confirmation from the Quality Management Team that the Materials Conformance Documents comply with all Contract requirements. The Agency Engineer may waive this requirement temporarily if Materials are necessary for immediate traffic safety.

(b) Materials Incorporated for Immediate Traffic Safety - If Materials are incorporated into the Project for immediate traffic safety before acceptable Materials Conformance Documents are available, no payment will be made for the value of the Materials, or the costs of incorporating them, until acceptable Materials Conformance Documents have been confirmed by the Quality Management Team, or the Materials are otherwise found through testing to comply with Contract requirements.

(c) Design-Builder's Request for Testing Assistance - If acceptable Materials Conformance Documents are not available, the Design-Builder may either have the necessary tests performed at a private laboratory or request in writing that the Agency Engineer:

- Determine if the Agency or its agents can sample and test;
- Estimate the cost to the Design-Builder for the testing service; or
- Estimate the time required to obtain the test results.

The Agency Engineer will provide this information to the Design-Builder in writing. If the Design-Builder requests the Agency Engineer, in writing, to proceed, the Agency Engineer will arrange for the sampling and testing at the Design-Builder's expense. If these tests determine the Material complies with Contract requirements, the Materials may be

incorporated into the Project, or, for Materials previously incorporated pursuant to (b) above, payment will be authorized.

DB165.75 Storage and Handling of Materials - The Design-Builder shall store and handle Materials so as to preserve their quality and fitness for incorporation into the Work. The Design-Builder shall restore all storage sites to their original condition according to DB140.90, or to comply with any applicable permits, orders, or agreements, at the Design-Builder's expense.

Stored Materials:

- Must be readily accessible for Inspection;
- May be stored on approved parts of the Right-of-Way; and
- May be stored on private property if written permission of the owner or lessor is obtained.

DB165.91 Fabrication Inspection Expense - Fabrication of certain items outside of the State creates additional shop and plant Inspection expense to the Agency. It is impractical, and extremely difficult, to determine the actual additional expenses incurred. Therefore, each time Inspection by or on behalf of the Agency is necessary, payment to the Design-Builder will be reduced by an amount computed at the following rates:

Zone	Place of Fabrication	Reduction in Payment
1	All of State of Oregon, and those portions of adjacent states within 50 airline miles of the Oregon border	$0
2	Outside of Zone 1, and up to 300 airline miles from the Oregon border	$200 per Calendar Day
3	Outside of Zone 2, up to 3,000 airline miles from the Oregon border, and within the continental United States.	Round trip coach airfare from Portland, Oregon plus $200 per Calendar Day
4	Outside of Zone 3, or outside of the continental United States.	Round trip coach airfare from Portland, Oregon plus $250 per Calendar Day

Calendar Day charges begin on the first day the Agency's Inspector begins travel to begin work at the fabrication site, and continue without interruption through the final day of travel back to the State. The Design-Builder will be notified in writing of the beginning and ending dates of the Calendar Days used in computing payment reduction.

This Subsection applies to all fabricated items or manufactured Materials that are inspected by or on behalf of the Agency, which include, but are not limited to:

- Structural steel fabrication;
- Prestressed concrete members;
- Precast concrete;
- Signs;
- Preservative treatment of wood products;
- Epoxy coating of reinforcing steel; and
- Other items specifically identified in the Contract requirements as requiring fabrication site or in-plant inspection by the Agency.

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SECTION DB170 – LEGAL RELATIONS AND RESPONSIBILITIES

DB170.00 General - The Design-Builder shall comply with all laws, ordinances, codes, regulations, executive orders and administrative rules (collectively referred to as "Laws" in this Section), that relate to the Work or to those engaged in the Work. Where the terms, provisions or conditions of the Contract are inconsistent or in conflict with applicable Laws, the Design-Builder shall comply with the more stringent standard.

All rights and remedies available to the Agency under applicable Laws are incorporated herein by reference and are cumulative with all rights and remedies under the Contract.

DB170.01 Other Agencies Affecting Agency Contracts - Representatives of regulatory bodies or units of government whose Laws may apply to the Work will have access to the Work according to DB150.20(d). These may include, but are not limited to, those in (a), (b), (c), and (d) below.

The following federal, State, and local agencies are known to have enacted ordinances and regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

(a) Federal Agencies:

- Agriculture, Department of
  - Forest Service
  - Natural Resource Conservation Service
- Army, Department of the
  - Corps of Engineers
- Commerce, Department of
  - National Marine Fisheries Service
- Defense, Department of
- Energy, Department of
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Geology Survey
- Health and Human Services, Department of
- Homeland Security, Department of
  - U.S. Coast Guard
- Housing and Urban Development, Department of
- Interior, Department of
  - Heritage, Conservation, and Recreation Service
  - Bureau of Indian Affairs
  - Bureau of Land Management
  - Bureau of Mines
  - Bureau of Reclamation
  - Geological Survey
  - Minerals Management Service

Office of Surface Mining, Reclamation, and Enforcement
- Minerals Management Service
- National Oceanic and Atmospheric Administration
- Solar Energy and Energy Conservation Bank
- U.S. Fish and Wildlife Service
- Labor, Department of
  Mine Safety and Health Administration
  Occupational Safety and Health Administration
- Transportation, Department of
  Federal Highway Administration
- Water Resources Council

(b) State of Oregon Agencies:

- Administrative Services, Department of
- Agriculture, Department of
  Natural Resources Division
  Soil and Water Conservation District
- Columbia River Gorge Commission
- Consumer and Business Services, Department of
  Insurance Division
  Oregon Occupational Safety and Health Division
- Energy, Office of
- Environmental Quality, Department of
- Fish and Wildlife, Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Labor and Industries, Bureau of
- Land Conservation and Development Department
- Parks and Recreation, Department of
- State Lands, Department of
- Water Resources Department

(c) Local Agencies:

- City Councils
- County Courts
- County Commissioners, Boards of
- Design Commissions
- Historical Preservation Commissions

- Lane Regional Air Pollution Authority
- Planning Commissioners
- Port Districts
- Special Districts

(d) Oregon Federally Recognized Tribal Governments:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of Grand Ronde
- Confederated Tribes of Siletz
- Confederated Tribes of Umatilla Indian Reservation
- Confederated Tribes of Warm Springs
- Coquille Tribe
- Cow Creek Band of Umpqua Indians
- Klamath Tribe

DB170.02 Hazardous Material Spill Reporting and Clean-Up of Spills - The Design-Builder shall be responsible for; reporting spills within the Work area to the Agency, initiating response and cleanup actions in accordance with Oregon Administrative Rules (OAR 340-142-0001 to 340-142-0130) for all spills within the work area, and the full cost incurred during the cleanup of spills associated with construction of the Project. Refer to DB141.57 for the specifics of hazardous spills response. The Design-Builder shall be responsible for reporting historic spills or areas of contaminated soil and groundwater encountered during construction to the Agency. Unreported spills identified after construction and associated with construction of the Project shall be cleaned up or remediated by the Design-Builder at no cost to the Agency.

The Agency will be responsible for any delay costs and expenses due to the Agency or the Design-Builder making a discovery of historic releases of Hazardous Materials that are not identified in the RFP or the Contract Documents. The Design-Builder shall be solely responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Materials that are identified in the RFP or the Contract Documents and for all spills or other contamination of the foregoing, and for all spills or other contamination of any other Hazardous Materials, that are caused by the Design-Builder or any Subcontractors, employees, or agents.

All reporting required under this Subsection shall be made to the appropriate Authorities per Oregon Administrative Rules. Notification and copies of any regulatory reports shall also be made immediately to the Agency Engineer if a spill occurs on State ROW. Notification and copies of any regulatory reports shall also be immediately provided to the Agency Engineer and the affected property owner(s) if a spill impacts beyond the State ROW.

DB170.03 Protection of Navigable Waters - The Design-Builder shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899, and its amendments.

The Design-Builder shall not interfere with waterway navigation or impair navigable depths or clearances, except as U.S. Coast Guard (USCG) or U.S Army Corps of Engineers (USACE) permits allow.

DB170.04 Safety, Health and Sanitation Provisions – The Design-Builder shall be fully responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the Work, including, but not limited to, taking reasonable precautions to ensure the safety of, and prevention of damage, injury, or loss to: (a) employees of the Agency, Cities, Counties, other Governmental Bodies, or Agency Consultants present on or in the vicinity of a Work Location, employees of the Design-Builder, employees of Subcontractors, and other persons performing Work on or in the vicinity of a Work Location, and other persons, including the traveling public, who may be affected; (b) Materials and Equipment to be incorporated into the Project; (c) portions of the Project under construction or completed; and (d) other property within or adjacent to a Work Location.

The Design-Builder shall comply with all Laws concerning safety, health, and sanitation standards. The Design-Builder shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

The Design-Builder shall coordinate with the Agency Engineer to provide and maintain a safe and healthy Project area for the Agency, the Design-Builder and workers as described in this Subsection and in accordance with applicable Laws and the Contract.

Workers exposed to traffic shall wear upper body garments or safety vests that are highly visible and meet the requirements of DB Standard Technical Specifications 00221.20.

Workers exposed to falling or flying objects or electrical shock shall wear hard hats.

Upon their presentation of proper credentials, the Design-Builder shall allow inspectors of the U.S. Occupational Safety and Health Administration (OSHA) and the Oregon Occupational Safety and Health Division (OR-OSHA) to inspect the Work and Project Site without delay and without an inspection warrant.

According to ORS 468A.715 and ORS 468A.720, the Design-Builder or a Subcontractor who performs Project Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

(a) Design-Builder's Safety Manager - The Design-Builder shall appoint a Safety Manager that shall be responsible for the safety aspects of the Project. The Safety Manager shall implement, maintain, and monitor compliance with the Design-Builder's safety procedures and all safety requirements and standards provided in the Contract Documents and applicable Law. The Design-Builder shall not commence any Construction Services until the Safety Manager has been appointed and is available to report to the Project Site within three hours of request or requirement by the Design-Builder or the Agency.

The Safety Manager shall have and exercise the authority to stop Work in the event of a perceived safety issue, concern, or observation, until appropriate corrective action has been taken or the situation has been rectified.

Breaches of the safety procedures and all safety requirements and standards provided in the Contract Documents and applicable Law, or other conduct prejudicial to safety may, in the Agency's sole discretion, be cause for the Agency to stop Work or require the removal of any worker, including the Design-Builder's Project Manager or Safety Manager, from the Project Site.

(b) Hazard and Risk Considerations - In addition to other risk assessment responsibilities of the Design-Builder, the Design-Builder shall identify and analyze the safety and other hazards and risks associated with the Work, including during construction, and the Project's ultimate use, and shall plan the Work and design the Project so as to eliminate, mitigate, or control such hazards and risks. Such hazards and risks shall be identified and logged in a database during the design process. The hazards and risks log shall be provided during the Design Review process to the Agency so that it can adequately prepare its staff for the Project.

(c) Preconstruction Conference - The Design-Builder shall submit a completed *ODOT Safety Questionnaire for Contracted Construction Projects* (ODOT Form STD 96002) to the Agency Engineer prior to preconstruction conferences. The Safety Questionnaire for Contracted Construction Projects form is available on ODOT's Construction Section Highway Construction Forms website (see DB110.05(e)).

(d) Medical Services and First Aid - The Design-Builder shall make its own arrangements to supply medical services and first aid to anyone who may be injured in connection with the Work, in accordance with OAR 437-002-2301.

DB170.05 Permits, Licenses, and Taxes - As required to accomplish the Work, the Design-Builder shall do the following:

- Obtain all necessary permits and licenses, except for those noted in DB170.06:
- Pay all applicable charges, fees, and taxes, except for those noted in DB170.06;
- Give all notices required by applicable Laws or under the terms, provisions and conditions of the Contract;
- Comply with ORS 274.530 relating to the lease of stream beds by the Oregon Division of State Lands;
- License, in the State of Oregon, all vehicles subject to licensing;
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands; and
- Comply with all orders and permits issued by the Authorities.

In any litigation, the entire text of any order or permit issued by a governmental or regulatory authority, as well as any documents referenced or incorporated therein by reference, shall be admissible for the purpose of Contract interpretation.

DB170.06 Permits - The Design-Builder shall prepare the documentation, apply for, obtain and pay for all necessary permits not furnished by the Agency.

The Design-Builder shall obtain and pay for any right to work or other permits within the jurisdiction's right-of-way as required by local agencies when not covered by an IGAs.

See DB141.28 and DB174.20 for additional information pertaining to acquisition of Right-of-Way.

The Design-Builder shall prepare the documentation and pay for any modifications to the Agency provided permits in DB General Provisions, Attachment A – Engineering Data. The Agency will obtain any modifications to the Agency provided permits using documentation prepared by the Design-Builder. (See also DB155.10.)

Refer to the following for additional details:

- The Roadway Reference Document Table 1 in DB General Provisions, Attachment C – Reference Documents for a list of potential permits by location.
- DB141.51 for environmental permitting.
- Local Agency websites for additional local agency permit information

DB170.08 Electronic Document Management:

(a) ProjectWise Access and General Requirements for Design - The Design-Builder shall include the provisions set forth in DB170.08(a) in any Subcontract that will require Subcontractor access to ODOT's ProjectWise network.

Unless otherwise allowed or directed by the Agency, the Design-Builder shall use ProjectWise for electronic submittal and receipt of Design Documents as necessary for the Project. The Design-Builder employees, Subcontractor employees, or other agents that will need access to ODOT's ProjectWise network must have an ODOT-approved ProjectWise account. Each individual that needs access must agree to the Terms and Conditions of Use set forth in the External User Access Agreement – ODOT's ProjectWise Network form, which is available on ODOT's ProjectWise website (see DB110.05(e)) as a condition of access to the ProjectWise network.

The Design-Builder shall submit a completed and signed form for every individual requiring access to the Agency for review and approval. Individuals with approved accounts will be provided access only to appropriate folders specific to the Project that they have been contracted to work on. The Design-Builder, Subcontractors and each individual seeking or having access to ODOT's ProjectWise network shall follow the procedures provided in the Contract Consultant and External User Roles, Responsibilities and Security Requirements – ODOT's ProjectWise Network (as may be revised from time to time by the Agency), which is available on ODOT's ProjectWise website (see DB110.05(e)).

The Design-Builder shall promptly send notice to the Agency at ProjectWiseAdmin@odot.oregon.gov to remove ProjectWise access for individuals that are no longer employed or that are reassigned or that otherwise no longer need access to ProjectWise for the Project. The Agency will send an attestation request to the Design-Builder every 30 Calendar Days (or such other period the Agency deems appropriate) to validate the list of individuals (including employees, Subcontractor employees or other agents) with access to ODOT's ProjectWise network. The Design-Builder shall respond in writing to the Agency within 3 Business Days of any such validation request.

(1) Correct Use of ProjectWise - Any person approved for accessing and using ODOT's ProjectWise Network on behalf of the Design-Builder acquires the status of an "Account Holder". The Design-Builder shall ensure each Account Holder: a) complies

with the Terms and Conditions of Use set forth or incorporated in the External User Access Agreement – ODOT's ProjectWise Network form, and b) has appropriate training in the proper use of ProjectWise and follows the Contract the Design-Builder and External User Roles, Responsibilities and Security Requirements – ODOT's ProjectWise Network. The Agency reserves the right to monitor Account Holder activity within ODOT's ProjectWise Network and may suspend or terminate any Account Holder ODOT, in its sole discretion, determines to be in violation of the Terms and Conditions of Use.

(2) Responsibility for ProjectWise Functioning - The Agency provides use of ODOT's ProjectWise Network "as is". The Agency does not warrant that the information or access thereto will be error free, uninterrupted or meet the Design-Builder's needs, nor does the Agency make any representation or warranty regarding the accuracy or completeness of the information. The Agency is not responsible for any damage that may occur due to error, omission, lack of timeliness or any other cause, of the information contained on ODOT's ProjectWise network or other sites accessible from it. The Agency does not assume any responsibility for information added to the site by Account Holders. The Agency disclaims any liability arising from interferences or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any cause beyond the control of the Agency. The Agency reserves the right to temporarily suspend access to ProjectWise, without notice, because of maintenance, repair, or any other reason deemed necessary for the proper functioning of ODOT's ProjectWise Network.

(3) Liability - In no event shall the State of Oregon, the Oregon Transportation Commission and its members, the Agency, or their officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs and expenses, including attorney fees, of whatsoever nature, resulting from or arising out of the Design-Builder's use of ODOT's ProjectWise Network.

The Design-Builder's indemnification, defense and hold harmless obligations its under Contract with the Agency shall apply to the terms, conditions and requirements referenced in DB170.08(a) and the acts and omissions of the Design-Builder or its Subcontractors, or their respective agents or employees, respecting ProjectWise.

(4) Firewall, Virus and Malware - The Design-Builder shall at all times maintain an active and current firewall protection in place for Account Holders who are accessing and using ODOT's ProjectWise application. The Design-Builder shall at all times maintain an active and current Virus and Malware protection on the individual machines and network being used by the Design-Builder to access ODOT's ProjectWise Network and shall ensure that such active and current Virus and Malware protection is maintained on machines and networks used for access to ProjectWise but not owned or controlled by the Design-Builder. Whether external users are accessing ODOT's ProjectWise data through a company-owned or personally-owned machine, the Agency reserves the right to quarantine any infected files, documents or other items that are found to contain a virus, malware, adware or otherwise harmful component. The Design-Builder shall immediately notify the Agency in the event of a breach or security concern at their company. The Agency reserves the right to suspend user and/or Design-Builder accounts containing harmful software. The Agency also reserves the right to require the Design-Builder to clean devices of harmful software. In the event

of chronic infections, the Agency reserves the right to deny future access to ODOT's ProjectWise network.

(5) Optional ProjectWise Add-on - Bentley Systems, Inc. ("Bentley") has developed an add-on for ODOT's ProjectWise network. The add-on is available for use by Design-Builder's employees, Subcontractor employees, or other agents and users that have access to ODOT's ProjectWise network, but installation and use of the add-on is not mandatory. The add-on creates a hook for the Agency's required document name and description conventions, which eliminates the need for copying and pasting. The add-on is located between the Attributes and General tab of the document properties. By downloading or using this add-on, and as a condition of its use, the Design-Builder understands and agrees that this add-on is provided for use "as is". Neither Bentley nor the Agency represents or warrants that access to or use of the add-on will be error free, uninterrupted or meet the user's needs.

Neither Bentley nor ODOT is responsible or liable for any damage to any person or party that may occur due to error, omission, lack of timeliness or any other cause related to use of the add-on. Bentley and the Agency each expressly disclaim all responsibility and liability arising from interference or interruptions, viruses, telephone faults, malicious damage by third parties, electronic system downtime, overloading of the Internet or any other cause related to use of the add-on. Bentley and the Agency reserve the right to temporarily or permanently suspend access to this add-on, without notice. This add-on is not supported by Bentley or the Agency and users should consult their IT department before installing.

(6) Electronic Documents, Digital Seal and Signature - All final documents identified in ORS 671.025, 671.379, 672.020(2), 672.025(2), 672.028(2) and 672.605, as applicable, must bear the digital seal and signature of the Oregon registered professional under whose supervision and control they were prepared. Documents must be submitted in the format specified in the Contract for each deliverable and must comply with OAR 804-030, OAR 806-010, OAR 809-050 and OAR 820-025 requirements, as applicable, for digital seal and signature capable of independent verification, final and draft documents, modifications to designs, and dual stamping of documents.

(b) Doc Express® Access and Requirements for Construction - The requirements of this Subsection do not apply to claims. Claims must be submitted on paper documents according to Section DB199. In addition, the requirements of this Subsection do not apply to Design Documents (see DB170.08(a)).

Unless otherwise allowed or directed by the Agency, following Notice to Proceed, other than Design Documents, the Design-Builder shall submit all documents (referred to in this Subsection as "Construction Documents") for this Contract to the Agency in an electronic format using Doc Express®. No paper Construction Documents, faxes or other similar paper methods or media are permitted, unless otherwise allowed or directed by the Agency. The Design-Builder shall be solely responsible for submitting Construction Documents to the Agency using Doc Express® for itself and for Subcontractors, Suppliers, vendors and other third parties. Only Construction Documents submitted by the Design-Builder and recorded in Doc Express® as received will be considered valid and received by the Agency.

Following Notice to Proceed, all Construction Documents for this Contract will be managed in Doc Express® unless otherwise allowed or directed by the Agency. Following Notice to Proceed, the Design-Builder shall use Doc Express® to submit Construction Documents to the Agency, and the Agency will use Doc Express® to submit Construction Documents to the Design-Builder.

The Design-Builder shall comply with naming conventions, drawer structure, and other Doc Express® instructions as specified in the ODOT Doc Express® User Guide for Construction Contractors, as may be revised from time to time and available from the Agency.

The Design-Builder shall provide all Subcontractors, Suppliers, vendors, and any other third parties receiving payment from the Design-Builder or any Subcontractor, Supplier, vendor, or any other third party, with read-only access to the Doc Express® drawer that contains payment documents from the Agency and the Design-Builder. The Design-Builder may provide Subcontractors, Suppliers, vendors, and any other third parties receiving payment from the Design-Builder or any Subcontractor, Supplier, vendor or other third party with read-only access to other Doc Express® drawers at the Design-Builder's discretion. The Design-Builder shall not grant write access to Subcontractors, Suppliers, vendors or any other third parties or their respective officers, employees or agents.

Construction Documents submitted according to this Subsection, from the Agency to the Design-Builder and from the Design-Builder to the Agency, are official Construction Documents for the Contract and will be accepted as such by both parties.

By submitting documents that originate from the Design-Builder to the Agency using Doc Express®, the Design-Builder is certifying that the Construction Documents are true and accurate and that if the Construction Document was required to be signed, it has been signed by a person with appropriate authority. By submitting documents to the Agency using Doc Express® that originate from a Subcontractor, Supplier, vendor, manufacturer or other third party, the Design-Builder is certifying that the Construction Documents are a true and complete copy of the Construction Documents the Design-Builder received, that if the Construction Document was required to be signed, it has been signed, and that the Design-Builder does not know, nor does it have reason to believe, that the documents are not true and accurate or signed by a person without appropriate authority.

In the event of a conflict between this Subsection and the Specifications, this Subsection shall control except for DB199.30.

Costs associated with obtaining and maintaining access to Doc Express® and the use of Doc Express® are incidental to Mobilization.

Failure to submit Construction Documents electronically, as required by this Subsection, may result in payments being withheld according to DB195.50(e).

The Design-Builder shall be responsible for causing access to Doc Express® to be disabled for any entity or individual that is no longer assigned, employed or under contract in relation to the Project or whose access is to be disabled due to improper activity. The Design-Builder's obligation to disable access applies to its own officers, employees and agents and to all Subcontractors, Suppliers, vendors and other third parties and their respective officers, employees and agents.

The Agency reserves the right to suspend or disable, or cause to be suspended or disabled, the access to Doc Express® for any entity or individual at any time.

Use and access for Doc Express® is provided “as is”. The Agency does not warrant that access to or functioning of Doc Express® will be error free, uninterrupted or meet the Design-Builder’s needs. The Agency is not responsible for any damage that may occur due to error, omission, lack of timeliness or other malfunction of Doc Express® or its supporting systems. The Agency disclaims all liability arising from interference or interruption, viruses, telephone faults, malicious damage by anyone, electronic system downtime, overloading of the Internet or sites or any cause beyond the control of the Agency. The Agency reserves the right to temporarily suspend or cause to be suspended access to Doc Express®, without notice, because of maintenance, repair or any other reason deemed necessary for the proper functioning of Doc Express® by the Agency or Info Tech, Inc.

In no event shall the State of Oregon, the Oregon Transportation Commission or the Agency or their respective members, officers, agents and employees be liable for any claims, suits, actions, losses, liabilities, damages, costs or expenses, including but not limited to attorney fees, of whatsoever nature, resulting from or arising out of the use of Doc Express® by the Design-Builder or Subcontractors, Suppliers, vendors or other third parties at any level or their respective officers, employees or agents.

The Design-Builder’s indemnification, defense and hold harmless obligations under the Contract shall apply to the terms, conditions and requirements of DB170.08 and to use of Doc Express® and the acts, errors and omissions of the Design-Builder, Subcontractors, Suppliers, vendors and other third parties and their respective officers, employees and agents respecting access to and use of Doc Express®.

The terms, conditions and requirements of DB170.08 and DB150.30 shall be included in all contracts with all Subcontractors, Suppliers, vendors and other third parties at all levels for which access to Doc Express® will or may be required.

(1) User Terms and Conditions - The Design-Builder shall comply with, shall require its officers, employees and agents to comply with, and shall require all Subcontractors, Suppliers, vendors and other third parties to comply with and to require their officers, employees and agents using or accessing Doc Express® to comply with DB170.08 and the following Additional User Terms and Conditions, all as may be revised from time to time:

As an officer, employee or agent of the Design-Builder or any Subcontractor, Supplier, vendor or other third party, respecting my use of or access to Doc Express®, I agree to the following, all as may be revised from time to time:

- The terms, conditions and requirements of DB170.08 of the Contract;
- The Info Tech, Inc. Doc Express® Privacy Policy and Terms of Use and the Digital Millennium Copyright Act (DMCA) Policy, accessible from the Doc Express® registration site;
- The ODOT Doc Express® User Guide for Construction Contractors available from the Agency; and

- The following Additional User Terms and Conditions:

My use of and access to Doc Express® are conditioned on my agreement to and my compliance with the foregoing and these Additional User Terms and Conditions.

I may have access to sensitive personnel, business, financial and/or security related information ("Confidential Information") through use of Doc Express®, and, except to the limited extent necessary to perform my duties, I will maintain its confidential status and will not share, publish or disseminate Confidential Information or other information obtained through Doc Express®, without regard to how ODOT may treat any such Confidential Information or other information. All information is also subject to the Oregon Public Records law. In addition, if I know or have reason to believe any information was inadvertently or improperly included in Doc Express®, I will immediately notify my employer for purposes of notification to the Design-Builder and the Design-Builder's notification to the Agency.

I will not access any information I am not authorized to use or access and I will not browse or otherwise use or access information, files or documents that exceed the minimum necessary to perform my duties.

If my authorized use of and access to Doc Express® includes submitting construction documents into Doc Express® (or "read-write" access), I will not submit any construction documents or information into Doc Express® except those I am authorized to submit and necessary to perform my duties.

I have no expectation of privacy, rights or ownership of anything I may access, create, store, send or receive within Doc Express®, respecting any construction documents or information, including but not limited to Confidential Information of any individual or entity. For audit or system security purposes, ODOT may monitor and/or record all activity conducted within Doc Express®. This includes but is not limited to the login identification information, times, dates and duration of access, as well as resources or construction documents accessed.

Unauthorized access or activities that could compromise the system or Confidential Information are strictly prohibited and patterns of unauthorized or unusual activity will result in access being immediately disabled, and possible further investigation.

If a breach of these terms and conditions or a security incident occurs, I will immediately notify my employer for purposes of notification to the Design-Builder and the Design-Builder's notification to the Agency.

I will not share my password or other means of access with any other individual or entity. Violation of this restriction or of any of these other Terms and Conditions will result in my access being immediately disabled.

I understand that my use of and access to Doc Express® is conditioned on my relationship to my employer and my employer's relationship to one or more of: the Agency, the Design-Builder, a Subcontractor, Supplier, vendor or other third party, and that if I am no longer so employed or my employer no longer has such relationship, I will immediately cease my use of and access to Doc Express® and

will immediately notify my employer for purposes of notification to the Design-Builder and the Design-Builder's notification to the Agency.

(2) Digital Signatures and Requirements - Unless otherwise allowed or directed by the Agency Engineer:

- For all Change Orders that require signature by the Design-Builder for this Contract, the Design-Builder, by a person with appropriate authority, shall sign using a Doc Express® digital signature.
- Change Orders that require signature by the Design-Builder, but do not have a Doc Express® digital signature from the Design-Builder verifiable by the Agency Engineer, will be considered as not received and of no effect.
- Construction Documents other than Change Orders that contain digital signatures, but do not have a digital signature verifiable by the Agency Engineer, or that were signed by a person without appropriate authority, will be considered as not received and of no effect.
- Notice requirements will not be satisfied and payments may be withheld for any affected Work items until the required construction documents with verifiable digital signatures have been received.

(3) Electronic Submittal Requirements - Unless otherwise allowed or directed by the Agency Engineer, all Construction Documents submitted to the Agency for this Contract that require a signature, other than Change Orders, shall be signed by a person with appropriate authority by applying:

- An original handwritten signature to a Construction Document and scanning the Construction Document into PDF format;
- An electronic signature to a Construction Document and converting the Construction Document into PDF format;
- A third-party verifiable digital signature to a PDF Construction Document; or
- A Doc Express® electronic signature when prompted during submission of the Construction Document into Doc Express®.

Documents that require a signature, but do not have a signature in accordance with this Subsection or were signed by a person without appropriate authority; or documents that were signed with a digital signature but are submitted in a form such that the digital signature is not verifiable by the Agency, will be considered as not received and of no effect. Notice requirements will not be satisfied and payments may be withheld for any affected Work items until the required construction documents with compliant signatures have been received.

Unless otherwise allowed or directed by the Agency, all Construction Documents submitted to the Agency for this Contract that do not require a signature shall be submitted using Doc Express®.

DB170.10 Required Payments by Design-Builder - The Design-Builder shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

(a) Prompt Payment by Design-Builder for Labor and Materials - As required by ORS 279C.505, the Design-Builder shall:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract;
- Pay all contributions or amounts due the Industrial Accident Fund, whether from the Design-Builder or a Subcontractor, incurred in the performance of the Contract;
- Not permit any lien or claim to be filed against the State or any political subdivision thereof on account of any labor or Materials furnished in performance of the Contract; and
- Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(b) Prompt Payment by Design-Builder to First-Tier Subcontractor(s) - According to ORS 279C.580(3)(a), after the Design-Builder has determined and certified to the Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, the Design-Builder may request payment from the Agency for the Work, and shall pay the Subcontractor(s) within 10 Calendar Days out of such amounts as the Agency has paid to the Design-Builder for the subcontracted Work.

(c) Interest on Unpaid Amount - If the Design-Builder or a first tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Days after the Design-Builder's receipt of payment, the Design-Builder or first tier Subcontractor shall owe the Entity the amount due plus interest charges that begin at the end of the 10 Day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b). As required by ORS 279C.515(2), the rate of interest on the amount due shall be 9% per annum. The amount of interest shall not be waived.

(d) Agency's Payment of Design-Builder's Prompt Payment Obligations - If the Design-Builder fails, neglects, or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to the Design-Builder or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, the Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due the Design-Builder under the Contract. (The Agency has no obligation to pay these Entities, and the Agency will not normally do so, but will refer them to the Design-Builder and the Design-Builder's Surety.)

The payment of a claim by the Agency in the manner authorized in this Subsection will not relieve the Design-Builder or the Design-Builder's Surety from obligations with respect to any such claims.

(e) Right to Complain to the Construction Contractors Board - If the Design-Builder or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the

Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

(f) Notice of Claim Against Bond - An Entity (which by definition includes a natural person) claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action on the Design-Builder's Payment Bond as provided in ORS 279C.600 and ORS 279C.605.

The Commissioner of the Bureau of Labor and Industries (BOLI) may have a right of action on the Design-Builder's and Subcontractors' Public Works Bonds and Payment Bonds for workers who have not been paid in full, as provided in ORS 279C.600 and ORS 279C.605.

(g) Paid Summary Report - The Design-Builder shall submit a "Paid Summary Report", form 734-2882, to the Agency Engineer certifying payments made to all of the following:

- All Subcontractors
- Committed DBE Suppliers
- Non-committed DBE Suppliers and service providers with estimated total payments for the Project over $10,000.

For this purpose, a committed DBE firm is one that was identified by the Design-Builder to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of Contract award.

The Design-Builder shall submit the completed and signed *Paid Summary Report* to the Agency Engineer within 20 Calendar Days of receipt of payment from the Agency for each month in which payments were made to each Subcontractor, each committed DBE Supplier, and each non-committed DBE Supplier or service provider with estimated total payments for the Project over $10,000. At the completion of the project, the Design-Builder shall submit form 734-2882 recapping the total amounts paid to each Subcontractor, and each DBE Supplier, and each non-committed DBE Supplier or service provider with estimated total payments for the Project over $10,000.

The Design-Builder shall require each Subcontractor at every tier to comply with the requirement to submit form 734-2882 within 20 Calendar Days of receipt of payment from its controlling contractor and provide a recap of the total amounts paid at the completion of the Project or completion of its Work.

Forms shall be submitted to an email address provided to the Design-Builder at the Preconstruction Conference.

DB170.20 Payment for Medical Care - According to ORS 279C.530, the Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or other needed care and attention, incident to sickness or injury, to the employees of the Design-Builder, of all sums that the Design-Builder agrees to pay for the services, and all moneys and sums that the Design-Builder has collected or deducted from the wages of employees under any Law, contract, or agreement for the purpose of providing or paying for the services.

DB170.25 Responsibility for Damage to Work:

(a) Responsibility for Damage in General - The Design-Builder shall perform Work, and furnish Materials and Equipment for incorporation into the Work, at the Design-Builder's own risk, until the entire Project has been completed and accepted by the Agency. The Design-Builder shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Work, except as otherwise provided in this Section.

(b) Repair of Damage to Work - Until Final Acceptance, the Design-Builder shall promptly rebuild, repair, restore, and make good damages to all portions of the permanent or temporary Work, except to the extent the Agency has assumed responsibility according to the provisions of (c) below. The Design-Builder shall perform all repairs of damage to Work at no additional cost to the Agency, except for repairs necessitated by damage caused by:

- Acts of God or Nature, as defined in Section DB110; or
- Actions of governmental authorities.

(c) Responsibility for Damage to Work Caused by Public Traffic - The Design-Builder may apply for relief of responsibility for damage to Work caused by Public Traffic by submitting a signed *Contractors Request for Relief of Responsibility* (ODOT Form 734-2768), to the Agency Engineer by mail, personal delivery, courier, scanned and submitted by email, or other agreed-upon method.

The Agency Engineer will process a maximum of two forms per month and return the forms within 7 Calendar Days indicating each item as "approved" or "denied".

The approval of the Agency Engineer is limited, and is made only for the purposes of determining relief of responsibility for damage to completed portions of the Work caused by Public Traffic. The completed portions of the Work are not considered complete, and are not finally accepted for any other purposes under the Contract.

If the Design-Builder disagrees with the Agency Engineer's findings, the Design-Builder may request a Region level review according to DB199.40(b).

(1) Request for Relief - The Agency will only accept a request for relief from and will only assume responsibility for damages caused by Public Traffic, to the following completed portions of the Work:

- A segment of Roadway, drainage facilities, Slopes, lighting, Traffic Control Devices and access facilities;
- A Bridge or other Structure within a segment of Roadway;
- Traffic signals and appurtenances at an intersection;
- Permanent, passive Traffic Control Devices;
- Complete circuits of a highway lighting system; and
- Portions of a building open to public use.

The Agency will approve a request for the Agency to assume responsibility for damages to the completed portions of the Work caused by Public Traffic only under the following conditions:

- The completed portions of the Work are completed according to Contract Change Orders, the Plans or approved stage construction Plans;
- The traffic control complies with approved Traffic Control Plans; and
- All required Materials conformance and Quality Compliance Documents pertaining to the completed portions of the Work are on files with the Agency Engineer (see Section DB165).

(2) Scope of Relief - When the Agency assumes responsibility for damage to completed portions of the Work caused by Public Traffic any damages will be repaired by the Design-Builder on a Changed Work basis, or by Agency forces, or by other means as determined by the Agency Engineer. If completed portions of the Work are damaged by Public Traffic before Final Inspection, and the Agency requires the Design-Builder to repair the damages, the Agency Engineer will reimburse the Design-Builder for the Changed Work at 75% of the total amount calculated according to Section DB197.

If completed portions of the Work are damaged by Public Traffic after Final Inspection, and the Agency requires the Design-Builder to repair the damages, the Agency Engineer will reimburse the Design-Builder for the Work at 100% of the total amount calculated according to Section DB197.

If any additional Work is performed by the Design-Builder on completed portions of the Work for which the Agency has assumed responsibility for damages caused by Public Traffic, and the Work is performed outside of the approved stage construction Plans or approved Traffic Control Plans, the Design-Builder shall become fully responsible and liable, and shall make good all damages caused by Public Traffic at no additional cost to the Agency.

(d) Vandalism and Theft - Vandalism includes damage to or destruction of Work or portions of Work that remain on the Project Site resulting from vandalism, criminal mischief, arson, or other criminal or illegal behavior.

The Design-Builder shall provide reasonable protection of the Work from vandalism until Third Notification. If reasonable protection has been provided, the Design-Builder's responsibility for damage resulting from vandalism will be limited to $5,000.00 per occurrence. Requests for reimbursement of amounts in excess of $5,000.00 shall be in writing and directed to the Agency Engineer. Upon receipt, the Agency Engineer will investigate, evaluate the amount of damages and their cause, determine the number of occurrences, and determine whether, and how much, the Design-Builder will be compensated.

Theft includes the loss of Work or portions of Work that are lost or stolen or otherwise unaccounted for from the Project Site or from Materials or fabrication locations. The Design-Builder shall remain solely responsible for all losses caused by theft, including without limitation theft that occurs in conjunction with vandalism.

DB170.30 Responsibility for Damage to Property and Facilities:

(a) In General - As used in this Subsection, the term "Design-Builder" shall include the Design-Builder's agents, Subcontractors, and all workers performing Work under the Contract; and the term "damage" shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature.

The Design-Builder shall be solely responsible for damages arising from:

- Design-Builder's operations
- Design-Builder's negligence, gross negligence, or intentional wrongful acts
- Design-Builder's failure to comply with any Contract terms, provisions or conditions

The Agency may withhold funds due to the Design-Builder or the Design-Builder's Surety until all lawsuits, actions, and claims for injuries or damages are resolved and satisfactory evidence of resolution is furnished to the Agency.

(b) Protection and Restoration of Agency Property and Facilities - The following requirements apply to Highways, Highway Structures, and other improvements that are existing, under construction, or completed. The Design-Builder shall:

- Provide adequate protection to avoid damaging Agency property and facilities.
- Be responsible for damage to Agency property and facilities caused by or resulting from the Design-Builder's operations.
- Clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by the Agency Engineer.

(c) Protection and Restoration of Non-Agency Property and Facilities - The Design-Builder shall determine the location of properties and facilities that could be damaged by the Design-Builder's operations and shall protect them from damage. The Design-Builder shall protect monuments and property marks until the Agency Engineer has referenced their location and authorized their removal. The Design-Builder shall restore non-Agency property or facilities damaged by its operations to the condition that existed before the damage, at no additional compensation.

The Design-Builder shall provide temporary facilities when needed (e.g., to maintain normal service or as directed by the Agency Engineer) until the required repair, rebuilding, or replacement is accomplished.

The Design-Builder shall protect specific service signs, (e.g., business logos, and Tourist-Oriented Directional Signs (TODS)) from damage, whether the signs are to remain in place or be placed on temporary supports. The Design-Builder shall repair or replace damaged signs at no cost to the Agency. Liquidated damages will be assessed against the Design-Builder in the amount of $200.00 per Calendar Day for each sign out of service for more than 5 Calendar Days because of the Design-Builder's operations.

DB170.35 Protection of Utility, Fire-Control, and Railroad Property and Services; Repair; Roadway Restoration:

(a) Protection of Utility, Fire-Control, and Railroad Property and Services; Coordination - The Design-Builder shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control Authorities during performance of the Work. The Design-Builder shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, as required under DB174.10, and of Railroad, railways, and fire-control property.

The Design-Builder shall conduct no activities of any kind around fire hydrants until the local fire-control Authority has approved provisions for continued service.

The Design-Builder shall immediately notify any Utility, Railroad, or fire-control Authority whose facilities have been damaged.

If an Entity has a valid permit from the proper Authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, the Design-Builder shall allow the permit holder to perform the work.

(b) Restoration of Roadway after Repair Work - The Design-Builder shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by the Agency Engineer, at no additional cost to the Agency.

DB170.40 Fencing, Protecting Stock, and Safeguarding Excavations - The Design-Builder shall be responsible for loss, injury, or damage that results from its failure to restrain stock and persons.

(a) At the Design-Builder's Expense - The Design-Builder shall restrain stock to lands on which they are confined using temporary fences or other adequate means. The Design-Builder shall provide adequate temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

The Design-Builder shall repair, at the Design-Builder's expense and to the Agency Engineer's satisfaction, fences damaged by the Design-Builder's operations and the operations of the Design-Builder's agents, employees, and Subcontractors.

(b) At the Agency's Expense - The Design-Builder shall construct fences, or move and reconstruct fences, as shown on the Contract Documents or as directed by the Agency Engineer. The Design-Builder shall tear down and remove fencing within the ROW when no longer needed, as part of the removal Work described in DB Standard Technical Specifications Section 00310.

DB170.45 Trespass - The Design-Builder shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

DB170.50 Use of Explosives - The Design-Builder shall comply with all Laws pertaining to the use of explosives. The Design-Builder shall notify anyone having facilities near the Design-Builder's operations of the Design-Builder's intended use or storage of explosives.

The Design-Builder shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (See DB Standard Technical Specifications 00330.41(e) and DB Standard Technical Specifications Section 00335.)

DB170.55 Responsibility for Defective Work - The Design-Builder shall make good any defective Work, Materials or Equipment incorporated into the Work, according to the provisions of Section DB150.

(a) Latent Defects - The Design-Builder shall remain liable for all latent defects resulting from causes other than fraud or gross mistakes that amount to fraud until the expiration of all applicable statutes of limitation and ultimate repose, the Performance Bond, warranty bond, or warranty period, whichever expires last. The Design-Builder shall remain liable for all latent defects resulting from fraud or gross mistakes that amount to fraud regardless of when those latent defects may be discovered and regardless of whether such discovery occurs outside any applicable statutes of limitation or ultimate repose or any applicable Performance Bond, warranty bond, or warranty period.

(b) Design-Builder Furnished Warranties:

(1) Design-Builder Warranties for Specific Items - For those items with Specifications referencing this DB170.55(b)(1) warranty, the Design-Builder warrants that the Work for those items, including Changed Work, Incidental Work, On-Site Work, and Extra Work, and Materials and Equipment incorporated into the Work, shall meet the Specifications required under the Contract. The warranty period will be identified in each applicable Specification or elsewhere in the Contract Documents and will begin on the date of Final Second Notification. The Design-Builder also warrants that all Design Services shall be performed in accordance with the standard of care specified in Design-Build Agreement, Article 2.1.2. The Design-Builder shall be responsible for making good the Work and for all repairs of damage to the Work and other improvements, natural and artificial structures, systems, Equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, and workmanship. The Design-Builder shall be responsible for all costs caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship.

When the Agency makes written notification of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items shall meet current Specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

This warranty provision shall survive expiration or termination of the Contract.

(2) Reserved

(c) Manufacturer Warranties and Guarantees:

(1) Manufacturer Warranties - For those Specification Sections referencing this (c)(1), the Design-Builder shall furnish warranties from the Manufacturer and signed by a Manufacturer's Representative.

The warranty period will be specified in the applicable Specification Section for which it applies.

The warranty period will begin on the date of Final Second Notification.

When the Agency makes written notification to the Manufacturer of failure of an item covered by this warranty, the warranty period will stop for the effected item or the portion of the effected item that failed, as applicable, until the required repairs or replacements are made and accepted. All repaired or replaced items must meet current Specifications, unless otherwise specified in the Contract, and will be warranted for the remaining warranty period.

If, in the opinion of the Agency Engineer, temporary repairs are necessary, the temporary repairs will be made by the Agency or an independent contractor at the Manufacturer's expense. The Manufacturer shall replace all temporary repairs at no additional cost to the Agency.

The Manufacturer shall provide all required traffic control during repair or replacement of failed items at no additional cost to the Agency.

Warranty work shall be performed when weather permits.

(2) Trade Practice Guarantees - For those items installed on the Project that have customary trade practice guarantees, the Design-Builder shall furnish the guarantees to the Agency Engineer at the completion of the Contract.

DB170.60 Indemnity / Hold Harmless - To the fullest extent permitted by Law, and except to the extent otherwise void under ORS 30.140, the Design-Builder shall indemnify, defend (with counsel approved by the Agency), and hold harmless the Agency and the Agency's authorized representatives and consultants, and their respective officers, directors, agents, employees, partners, members, stockholders, and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorneys' fees), demands, and actions of any nature whatsoever that arise out of, result from, or are related to the following:

- Any damage, injury, loss, expense, inconvenience, or delay described in this Subsection.
- Any accident or occurrence that happens or is alleged to have happened in or about a Work Location or any other place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects.
- Any failure of the Design-Builder to observe or perform any duty or obligation under the Contract Documents that is to be observed or performed by the Design-Builder, or any breach of any agreement, duty, obligation, responsibility, covenant, provision, requirement, representation, or warranty of the Design-Builder contained in the Contract Documents or in any subcontract.
- The negligent acts or omissions of the Design-Builder, a Subcontractor, or anyone directly or indirectly employed by them or any one of them, or anyone for whose acts

they may be liable, for such portion of the claim, damage, loss, or expense not caused by a party indemnified hereunder.

- Any failure to comply with all applicable Laws by the Design-Builder or any Subcontractor, or anyone employed by any one of them, or anyone for whose acts they may be liable.
- Any lien filed upon the Project or bond claim in connection with the Work.

Such obligation must not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party, Entity, or person described in this Subsection.

In claims against any Party, person or Entity indemnified under this Subsection by an employee of the Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

Notwithstanding the Design-Builder's foregoing defense obligations, neither the Design-Builder nor any attorney engaged by the Design-Builder shall defend any claim in the name of the Agency, nor purport to act as legal representative of the Agency or any of its agencies, without the prior written consent of the Agency's legal counsel, which in the case of ODOT is the Oregon Attorney General. The Agency may, at any time at its election assume its own defense and settlement in the event that it determines that the Design-Builder is prohibited from defending the Agency, or that the Design-Builder is not adequately defending the Agency's interests, or that an important governmental principle is at issue or that it is in the best interests of the Agency to do so. The Agency reserves all rights to pursue any claims it may have against the Design-Builder.

The Design-Builder shall extend indemnity, defense and hold harmless to the Agency and the following:

- Jacobs Program Management Co. and their subcontractors.
- Kelly McNutt Consulting, LLC
- Global Transportation Engineering Corporation
- Commonstreet Consulting, LLC

DB170.70 Insurance:

(a) Insurance Coverages:

Design-Builder - The Design-Builder shall obtain the insurance specified below prior to the execution of the Contract. The Design-Builder shall maintain the insurance in full force at the Design-Builder's expense throughout the duration of the Contract and all warranty periods that apply.

Subcontracting - If the Design-Builder specifies prior to the execution of the Contract that a Subcontractor will satisfy an insurance requirement, that is permitted to be satisfied by a Subcontractor, the Design-Builder shall obtain Agency approval of Subcontractor and

Subcontractor's insurance coverage(s), as required by DB180.21, prior to commencement of subcontracted Work. After the Design-Builder receives Agency approval of the Subcontractor, the Design-Builder may contractually obligate the Subcontractor to obtain and maintain, at the Subcontractor's expense or at the Design-Builder's expense, the insurance permitted.

The Design-Builder shall require that all Subcontractors carry insurance coverage that the Design-Builder deems appropriate based on the risks of the subcontracted work. The Design-Builder shall obtain proof of the required insurance coverages, as applicable, from any Subcontractor providing Services related to the Contract.

Neither the insurance provided by Subcontractor(s) nor any agreements Design-Builder or Subcontractor(s) may enter into shall place any limitation on the liability or indemnification obligations of the Design-Builder under applicable law or the Contract.

Insurance Provisions - The Design-Builder and Subcontractor(s), if any, shall obtain insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in the State and that are acceptable to the Agency. Insurance coverage shall be primary and noncontributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation/Employer's Liability. The Design-Builder, or appropriate Subcontractor, but not the Agency, shall pay for all deductibles, self-insurance retentions and self-insurance, if any.

Professional Liability - shall obtain and maintain throughout the duration of the Contract.

If the Design-Builder has a Design Firm Subcontractor, the Design-Builder shall require its Design Firm Subcontractor that performs Design Services for the Project to obtain and maintain during the term of this Contract, including any required Extended Reporting period, at the Design-Builder's expense or the Design Firm Subcontractor's expense, Professional Liability Insurance covering any damages caused by any errors, omissions or any negligent acts of the Design Firm Subcontractor and its Subcontractors and, their respective agents, officers and personnel performing Design Services for the Project. The per occurrence limit shall not be less than the dollar amount specified in the Contract. The aggregate limit shall not be less than the dollar amount specified in the Contract.

If the Design-Builder has a Design Firm Subcontractor, the Design-Builder shall obtain and maintain at its own expense Professional Liability Insurance covering any errors, omissions or any negligent acts of the Design-Builder and its Subcontractors (other than its Design Firm Subcontractor) and their respective agents, officers or personnel performing Design Services for the Project. The per occurrence limit shall not be less than the dollar amount specified in the Contract. The aggregate limit shall not be less than the dollar amount specified in the Contract.

If the Design-Builder itself performs the Design Services for the Project, without a Design Firm Subcontractor, the Design-Builder shall obtain and maintain at its own expense Professional Liability Insurance covering any damages caused by any errors, omissions or any negligent acts of the Design-Builder and Subcontractors and their respective agents, officers or personnel performing Design Services for the Project. The per occurrence limit shall not be less than the dollar amount specified in the

Contract. The aggregate limit shall not be less than the dollar amount specified in the Contract.

The following Professional Liability insurance coverages and dollar amounts are required pursuant to this Subsection:

Insurance Coverages	**Annual Per Occurrence Limit**	**Aggregate Limit**
Professional Liability (For the Design Firm - If the Design-Builder has a Design Firm Subcontractor)	$5,000,000	$10,000,000
Professional Liability (For the Design-Builder - If the Design-Builder has a Design Firm Subcontractor)	$1,000,000	$2,000,000
Professional Liability (For the Design-Builder – If the Design-Builder does not have a Design Firm Subcontractor)	$5,000,000	$10,000,000

If Professional Liability insurance is provided on a “claims made” basis, the Design-Builder or Design Firm Subcontractor, if applicable, shall maintain continuous claims made liability coverage or shall obtain an extended reporting period on the claims made policy or maintain the claims made policy, for a duration of at least 5 years from the date the applicable work has been completed and accepted by the Agency or the date of Final Acceptance. This extended reporting requirement shall be satisfied with documentation of one of the following:

- Extended Reporting Endorsement;
- Tail Coverage; or
- Maintaining the applicable continuous claims made policy with liability coverage.

The Design-Builder or Design Firm Subcontractor shall furnish certification of this extended reporting requirement as a condition to receive Third Notification under DB150.90(b) and DB180.50(g).

Commercial General Liability - Shall obtain and maintain throughout the duration of the Contract.

The Design-Builder shall provide Commercial General Liability Insurance written on an occurrence basis and covering the Design-Builder’s liability for bodily injury and property damage. This insurance shall include personal and advertising injury liability, products and completed operations coverage, and contractual liability coverage. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract. The annual aggregate limit shall not be less than the dollar amount specified in the Contract. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

When Work to be performed includes operations or activity within 50 feet of any railroad property, bridge, trestle, track, roadbed, tunnel, underpass or crossing, the Design-Builder shall provide the Contractual Liability – Railroads CG 24 17 endorsement, or equivalent, on the Commercial General Liability policy.

The following Commercial General Liability insurance coverage and dollar amounts are required pursuant to this Subsection:

Insurance Coverage	Combined Single Limit Per Occurrence	Aggregate Limit
Commercial General Liability	$5,000,000	$10,000,000

Commercial Automobile Liability - Shall obtain and maintain throughout the duration of the Contract.

The Design-Builder shall provide Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles for bodily injury and property damage. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract.

Commercial Automobile Liability (pedestrian transport vehicle for pedestrian circulation) - Shall obtain at least 35 Calendar Days before commencement of the related Work and maintain throughout the duration of the related Work.

The Design-Builder or Subcontractor, whichever is performing the vehicle transportation for pedestrian circulation, shall provide Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles for bodily injury and property damage. Combined single limit per occurrence shall not be less than the dollar amount specified in this subsection.

The following Commercial Automobile Liability insurance coverage and dollar amount is required pursuant to this Subsection:

	Combined Single Limit	
Commercial Automobile Liability	$2,000,000	(aggregate limit not required)
Commercial Automobile Liability (pedestrian transport vehicle)	$5,000,000	(aggregate limit not required)

Pollution Liability- Shall obtain at least 35 Calendar Days before commencement of the related Work and maintain throughout the duration of the related Work and the required extended reporting period.

The Design-Builder or Subcontractor, whichever is performing the pollution related Work, shall provide Pollution Liability Insurance written on an occurrence or claims

made basis and covering the Design-Builder's or Subcontractor's liability, for bodily injury, property damage, and environmental damage resulting from sudden, accidental, and gradual pollution, and related cleanup costs. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract. The annual aggregate limit shall not be less than the dollar amount specified in the Contract.

The following Pollution Liability insurance coverage and dollar amounts are required pursuant to this Subsection:

	Combined Single Limit per Occurrence	**Annual Aggregate Limit**
Pollution Liability	$1,000,000	$2,000,000

With Lead Liability Endorsement or separate coverage

Lead Liability - The Design-Builder or Subcontractor, whichever is performing lead-related Work, shall provide the Pollution Liability coverage with a Lead Liability endorsement. If an endorsement cannot be obtained, the Design-Builder or Subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance.

Commercial Automobile Liability with Pollution Coverage - Shall obtain at least 35 Calendar Days before commencement of the related Work and maintain throughout the duration of the related Work and the required extended reporting period.

The Design-Builder or Subcontractor, whichever is performing the pollution related Work shall provide Commercial Automobile Liability Insurance with Pollution coverage covering the Design-Builder's or Subcontractor's liability for bodily injury, property damage, natural resource damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. Combined single limit per occurrence shall not be less than the dollar amount specified in the Contract.

The following Commercial Automobile Liability insurance with Pollution coverage and dollar amount is required pursuant to this Subsection:

	Combined Single Limit per Occurrence	
Commercial Automobile Liability with Pollution Coverage	$2,000,000	(aggregate limit not required)

Excess/Umbrella Liability - Shall obtain and maintain throughout the duration of the Contract.

The Design-Builder shall obtain, Excess/Umbrella Liability Insurance coverage that applies over all liability policies, without exception, including but not limited to

Professional Liability, Commercial General Liability, Automobile Liability, and Employer's Liability coverage.

Excess/Umbrella coverage must be at least as broad as that provided by the underlying primary insurance policies. In addition, the limits of the underlying primary insurance must be sufficient to prevent any gap between minimum limits and the attachment point of the coverage provided by the Excess/Umbrella Liability policy. Any Excess/Umbrella Liability policies in place must be on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance.

(b) Extended Reporting - If any of the required insurance is permitted to be and is on a "claims made" basis, with the exception of Professional Liability, the Design-Builder or Subcontractor who provided the insurance coverage, shall obtain an extended reporting period on the claims made policy or maintain the claims made policy, for a duration of at least 2 years from the date the applicable work has been completed and accepted by the Agency or the date of Final Acceptance. This extended reporting requirement shall be satisfied with documentation of one of the following:

- Extended Reporting Endorsement;
- Tail Coverage; or
- Maintaining the applicable continuous claims made policy with liability coverage.

The Design-Builder or Subcontractor shall furnish certification of this extended reporting requirement as a condition to receive Third Notification under DB150.90(b) and DB180.50(g).

(c) Excess/Umbrella Liability - A combination of primary and Excess/Umbrella Insurance may be used to meet the required minimum limits of insurance. If any Excess/Umbrella Liability policies are in place, they must be on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying insurance. In addition, the limits of the underlying primary insurance must be sufficient to prevent any gap between such minimum limits and the attachment point of the coverage provided by the Excess/Umbrella Liability policy.

(d) Additional Insured - The liability insurance coverages of DB170.70(a), except for Professional Liability, shall include an Additional Insured Endorsement endorsing the "State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation, and their respective officers, members, agents, and employees" as Additional Insureds, but only with respect to the Design-Builder's activities to be performed under the Contract. Coverage shall be primary and noncontributory with any other insurance and self-insurance. The liability coverages of DB170.70(a) that are permitted by the Agency to be obtained by an appropriate Subcontractor shall include all of the foregoing as Additional Insureds and shall also include the Design-Builder and its officers and employees as Additional Insureds.

Additional Insured Endorsements on the Commercial General Liability shall be written on Insurance Services Office (ISO) Form Commercial General (CG) 20 10 07 04, or

equivalent, with respect to liability arising out of ongoing operations and ISO Form CG 20 37 07 04, or equivalent, with respect to liability arising out of completed operations.

Additional Insured Endorsements shall be submitted with the Certificate(s) of Insurance and must be acceptable to the Agency.

The following shall be added as Additional Insureds under the Contract:

- Jacobs Program Management Co

(e) Workers' Compensation and Employer's Liability - All employers, including the Design-Builder and Subcontractor(s), if any, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide Workers' Compensation Insurance coverage, unless such employers meet the requirement for an exemption under ORS 656.126(2). The coverage shall include Employer's Liability Insurance with limits not less than $500,000 each accident.

The Design-Builder shall certify in the Contract that the Design-Builder is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

The Design-Builder shall require and verify that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

All employers, including the Design-Builder and Subcontractor(s), if any, exempt under ORS 656.126(2) and subject to any other state's Workers' Compensation Laws, shall provide Workers' Compensation Insurance coverage as required by applicable Workers' Compensation laws. The coverage shall also include Employer's Liability Insurance with limits not less than $500,000 each accident.

If the Design-Builder's and Subcontractor's, if any, operations include use of watercraft on navigable waters and employ persons in applicable positions, a Maritime Coverage Endorsement must be added to the Workers' Compensation policy, unless coverage for captain and crew is provided in a Protection and Indemnity policy.

If the Design-Builder and Subcontractor, if any, conducts its operations in proximity to navigable waters and employ persons in applicable positions, United States Longshore and Harbor Workers' Compensation Act coverage must be endorsed onto the Workers' Compensation policy.

The Design-Builder shall require compliance with these requirements in all Subcontractor contracts.

(f) Notice of Cancellation or Change - The Design-Builder shall provide at least 30 Calendar Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-renewal of the required insurance coverages. If a Subcontractor is providing insurance to meet the contract requirements, the Design-Builder shall provide at least 30 Calendar Days' written notice to the Agency before cancellation of, material change to, potential exhaustion of aggregate limits, or non-

renewal of the required insurance coverage(s). Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to the State, Agency, County, City, or other applicable political jurisdiction or to the Agency's governing body, board, or Commission and its members, and the Agency's officers, agents, and employees.

(g) Certificate(s) of Insurance - As evidence of the insurance coverages required by the Contract, the Design-Builder shall furnish Certificate(s) of Insurance to the Agency at the time(s) provided in the RFP Instructions to Proposers and DB170.70. As evidence of insurance coverages required by the Contract but permitted by the Agency under DB170.70(a) to be obtained by an appropriate Subcontractor, the Design-Builder shall furnish Certificate(s) of Insurance to the Agency for such coverages together with the Design-Builder's request under DB180.21 for approval of the subcontract with that Subcontractor. The Certificate(s) shall:

- List the “State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation, and their respective officers, members, agents and employees” as a Certificate holder and endorse as an Additional Insured;
- Include all required endorsements or copies of the applicable policy language effecting coverage required by the Contract;
- Specify that all liability insurance coverages shall be primary and noncontributory with any other insurance and self-insurance, with exception of Professional Liability and Workers’ Compensation/Employer’s Liability;
- Include a list of all policies that fall under the Excess/Umbrella Insurance if Excess or Umbrella Insurance is used to meet the minimum insurance requirement.

(h) Agency Acceptance - All insurance and insurance providers are subject to Agency acceptance. In addition, all of the following are subject to Agency acceptance and, if requested by Agency, the Design-Builder shall provide complete copies of the following to Agency’s representatives responsible for verification of the insurance coverages required by the Contract: insurance policies, endorsements, self-insurance documents and related insurance documents.

(i) Insurance Requirement Review - The Design-Builder agrees to periodic review of insurance requirements by Agency under the Contract and to provide updated requirements as mutually agreed upon by the Design-Builder and Agency.

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SECTION DB174 – UTILITIES, RIGHT-OF-WAY (ROW) AND RAILROADS

DB174.10 Utilities:

(a) Scope - This Subsection provides information on the Design-Builder's overall responsibilities as they relate to existing and new Utilities, the manner in which Utilities are to be protected, relocated, upgraded, constructed, or incorporated into the construction, and who will be responsible for the Work.

The Design-Builder shall comply with OAR 734-055-0005 through 734-055-0110, OAR 952-001-0010 through 9520010100, the ODOT *Bridge Design Manual* as it relates to Utilities, the ODOT *Oregon Utility Relocation Manual,* and the ODOT *Utility Relocation Guide*.

(b) Standards - All Utility work (whether performed by the Design-Builder or by the Utility Owner) shall comply with the ODOT *Oregon Utility Relocation Manual*, all applicable Governmental Rules, any applicable permits or franchises, and the Standards required by the applicable Utility. The Design-Builder shall obtain Utility Standards relating to the Utility Work from the Utility Owners.

Standards are the current edition as of the Advertisement Date and include, but are not limited to, the following:

- Utility Owner Standards (applicable to the Utility Owner)
- ODOT *Oregon Utility Relocation Manual*
- ODOT *Utility Relocation Guide*

(c) Requirements:

(1) General - Unless otherwise set forth in the Contract Documents, existing Utilities requiring adjustment may be adjusted by the Utility before, during, or after Project construction. "Adjustment of Utilities" shall mean the alteration, improvement, connection, disconnection, relocation, or removal of existing Utility lines, facilities, or systems in a temporary or permanent manner.

(2) Agency Responsibilities:

a. The Agency has identified known Utility Owners within the Project Sites and is provided in Attachment C - Reference Documents. The Design-Builder shall verify and update the list. There will be no adjustment for Contract time or cost for additional Utilities not identified or incorrectly identified to the extent not prohibited by ORS 279C.315.

b. The Agency will be responsible for coordinating with FHWA for approval of any Utility impacts within the Federal-aid ROW along the Interstate system. The Design-Builder should allow an additional 60 Calendar Days for FHWA approval in the Utility Report.

(3) Utility Information - The Design-Builder shall be responsible for determining what Adjustments of Utilities will be required in order to accommodate the Project.

This Project is located within the Oregon Utility Notification Center area, which is a Utilities notification system for notifying owners of Utilities about Work being performed in the vicinity of their facilities. The Utilities notification system telephone number is 811 (or use the old number which is 18003322344).

In the event of an emergency with a high pressure gas line, the Design-Builder, in addition to calls required by the Utilities notification system, shall call the relevant Utility Owner:

- Marathon Petroleum Corporation / Andeavor 1-800-725-1514; or
- Avista Corporation 1-800-227-9187; or
- Cascade Natural Gas Corporation 1-888-522-1130; or
- Kinder-Morgan Energy 503-224-3390; or
- Northwest Natural Gas 1-800-882-3377; or
- Ruby Pipeline (LNG) 1-877-712-2288; or
- TransCanada GTN 1-800-447-8066; or
- Williams Pipeline 1-801-584-6948.

In the event of an emergency with Bonneville Power, the Design-Builder shall call BPA Monroe Control Center (MCC) dispatch office at 1-509-465-1837, in addition to calls required by the Utilities notification system.

(4) Design-Builder Responsibilities - The Design-Builder shall be aware that, during the term of this Contract, the owners and operators of Utilities may make changes in ownership and Adjustments of Utilities to their facilities. Adjustment of Utilities made to the Utility facilities may be made by the Utility employees or by contract within or adjacent to the Project Site, and may be both temporary and permanent. The Design-Builder shall:

- Follow applicable rules adopted by the Oregon Utility Notification Center;
- Contact Utility Owners to verify all Utilities' involvement and reimbursable status on the Project Site;
- Coordinate Project construction with the Utilities' planned Adjustment of Utilities, take all precautions necessary to prevent disruption of Utility service, and perform its Work in the manner that results in the least inconvenience to the Utility Owners;
- Include all Utility adjustment work, whether to be performed by the Design-Builder or the Utilities, in the Design-Builder's Preliminary Baseline Schedule submitted under DB180.41(g)(2);
- Protect from damage or disturbance any Utility that remains within the area in which Work is being performed. Maintain and re-establish location marks according to OAR 952-001-0090(3)(a). Coordinate re-establishment of the location marks with the associated Utility;

- Not disturb an existing Utility if it requires an unanticipated adjustment, but shall protect the Utility from damage or disturbance and promptly notify the Agency Engineer;
- Determine the exact location before excavating within the tolerance zone according to OAR 952-001-0090(3)(c);
- Backfill any exposed Utilities as recommended and approved by the Utility representative. Obtain Utility locate warning tape from the Utility and replace damaged or removed warning tape. Utility locate warning tape may not be present at all existing Utilities;
- Stake, place warning tape, and maintain no work limits around critical Utility facilities as shown or directed by the Agency Engineer and the Utility;
- In addition to the notification required in OAR 952-001-0090(7), notify the Agency Engineer and the Utility as soon as the Design-Builder discovers any previously unknown Utility, conflicts, or issues. Contrary to the OAR, stop excavating until directed by the Agency Engineer and allow the Utility a minimum of two weeks to relocate or resolve the previously unknown Utility issues; and
- Report to the Agency Engineer any Utility Owner who fails to cooperate or fails to follow the planned Utility adjustment.

The Design-Builder shall be solely responsible for verifying the exact horizontal and vertical location, size, type, and all other relevant characteristics of all Utilities located within the Project ROW or otherwise potentially impacted by the Project (including any Utilities located on private property).

Subject to the Agency's approval, the Design-Builder may adjust the Utilities by asking the Utility Owners to move, remove, or alter their facilities in ways other than as shown on the Design-Builder's Plans or in the Design-Builder Specifications. The Design-Builder shall conduct all negotiations, make all arrangements, and assume all costs that arise from such changes.

The Design-Builder shall: (a) coordinate and resolve all Utility relocation issues relating to the Project as set forth in the Contract Documents, and (b) include the following services:

- Identification and verification of all Utilities located within or near the Project Site or otherwise impacted by the Project;
- Notifications to Utility Owners with respect to relocation of their Utilities;
- Coordination of design and construction efforts for all relocations;
- Verification that each Utility that is required to perform adjustments of their facilities has obtained the necessary permits or agreements in order to do so, including coordination between Utility representatives and Agency or City permitting staff;
- Verification that each Utility that is required to perform adjustments of their facilities has obtained necessary easements, if any;

- Verification that each relocated Utility, as designed and constructed, is compatible with and interfaces properly with the Project. Coordination and review of reimbursement status with Utilities; and
- Verification of easements and reimbursable rights

The Design-Builder shall be responsible for all negotiations regarding the potential relocation or adjustment of Utility facilities regardless of when the facilities are discovered.

a. Design-Builder Utility Coordinator - The Design-Builder shall assign a single Utility Coordinator, responsible for coordinating Project activities with each Utility Owner affected by the Project.

The Utility Coordinator shall have a minimum of 3 years of demonstrated Utility coordination experience involving large scale Utility relocations, review of Utility relocation plans, issuing the proper Utility notifications, and reimbursable Utility relocations processes.

The Utility Coordinator shall be the principal lead for all Utility relocation questions and issues for the Project and shall be responsible for following all State and Federal Utility coordination and relocation processes, Laws, and regulations. The Utility Coordinator shall identify reimbursable status, coordinate the Utility relocations, and associated permitting requirements, and shall be responsible for ensuring that all Utility coordination is completed and associated permitting issues are resolved before the associated construction Work begins. For Utilities with a proven reimbursable right, the Utility Coordinator shall provide all necessary information to the ODOT State Utility and Railroad Liaison (SURL) to ensure that proper reimbursement is made. The Utility Coordinator must be familiar with and follow the ODOT *Oregon Utility Relocation Manual*, which is available on ODOT ROW Utility Relocation Program website (see DB110.05(e)). The Utility Coordinator shall work directly with the SURL for all reimbursable Utility costs. The Utility Coordinator shall be responsible for the Design-Builder successfully obtaining certification of the completed Utility process according to Agency, FHWA, and FTA requirements.

The Utility Coordinator shall be readily available by telephone at a telephone number which must be provided to the Agency throughout the life of the Project. The Utility Coordinator shall comply with the requirements provided in DB180.35.

b. Coordination - The Design-Builder shall be responsible for the cost of performing all Utility coordination tasks for non-reimbursable and reimbursable relocations.

The Design-Builder shall begin Utility coordination effort with all Utility Owners within 30 Calendar Days following NTP. The Design-Builder shall coordinate the Project design and construction with all Utilities that may be affected. The Design-Builder shall identify, verify the existence of, determine if conflicts exist, and resolve all Utility conflicts on the Project. The Design-Builder activities shall include, but are not limited to, the following:

- Identifying the full extent of Utilities in the Project Site;
- Verifying Utility Owners and locations of Utilities;
- Locating Utilities and identifying potential conflicts;
- Providing information to the Agency to assist in exchange of Utility easements, if necessary;
- Coordinating, designing, and constructing the Adjustment of Utilities and new Utilities according to this Subsection;
- Reviewing Utility relocation plans for conflicts with the proposed Highway improvement for this Project and conflicts with other Utility's relocation plans;
- Coordinating and reviewing reimbursable status and verification of easements and reimbursable rights;
- Coordinating with SURL to initiate the Utility Agreement with each utility requiring an agreement.; and
- Verifying that the proposed relocation plan will work with the proposed Design-Builder's design.

The Design-Builder shall coordinate and facilitate all Utility field activities to ensure relocated facilities are properly relocated to the facility's approved horizontal and vertical position and Work completed on or before the time requirement deadline. The effort involved must include, but is not limited to, the following:

- Providing field reference stakes for Utilities performing facility field staking; or
- Providing line and grade staking for the adjusting Utility facility; and
- Conducting on-site meetings, when requested by the Agency, with Utility representatives to include weekly "Schedule and Work Planning" field meetings with Utility contractors during Utility construction;
- Approving the Utility's field staking prior to beginning Utility construction;
- Inspecting Utility pole-line construction for alignment compliance;
- Inspecting Utility boring activity for line and grade compliance;
- Inspecting Utility construction excavations for line and grade compliance, prior to excavation backfill, and
- Monitoring and documenting all Utility construction on-site resources, effort, effectiveness, and progress on a daily basis.

c. Design-Builder Investigations and Verification of Agency-Provided Information - The Design-Builder shall be solely responsible for conducting investigations and verifying the exact horizontal and vertical location, size, type, and all other relevant characteristics of all Utilities located within the Project Site or otherwise potentially impacted by the Project (including any Utilities located on private property), whether or not such Utilities are identified in the Agency-provided Utility information. Such actions shall include, but not be limited to the following:

- Making diligent inquiry at the offices of the Utility Owners;
- Consulting public records;

- Conducting field studies; and
- Performing potholing, as appropriate.

The Design-Builder shall develop a Utility Report consistent with ODOT's Utility Manual Section 2-2-4 within 90 Calendar Days of NTP. The report shall include at minimum:

- Introduction – project description;
- Utility contacts;
- Utility – existing conditions broken down by Work Location; and
- Potential conflicts.

d. Non-Reimbursable Utility Relocations – If a Utility requests that the relocation work be a part of the Design-Builder's work, coordination and cost reimbursement shall be directly with the Design-Builder and not include the Agency.

e. Reimbursable Utility Relocations - Unless otherwise specified in the Contract Documents, the Agency will be responsible for costs associated with reimbursable Adjustments of Utilities as provided in ODOT *Oregon Utility Relocation Manual*.

Federal regulation 23 CFR 645.107(a) shall be the basis for determining if the Utility facility relocation is eligible for reimbursement. Under provisions in 23 CFR 645.103(d), FHWA reimbursement to the State is governed by either a State standard as established by State Law or regulation, or by an FHWA standard as established by regulation. Should FHWA and State Standards differ, FHWA reimbursement is limited to the one that is more restrictive.

When the relocation of a Utility facility is determined to be reimbursable, the Design-Builder shall enclose an ODOT Reimbursement Information Form (RIF) with the ODOT Conflict Letter and send a copy to the Utility and notify the Agency. The Utility Owner must return the RIF with documentation to show they have a compensable property right, or prior rights. Acceptable evidence is the physical document showing easements, fee title, x-permit, franchise agreement, or Court findings of prescriptive rights. Once eligibility is confirmed, the Design-Builder's Utility Coordinator shall prepare an ODOT Reimbursement Certification Form and submit the Reimbursement Package to the SURL for review and acceptance within 30 Calendar Days of delivery of the Reimbursement package. The Reimbursement Package must include the Reimbursement Certification, the RIF and all relevant documentation to verify the Utility facility relocation is reimbursable per the ODOT *Oregon Utility Relocation Manual*.

The Design-Builder shall communicate to the Utility that negotiations for reimbursable status will not grant the utility additional time for relocation beyond the time identified in the Time Requirement Letter. The Design-Builder shall work with the Utility to support them in meeting their time requirement letters which include timely negotiations for reimbursable agreements.

1. Utility Construction Agreements – When a Utility is considered reimbursable, the SURL will complete the Utility Construction Agreement and send it to the Utility for signature once a detailed cost estimate and all of the

required information described in DB174.10(c)(4)e has been submitted and approved by the Agency.

The Design-Builder shall inform the Utilities that 90 Calendar Days should be accounted for in their anticipated time for relocation for the Agency to process a Reimbursable Agreement. The 90 Calendar Days begins after notice of acceptance of the Reimbursement Package before the Utility Construction Agreement can be issued.

f. Design-Builder Certification and Utility Owner Sign-off - The Design-Builder shall obtain or, together with the Utility Owner, prepare a sketch for each Utility that requires adjustment in the preparation of the Utility Report. The Design-Builder shall review the proposed Adjustment of Utilities sketch and certify in a written statement to the Agency that the proposed Adjustment of Utilities will not conflict with the proposed project improvement and will not conflict with another Utility's relocation plan. If a party other than the Utility Owner or its agent prepares the relocation sketch, there must be a concurrence box on the plans where the Utility Owner signs and accepts the relocation sketch as shown. The Design-Build Utility Coordinator must supply all Utility companies with an approved relocation plan.

g. Utility Conflict Matrix

The Design-Builder shall provide a Utility Conflict Matrix no later than Definitive Design.

The Utility Conflict Matrix shall include:

- The name of the Utility Owner;
- A brief description of the Utility by size and type;
- The location of the Utility;
- The proposed disposition (e.g., relocation, protection in place) for the Utility;
- The nature of the Utility Owner's right of occupancy of the ROW for such Utility (e.g., franchise, permit, easement, etc.);
- Draft Utility conflict maps;
- The nature of the Utility Owner's right of occupancy of the ROW for such Utility (e.g., franchise, permit, easement, etc.);
- Scheduled start and completion dates for design and construction of modifications to Utilities as agreed to in the Time Requirement Letter;
- The party responsible for performing relocation design and construction;
- The status of Utility design and construction activities; and
- Such additional information as requested by the Agency
- Description of any timing and sequencing requirements in relation to the relocations and the proposed schedule for relocations.

The Utility Conflict Matrix shall be updated monthly and submitted to the Agency to include the following:

- General concerns and issues broken down by work location and Utilities; and
- Maps of each Utility broken down by work location and based on survey with the following:
- Proposed location of each Utility, which may be based on relocation maps for draft, but must be overlaid with the proposed design in MicroStation prior to final submittal of the report.;
- Existing easements by what is to remain and what is to be obtained; and
- Proposed easements

h. Project Notification Letters and Time Requirement Letters:

1. Conflict Letter or Project Notification Letter - The Design-Builder shall send a completed Conflict Letter or Project Notification Letter, to the Agency for Acceptance prior to sending to all Utility Owners. The Design-Builder shall allow for 21 Days for the Agency to provide acceptance to send the Conflict Letter or Project Notification Letter. This is considered the "first notification" as per OAR 734-055-0045(2). The Design-Builder shall use the appropriate letter template located on the ODOT Right-of-Way Utility Relocation Program website (see DB110.05(e)).

The Design-Builder shall include a set of Definitive Design plan sheets with each Project Notification Letter. The Design-Builder may use a conflict exhibit prior to Definitive Design if approved by the Agency Engineer.

The Design-Builder shall include with each Conflict Letter a set of Definitive Design plan sheets or utility conflict exhibit that are annotated to clearly describe potential conflicts, and a conflict list. The Design-Builder shall also include a Utility Reimbursement Information Form with the Conflict Letter for Utilities.

The Design-Builder shall send Conflict Letters or Project Notification Letters to all affected Utilities no later than 20 Calendar Days after Acceptance of Definitive Design. The Design-Builder shall include the Agency on submittals of all Project Notification Letters and Conflict Letters.

2. Time Requirement Letter with Utilities - Once the schedule, relocation plan, and estimates are reviewed the Design-Builder is responsible for all negotiations related to time requirements by the Utilities. Once the schedule, relocation plan, and estimates are accepted by all parties, the Design-Builder shall prepare and issue Time Requirement Letters to the Utility Owners, template included on ODOT Right-of-Way Utility Relocation Program website (see DB110.05(e)), and include the Agency on their submittal. This letter meets the second notice requirement as defined in OAR 734-055-0045(4). The letter is a confirmation of the schedule as agreed.

i. Utility Certification - The Design-Builder shall prepare and submit a Utility Certification to the Agency for Acceptance and signature with each Readiness-for-Construction Design Review submittal. The Agency will not review Utility Certifications submitted prior to the Readiness-for-Construction Design Review

submittal. The Utility Certification must be Accepted and signed by the Agency before the Design-Builder commences construction activity for the associated RFC package.

The Utility Certification form is available on ODOT's ROW Utility Relocation Program website (see DB110.05(e)).

(5) Coordination Requirements - The Design-Builder shall share with affected Utility Owners design plans as they progress. The Design-Builder shall allow in the Preliminary Baseline Schedule and Monthly Progress Schedule the time defined in the Time Requirement Letter required for Utility Owners to accomplish the tasks and activities for which they are responsible.

a. Scheduling - The Design-Builder shall develop a Preliminary Baseline Schedule that identifies all Utility Work, as well as relocation work to be performed by Utility Owners and allows sufficient time for completion of all such work. In addition to the requirements in DB180.41(g)(3), the Baseline Schedule shall include, at a minimum, activities for design coordination, review, and response times for the Agency and Utility Owners, seasonal restrictions on interruptions of Utility service, material procurement, permitting activities and performance of Utility Work.

b. Coordination Responsibilities - The Design-Builder shall coordinate with each affected Utility Owner to accomplish relocation Work. Such responsibilities shall include, as appropriate to the specific Utility Owner, obtaining information from and providing information to Utility Owners, keeping the SURL informed as to the progress of Utility matters on a continuous basis, coordination and scheduling of design review, inspections, Utility permit or franchise applications, approvals, acceptances, and coordination and scheduling of construction work. The Design-Builder shall monitor the progress of work by Utility Owners and be responsible for resolving any scheduling difficulties with the Utility Owners.

The Design-Builder shall keep Utility Owners informed of the Design-Builder's construction schedules and of changes which affect their Utilities. The Design-Builder shall provide Utility Owners with 30 Calendar Days to notify their customers of any potential impacts to service.

The Design-Builder shall cooperate with the Utility Owners to the extent that such cooperation is consistent with the Design-Builder's obligations pursuant to the Contract Documents. The Design-Builder shall act diligently in maintaining a positive relationship with the Utility Owners. Some Utility Owners may have utilized another Utility Owner's franchise rights or are utilizing their own franchise rights on another Utility Owner's right-of-way or in conjunction with another Utility Owner's facilities that may be affected as part of this Contract. The Design-Builder shall facilitate coordination for relocation work between these Utility Owners when applicable.

The Design-Builder shall coordinate any service interruptions with the Utility Owners. The Design-Builder shall comply with all requirements for advance notice and notification of affected customers.

c. Notices and Correspondence between the Design-Builder and Utility Owners - All notices, Conflict Letters, Project Notification Letters or Time Requirement Letters provided to Utility Owners from the Design-Builder must be in writing. The Design-Builder shall include the Agency on all the correspondence with the Utility Owners.

d. Meetings with Utility Owners - The Design-Builder shall contact Utility Owners to verify all Utilities' involvement on the Project Site. Within 90 Calendar Days after NTP the Design-Builder shall conduct a group Utilities scheduling meeting with representatives from the Utility companies involved with the Project and the Agency broken down by Design Unit. This shall include review of the preliminary design so the Design-Builder and affected Utility Owners can meet and familiarize themselves with design elements, Utility facilities, and general features of the Project.

The Design-Builder shall incorporate the Utilities' time needs into the Design-Builder's Project Schedule as described in DB180.41(g)(3). If the Design-Builder did not account for enough time for Utilities to relocate in their Baseline Schedule any delay to the schedule shall be at the cost of the Design-Builder and is not eligible for a delay claim, to the extent not prohibited by ORS 279C.315

The Design-Builder shall hold, at minimum, on-going monthly Utility coordination meetings with impacted Utilities and the Agency Engineer to:

- Discuss existing and abandoned Utilities;
- Discuss needed Utility shut-offs or turn-ons;
- Coordinate locations for potholing of Utilities;
- Review Project activities that may impact Utilities or schedule;
- Discuss on-going Utility relocations and planned relocations in upcoming Project activity areas;
- Review design concepts and discuss potential Utility impacts and suggestions for cooperative solutions pending more detailed design;
- Review intermediate design to track the progress of on-going design processes;
- Review final design and initial construction coordination to finalize the plans and specifications for relocation of the Utilities impacted by the Project; and
- Coordinate Project activities with Utilities and on-going Utility relocation work.

The Design-Builder shall facilitate virtual utility coordination meetings unless the Agency requests in person meeting(s). Then the Design-Builder shall arrange for in person meeting on the Project Site or other location requested by the Agency.

During the meetings with the Utilities, the Design-Builder shall ensure that Utilities have provided Utility drawings and discuss the scope, extent, locations, and significance of all Utility facilities before the Design-Builder begins work in a new activity area.

After relocation plans and specifications are finalized, additional meetings are anticipated to coordinate the construction of relocations and to establish a forum for the regular exchange of information during construction to minimize delays and provide for proper inspection.

The Design-Builder shall notify the Agency in writing at least 14 Calendar Days in advance of each meeting and shall allow the Agency or their representative the opportunity to participate in each meeting.

The Design-Builder shall plan and schedule all Utility adjustment operations well in advance of On-Site Work. When the Design-Builder becomes aware of Utility conflicts not previously identified, the Design-Builder shall notify the applicable Utilities in writing the same Calendar Day. The Design-Builder shall follow the standard Utility relocation process as outlined in the ODOT Utility Relocation Manual and OARs.

e. Meeting Summary Notes - The Design-Builder shall record and maintain objective summaries of all meetings with Utility Owners and with the Agency with respect to relocation work. The Design-Builder shall provide copies of the meeting summaries to all meeting attendees and the Agency within 4 Calendar Days after each meeting.

f. Contact Information - Utility Owners within the Project Site are listed in the Utility Owner Contact List included in Attachment C – Reference Documents. The information provided for those Utility Owners includes contact names, phone numbers, email addresses, and mailing addresses. The contact information is also available in section DB174.10(c)(3). The Design-Builder shall verify the accuracy of the contact information and maintain current contacts for all Utilities affected by the Project.

1. **Agency Contact:**

   ODOT Statewide Utility Coordinator:

   Nicole Frankl
   Statewide Right-of-Way Utility Coordinator
   4040 Fairview Industrial Drive SE MS#2
   Salem, OR 97302-1142
   Phone: 503-934-6077
   Email: Nicole.Frankl@odot.oregon.gov

(6) Design - The Design-Builder shall design the Project to avoid conflicts with Utilities where possible and shall minimize impacts where conflicts cannot be avoided.

The Design-Builder shall assume that Utility Owners will furnish relocation designs unless otherwise stated in DB174.10.

a. General Design Criteria - The Design-Builder shall verify that all design plans for relocation work, whether furnished by the Design-Builder or by the Utility Owner, are consistent and compatible with the following:

- The Design-Builder's design and construction of the Project;
- Any other Utilities being installed in the same vicinity;
- The terms, provisions, and conditions of all applicable new or amended permits and franchises; and
- All applicable mandatory Standards.

The Design-Builder shall ensure and confirm that all relocations to be installed within the Project ROW meet the applicable State requirements as set forth in OAR 734-055. Upon completion of Utility relocation work, the Design-Builder shall verify and document that the Utilities were relocated according to the approved relocation plan. The Design-Builder shall submit documentation of these verifications to the Agency Engineer.

The Design-Builder shall be responsible for coordinating with Utilities to correct any nonconforming Utility relocation work.

b. Relocation Design Furnished by the Utility Owner - The Design-Builder shall coordinate the delivery of each relocation design to be furnished by the Utility Owner. The Design-Builder shall review each design for compliance with the requirements of this DB174.10, and provide comments to the Utility Owner as appropriate. The Design-Builder shall submit the relocation design to the Agency for Review and Comment; transmit the Agency comments to the Utility Owner, and shall coordinate modification and re-submittal as necessary to obtain the necessary approvals.

(7) Construction:

a. General - All Utility relocation construction performed by the Design-Builder shall conform to the requirements listed below. The Design-Builder shall verify that all construction relocation work performed by each Utility Owner complies with the requirements listed below. In case of nonconformance, the Design-Builder shall notify, in writing, the Agency and the Utility Owner (and its contractors, as applicable) of nonconformance. The Agency will direct the Utility Owner to complete all necessary corrective work or to otherwise take such steps as are necessary to conform to the following requirements:

- The ODOT Utility Accommodation Policy as specified in OAR 734-055;
- The requirements of the applicable Utility Time Requirement Letter;
- The approved plans for such construction;
- The Design-Builder's design and construction of the Project;
- Any other Utilities being installed in the same vicinity;
- The terms, provisions, and conditions of all applicable new or amended permits and franchises; and
- Any other applicable requirements specified in DB174.10.

The Design-Builder shall cooperate with the Utility Owner to identify all necessary permits, and ensure that Utility Owners meet all Project safety and environmental requirements.

b. Inspection – The Project Quality Manager shall be responsible for inspection, sampling and testing of the Design-Builder's relocation work necessary to comply with its obligations under the Contract, Utility agreements, and the Agency Accepted Design-Builder's Quality Plan. The Project Quality Manager, or their designee, shall immediately notify, in writing, the Agency and the Utility Owners regarding any noncompliance.

Each Utility Owner shall have the right to inspect construction performed on its Utilities by the Design-Builder. The Design-Builder shall not refuse Utility Owner inspection requests. The Design-Builder shall coordinate a mutually agreeable schedule and scope with the Utility Owner for the inspections. The Project Quality Manager shall attend Utility Owner inspections, and shall be responsible for tracking and ensuring that any deficiencies in the Design-Builder's work performed on the Utility Owner's facilities that are identified during the inspections are corrected. The Design-Builder shall inform the Utility Owner in writing, prior to commencing any corrective work on the Utilities, so that the Utility Owner may inspect the corrective work and confirm to the Project Quality Manager that the deficiencies have been corrected to conform to the Contract requirements. The Design-Builder shall use the Add-Work Project Acceptance document as a tool for this communication.

c. Maintenance of Service - All Utilities must remain operational during all phases of construction, except as specifically allowed and approved in writing by the Utility Owner. The Design-Builder shall obtain the Utility Owner's approval in writing prior to any temporary diversion or interruption of service of affected Utility facilities. The Design-Builder shall be responsible for arranging and coordinating all temporary diversion or interruptions of service with the Utility Owner, whether performed by the Design-Builder, the Utility Owner, or others. The Design-Builder shall be responsible for all costs associated with all temporary diversions or interruptions of service requested by the Design-Builder, or resulting from the actions of the Design-Builder.

The Design-Builder shall provide a written notification of any temporary diversion or interruption of Utility services to the Agency a minimum of 14 Calendar Days prior to any planned temporary diversion or interruption of Utility services.

d. Maintenance of Traffic - The Design-Builder shall be responsible for all traffic control to ensure safe and efficient traffic flow during the Utility Work. Refer to DB141.31 for maintenance of Traffic requirements.

e. Street Restoration - The Design-Builder shall be responsible for constructing, resurfacing, restoration, and re-striping of all streets, roadside features, or other affected areas in compliance with any applicable permits, the standards of the Local Agency with jurisdiction over the affected facilities and as set forth in the Contract Documents.

f. Maintenance and Care During Construction - The Design-Builder shall comply with all applicable Laws relating to grading or excavation in the area of underground Utilities. Before starting construction that may affect any Utility in a particular area, the Design-Builder shall notify the affected Utility Owners in writing at least 30 Calendar Days prior to commencement of construction in that area. The Design-Builder shall contact the Utility Notification Center (811) prior to performing any excavation. The Design-Builder shall maintain all appropriate clearances from active power lines according to OAR 437-004-3050.

When operating Equipment directly above high pressure gas pipelines, the Design-Builder shall keep Equipment on paved surfaces only. In the immediate area of the high pressure gas lines, when moving any Equipment, excavating, driving piles, pounding guardrail posts, boring, or other road construction activities, the Design-Builder shall increase the tolerance zone from 24 inches, as defined in OAR 952-001-010, to 10 feet. Exceptions require written approval from the Utility Gas Company and may require an On-Site safety watcher, at no cost to the Design-Builder.

The Design-Builder shall support, secure, and exercise care with respect to Utilities to avoid damage to them. The Design-Builder shall ensure continuity of all existing Utility services to all users except when the Utility Owner determines that temporary interruption is necessary and acceptable. The Design-Builder shall not move or remove any Utility without the written consent of the Utility Owner, unless otherwise directed by the Agency. All costs required to protect Utilities during the course of the work shall be the Design-Builder's responsibility.

g. Governmental Approvals - The Design-Builder shall obtain all required Governmental approvals prior to commencing any Utility relocation. The Design-Builder's Project Quality Manager shall verify that the Utility relocation performed (whether by the Design-Builder or by or on behalf of the Utility Owner) complies with the requirements of all applicable Governmental approvals.

h. Access to Existing Utilities - The Design-Builder shall allow any authorized agent of the Agency, a Utility Owner, or the Utility Owner's representative to enter the Project ROW to inspect, repair, maintain, rearrange, alter, or connect Utility facilities and equipment. The Design-Builder shall cooperate with such efforts to avoid creating delays or hindrances to those doing such work.

If the Design-Builder or a Utility Owner determines that a Utility Owner representative must be on-site during a Utility relocation or while other construction occurs in the vicinity of their facility, the Design-Builder shall provide at least 7 Calendar Days advance written notification to the Utility Owner.

i. Best Management Practices (BMPs) and Erosion and Sedimentation Control - Regardless of who performs or pays for any relocation work, the Design-Builder shall ensure that appropriate BMPs and erosion and sedimentation control (ESC) measures are followed in the performance of relocation work. Refer to Subsection DB141.51 for BMP and ESC requirements.

(8) Abandoned Utilities - When Utility facilities not located by the OUNC or Utility Facilities that appear to be abandoned are identified in with the Project Site the Design-

Builder shall perform a thorough investigation to determine the facility owner and contact the appropriate Utility representative to secure verification that the facility is abandoned. If in conflict of construction work, the Design-Builder shall remove and properly dispose of abandoned Utility facilities encountered through the normal course of construction, including Utility facilities such as, but not limited to, poles, manholes, pipes, wires, conduits, conduit hangers, cables, ground and subsurface guy anchors, pedestals, thrust blocks, concrete collars, encasements and pads, steel casings, and cabinets.

The Design-Builder may request abandonment in place from the Agency if the Utility does not appear to be in direct conflict of construction. Abandonment in place shall mean allowing elements of the Utility facility to remain in place and performing any flushing, capping, grouting, and other work required to meet Utility Standards and applicable law (whichever is more stringent).

Any Utility located outside the Project ROW that is taken out of service as part of a relocation shall be removed or abandoned according to the Utility Owner's Utility standards and any applicable permits or franchises issued by the city with jurisdiction.

The relocation work for each abandonment shall include making all arrangements and performing all work necessary to accomplish the proposed abandonment including design, construction, and in each instance obtaining consent from any affected landowner(s) (and from the Utility Owner, if the Design-Builder is performing the work). The Design-Builder shall obtain any necessary Governmental approvals and Agency approvals and permits, or the Design-Builder shall confirm that the Utility Owner has obtained the same.

Certain Utilities may be composed of, contain, or be insulated with materials containing asbestos. Any removal and disposal of such asbestos containing materials shall be performed in compliance with all applicable Governmental Rules and Environmental Laws (see DB141.51).

For each Utility that will be abandoned or removed, the Design-Builder shall notify, in writing, the Agency at least 7 Calendar Days prior to commencement of such action.

(9) Protection of Utilities - The Design-Builder shall protect in place all Utilities that are not affected in constructing the Project (see Section DB170).

The Design-Builder shall protect in place (or cause to be protected in place by the Utility Owners) all Utilities impacted by the Project (including any Utilities remaining in place and any Utilities installed during the course of the Work), as necessary to ensure their continued safe operation and structural integrity.

Protection in place may be permanent or temporary, depending upon the types of measures that are necessary to satisfy the specific requirements for a particular Utility.

The Design-Builder shall maintain and re-establish location marks according to OAR 952-001-0090(2)(a). The Design-Builder shall coordinate re-establishment of the location marks with the associated Utility.

(10) Damage to Utilities - If the Design-Builder causes or observes damage to any Utility facilities, the Design-Builder shall notify the Utility Owner immediately. If the damage causes an emergency, the Design-Builder shall notify all appropriate local public safety agencies immediately by calling 911 and take reasonable steps to ensure public safety. The Design-Builder shall not bury damaged underground facilities without the consent of the Utility Owner of the damaged facility. If the damaged facility is repaired by the Utility Owner and the Design-Builder is determined to be at fault for the damage, the Design-Builder shall reimburse the Utility Owner within 45 Calendar Days of receipt of the Utility Owner's invoice. If the Design-Builder fails to make any required payment within 45 Calendar Days after receipt of the Utility Owner's invoice, the Agency will have the right to pay the Utility Owner from the Agency's funds and deduct an amount sufficient to cover the cost from any monies due or that may become due to the Design-Builder under the Contract.

(11) Utility Caused Delays - The Design-Builder shall monitor Utility relocation work and regularly communicate in writing to the Utility Owners, with a copy to the Agency Engineer, any observations, issues, or concerns related to the completion of the relocation work within the timeframe included in the Design-Builder's Time Requirement Letter.

(12) As-Constructed Plans - The Design-Builder shall accurately show the final location of all Utilities on the As-Constructed Plans for the Project.

(13) Submittals - The Design-Builder shall submit the following to the Agency:

a. Utility Conflict Matrix and Draft Utility Conflict Maps – within 110 Calendar Days of NTP, no later than Definitive Design and shall be updated and submitted monthly.

b. Reimbursement Package - Once reimbursement eligibility is confirmed by the Design-Builder, the Design-Builder shall submit the Reimbursement Package to the SURL for review and acceptance. The Reimbursement Package must include the information required under DB174.10(c)(4).

c. Draft Utility Report - The Design Builder shall Submit the Draft Utility Report with Definitive Design.

The Design-Builder shall update and submit the Utility Report to the Agency on a quarterly basis, unless otherwise directed by the Agency.

d. Project Notification Letters, Conflict Letters, Time Requirement Letters and Other Correspondence between the Design-Builder and Utility Owners - The Design-Builder shall submit to the Agency copies of all correspondence between the Design-Builder and any Utility Owners within 7 Calendar Days of receipt or sending correspondence, as applicable. Project Notification Letters, Conflict Letters, and Time Requirement Letters are subject to Agency Acceptance and must be submitted prior to sending to Utilities.

e. Meeting Summary Notes - The Design-Builder shall submit meeting summaries to all meeting attendees and the Agency within 4 Calendar Days after each meeting.

f. Design-Build Utility Certifications - The Design-Builder shall submit the Design-Build Utility Certifications to the Agency for Acceptance according to DB174.10(c)(4).

DB174.20 Right-of-Way (ROW):

(a) Scope - This Subsection sets out the general provisions, activities, Standards, governing Laws, manuals, and policies the Design-Builder shall follow with regard to ROW.

The Design-builder is responsible for identifying additional ROW necessary to construct the Project. The Design-builder shall develop the legal descriptions consistent with section DB141.28. After additional ROW needs have been accepted by the Agency, the Agency will acquire the additional ROW as outlined in DB174.20(c)(9).

(b) Standards and Project-Specific Information:

(1) Standards:

- ODOT Right of Way Manual
- ODOT Right of Way Engineering Manual
- ODOT ROW Technical Guidance
- ODOT Highway Design Manual
- ODOT Survey Policy and Procedure Manual
- Code of Federal Regulations 23 CFR 710
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (The Uniform Act 42 United States Code 4610 et seq. and 49 CFR Part 24)
- All other relevant State and Federal Laws

ODOT ROW publications and technical guidance are available on the ODOT ROW website (see DB110.05(e)).

(2) Project-Specific Information – The Agency has developed location specific preliminary ROW resolutions, see Survey Data and Information, included in Attachment A - Engineering Data.

(c) Requirements:

(1) General - Prior to entering or using any areas located outside of the existing ROW, the Design-Builder shall verify and confirm the location and accuracy of the Project ROW boundaries.

(2) Private Property Access:

a) For Survey - The Design-Builder shall comply with ORS 672.047 prior to entering onto private property(ies) to survey.

b) For Examining, Conducting Tests, Taking Samples, etc. - The Design-Builder shall coordinate with the Agency to obtain a Temporary Right of Entry in compliance with applicable State and Federal Laws and Agency policies prior to

entering onto private property(ies) to examine, conduct tests, take samples, or perform similar tasks.

(3) Conflict of Interest - The Design-Builder and all Subcontractors, along with their officers, employees, and agents, are prohibited from acquiring any interest, including purchase options, in property within or adjacent to the Project Site that is reasonably anticipated to be impacted by the Project. The Design-Builder and all Subcontractors, along with their officers, employees, and agents, are also prohibited from receiving any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person in connection with any real estate acquisition activity related to this Project. The Design-Builder shall include these prohibitions in all of its subcontracts and require that they be included in all lower-tier subcontracts. Any such acquisition of a property interest or receipt of fees, compensation, or benefit shall constitute a material breach of Contract, and may result in the termination of the Contract by the Agency.

No person(s) on the Design-Builder's team for this Project shall discuss compensation for any parcels being acquired by the Agency for the Project with a property owner or a property owner's representative prior to establishment of just compensation by the Agency and a written offer being made to a property owner.

(4) Commencement of On-Site Work – Except as provided herein, the Design-Builder shall not commence On-Site Work in any portion of a Design Unit prior to the Agency taking physical possession and issuing a Right-of-Way Certification to the Design-Builder in accordance with DB174.20(c)(14).

Any decision to advance to the construction stage must not impair public safety or in any way be considered coercive in the context of 49 CFR 24.102(h) with respect to unacquired or occupied properties on the same or adjacent ROW portions. These provisions include, but are not limited to the following:

- Adequate Access must be provided to all occupied properties, including businesses, to ensure emergency, delivery, and personal vehicle Access.
- Utility service must be maintained to all occupied properties at all times.
- Open burning must not occur within 1,000 feet of an occupied dwelling.

(5) Utilities and Railroads - ROW activities associated with the Project that affect services or property rights of Utilities or Railroads must be approved by the Agency. See DB174.10, DB174.30 and DB174.20(c)(19) for additional requirements.

(6) Waste Site - No designated waste site is provided for the Project. The Design-Builder may propose to dispose of clean, surplus excavation material from the Project within the Project boundaries. The material must meet the requirements for clean fill according to DB Standard Technical Specifications, Subsection 00290.20. Prior to placing material, the Design-Builder shall submit a Site Preparation, Grading, and Erosion Control Plan to the Agency for review and approval. The Design-Builder shall obtain the necessary permits and Agency approval.

The Design-Builder may need to secure rights for these purposes outside the Project boundaries. See DB174.20(c)(10).

(7) Staging Areas - The Design-Builder may propose to use areas within the Project boundaries for staging purposes and may secure rights for these purposes outside the existing ROW. See DB174.20(c)(10).

(8) Schedule - The Design-Builder shall develop Project schedules to account for the dates that Right-of-Way is obtained and certified by the Agency. The Design-Builder's schedules shall allow for the full agency time for issuance ROW certification and must show construction activities commencing for a Design Unit after that milestone.

(9) Additional Right-of-Way Needed by Design-Builder - The Design-Builder's proposed design will require the acquisition of property outside of the existing ROW. The Design-Builder shall identify the type and location of the additional ROW and submit a written request for additional ROW, including a justification of necessity, to the Agency for review and approval no later than Definitive Design.

The Design-Builder shall not be subject to the requirements under DB155.10 when the Agency, in its sole discretion, has determined that the Design-Builder's requested additional ROW is necessary to build the Project in order to meet the Project requirements.

The timeline for acquisition will be set by the Agency upon the Agency's evaluation at the time the additional ROW requests are submitted. The time required to acquire additional ROW varies. Any impacts to the schedule from the Agency-provided timeline compared to the assumptions made in the Baseline Schedule shall be at the cost of the Design-Builder, to the extent not prohibited by ORS 279C.315.

The request for additional ROW shall occur after the Design-Builder has conducted a ROW design/layout meeting and obtained concurrence from the Agency on their ROW Design/Layout Map. Multiple ROW concept map meetings may occur. The meetings shall include map(s) with existing, potential proposed, and potential construction ROW as well as existing utilities and to the best available knowledge proposed Utility relocations. The Design-Builder shall update the ROW Design/Layout Map(s) (see DB141.28) based on feedback from the meetings and submit PDFs and MicroStation files for Review and Comment by the Agency. The Design-Builder shall minimize additional ROW footprint.

a. Additional ROW Requirements Determination - Acquisition of additional ROW necessary to construct the Project will be administered by the Agency. See section DB 141.28 Survey and Mapping for additional requirements.

The Design-Builder shall not be required to reimburse the Agency, through a price adjustment or otherwise, for review and acquisition costs when the Agency, in its sole discretion, has determined that the Design-Builder's requested additional ROW is necessary to supplement the Planned ROW in order to meet the Project requirements.

The costs of the review shall be paid by the Design-Builder when the Agency determines that the additional ROW is not required to meet the Project requirements. This includes costs for:

- All acquisition costs, including but not limited to the following:
- Legal Descriptions (see DB141.28);
- Title reports;
- Appraisals;
- Condemnation; and
- Relocation assistance.
- Schedule delays and cost of schedule delays, to the extent not prohibited by ORS 279C.315

The Agency will provide an estimate of all costs, including but not limited to Agency staff costs, appraisal costs, consultant costs, legal and contingency costs, to acquire the additional ROW to the Design-Builder within 60 Calendar Days following receipt of the written request for additional ROW. The cost estimate will serve as the basis for a price adjustment as described in Section DB195.

The Design-Builder shall not be required to reimburse the Agency, through a price adjustment or otherwise, for review and acquisition costs when the Agency, in its sole discretion, has determined that the Design-Builder's requested additional ROW is necessary to supplement the existing ROW in order to meet the Project requirements.

The Design-Builder’s written request for additional ROW must include the following:

- A letter indicating the Design-Builder’s name, the Project name, the Project location, the Contract number, the submittal date, and the submittal type; and
- A plan showing the Project ROW, including the proposed additional ROW, prepared in accordance with the ODOT *Right of Way Engineering Manual*.
- A description of the exact activities that will take place on the additional ROW.
- An outline of what will be required for the Agency to acquire the additional ROW. The Design-Builder’s proposed design must be advanced to a sufficient level such that the Agency can provide a proper cost estimate for the additional ROW.
- Proposed ROW segmented certifications shall be consistent with the Design Units and the Design Units must be set up such that they comply with CFR 710.309.
- A discussion of the impacts to the Project schedule, and a proposed plan to recover the Project schedule.
- Identification of any Utility Easements or other rights or interests in property, if any, located with the proposed additional ROW that may require quitclaim or other release. Any such actions will be taken at the sole discretion of the Agency.

The Design-Builder shall not request the Agency to acquire ROW that requires a demolition plan of all buildings, structures, and other improvements located in the additional ROW. The plan must also include the inspection, sampling, and testing of any lead-based paint, asbestos, or other Hazardous Materials, in accordance with applicable State and Federal regulations. The Design-Builder shall provide the Agency with a Hazardous Materials abatement plan for Review and Comment. All Utilities installed on or connected to buildings, Structures, or other improvements in the additional ROW shall be abandoned or removed in accordance with the requirements of the applicable Utility Owner as part of the demolition, unless otherwise specified. All costs associated with the demolition shall be at no additional cost to the Agency.

Any acquisition of additional ROW requested by the Design-Builder shall be performed in accordance with all applicable Laws, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended; ORS Chapter 35 (Eminent Domain; Public Acquisition of Property); the ODOT *Right of Way Manual*; and 49 CFR Part 24.

b. Additional ROW Acquisition - Upon approval of the request for additional ROW, the Agency will establish an additional ROW work order funded by the Design-Builder and initiate the additional ROW acquisition process.

The Design-Builder shall not be required to fund the additional ROW work order when the Agency, in its sole discretion, has determined that the Design-Builder's requested additional ROW is necessary to supplement the Planned ROW in order to meet the Project requirements.

Upon successful acquisition of the additional ROW, the Agency will provide the Design-Builder with copies of construction commitments, and, if requested, documentation of State ownership.

(10) Other Property Rights - The Design-Builder, with the Agency's concurrence and at no additional cost to the Agency, may acquire any rights or interests in real property other than the parcels required to be acquired for the Project. Such real property may be acquired for workspace, lay-down areas, material storage areas, or other convenience, but not for construction of the Project. The State will not be obligated to exercise its power of eminent domain; will not come into title to the property; and will not take any responsibility for the acquisition, maintenance, or disposition of additional properties or for any temporary rights of interest therein.

(11) Temporary Right of Entry - If the Design-Builder requests to enter property inside the Project Planned ROW for preconstruction activities, such as testing and inspection, prior to the Agency obtaining possession and use, upon the Agency's concurrence, the Agency will contact the legal property owner within (30) Calendar Days upon receipt of the Design-Builder's written request to request permission to enter that property. The Agency does not guarantee that a requested Temporary Right of Entry can or will be obtained.

The time required to acquire a Temporary Right of Entry varies. The Design-Builder shall contact the Agency to obtain an estimate of the time that would be required to obtain a requested Temporary Right of Entry.

The Design-Builder shall submit a written request for a Temporary Right of Entry to the Agency that must include the following:

- Request for permission to enter the owner's property;
- Identification of the parcel and the portion to be entered;
- An explanation of the type of work that will take place, and the type of equipment that will be used;
- A statement that any damage to the property will be repaired to the same or better condition prior to entry at the Design-Builder's expense; and
- The duration, including estimated dates, that the Design-Builder will be on the property.

(12) ROW Monumentation - Refer to DB141.28 for ROW monumentation requirements.

(13) Access - The Design-Builder shall incorporate any Agency-provided Access management plan(s) into the Design-Builder's design and recognize its impact on ROW activities.

(14) Taking Physical Possession – The Design-Builder is authorized to proceed with Work on properties that are shown to be under the Agency's possession through Right-of-Way Certifications that the Agency issues to the Design-Builder.

The Agency will issue an authorization-to-proceed, through one or more subsequent Right-of-Way certifications, for any additional ROW acquired as requested by the Design-Builder, or as otherwise identified by the Agency. More than one authorization-to-proceed may be required for the Project.

The Design-Builder may request Agency approval to conduct tests, take samples, or perform similar activities on properties that are in the Agency's possession, but which have not yet been included in a Right-of-Way Certification issued by the Agency.

(15) Permits of Entry (for Construction) - Under exceptional circumstances, the Agency may obtain Permits of Entry to allow access to a property prior to payment to the property owner for possession (see the ODOT *Right of Way Manual*). Permits of Entry cannot be used to circumvent normal negotiation processes solely to meet a predetermined construction schedule. The Design-Builder shall submit a written request to the Agency to attempt to obtain a Permit of Entry for a property.

(16) Existing Materials within the Project ROW - Any removal, disposal or demolition activities, or any other property management services required by the Project must be performed by the Design-Builder in accordance with all Contract requirements including but not limited to DB141.51, the DB Standard Technical Specifications and Oregon DEQ requirements.

(17) Construction Interdisciplinary Commitments – Construction Interdisciplinary Commitments (IDCs) provide commitments (in the form of State obligations) by the Agency during the acquisition of the property that shall be fulfilled by the Design-Builder with respect to the acquired ROW.

(18) Protecting Existing Utility Easements - Parcels may be acquired subject to existing public Utility easements. The Design-Builder shall protect the Utilities so their function or integrity is not impaired during and after construction. This requirement shall remain until the Utility is relocated and becomes serviceable, if applicable. If the Utility will not be relocated, then it shall remain serviceable after construction.

(19) Notification - The Design-Builder shall submit written notification to the Agency when the following occur:

- IDC commitments are completed;
- When Utilities are relocated;
- When individual sewer service lines are connected and become operational;
- When individual stormwater service lines are connected and become operational;
- The date Work in a temporary construction easement (TCE) area commences; or
- The date Work in a TCE area is completed (excepting maintenance of landscaping as described in DB141.27).

(20) Submittals:

- Written request for additional ROW – after Acceptance of the ROW Design/Layout Meeting maps, and at or before Definitive Design
- Written request for Temporary Right of Entry as needed.

DB174.30 Railroads:

(a) General - This Subsection DB174.30 sets out the general provisions, activities, Standards and governing Laws, manuals and policies relating to the requirements applicable to the Work performed upon or adjacent to the Railroad property. The Design-Builder shall be subject to the requirements related to Railroads as outlined in this Subsection and in Standards.

Work shall be conducted such that no changes in existing Rail Crossing Orders are required and such that no Construction and Maintenance Agreements will be required as part of the Work for remediation of Settlement Curb Ramps. Some work may require coordination with Railroads due to proximity of the railroad. The Railroad will dictate its own schedule for Work near, under or over Railroad property. The Agency will assist the Design-Builder with the coordination with the Railroads for the review and approval by the Railroad of the Design-Builder's submittals; however, the Railroad will dictate its own schedule for the approval of submittals and execution of any required agreements. The Design-Builder shall obtain all agreements, permits, Rights of Entry, and pay all costs.

Rail traffic service levels are subject to change by the Railroad at any time. Except as specifically permitted by an authorized representative of the Railroad in writing, the Design-Builder shall not interfere with Railroad operations.

(1) Contacts:

a. ODOT Railroad Liaison:
Nicole Frankl
State Utility and Railroad Liaison
4040 Fairview Ind. Drive SE MS#2fi
Salem, OR 97302-1142
Phone: 503-934-6077
Email: Nicole.Frankl@odot.oregon.gov

The Design-Builder shall appoint a single point of contact to coordinate with all Railroads.

(b) Standards and References - The Design-Builder shall perform all Railroad related Work in accordance with the requirements of this DB174.30.

(1) Standards:

- American Railway Engineering and Maintenance-of-Way Association *Manual for Railway Engineering*
- Union Pacific Railroad (UPRR) – BNSF Railway Guidelines for Railroad Grade Separation Projects
- UPRR – BNSF Railway Guidelines for Temporary Shoring
- BNSF/UPRR Utility Accommodation Policy
- BNSF Railway Public Projects Manual
- ODOT *Right of Way Manual*
- ODOT Highway Design Manual

- ODOT Bridge Design Manual
- DB Standard Technical Specifications
- Other Railroad Standards as applicable to secure required agreements, permits and Rights of Entry.

(2) References:

- BNSF/UPRR Term Sheet
- ODOT Boilerplate Special Provisions RR BNSF
- ODOT Boilerplate Special Provisions RR CBRL
- ODOT Boilerplate Special Provisions RR CORP
- ODOT Boilerplate Special Provisions RR PNWR
- ODOT Boilerplate Special Provisions RR UPRR

(c) Requirements:

(1) Railroad Requirements:

a. Train Traffic and Work Windows - Access to the Railroad property is limited to the times and durations set by the Railroad.

b. Train Railroad Agreements, Licenses, and Permits - The Design-Builder shall prepare and submit to the Agency for Review and Comment all documentation and information necessary to obtain any required Right of Entry agreements, Temporary Construction Crossing Agreements, Maintenance Consent Letter, Utility license agreements, general license agreements, Utility licenses, general licenses and any other licenses or permits required by the Railroad for the design and construction of the Project. These agreements, licenses, and permits apply to all activities and requirements for Work on or around Railroad ROW.

Upon receipt of Agency comments, the Design-Builder shall revise the submitted documentation according to the comments provided and subsequently re-submit the documentation to the Agency for Acceptance.

Upon Agency Acceptance of the Design-Builder's documentation necessary for agreements, permits, and Rights of Entry, the Design-Builder shall submit the documentation to the Railroad and coordinate directly with the Railroad to secure agreements, permits, and Rights of Entry. There will not be any adjustment in Contract time or compensation due to coordination with the Railroads, to the extent not prohibited by ORS 279C.315.

The Design-Builder shall not transport Equipment, machinery, or Materials across the Railroad's tracks, except at a public crossing.

c. Railway Flagging Services Agreement - The Railway Flagging Services Agreement is the agreement between the Design-Builder and the Railroad or Railroad-approved third party Railroad flagger vendor.

A Railroad flagger will be required by the Railroad in cases including, but not limited to, when Design-Builder's Work activities are located within 25 feet measured horizontally from center line of the nearest track, when the Design-Builder's Work impacts Public Traffic at the crossing in a manner that could result in hazards or affect the operation of the crossing, and when cranes or similar Equipment positioned outside of 25 feet horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence. The Design-Builder shall comply with the requirements of the Railway Flagging Services Agreement when working within these areas.

The Design-Builder shall be responsible for all Railroad flagger service costs. When Railroad flagger services are required, the Agency will pay the Railroad for flagger services and deduct such costs from monies due or to become due the Design-Builder under the Contract.

Union Pacific Railroad (UPPR) requires a third -party flagging vendor when Work occurs near or within Railroad property. When Railroad flagger services are required, the Design--Builder shall provide services from UPRR's approved third party list according to 00223.35, and at no additional cost to the Agency.

d. Right of Entry - The Right of Entry is the agreement specifying the Railroad requirements for the Design-Builder when working on Railroad property, including insurance requirements, indemnity, notifying and coordinating with the Railroad, security requirements, safety and training requirements, and any other Railroad requirements.

All persons not directly employed by the Railroad must complete any safety training as required by the Railroad prior to entering the Railroad's property.

All Work within Railroad property shall be in accordance with the Right of Entry.

e. Protection of Railroad Property and Operation - The Design-Builder shall exercise due care in all operations and protect the property of the Railroad and its appurtenances, property in its custody, or person lawfully upon its ROW, from damage, destruction, interference, or injury. The Design-Builder shall pursue the Work so as to not interfere with the Railroad or its appurtenances, or any of the Railroad's trains or facilities, and to complete the Work to a condition that shall not interfere with or menace the integrity of safe and successful operations of the Railroad or its appurtenances, or any of the Railroad's trains or facilities. Except as specifically permitted by an authorized representative of the Railroad in writing, the Design-Builder shall perform the Work in such a manner as not to interfere with the operations of Railroad traffic. The Railroad will specify what periods will be allowed to the Design-Builder for executing any part of the Work in which the Railroad's tracks will be made unsafe for operation of the Railroad traffic.

The Design-Builder shall conduct operations in a manner that keeps drainage ditches and other Railroad facilities undamaged, open, and clean from any deposits

and debris, and shall clean and restore ballast of the Railroad, which may be disturbed or becomes fouled with dirt or materials from the operations of the Design-Builder.

f. Flagging, Linemen and Signalmen - The Design-Builder shall be responsible for all costs associated with providing Railroad flaggers, security personnel or both, according to the Right of Entry or other agreements with the Railroad. In addition to providing 30 Calendar Days' notice for Railroad work planning, the Design-Builder shall comply with the Right of Entry (Contractor's Endorsement) as applicable, and notify the Railroad's Road Master within the timeframe(s) specified in the Right of Entry in advance of Work the Design-Builder intends to perform adjacent to the tracks (based on Railroad specifications) to enable the Railroad to provide timely flagging or other protective services.

When, in the opinion of the Railroad's representative, any of Design-Builder's operations performed within or near Railroad ROW could endanger Railroad facilities or create a hazard to Railroad operations, communications linemen or signalmen may be used to protect communications and signal facilities, as deemed necessary by the Railroad.

The Design-Builder shall be responsible for all Railroad flagger service costs.

The Design-Builder shall track and keep a record of all Railroad protective services provided by the Railroad described above and provide that information to the Agency upon request.

g. Railroad Limitations on Design-Builder Work - The Design-Builder shall cooperate with the Railroad if it is determined by the Railroad that the Design-Builder cannot work due to train traffic or any other Railroad operations. The Design-Builder shall bear all risk associated with potential Railroad limitations on the Design-Builder's Work. If the Design-Builder's Work is interrupted, delayed, or prevented by the Railroad, the Design-Builder shall bear all costs and time associated with those Railroad limitations to the extent not prohibited by ORS 279C.315.

To the extent not prohibited by ORS 279C.315, the Agency is not responsible for any Railroad limitations on the Design-Builder's Work and will bear no cost or additional time for those limitations.

h. Other Railroad Protective Services - In addition to flagging, other protective devices, including but not limited to crossing signals, indicators, telltales, lights, and telephones may be required by the Railroad. The nature and extent of protective services, personnel and other measures required will in all cases be determined by the Railroad. Nothing in these Specifications will limit, in any way, the Railroad's right to determine and assign the number of personnel, the classes of personnel for protective services, nor other protective measures it deems necessary. Unless otherwise provided, such as a Railroad inspection representative, all personnel assigned by the Railroad, other than those engaged in performing construction work by the Railroad, will be considered protective personnel. The Design-Builder shall reimburse the Agency for all payments made to the Railroad by the Agency for the cost of any and all protective personnel and protective devices installed by the Railroad in order to accommodate the Design-Builder's Work.

The Design-Builder shall notify the Railroad's Roadmaster within the timeframe(s) specified in the Right of Entry in advance of Work within 25 feet measured horizontally from center line of the nearest track. The Design-Builder shall also notify the Railroad's Roadmaster within the timeframe(s) specified in the Right of Entry in advance of positioning cranes or similar Equipment outside of 25 feet horizontally from track center line that could foul the track in the event of tip over or other catastrophic occurrence.

i. Railroad Inspection Representative - In addition to Railroad protective services, an inspection representative may be required by the Railroad. The nature and extent of inspection services, personnel and other measures required will in all cases be determined by the Railroad. Nothing in this Subsection DB174.30 will limit, in any way, the Railroad's right to determine and assign the number of personnel, the classes of personnel for inspection services, nor other inspection measures it deems necessary. The Design-Builder shall reimburse the Agency for all payments made to the Railroad by the Agency for the cost of inspection services by the Railroad in order to accommodate the Design-Builder's Work.

j. Emergency - In the event that an emergency occurs in connection with the Work specified, the Railroad reserves the right to do any and all work that may be necessary to maintain Railroad traffic. If the emergency is caused by the Design-Builder, the costs of such emergency work and any cost of lost revenue during the stoppage shall be borne by the Design-Builder.

k. Liability - No act by the Railroad in supervising or approving any Work shall reduce or in any way affect the liability of the Design-Builder for damages, expense, or costs which may result to the Railroad from the Work. The Design-Builder shall bear any costs incurred during the Work on the Railroad's property that is due to negligence by the Design-Builder for the construction of the Project, or for which the Design-Builder would otherwise be responsible under the terms of the Contract, and no costs will be borne by the Agency.

l. Insurance - The Railroad will require insurance if the Design-Builder enters onto Railroad property. The Design-Builder shall obtain at its expense any insurance required by the Railroad.

m. Payments - The Design-Builder shall bear all costs for services provided by the Railroad. If the costs for services provided by the Railroad are invoiced directly to the Agency by the Railroad, the Agency will pay the Railroad for the services and subsequently deduct such costs from monies due or to become due the Design-Builder under the Contract.

(2) Submittals - The Design-Builder shall prepare submittals in accordance with Railroad guidelines. The Railroads have various review timelines, and the Design-Builder shall schedule their Work to accommodate the Railroads review timelines. There will not be any adjustment in Contract time or compensation because of the Railroad review process.

The Design-Builder shall allow for 120 Calendar Days for Railroad review and response to each submittal and resubmittal.

a. Right of Entry - The Design-Builder shall submit a copy of the fully executed Contractor's Right of Entry Agreement to the Agency within 3 Calendar Days of execution of the agreement.

b. License Agreement - If an agreement for utilities or drainage facilities is necessary to accomplish the Work, the Design-Builder shall submit the applications for the Utility License Agreement and General License Agreement to the Agency for Review and Comment and for the Railroad's review, comment, and approval. The Design-Builder will coordinate with the Railroad for review and comment of the applications, which are subject to Railroad approval.

Applications must include plans for the proposed drainage or Utility installation. Applications for Utility License Agreement must meet the requirements of the Railroad's Utility Accommodation Policy.

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SECTION DB180 – PROSECUTION AND PROGRESS

DB180.00 Scope - This Section consists of requirements for assignment of the Contract, subcontracting, scheduling, time for performance, Contract responsibility, suspensions, terminations, and related provisions.

DB180.01 Definitions - The following definitions apply to DB180.41:

(a) Activity - Identifies the specific Work in the Project Work Schedule that needs to be performed to produce the various Project deliverables and milestones. Identifies the deliverables and Work that consumes time and resources at the lowest level in the Work Breakdown Structure.

(b) Critical Path - The longest continuous chain of zero or negative float Activities which establishes the minimum overall Project duration and drives the scheduled completion of the Project back to the start date. A slippage or delay in completion of an Activity on the Critical Path will extend Project final completion correspondingly.

(c) Critical Path Method (CPM) - A scheduling technique used to plan and control a project. CPM combines all relevant information into a single plan defining the sequence and duration of operations, and depicting the interrelationship of the work elements required to complete the Project.

(d) Data Date - The calendar date that separates actual (historical) data from scheduled data. For schedule updates the Data Date is the reporting period cut-off date.

(e) Free Float - The amount of time that an Activity may slip in its completion before delaying the early start of its successor Activity.

(f) Fragmentary Network - Also known as a “Fragnet”. A sequence of new Activities that are proposed to be added to the Project Work Schedule to evaluate the influence of delay or impact to the Work. The introduction of a Fragnet into the Project Work Schedule is not always going to result in a delay to the Project final completion.

(g) Lag - Also known as “Lag Time”. When the successor Activity completes and there is a delay or wait period before the predecessor Activity starts. Lag Time is the delay between the successor and predecessor Activities.

(h) Lead - Also known as “Lead Time”. When the successor Activity begins before the predecessor Activity has completed. Lead Time is the overlap between the predecessor and successor Activities.

(i) Milestone - A zero duration “Activity” used to denote a particular point in time or start or finish of an event or series of events toward the completion of Work within a Price Center. Milestones do not consume time or resources.

(j) Three Week Look-Ahead Schedule - Depicts resource requirements for a three-week time period and consists of current and planned Activities and related Contract Work

Activities, including Subcontractor Work required to complete the Activities contained in the Project Work Schedule.

(k) Total Float - The amount of time that an Activity or WBS Element may slip in its start and/or completion before becoming critical and delaying the finish of the Project. It is measured by comparing the early and late dates on a start and finish basis.

(l) Work Breakdown Structure (WBS) - A deliverable-oriented chart that illustrates the relationships of critical elements of the Work to be executed by the Project team to accomplish the Project objectives and create the required deliverables.

(m) Work Breakdown Structure Element - A single component and its associated attributes located anywhere within a Work Breakdown Structure. A Work Breakdown Structure Element can contain work, or it can contain other WBS Elements.

(n) Work Breakdown Structure Number - A unique identifier assigned to an Activity required to complete an element of Work in a Work Breakdown Structure for the purpose of designating the element's hierarchical location within the Work Breakdown Structure.

DB180.05 Assignment/Delegation of Contract - Unless the Agency gives prior written consent, which will not be unreasonably withheld, the Design-Builder shall not assign, delegate, sell, or otherwise transfer or dispose of any rights or obligations under the Contract, whether voluntarily or involuntarily, and whether by merger, consolidation, dissolution, operation of law, or any other manner, including, without limitation:

- The power to execute or duty to perform the Contract; or
- Any of its right, title or interest in the Contract.

Any purported or attempted assignment, delegation, sale, transfer or disposition without prior Agency consent shall be voidable.

If written Agency consent is given to assign, delegate, sell, or otherwise transfer or dispose of any rights or obligations under the Contract, such consent shall not relieve the Design-Builder or its Surety of any part of their duties, obligations, responsibilities, or liabilities under or pursuant to the Contract.

DB180.06 Assignment of Funds Due Under the Contract - Assignment of funds due or to become due under the Contract to the Design-Builder will not be permitted unless:

- The assignment request is made on the form provided by the Agency;
- The Design-Builder secures the written consent of the Design-Builder's Surety to the assignment; and
- The Agency gives prior written consent to the assignment, which will not be unreasonably withheld.

DB180.10 Responsibility for the Contract - The Design-Builder shall direct and coordinate the operations of its employees, Subcontractors, and agents performing Work and see that the Agency's orders are carried out promptly. The Design-Builder's failure to direct,

supervise, and control its employees, Subcontractors, and agents performing Work will result in one or more of the following actions, as the Agency deems appropriate:

- Suspension of the Work;
- Withholding of Contract payments, as necessary to protect the Agency;
- Ordering removal of individuals from the Project Site; or
- Termination of the Contract.

DB180.15 Agency's Right to do Work at Design-Builder's Expense - Except as otherwise provided in DB150.75 and DB Standard Technical Specifications 00220.60, if the Design-Builder neglects to prosecute the Work properly or fails to perform any provision of the Contract, the Agency may, after 2 Calendar Days' written notice, correct the deficiencies at the Design-Builder's expense. In situations where the Agency reasonably believes there is danger to life or property, the Agency may immediately and without notice correct the deficiencies at the Design-Builder's expense. Any amounts expended in accordance with this Subsection may be deducted from monies due or to become due to the Design-Builder under the Contract.

Action by the Agency under this provision will not prejudice any other remedy it may have.

DB180.20 Subcontracting Limitations:

(a) Design-Builder's Organization - Pursuant to 23 Code of Federal Regulations ("CFR") 635.116(d), ODOT has established a self-performance requirement of 30% for this Project. To satisfy ODOT's requirement, the Design-Builder's own organization shall perform Construction Services amounting to not less than 30% of the total of the original contract amount for construction services Pay Items for each Price Center.

(b) Own Organization - The term "own organization", as used in this Section DB180, includes only employees of the Design-Builder, Equipment owned or rented by the Design-Builder, Incidental rental of operated Equipment, truck hauling of materials not included in or requiring a subcontract, and Materials and Equipment to be incorporated into the Work purchased or produced by the Design-Builder.

If the Design-Builder is a partnership or a joint venture, the term "own organization", as used in Section DB180, includes only the employees of the Design-Builder and the employees of the partners or joint venture members of the Design-Builder, Equipment owned or rented by the Design-Builder or the partners or joint venture members of the Design-Builder, Incidental rental of operated Equipment, truck hauling of Materials not included in or requiring a subcontract, and Materials and Equipment to be incorporated into the Work purchased or produced by the Design-Builder or the partners or joint venture members of the Design-Builder. (See DB180.21(a) regarding joint venture members or partners as Subcontractors.)

(c) Rental of Operated Equipment -The use of Equipment rented with operators, except truck hauling of Materials which is addressed in DB180.20(e), will be allowed without a subcontract only when the following requirements are met:

(1) Written Request - The Design-Builder has submitted to the Agency Engineer a written request describing the work or service to be provided, its estimated cost, and the estimated duration. The Agency must approve the request before the work or service is provided.

(2) Limitations - The use of Equipment rented with operators is limited to performing minor, Incidental, short-duration work or services under the direct supervision of the Design-Builder or Subcontractor, with Equipment not customarily owned, rented, leased, or operated by a Design-Builder, or with Equipment that is temporarily unavailable to the Design-Builder.

(3) Submittals - The Design-Builder shall provide the Agency Engineer with a copy of the rental agreement or purchase order covering the work or service to be provided. The Design-Builder shall make certain that the provider of approved work or services submits payrolls required under Section DB170 and complies with applicable Contract terms, provisions and conditions, including without limitation Article 8 of the DB Agreement. The work or service provider will not be considered a Subcontractor under the Contract, but the work or services will be considered to have been performed by the Design-Builder's own organization for the purpose of determining compliance with DB180.20(a).

(4) Revocation of Consent - The Agency may revoke its consent to the work or services provided through rented, operated Equipment at any time the Agency determines that the work is outside that authorized under DB180.20(c)(2) above. Unless the Design-Builder promptly submits to the Agency Engineer a subcontract agreement for consent under DB180.21, the work or service provider shall be immediately removed from the Project Site.

(d) Disadvantaged Business Enterprise (DBE) - Every agreement to perform work, including without limitation subcontracts, trucking services agreements, purchase orders, and rental agreements, shall indicate whether the work will be performed by a DBE or non-DBE.

(e) Trucking - This Section does not apply to delivery of Materials by or for or from a Supplier. This Subsection applies to all truck hauling of materials not performed with trucks owned (or rented) and operated by the Design-Builder. If the services under Rental of Operated Equipment or Trucking are provided by a committed DBE firm, a subcontract is required under DB180.21. For this purpose, a committed DBE firm is one that was identified by the Design-Builder to meet an assigned DBE goal including DBE firms substituting for DBE firms committed as a condition of Contract Award.

(1) Trucking Services Agreement - The Design-Builder shall submit at the preconstruction conference one or more proposed trucking services agreements for all trucking services for hauling Materials. The proposed agreements shall include:

- Statement specifying whether the services will be provided by a DBE;
- Statement specifying whether the services will be provided by an owner/operator;
- Prompt payment clause (10 days) (ORS 279C.580);

- Interest penalty clause (ORS 279C.580);
- Lower tier clause (ORS 279C.580);
- Statement about the provider's ability to file a complaint with the Construction Contractors Board (ORS 279C.515);
- Statement that workers shall be paid not less than the specified minimum hourly rate of wage (ORS 279C.830) as applicable;
- Provision requiring the provider to have a public works bond filed with the Construction Contractors Board before starting work on the Project, unless exempt under ORS 279C.836 (4) or (9) or has elected to not file a bond under ORS 279C.836 (7) or (8), or is otherwise not applicable;
- Insurance clauses that include Commercial Automobile Liability and Workers Compensation (ORS 656.017 unless exempt under ORS 656.126);
- Provision requiring the provider to comply with applicable Contract terms, provisions and conditions including without limitation Record Requirements in Article 8 of the DB Agreement; and
- Construction Contractors Board License Number if applicable.

The Agency must review and consent to the proposed trucking services agreements prior to use.

(2) Limitations - The approved trucking services agreements shall be used for all trucking services for hauling materials not provided by trucks owned (or rented) and operated by the Design-Builder, except for trucking services provided by committed DBEs that require a subcontract under DB180.21. The Design-Builder shall execute a trucking services agreement with every trucking services provider for hauling materials prior to the trucking services provider doing any Work on the Project Site.

(3) Submittals - The Design-Builder shall provide the Agency Engineer with an executed copy of the trucking services agreement not later than 2 Calendar Days after the trucking services provider for hauling materials has started work. The Design-Builder shall make certain that the provider of approved trucking services submits payrolls required under Section DB170, complies with applicable Contract terms, provisions and conditions, including without limitation Article 8 of the DB Agreement, and complies with applicable trucking services agreement provisions. The work or service provider will not be considered a Subcontractor under the Contract, but the work or services will be considered to have been performed by the Design-Builder's own organization for the purposes of determining compliance with DB180.20(a). If the trucking services are provided by an owner/operator:

- Attach a copy of the data required under Article 11.3.2 of the DB Agreement to the trucking services agreement; and
- Each truck shall have the name of the owner/operator clearly displayed on the side of the truck.

(4) Revocation of Consent - The Agency may revoke its consent for trucking services provided under the trucking services agreement at any time the Agency determines that the work or service is outside that authorized under DB180.20(e). Upon revocation of consent, the service provider shall be immediately removed from the Project Site.

DB180.21 Subcontracting:

(a) Submittal of Subcontracts - The Design-Builder shall not subcontract or perform any portion of the Contract by other than the Design-Builder's own organization without the Agency's prior written consent. A request for consent to subcontract, at any tier, solely for the furnishing of a labor force will not be considered.

Notwithstanding the definition of "own organization" in DB180.20(b), if the Design-Builder is a partnership or a joint venture, performance of any portion of the Work by a partner or joint venture member shall be pursuant to a subcontract subject to the Agency consent requirements of this Subsection DB180.21.

A written request for consent to subcontract any portion of the Contract at any tier shall be submitted to the Agency Engineer, and when required by the Agency Engineer, shall be accompanied by background information showing that the organization proposed to perform the Work is experienced and equipped for such Work. The Agency will review the Design-Builder's submission to verify compliance with Contract requirements, confirm the percentage of Work subcontracted, and evaluate the proposed Subcontractor's ability to perform the Work. If the Agency approves the Design-Builder's request to subcontract, the Agency will provide its consent to the Design-Builder's request as follows:

- If the Subcontractor is not providing any of the insurance coverages as permitted under DB170.70(a), the Agency will respond within 7 Calendar Days after the Engineer's receipt of the request.
- If the Subcontractor is providing any of the insurance coverages as permitted under DB170.70(a), the Agency will respond within 35 Calendar Days after the Agency Engineer's receipt of the request. (28 Calendar Days for the Agency to review and approve the Certificates of Insurance required by DB170.70(f) plus 7 Calendar Days to review and approve the subcontract request.)

The Agency Engineer may revoke consent to subcontract. If the Agency Engineer revokes consent to subcontract, the Subcontractor shall be immediately removed from the Project Site.

(b) Submittal of Requests - The Design-Builder must submit requests for consent to subcontract any portion of the Contract, at any tier, on the Agency's form, available from the Agency Engineer. The Design-Builder shall attach a duplicate original subcontract agreement. The Design-Builder must also submit in writing any amendments or modifications proposed to Agency-approved subcontract agreements, at any tier, before the affected Work begins. The Agency's written consent will be required before such amendments or modifications become effective.

The Design-Builder and proposed Subcontractors shall review the Agency's Conflict of Interest Guidelines, and if any disclosures are required, they shall complete the Conflict-of-Interest Disclosure Form(s) and submit them with the request for consent to subcontract. The ODOT *Conflict of Interest Guidelines for Procurements & Contracts* and *Conflict of Interest Disclosure Form* are available on the ODOT Procurement Office website (see DB110.05(e)).

If disclosures are not required under the Agency's Conflict of Interest Guidelines, no disclosures need be submitted.

The Subcontractors shall also otherwise be and remain in compliance with the Agency's Conflict of Interest Guidelines. (See Section DB170.)

(c) Replacement of Major Subcontractors - Article 2.6 of the DB Agreement.

(d) Terms of Subcontracts - All subcontracts at all tiers shall provide that Work performed under the subcontract shall be conducted and performed according to, and shall include the pertinent requirements, provisions, terms, and conditions of the Contract. All subcontracts at all tiers that include Design Services shall also specifically name the State of Oregon, the Oregon Transportation Commission and the Oregon Department of Transportation and their respective officers, members and employees as intended third-party beneficiaries of the subcontract and shall indemnify the foregoing as provided in Section DB170. Compliance with Article 8 of the DB Agreement is required for all subcontracts. All subcontracts, including Design-Builder's with the first-tier Subcontractors and those of the first-tier Subcontractors with their Subcontractors, and any other lower-tier subcontracts shall contain a clause or condition that if the Design-Builder or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580. Additionally, according to the provisions of ORS 279C.580, subcontracts shall include:

(1) A payment clause that obligates the Design-Builder to pay the first tier Subcontractor for satisfactory performance under the subcontract within 10 Calendar Days out of amounts the Agency pays to the Design-Builder under the Contract.

(2) A clause that requires the Design-Builder to provide the 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 Design-Builder.

(3) A clause that requires the Design-Builder, except as otherwise provided in this Subsection, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Design-Builder may change the form or the regular administrative procedures the Design-Builder uses for processing payments if the Design-Builder:

- Notifies the Subcontractor in writing at least 45 Calendar Days before the date on which the Design-Builder 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.

(4) An interest penalty clause that obligates the Design-Builder, if the Design-Builder does not pay the first tier Subcontractor within 30 Calendar Days after receiving payment from the Agency, to pay the first tier Subcontractor an interest penalty on amounts due in each payment the Design-Builder does not make in accordance with the payment clause included in the subcontract under DB180.21(d)(1). The Design-

Builder or first tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Design-Builder or first tier Subcontractor did not make payment when payment was due is that the Design-Builder or first tier Subcontractor did not receive payment from the Agency or the Design-Builder when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and ends on the date on which the amount due is paid; and shall be computed at the rate specified in Section DB170.

(5) A clause that requires the Design-Builder's first-tier Subcontractor to include a payment clause and an interest penalty clause that conform to the standards of ORS 279C.580 (see DB180.21(d)(1) and DB180.21(d)(4)) in each of the first tier Subcontractor's subcontracts and to require each of the first tier Subcontractor's Subcontractors to include such clauses in their subcontracts with each lower tier Subcontractor or Material Supplier.

These payment clauses shall require the Design-Builder to return all retainage withheld from the Subcontractor, whether held by the Design-Builder or the Agency, as specified in DB195.50(d).

As required by ORS 279C.800 through ORS 279C.870, subcontracts shall include:

- A provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work on the Project, unless exempt.
- A provision requiring that the workers shall be paid not less than the specified minimum hourly rate of wage.

As and when applicable, the Design-Builder shall require in its subcontracts that Subcontractors maintain the certifications required by ORS 279A.107.

(e) Design-Builder's Responsibilities - As a condition of the Agency's grant to consent to subcontract, whether or not stated in the subcontract agreement itself, the Design-Builder shall remain solely responsible for administration of the subcontracts, including but not limited to:

Performance of subcontracted Work;

Progress of subcontracted Work;

Payments for accepted subcontracted Work; and

Disputes and claims for additional compensation regarding subcontracted Work.

The Agency's consent, or the subcontract, or both, shall not create a contract between the Agency and the Subcontractor, shall not convey to the Subcontractor any rights against the Agency, and shall not relieve the Design-Builder or the Design-Builder's Surety of any of their responsibilities under the Contract.

(f) Failure to Comply - Failure to comply with DB180.21 will be cause for the Agency to take action reasonably necessary to obtain compliance. This action may include, but is not limited to, the following:

- Suspension of the Work;
- Withholding of Contract payments as necessary to protect the Agency; and
- Termination of the Contract.

(g) Mentor-Protégé Agreement - If the Design-Builder enters into a subcontract with an Emerging Small Business (ESB) Subcontractor, the Agency may offer the Design-Builder and its ESB Subcontractor an opportunity to enter into a Project-specific Mentor Protégé Agreement.

The Project-specific Mentor Protégé Agreement will be paid for and specified by Change Order.

DB180.22 Payments to Subcontractors and Agents of Design-Builder - To the extent practicable, the Design-Builder shall pay in the same units and on the same basis of measurement as listed in the Schedule of Prices for subcontracted Work or other Work not done by the Design-Builder's own organization. The Agency will not be responsible for any overpayment or losses resulting from overpayment by the Design-Builder to Subcontractors and to its other agents, service providers, and trucking services providers.

If requested in writing by a first-tier Subcontractor, the Design-Builder shall send to the Subcontractor, within 10 Calendar Days of receiving the request, a copy of that portion of any invoice or request for payment submitted to the Agency, or pay document provided by the Agency to the Design-Builder, specifically related to any labor, Equipment, or Materials supplied by the first-tier Subcontractor.

DB180.30 Materials, Equipment, and Work Force - The Design-Builder shall furnish suitable and sufficient Materials, Equipment, and personnel to properly prosecute and complete the Work. The Design-Builder and all Subcontractors shall use only Equipment of adequate size and condition to meet the requirements of the Work and the Specifications, and to produce a satisfactory quality of Work. Upon receipt of the Agency's written order, the Design-Builder shall immediately remove, or cause to be removed, and not use again, or allow to be used again, on the Project without the Agency's prior written consent, Equipment that, in the Agency's opinion, fails to meet the Specifications or produce a satisfactory product or result.

The work force shall be trained and experienced for the Work to be performed. Upon receipt of the Agency's written order, the Design-Builder shall immediately remove from the Project Site, and shall not employ again on the Project without the Agency's prior written approval, any management personnel, supervisor, employee, worker, agent or other provider of the Design-Builder or of any Subcontractor or Supplier who, in the Agency's opinion, does not perform satisfactory Work or whose conduct interferes with the progress of the Work.

If required by the Agency Engineer, the Design-Builder shall provide the Agency at least 14 Calendar Days prior written notice of the proposed replacement for any management personnel, supervisor or employee of the Design-Builder or any Subcontractor, Supplier, other provider or agent and request the Agency's approval. The Agency's prior written consent is required for any such replacement. See DB180.35(c) for requirements for replacement of Key Personnel and DB180.35(d) for Major Subcontractors.

If the Design-Builder fails to remove Equipment or persons as ordered, or fails to furnish suitable and sufficient Materials, Equipment, and personnel for the proper prosecution of the Work, the Agency may suspend the Work by written notice until such orders are complied with and such deficiencies are corrected, or the Agency may terminate the Contract under the provisions of DB180.90(a).

DB180.31 Required Materials, Equipment, Products, and Methods - The Agency's decisions under this Section are final. Substitutions after Award will be considered as provided below unless specified as the subject of an exemption per ORS 279C.345.

(a) General - When the Equipment and methods to be used are not specified in the Contract, any Equipment or methods that accomplish the Work as required by the Contract will be permitted.

When the Contract specifies certain Equipment or methods, the Design-Builder shall use the Equipment or methods specified unless otherwise authorized by the Agency in writing.

(b) Substitution of Materials, Products, and Equipment to be Incorporated into the Work - After execution of the Contract, the Agency may consent to substitution of Materials, products, and Equipment to be incorporated into the Work as follows:

(1) Reasons for Substitution - The Agency will consider substitution only if:

- The proposed Materials or Equipment are equal to or superior to the specified items in construction, efficiency, and utility; or
- Due to reasons beyond the control of the Design-Builder, the specified Materials, products, or Equipment cannot be delivered to the Project in sufficient time to complete the Work in proper sequence.

(2) Submittal of Request - The Design-Builder shall submit requests for substitution to the Agency, including manufacturers' brochures and other information needed to verify equality of the proposed item(s).

(c) Substitution of Equipment Specified to Perform Work - The Agency encourages development of new or improved Equipment and innovative use of Equipment. When the Specifications require Equipment of a particular size or type to be used to perform certain portions of the Work, the Design-Builder may submit a request to the Agency to use Equipment of a different size or type. The request must:

- Be in writing and include a full description of the Equipment proposed and its intended use;
- Include the reasons for requesting the substitution, and
- Include evidence, obtained at the Design-Builder's expense and satisfactory to the Agency, that the proposed Equipment is capable of functioning as well as or better than the specified Equipment.

The Agency will consider the Design-Builder's request and will provide a written response to the Design-Builder, either permitting or denying use of the proposed Equipment.

Permission may be granted on a trial basis to test the quality of Work produced, subject to the following:

- There will be no cost to the Agency, either in Contract Amount or in Contract Time;
- The permission may be withdrawn by the Agency at any time if, in the Agency's opinion, the Equipment is not performing in all respects equivalent to the Equipment specified in the Contract;
- If permission is withdrawn, the Design-Builder shall perform the remaining Work with the originally specified Equipment; and
- The Design-Builder shall remove and replace noncompliant Work resulting from the use of the Design-Builder's proposed Equipment, or otherwise correct it as the Agency directs, at no additional compensation.

(d) Substitution of Methods - The Agency encourages development of new, improved, and innovative construction methods. When the Plans or Specifications require a certain construction method for a portion of the Work, the Design-Builder may submit a request for a change by following the provisions of DB140.70.

DB180.32 Alternative Materials, Equipment, and Methods - Whenever the Contract authorizes certain alternative Materials, Equipment, or methods of construction for the Design-Builder's use to perform portions of the Work, and leaves the selection to the Design-Builder, the Agency does not guarantee that all listed alternative Materials, Equipment, or methods of construction can be used successfully throughout all or any part of the Work.

The Design-Builder shall employ only those alternatives that can be used to satisfactorily perform the Work. No additional compensation will be paid for corrective work necessitated by the Design-Builder's use of an inappropriate alternative.

DB180.35 Key Personnel and Major Subcontractors:

(a) Key Personnel - The Design-Builder represents that the Key Personnel identified in the Design-Build Agreement meet the applicable qualifications specified in this Subsection. The Design-Builder shall assign the Key Personnel to perform in the capacities identified in the Design-Build Agreement.

(1) Key Personnel Requirements and Qualifications:

a. Project Principal - The Project Principal shall have demonstrated experience in construction and management of construction on highway projects with similar size, type of work, complexity, and challenges as this Project. The Project Principal shall have design-build experience and extensive project management experience.

The Project Principal shall directly supervise the Design-Build Project Manager.

b. Design-Build Project Manager - The Design-Build Project Manager shall be the Design-Builder's representative and single point of contact for the duration of the Contract. The Design-Build Project Manager shall be responsible for the overall design, construction, Quality Management and contract administration for the Project. The Design-Build Project Manager shall also be responsible for ensuring

that the Project is delivered in accordance with Contract requirements and that the Project goals are met or exceeded. The Design-Build Project Manager shall have full responsibility for the prosecution of the Work, act as a single point of contact in all matters, and have authority to bind the Design-Builder on all matters relating to the Project. The Design-Build Project Manager shall have full authority and responsibility to promptly execute orders or directions of the Agency Engineer.

The Design-Build Project Manager shall be authorized to execute Change Orders on behalf of the Design-Builder.

The Design-Build Project Manager shall have demonstrated experience in construction and management of construction on design-build projects and on projects with similar size, complexity, and challenges as this Project, including Design-Build projects with public transportation ADA improvements. The Design-Build Project Manager shall have at least 5 years of demonstrated experience working in Design-Build on similar projects.

The Design-Build Project Manager shall be dedicated solely to this Project, and shall hold only this Key Personnel position. The Design-Build Project Manager shall directly supervise the Design Manager and Construction Manager.

c. Construction Manager - The Construction Manager shall be responsible for all of the Design-Builder's Construction Services. The Construction Manager shall be responsible for ensuring the construction is managed and delivered in accordance with the Contract requirements and ensuring that the Work meets or exceeds the Project goals. The Construction Manager shall work under the direct supervision of the Design-Build Project Manager. The Construction Manager shall directly supervise the Superintendent(s).

The Construction Manager shall have a minimum of 5 years of demonstrated experience in construction and management for similar type and complexity construction projects that include work on public transportation ADA curb ramp improvements.

The Construction Manager shall be dedicated solely to this Project and shall hold only this Key Personnel position.

d. Design Manager – The Design Manager shall be responsible for all of the Design-Builder's Design Services and for ensuring that the overall Project design is completed and design criteria requirements are met. The Design Manager shall have authority to communicate directly with Agency staff during all phases of the Project.

The Design Manager shall be an employee of the Design Firm and a registered Professional Engineer in the State of Oregon. The Design Manager shall have demonstrated experience in managing design for projects with similar type and complexity of the work on this Project including work on public transportation ADA curb ramp improvements.

The Design Manager shall have a minimum of 5 years of demonstrated experience managing design projects. The Design Manager shall hold only this Key Personnel position.

Utility Coordinator - The Utility Coordinator shall be responsible for coordinating Project activities with each Utility Owner affected by the Project. The Utility Coordinator shall be responsible for coordinating resolution of all utility issues for the Project and shall be responsible for following all State and Federal Utility coordination and relocation processes, Laws, and regulations.

The Utility Coordinator shall identify reimbursable status, coordinate the Utility relocations, and associated permitting requirements, and shall be responsible for ensuring that all Utility coordination is completed and associated permitting issues are resolved before the associated construction Work begins. For Utilities with a proven reimbursable right, the Utility Coordinator shall provide all necessary information to the State Utility Liaison to ensure that proper reimbursement is made.

The Utility Coordinator must be familiar with and follow the ODOT Oregon Utility Relocation Manual, which is available on ODOT Right-of-Way Utility Relocation Program website. The Utility Coordinator shall have a minimum of 3 years of demonstrated Utility coordination experience involving large scale Utility relocations, review of Utility relocation.

f. Environmental Compliance Manager – The Environmental Compliance Manager shall be the principal lead for all environmental design and compliance elements of the Project and be responsible for ensuring that the overall Project environmental issues are completed, the environmental criteria are met, and the Project environmental requirements meet or exceed the Project goals. The Environmental Compliance Manager shall have the authority to stop all Work due to environmental concerns and permitting requirements.

The Environmental Compliance Manager shall have at least a B.S. or B.A. degree and 5 years of demonstrated experience in managing others in environmental activities and demonstrated experience with major highway projects. The Environmental Compliance Manager shall have demonstrated experience in reviewing highway engineering drawings, conceptual drawings, and specifications for compliance with regulatory permits and approvals, and in monitoring construction activities for adherence to regulations, approvals, and environmental performance specifications. The Environmental Compliance Manager must have knowledge of the environmental regulations and permits relevant to the Project and demonstrated experience in working cooperatively and effectively with regulatory agency staff, design engineers, and construction personnel. The Environmental Compliance Manager shall have demonstrated experience managing the environmental compliance efforts on projects involving highway and ADA curb ramp work environmental and marine areas of northwest United States, major transportation projects in urban locations, and major transportation projects that interface with significant marine industrial areas.

The Environmental Compliance Manager shall work under the direct supervision of the Design-Build Project Manager.

g. Traffic Control Manager – The Traffic Control Manager shall be responsible for ensuring overall Project traffic management and that TCP and methods of handling traffic are designed, implemented, evaluated, revised and maintained to ensure maximum safe and efficient flow of traffic through the Project area.

The Traffic Control Manager shall have a minimum of 4 years of demonstrated recent experience in managing traffic control. The Traffic Control Manager shall have demonstrated experience in management of traffic control work on highway projects involving complex construction staging and phasing. The Traffic Control Manager shall possess a current, valid certificate verifying training as a TCS by one of the following:

- ATSSA – ATSSA certification and in addition requires proof of completion of second day of Oregon TCS Certification Class
- Oregon TCS Certification Class
- Other training course approved by ODOT

The Traffic Control Manager shall have completed the above certification within 2 years of commencement of the Work.

The Traffic Control Manager shall work under the direct supervision of the Design-Build Project Manager. The Traffic Control Manager shall be dedicated solely to this Project and shall hold only this Key Personnel position.

h. Project Quality Manager - The Project Quality Manager shall be responsible for the overall design and construction quality of the Project, implementing quality planning and training, managing the Design-Builder's Quality Management process, and for the preparation, implementation and updating of the Design-Builder's Quality Plan. The Project Quality Manager shall have the authority to stop any and all Work that does not meet Contract requirements. The Project Quality Manager shall not be directly responsible for design or construction functions. The Project Quality Manager shall have authority to communicate directly with Agency staff throughout the duration of the Project. The Project Quality Manager shall directly supervise the Design Quality Manager and Construction Quality Manager. The Project Quality Manager shall have authority to operate independently from the Design Build Project Manager.

The Project Quality Manager shall be a registered Professional Engineer in the State of Oregon and have demonstrated experience in highway and bridge design and construction with at least 4 years of demonstrated experience in quality assurance and quality control activities, including preparation and implementation of quality plans and procedures for design and construction. The Project Quality Manager shall also have demonstrated experience with design-build quality management systems and documentation.

The Project Quality Manager must be employed by an entity that is not performing any Work on the Project, other than Quality Management activities. The Project Quality Manager shall hold only this Key Personnel position.

i. Design Quality Manager – The Design Quality Manager must be employed by an Entity that is not performing any Work on the Project, other than Quality Management activities. Nor shall the Design Quality Manager perform any Work on the Project, other than Quality Management activities.

The Design Quality Manager shall be responsible for ensuring the overall quality of the Project design and overseeing the implementation of the Design-Builder's Quality Management process for all Design Services. The Design Quality Manager shall have authority to communicate directly with Agency staff during all phases of the Project.

The Design Quality Manager shall be a registered Professional Engineer in the State of Oregon. The Design Quality Manager shall have demonstrated experience in highway and Bridge design with at least 5 years of demonstrated experience in design-build quality management activities, including preparation and implementation of quality plans and procedures for design.

The Design Quality Manager shall hold only this Key Personnel position. The Design Quality Manager shall work under the direct supervision of the Project Quality Manager.

j. Construction Quality Manager – Unless otherwise approved in writing by the Agency Engineer, the Construction Quality Manager must be employed by one of the following:

- An Entity that is not performing any Work on the Project, other than Quality Management activities or Design Services, provided that the Entity:
- is not the Design-Builder;
- is not a joint venture member or partner of the Design-Builder; and
- is not a parent, subsidiary or affiliate of the Design-Builder (or of a joint venture member or partner of the Design-Builder)

The Construction Quality Manager shall not perform any Work on the Project, other than Quality Management activities.

The Construction Quality Manager shall be responsible for ensuring the overall quality of the Project construction and overseeing the implementation of the Design-Builder's Quality Management process for all Construction Services. The Construction Quality Manager shall have authority to communicate directly with Agency staff during all phases of the Project.

The Construction Quality Manager shall be a registered Professional Engineer in the State of Oregon and shall meet all requirements included in Section DB156. The Construction Quality Manager shall have at least 5 years of demonstrated experience overseeing construction inspection administration and materials testing on major highway construction projects. The Construction Quality Manager shall have at least 2 years of demonstrated experience overseeing or performing highway construction materials testing and at least 2 years of demonstrated experience overseeing or performing highway construction inspection.

The Construction Quality Manager shall hold only this Key Personnel position. The Construction Quality Manager shall work under the direct supervision of the Project Quality Manager.

k. Roadway Lead Engineer - The Roadway Lead Engineer shall be the principal lead for all roadway and ADA curb ramp design elements of the Project and shall be responsible for ensuring that the overall roadway design is completed, design criteria requirements are met, and the design meets or exceeds the Project goals. The Roadway Lead Engineer shall be in responsible charge of all Roadway Design Services.

The Roadway Lead Engineer shall be a registered Professional Engineer in the State of Oregon. The Roadway Lead Engineer shall have a minimum of 6 years of demonstrated experience leading the roadway and ADA design efforts on ODOT or other federal funded highway projects with similar size, complexity, and challenges as this Project.

l. ADA Curb Ramp Lead Inspector – The ADA Curb Ramp Lead Inspector shall meet the requirements for inspectors included in DB156. The ADA Curb Ramp Lead Inspector shall have a minimum of 2 years of ODOT specific ADA ramp specific inspection and shall have ODOT ADA Curb Ramp Inspector Certification. They are responsible for coordinating and performing inspections, and verifying that inspector forms are checked and submitted following standards and process.

The ADA Curb Ramp Lead Inspector shall coordinate with the Agency for quality assurance and with the Design-Builder for failures and modifications that may be needed. The ADA Curb Ramp Lead Inspector shall also ensure the inspection is staffed and programed to meet the critical activities. They shall oversee the Design-Builder's corrective action plan for ADA ramps. This role must be a part of the quality team.

m. Other Key Personnel - The Agency may designate other positions as Key Personnel or change the title or designation of some of the positions as needed at any time during the term of the Contract.

(2) Availability and Location of Key Personnel - Key Personnel shall be available for the Project for the duration of the Contract not less than the percentage of time as specified on the Design-Builder's Form KP as agreed to by the Agency and as necessary to fulfill the obligations of their position under the Contract. Some of the Key Personnel may be subject to more than one location requirement as provided in the following Subsections.

a. At Project Site Requirement - The following Design-Builder's Key Personnel are required to be within 100 miles of the Project Sites during Project Work hours and be on the Project Site and available for in-person meetings in Salem, Oregon as necessary to fulfill the obligations of their position under the Contract and to address any issues as required by the Agency for the duration of the Project.

- Design-Build Project Manager
- Traffic Control Manager

- Construction Manager
- Design Manager
- Project Quality Manager
- ADA Curb Ramp Lead Inspector
- Environmental Compliance Manager
- Utility Coordinator

(3) Temporary Absence of Key Personnel - If any of the Key Personnel are unable to fulfill the applicable specified duties of the position, or are to be absent from their applicable specified locations, for more than 48 hours, the Design-Builder shall submit a written request identifying a proposed individual who will temporarily replace the absent Key Personnel. The Design-Builder shall submit the request at least 7 Calendar Days in advance of when the absence of the Key Personnel will begin. The Agency will have no obligation to consider or approve a request to temporarily replace the Key Personnel. If the Agency does approve the request for temporary replacement of the Key Personnel, the temporary replacement shall fill the position commencing at the beginning of the absence of the Key Personnel.

If the temporary absence of a Key Personnel will be greater than 14 Calendar Days, the process described in DB180.35(c) below for replacements shall apply to the selection of the individual who will temporarily replace the absent Key Personnel. The Agency may require the removal and replacement of any Key Personnel if the Agency, in its sole discretion, determines that one or more periods of temporary absence are preventing that Key Personnel from fulfilling the Design-Builder's Contract obligations.

(4) Directory of Key Personnel - Within 15 Calendar Days after NTP, the Design-Builder shall submit to the Agency Engineer a directory and organizational chart showing all of the Design-Builder's Key Personnel. The directory shall be updated throughout the Contract within 5 Calendar Days after the changes occur. For replacement of Key Personnel allowed per (c) below, the Design-Builder shall provide an updated directory and organizational chart to the Agency Engineer within 5 Calendar Days of execution of a Contract Change Order authorizing the replacement. The directory must include the names, titles, areas of responsibility, office address and location, office telephone numbers, email addresses and cellular numbers of Key Personnel. The Design-Builder shall provide information sufficient for the Agency Engineer to contact any of the Key Personnel on a 24-hour basis for the duration of the Contract.

The Agency Engineer will provide a directory of the Agency's key Project staff to the Design-Builder.

(b) Major Subcontractors - The Major Subcontractors are identified in Design-Build Agreement, Article 3.5.

(c) Replacement of Key Personnel - The Design-Builder shall not request transfer, reassignment or replacement of Key Personnel, or delegation of authority or responsibilities of any Key Personnel to another person or Entity, without adequate justification. The Design-Builder shall not transfer, reassign or replace any Key Personnel, or delegate any authority or responsibilities of any Key Personnel to another person or Entity, without prior written consent from the Agency. Notwithstanding the procedures set out herein, the Agency will have no obligation to consider or consent to any such requests,

but may do so. Inadequate or unacceptable reasons or justifications for change include, but are not limited to, changes within the employer's control, including but not limited to:

- The employer of the Key Personnel reassigning or transferring the Key Personnel to other positions, jobs or projects or to any affiliate of the employer;
- Furloughing the Key Personnel; or
- The Key Personnel becoming employed by an affiliate of the employer of the Key Personnel.

(1) Proposed Replacements - If the Design-Builder is proposing to transfer, reassign, replace or delegate the authority or responsibilities of a Key Personnel identified in Design-Build Agreement, Article 3.4, the Design-Builder must submit a written request to the Agency at least 30 Calendar Days in advance of any such desired change.

(2) Required Information - The Design-Builder shall demonstrate in its written request that the proposed personnel are equal to or better than the Key Personnel identified in Design-Build, Agreement, Article 3.4. The Agency will use the Key Personnel criteria specified in DB180.35(a) and the RFP to evaluate all requests. The Agency is under no obligation to accept the offered reason or justification or to consent to such requests and may approve or disapprove a portion of the request or the entire request.

The Design-Builder shall submit with any request:

- The name and qualifications of the proposed personnel;
- The same selection qualifications and evaluation information as was specified in the Solicitation Documents;
- A resume for the proposed personnel demonstrating that the proposed personnel has qualifications that are equal to or better than the qualifications of the Key Personnel being replaced (The Agency may require that resumes for more than one qualified proposed personnel be submitted for consideration.); and
- The reason and justification for the proposed change.

The Agency shall have the right to interview, review the qualifications of, and approve or disapprove the proposed personnel.

(3) Agency Written Consent Required - If the Agency elects to consider the request for a change of Key Personnel, and if the Agency determines the offered reason or justification to be adequate, the Agency will determine whether or not the proposed personnel is appropriately qualified and whether or not to authorize the change of the Key Personnel, which decision shall be final. The Agency may require additional explanation from the Design-Builder as to the reason and justification for the change.

The Agency will notify the Design-Builder of its determination whether or not to authorize the change within 14 Calendar Days of receiving the complete written request. Failure of the Agency to respond within the response period shall indicate the Agency's election to not consider the request. Any authorization will be in writing, and the Design-Builder shall not make any change to Key Personnel except upon receipt of such prior written consent from the Agency. Once a change for any Key Personnel

is authorized in writing by the Agency, the authorized personnel shall be deemed to be a Key Personnel under the Contract and further replacement shall not occur without the prior written consent of the Agency.

(4) Agency Required Replacements - The Agency reserves the right to require the removal and replacement of any Key Personnel according to DB180.35(c). If removal and replacement of Key Personnel is required by the Agency, the above procedures and requirements for replacements in this DB180.35(c) shall apply.

(5) Key Personnel Transition - Time and costs associated with the transfer of knowledge and information for a change in Key Personnel is not a cost borne by the Agency and shall be at no additional cost to the Agency. This includes time spent reviewing Contract and Project documentation, participation in meetings with personnel associated with the Contract and Project, and participating in site visits to become familiar with the Project.

When a change has been authorized in writing by the Agency, the Design-Builder shall provide a transition period of at least 21 Calendar Days during which the replaced and replacement Key Personnel shall be working on the Project concurrently at no additional cost to the Agency.

(d) Replacement of Major Subcontractors - The Design-Builder shall not request reassignment or replacement, in whole or in part, of Major Subcontractors without adequate justification. The Design-Builder shall not reassign or replace any Major Subcontractor without prior written consent from the Agency. Notwithstanding the procedures set out herein, the Agency will have no obligation to consider or consent to any such request, but may do so.

(1) Proposed Replacements - If the Design-Builder is proposing to reassign or replace any Major Subcontractor identified in the Design-Build Agreement, Article 3.5, the Design-Builder must submit a written request to the Agency at least 60 Calendar Days in advance of any such desired change.

(2) Required Information - The Design-Builder shall demonstrate in its written request that the proposed subcontractor is equal to or better than the Major Subcontractor identified in the Design-Build Agreement, Article 3.5. The Agency will use the criteria specified in the Solicitation Documents and the Design-Builder's responses to evaluate all requests. The Agency is under no obligation to accept the offered reason or justification or to consent to such requests and may approve or disapprove a portion of the request or the entire request.

The Design-Builder shall submit with any request for replacement:

- The company name and qualifications of the proposed subcontractor (the Agency may require that more than one qualified company and their qualifications be submitted for consideration);
- The same selection qualifications and evaluation information as was specified in the Solicitation Documents;
- Resumes for employees of the proposed subcontractor demonstrating that the proposed subcontractor employs personnel with qualifications that are

equal to or better than the qualifications of the Key Personnel and other employees of the Major Subcontractor being replaced; and

- The reason and justification for the proposed change.

The Agency shall have the right to interview the employees of, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Major Subcontractor.

(3) Agency Written Consent Required - If the Agency elects to consider the request for a change of a Major Subcontractor, and if the Agency determines the offered reason or justification is adequate, the Agency will determine whether or not the proposed Major Subcontractor is appropriately qualified and whether or not to authorize the change of the Major Subcontractor, which decision shall be final. The Agency may require additional explanation from the Design-Builder as to the reason and justification for the change.

The Agency will notify the Design-Builder of its determination whether or not to authorize the change within 45 Calendar Days of receiving the complete written request. Failure of the Agency to respond within the response period shall indicate the Agency's election to not consider the request. Any authorization will be in writing, and the Design-Builder shall not make a change to any Major Subcontractor except upon receipt of such prior written consent from the Agency. Once a change for any Major Subcontractor is authorized in writing by the Agency, the Design-Builder shall submit a subcontract for review according to DB180.21. If the Agency consents to the subcontract submitted according to DB180.21 the Subcontractor will be deemed to be a Major Subcontractor under the Contract and further replacement shall not occur without the prior written consent of the Agency.

(4) Agency Required Replacements - The Agency reserves the right to require the removal and replacement of any Major Subcontractor according to DB180.21(a) and DB180.30. If removal and replacement of a Major Subcontractor is required by the Agency, the above procedures and requirements for replacements in this DB180.35(d) shall apply.

DB180.40 Limitation of Operations:

(a) General - The Design-Builder shall comply with all Contract terms, provisions and conditions and shall:

- Conduct the Work at all times so as to cause the least interference with traffic, and
- Not begin Work that may allow damage to Work already started.

(b) On-Site Work - The Design-Builder shall not begin on-site Construction Services for any Design Unit until the Design-Builder has:

- Filed with the Construction Contractors Board the Public Works Bond as required in Article 6.2;

- Confirmed that all Subcontractors have the required Public Works Bonds on file with the Construction Contractors Board;
- An approved Project Work Schedule;
- Received Acceptance of the Part II of the Quality Plan;
- Met with the Agency Engineer at the required preconstruction conference for each Design Unit;
- Confirmed the Safety Manager has been appointed and has commenced duties;

and also the following for the on-site Construction Services for each Design Unit:

- Received Acceptance of the Readiness-for-Construction Plans and Specifications and certified Working Drawings;
- Received Acceptance on the Traffic Control Plan;
- Received Acceptance on the Pollution Control Plan;
- Received Acceptance on the Erosion and Sediment Control Plan;
- Obtained all necessary permits and regulatory approvals;
- Met all requirements included under DB155.16; and
- Assembled all Materials, Equipment, and labor on the Project Site, or has reasonably assured that they will arrive on the Project Site, so the Work can proceed according to the Project Work Schedule.

DB180.41 Schedules - The Design-Builder shall submit schedules meeting the requirements of this Subsection to the Agency Engineer. The schedule shall identify the sequencing of Activities and time required for prosecution of the Work. Schedules are used to plan, coordinate, and control the progress of design and construction. Therefore, schedules shall provide for orderly, timely, and efficient prosecution of the Work, and shall contain sufficient detail to enable both the Design-Builder and the Agency to plan, coordinate, analyze, document, and control their respective Contract responsibilities. Schedules shall also include all required double shifts, overtime work, or combination of both necessary to complete Work within the Contract Time.

(a) Purpose of Schedule - The purpose of these scheduling requirements is to ensure adequate planning and execution of the Work and to evaluate the progress of the Work. Review and Comment by the Agency will not be construed to imply approval of any method or sequence of construction or to relieve the Design-Builder of the responsibility for providing sufficient Materials, Equipment, and labor to guarantee completion of the Project in accordance with all Contract requirements. Review and Comment by the Agency will not be construed to modify or amend the Contract, Interim Completion Dates, or the Contract Completion Date.

(b) Specified Contract Time Not Superseded by Schedule Revisions - The completion dates in any Project Work Schedule and any revised or updated Baseline Schedule shall be within the Contract Time specified for the Project, or within adjusted Contract Time approved according to DB180.80(c); alternatively, the Design-Builder shall provide written acknowledgement that liquidated damages will be incurred. Acceptance

of any revised or updated Baseline Schedule shall not constitute approval of any completion dates that exceed such Contract Time.

If the Design-Builder believes that additional Contract Time is due, the Design-Builder shall submit, with a revised Baseline Schedule, a request for adjustment of Contract Time according to DB180.80(c). A request for an adjustment of Contract Time will be evaluated using the most recent Project Work Schedule, prior to the event(s) occurring to which the Design-Builder is asserting to have resulted in a projected delay to the completion of the Project.

(c) Float Time - Float time shown on the Project Work Schedule, including any time between the Design-Builder's scheduled completion date and the specified Contract Time, does not exist for the exclusive use of either party to the Contract and belongs to the Project. The Design-Builder is expressly prohibited from adjusting Activity durations and/or Activity logic, including but not limited to adding, removing or changing Activity constraints and calendars, in order to consume available Free Float or to artificially extend the Project time to reflect "just on time" completion.

(d) Schedules Do Not Constitute Notice - Submittal of a schedule, with or without a supporting Project narrative, does not constitute or substitute for any notice the Design-Builder is required under the terms, provisions and conditions of the Contract to give the Agency.

(e) Scheduling Limitations - The following limitations apply to all schedules in DB180.41:

- Relationships between Construction Activities shall be Finish-to-Start (FS). Other relationship types including Start-to-Start (SS) and Finish-to-Finish (FF) will be allowed only with Agency concurrence. Start-to-Finish relationships shall not be used.
- Lags are not permitted to be used with FS relationships. Lags, if used in conjunction with SS or FF relationships, shall be limited and shall be a positive amount (no negative Lags). Lags shall be documented by the Design-Builder for review and concurrence by the Agency.
- Resource leveling calculations based on the applied resources included in the Project Work Schedules are not permitted. Crew or major equipment restraints, where and when required, shall be documented by the Design-Builder for review and concurrence by the Agency.
- The Construction Activities shall be separately identifiable by a unique number assigned to each WBS Element for the purpose of designating the element's hierarchical location within the WBS and shall identify, at a minimum, traffic stage, phase, Structure name or number, stationing limits, the direction of travel, etc. If a specific Construction Activity is being performed by a Subcontractor, then the WBS Number will include unique identifiers for each Subcontractor. Other WBS Numbers may be added by the Agency to further define the schedule Activities. The duration of each Activity shall be verifiable and consistent with the description in the Project narrative required in DB180.41(g)(5).

(f) Failure to Provide Schedule - The Project schedule is essential to the Agency. The Design-Builder's failure to provide the schedule, schedule information, progress reports, Project narratives, or schedule updates when required will be cause to suspend the Work, or to withhold Contract payments as necessary to protect the Agency, until the Design-Builder provides the required information to the Agency.

(g) Schedule Requirements - The Design-Builder shall designate a qualified Project Scheduler responsible for preparation and maintenance of all the Project schedules required in DB180.41(g).

The Project Scheduler shall have a Degree in Construction Management, Engineering or related field and at least 5 years of demonstrated experience in successfully preparing and maintaining Design-Build schedules on projects of similar size, type and complexity as the Project. The Project Scheduler must be proficient in preparing and maintaining CPM schedules utilizing the same scheduling software, described in this Section that is being used for this Project. The Design-Build Project Manager, with assistance of the Project Scheduler, shall be primarily responsible for the preparation and maintenance of Project schedules required in this Subsection DB180.41(g). The Project Scheduler shall submit Project schedules to the Design-Builder Project Manager prior to the required submittals and reviews in this subsection DB180.41(g).

The schedule network drawing(s) shall include a title block showing the Contract name and number, Design-Builder's name, date of original schedule, and all update dates; and a legend containing the symbols used, their definitions, and the time scale, shown graphically. To ensure readability the drawings shall be on a reasonable size of paper up to a maximum of 36 inches x 36 inches, using multiple sheets when needed.

Computer printouts for all schedules submitted under this Section shall consist of at least a node (Activity ID) sort an "early start/Total-Float" sort and a “Total-Float/early start/ early finish (Critical Path)” sort. Bar chart printouts shall consist of at least a WBS (Phase, Stage, Area, Structure, etc.) sort, and a “Total-Float/early start/early finish (Critical Path)” sort.

The Project schedules shall be compatible with the current version of Primavera P6 by Oracle, or another scheduling program approved by the Agency Engineer. The schedule date calculations shall be made using the “Retained Logic” option in Primavera P6 Professional. No overriding of logic due to out-of-sequence progress shall be permitted. The Design-Builder may request approval from the Agency to use another scheduling program, with similar capabilities as the Primavera P6 by Oracle. The Design-Builder’s scheduling software shall be appropriate to the size and complexity of the Project and be maintained through Project completion.

(1) Schedule Submittal and Review Requirements – For purposes of this Subsection, “Project schedules” include, but are not limited to, the Preliminary Baseline Schedule, the Baseline Schedule, and Monthly Progress Schedules. The Design-Builder Project Manager shall submit Project schedules, in both digital (native) and paper format to the Project Quality Manager. The Project Quality Manager shall independently review the Project schedules, and upon completion of the review shall certify to the Agency Engineer that the actual progress to date shown on the Project schedules accurately represents any completed quantities of Work, and that the Work as planned complies with all Contract requirements and restrictions.

The Project Quality Manager shall also disclose and discuss all Leads, Lags, assigned constraints, retained logic, and all other schedule aspects of interest.

The Project Quality Manager shall submit Project schedules to the Agency Engineer, along with the Project Quality Manager's certification and disclosure reports. The Project Quality Manager shall facilitate resolution of all questions and comments on updated Project schedules from the Agency.

The Project Scheduler and Project Quality Manager shall be in attendance at all scheduled meetings.

Review and Acceptance of any Project schedule and Project narratives by the Agency shall not relieve the Design-Builder of responsibility for timely and efficient execution of the Contract.

(2) Preliminary Baseline Schedule - At least 10 Calendar Days prior to the Design Mobilization Meeting, the Design-Builder shall provide to the Agency Engineer one digital (native) copy and four paper copies of a Preliminary Baseline Schedule, including a time-scaled logic diagram. The digital copy shall be a full backup version of the Preliminary Baseline Schedule. The Preliminary Baseline Schedule shall be prepared utilizing software described above in this Subsection. The Preliminary Baseline Schedule shall include, but is not limited to:

- Stages of design development and construction, ROW, procurement, in water work, or other calendar constraints, etc.;
- Preliminary ROW acquisition timeline of 14 months from accepted final legal descriptions;
- Critical Path Activities, as well as order and delivery dates of Materials and Equipment;
- PCs and subordinated Activities; durations, sequences, and interrelationships representing the Design-Builder's Work plans;
- WBS for designing, constructing, and completing the Project;
- The expected beginning and completion date of each Activity, including all stages and phases;
- The time needed for completion of the Utility relocation work;
- The elements of the Traffic Control Plan as required under DB141.31; and
- Subcontractor Activities showing the subcontract commencement date and estimated completion date for each subcontract, including DBE Subcontractors.

In addition to the bulleted list above, the Preliminary Baseline Schedule shall include all Project Work intended for the first 90 Calendar Days of the Contract to the level of detail described below, and shall show the priority and interdependence (sequencing and network logic) of all major segments of the remainder of the Work.

(3) Baseline Schedule – Not later than 90 Calendar Days after NTP, and at least 10 Calendar Days prior to the first preconstruction conference, the Design-Builder shall

provide to the Agency Engineer one digital copy and four copies of a Baseline Schedule, including a time-scaled logic diagram that clearly shows the Critical Path.

The Baseline Schedule must show the order in which the Design-Builder proposes to prosecute the Work, the date on which it will start the major items of Work (including, but not limited to, excavation, drainage, paving, Structures, mobilization, soil erosion and sediment control), the critical features of such Work (including procurement of Materials and Equipment), and the contemplated dates for completing the Work. The Baseline schedule must be in a suitable scale to indicate graphically the total percentage of Work scheduled to be completed at any time.

The Baseline Schedule shall comply with the following:

- Activity numbering (Activity ID) shall be unique to each Activity in the schedule and not change if Activities are removed from or added to the Project schedule.
- The time scale shall be in Calendar Days, the smallest unit shown shall be one day. The longest duration shown for an individual construction Activity shall be 15 Calendar Days;
- The longest duration shown for long lead or fabricated material procurement may exceed 15 Calendar Days, but shall be verifiable by the Agency by way of Supplier quotation or other means;
- Show the length of each Activity or scaled to accurately represent the number of normal Calendar Days scheduled. Unique coding or other identifiers shall be used to show multiple shifts, holiday, or weekend work;
- The planned, actual start and finish dates of all major items of Work and Activities for both design and construction representing the complete Project Scope of Work;
- A listing of the estimated quantity of Work for each Activity in common units of measure;
- Anticipated resource-loading for each Activity (manpower – by design/engineering disciplines, trade and equipment – by type with descriptions for unique equipment such as cranes, etc.);
- Seasonal weather limitations;
- Phase duration or Milestone events, as applicable;
- Any limitations of operation specified in DB180.40;
- The time needed for completion of the Utility relocation work;
- The time needed for ROW acquisition;
- The time needed for permit acquisition;
- Design checks and review as specified in DB155.11;
- Implementation of TCP for each stage and phase;
- Submittal and approval of Material samples, mix designs, and shop drawings;
- Agency timeframes to process and return Design-Builder submitted Plans, Working Drawings, Equipment lists and other submittals;

- Unique/Special Reviews of submittals by outside agencies;
- Procurement of critical Materials;
- Fabrication, installation, and testing of special Material and Equipment;
- Duration of Work, including completion times of all stages and their sub phases; and
- Specified cure times for all concrete elements - the use of relationship Lags for this purpose is prohibited.

Additionally, Design-Builder shall include the following Settlement Curb Ramps remediation tasks in the Baseline Schedule:

- Contractor initial site visit(s) for ramp existing conditions;
- Submittal of Working Drawings for each ramp, submitted to the Agency according to 00759.03(c);
- Submittal and Acceptance of RFC Plans and Specifications;
- Preplacement Conference(s);
- Initial ADA Inspection; and
- Date a passing ADA inspection form (form 734-5020A-H) will be provided to the Agency.

The Design-Builder shall set the schedule baseline in accordance with the scheduling software provider's operating instructions immediately following the Agency's Acceptance of the Baseline Schedule and following the Agency's Acceptance of any revisions to the Design-Builder's Baseline Schedule. Regular progress updates should not be considered revisions to the Baseline Schedule.

The Design-Builder shall include a tabulation of each Activity in the Baseline Schedule. The following information represents the minimum required for each Activity:

- Event (node) number(s) for each Activity (Activity ID) and maintain event (node) numbers throughout the Project;
- Activity description;
- Original duration;
- Estimated remaining duration;
- Earliest start date and actual start date (by calendar date);
- Earliest finish date and actual finish date (by calendar date);
- Latest start date (by calendar date);
- Latest finish date (by calendar date); and
- Slack or float time.

If abbreviations or truncated words are used within Activity Descriptions, a listing of these shall be provided for use by the Agency, as necessary.

The Baseline Schedule shall be accompanied by a written Project narrative that discusses the planning, coordination, scheduling and resourcing of the Work. The Project narrative shall describe, including but not limited to, the following:

- Design Services.
- Construction Services.
- Plans for staging the Project.
- A listing of the Activities that comprise the Critical Path.
- All near critical Activities defined as those with less than 30 Calendar Days of Free Float.
- All Subcontractor Activities that are critical, near critical, and those that are greater than two weeks in duration.
- Labor resourcing, by stage and phase, to include the number of crews, average crew size and planned night/weekend shifts including that of Subcontractors.
- Equipment allocation, by stage and phase to include mobilization, demobilization, and planned Activities including that of Subcontractors.
- Notifications required under the Contract during each stage and phase which may include but are not limited to road closures, lanes closures, night work, cold plane Pavement removal, and pile driving.
- Provide discussion on addressing reasonably predictable weather conditions and their impact on all weather-sensitive Activities. Also, provide discussion on other weather limitations that may affect the Project schedule.
- Submittal and approval of material samples, mix designs, and shop drawings.
- Procurement of critical Materials.
- Plans for dealing with "unique" construction items.
- Coordination of Utilities, right-of-way, and Railroad and any immediate concerns for impacts or delays.

(4) Project Work Schedule - Once Accepted by the Agency, the Baseline Schedule becomes the Project Work Schedule.

(5) Monthly Progress Schedule and Narrative Submittals - The Design-Builder shall submit a Monthly Progress Schedule and monthly project narrative to the Agency Engineer in accordance with DB180.45.

If the specified Work falls behind the Project Work Schedule, the Design-Builder shall take such actions as are necessary to improve its progress. If the Design-Builder is behind schedule, the Design-Builder shall indicate what measures it will take, including increasing its workforce, construction plant and Equipment, or number of work shifts in the next 30 Calendar Days to put the Work back on schedule so as to meet Interim Completion Dates and the Contract Completion Date.

If the Agency finds the Monthly Progress Schedule not acceptable, the Agency may require the Design-Builder to submit a new revised Baseline Schedule showing the

Design-Builder's recovery strategy for review and consideration for Acceptance by the Agency.

a. Monthly Progress Schedule - The Design-Builder shall submit the Monthly Progress Schedule for the prior month to the Agency according to DB180.45.

In addition to the scheduling requirements of DB180.41(g)(3), the Monthly Progress Schedule submittals shall conform with the following requirements:

- One electronic (native) file and one hardcopy with time scaled Gantt chart.
- Include a vertical grid line depicting the Data Date on the Gantt chart.
- Logic constraints shall not be applied to work that has not been started.
- The Design-Builder shall collect information on all Activities worked on or scheduled to be worked on during the previous report period, including shop drawings, Material procurement, and Contract Change Orders, with and without Contract Time, that have been executed.
- Information shall include actual start and completion dates on Activities started or completed, or if still in progress, the remaining time duration.
- Percentage of completion shall not be used to determine the remaining time duration. The remaining time duration shall be expressed as the number of forecast Calendar Days remaining as of the schedule Data Date regardless of percentage completion.
- Shall include only accepted proposed schedule changes.

The Project Quality Manager shall independently review the Monthly Progress Schedule and upon completion shall certify to the Agency Engineer that the actual progress to date shown on the Monthly Progress Schedule accurately represents completed quantities of Work, and that the planned Work complies with all Contract requirements and restrictions. The Project Quality Manager shall communicate and discuss with Agency Engineer all Leads, Lags, assigned constraints, retained logic, and all other schedule aspects of interest. The Project Quality Manager shall submit the independent review and certification with the Monthly Progress Schedule to the Agency Engineer in accordance with DB180.45.

The approved Monthly Progress Schedule becomes the current Project Work Schedule.

b. Monthly Project Narrative - The Design-Builder shall prepare a monthly Project narrative. The Design-Builder Project Manager shall submit the monthly Project narrative for the prior month to the Project Quality Manager.

The monthly Project narrative shall summarize the progress during the prior month including but not limited to the following information:

- A sufficient description, in narrative form, to describe the past progress, anticipated Activities, and stage Work;

- Activity and progress for the Contract, including design and construction, and identification of the start and completion dates of Work on any Price Centers and Design-Unit;
- A listing of the Activities that comprise the Critical Path. The Design-Builder's narrative report must include a comparison of the then-current Critical Path to the Critical Path for the prior schedule update period. If the Critical Path is different, an explanation shall be provided as to why changes to the Critical Path occurred and discuss whether this change was caused by, at a minimum, progress, out-of-sequence work, logic changes, etc.
- Limitations on commencement of upcoming Activities, including but not limited to Hold Points;
- Quality Management activities, including results of any Design Reviews or quality audits;
- Problems and issues that arose during the period if they are remaining problems and issues to be resolved or resolution that occurred; including any impact to float or remaining float.
- Upcoming critical schedule issues including delaying factors and proposed resolutions, proposal of actions planned to correct any negative float and explanation of potential delays and problems and their estimated impact on performance; if no negative float, how much remaining float is available;
- Float time for upcoming critical issues which may need the Agency's attention or action for the next month, including Design Reviews
- Proposed corrective actions;
- Proposals to keep the Project on schedule in the event of a delay;
- Any changes to the logic as compared to the accepted Project Work Schedule.
- Any Agency Accepted Fragnets between monthly submittals and their impact to the Project; and
- Discussion on addressing reasonably predictable weather conditions and their impact on all weather sensitive activities. Also, provide discussion on other weather limitations that may affect the Project Work schedule.

The Project Quality Manager shall independently review the monthly Project narrative, and upon completion shall certify to the Agency Engineer the accuracy of the information presented in the monthly Project narrative. The Project Quality Manager shall submit the independent review certification with the monthly Project narrative to the Agency Engineer in accordance with DB180.45.

(6) Proposed Changes to Schedule - The Design-Builder shall develop Fragnets to incorporate proposed changes, Changed Work, or Extra Work into the current Project Work Schedule as a proposed revision. The Design-Builder shall re-calculate the Project status subsequent to the inclusion of a Fragnet for review and consideration for Acceptance by the Agency.

For this subsection, proposed changes to the schedules include, but are not limited to, changes in original duration, changes in calendar, added activities, deleted activities, added relationship, deleted relationship, and changes to the lag. Proposed changes to

schedules, may be grouped together by the Design- Builder and shall be assigned a change number identifier.

All changes contemplated or requested by the Agency to the Project Work schedule shall be submitted to the Agency Engineer for approval prior to their incorporation into the subsequent monthly update of the current Project Work schedule. A Project Work Schedule without the contemplated changes shall also be submitted for comparison to the proposed revised Project Work schedule.

The following shall apply to schedule Fragnets:

- Fragnets shall include all necessary Activities and logic connectors to describe the Work and all restrictions on it.
- Restraints shall include those Activities from the Project Work Schedule that initiated the Fragnet as well as those restrained by it.
- For any Activity that has started, the Design-Builder shall add a symbol to show the actual date the Activity started and the number of Calendar Days remaining until completion.
- For Activities that are finished, a symbol shall be added to show the actual date. No Activity is permitted to be shown as actually started or actually completed on or after the schedule Data Date.

Proposed changes to the current Project Work Schedule in effect at the time of the proposed change shall be limited to:

- Reallocation of resources, confirmed by schedule resource loading;
- Prior error – either in logic or duration, confirmed by estimate; or
- Recovery of time lost by the Design-Builder (verified in subsequent updates).

The Design-Builder may include minor changes included into one Fragnet. The Agency has final approval over what are minor changes and what can be combined into one Fragnet.

(7) Schedule Review with the Agency - The Design-Builder shall perform ongoing reviews of the Project Work Schedule and progress of the Work with the Agency. If the Agency or the Design-Builder determines that the Project Work Schedule no longer represents the Design-Builder's own plans or expected time for the Work, a meeting shall be held between the Agency and the Design-Builder. At this meeting, the Design-Builder, including the Design-Build Project Manager, Project Quality Manager, and Project Scheduler, and the Agency shall review Project events and any changes for their effect on the Project Work Schedule.

The Design-Builder shall submit the revised Project Schedule and associated Project narrative to the Project Quality Manager. The Project Quality Manager shall independently review, certify and submit the revised Project Schedule and associated Project narrative to the Agency Engineer for Acceptance within a timeframe as determined by the Agency Engineer. Upon Acceptance of the revised Baseline Schedule by the Agency, this will become the current Project Work Schedule.

If the Project Work falls behind the latest Project Work Schedule see DB180.60 and DB180.80.

(8) Three Week Look-Ahead Schedule - The Design-Builder shall submit the Three Week Look-Ahead Schedule starting no later than 60 Calendar Days after NTP and continuing each week until Final Second Notification has been issued and all Punch-List Items and Final Trimming and Cleanup have been completed. Schedules must be uploaded to the DocExpress as well as emailed to the Agency in PDF format.

a. Three Week Look-Ahead Schedule Review Meetings - The Design-Build Project Manager shall meet with the Agency Engineer each week to review the Three-Week Look-Ahead Schedule.

If the Agency or the Design-Builder determines that the current Three-Week Look-Ahead Schedule requires changes or additions, either notations can be made on the current Three-Week Look-Ahead Schedule or the Agency may require the submittal of a revised Three-Week Look-Ahead Schedule.

Review of the current and subsequent Three-Week Look-Ahead Schedules does not relieve the Design-Builder of responsibility for timely and efficient execution of the Contract.

b. Three Week Look-Ahead Schedule Submittal Requirements - The Three-Week Look-Ahead Schedule shall be generated from the Project Work Schedule, and must include, at a minimum, all Activities projected to be performed in the Project Work Schedule during the three-week period.

The Design-Builder shall prepare a bar chart that:

- Shows at least three weeks of Activity including the week the bar chart is issued.
- Uses a largest-time scale unit of 1 Calendar Day. Smaller time scale units may be used if needed.
- Is in accordance with the Activities included in the Monthly Progress Schedule.
- Identifies each Calendar Day by month and day.
- Identifies each Holiday or day there is no planned Work included in the “look ahead” period.

The Three-Week Look-Ahead Schedule must:

- Identify the sequencing of Activities and time required for prosecution of the Work.
- Provide for orderly, timely, and efficient prosecution of the Work.
- Contain sufficient detail to enable both the Design-Builder and the Agency to plan, coordinate, analyze, document, and control their respective Contract responsibilities.
- Include the Contract name, Contract number, Design-Builder's name, and date of issue on each page of the bar chart.

- Identify the resources the Design-Builder, Subcontractors, or services will use, including the number of personnel, kind of Equipment, and nature of the Work to be performed.
- Identify the locations of each Activity that will be done including the limits of the work by mileposts, stations, or other indicators.
- Identify the time frames of each Activity by Calendar Days, shifts, and hours.
- Identify all anticipated Shoulder, lane, and road closures.
- Identify which of the Activities shown are on the Critical Path.
- Identify date of curb ramp site visit to include the Design-Builder and Agency, to review Working Drawings;
- Identify curb ramp resubmittal of Working Drawings, as required according to 00759.03;
- Identify the anticipated date of curb ramp closure;
- Identify the field markings for excavation limits for curb ramps;
- Identify when the curb ramp formwork begins;
- Identify when the curb ramp Concrete placement begins; and
- Identify the anticipated opening curb ramp date.

DB180.42 Meetings and Conferences - The Design-Builder shall arrange and conduct the Project meetings with the Agency and other parties as determined by the Agency at the Agency's sole discretion. Project meetings with the Agency include but are not limited to those listed in the following Table 180.42-1.

Table 180.42-1
Mandatory Meetings

Description	Frequency	Subsection
Quality Task Force Meetings	Weekly	DB154.30
Design Development Meeting	Once	DB155.05
Design Mobilization Meeting	Once	DB155.06
Design Review Meetings	Varies	DB155.12
Materials Quality Team Meetings	Weekly	DB156.50(e)
Preconstruction Conference	Once per Design Unit	DB180.42(a)
Progress Meetings	Monthly	DB180.42(b)
Three Week Look-Ahead Schedule Review Meetings	Weekly	DB180.41(g)(8)

Additional Project meeting requirements are included in Sections DB141 and DB174.

The Design-Builder shall be responsible for scheduling all meetings, developing all meeting agendas, attending, and providing all meeting facilities and materials for all meetings required by the Contract Documents or as otherwise requested by the Agency. Meeting schedules and agendas shall be sent to invitees a minimum of 24 hours prior to each meeting. The Design-Builder shall include all agenda items requested by the Agency.

For all meetings relating to the Project for which the Design-Builder and the Agency participate, the Design-Builder's personnel shall physically attend the meetings, unless

otherwise allowed or directed by the Agency. The Design-Builder shall record minutes of each meeting and distribute copies for Review and Comment to the Agency within 3 Calendar Days after the meeting. The Agency will return comments to the Design-Builder within 3 Calendar Days of receipt of meeting minutes, and the Design-Builder shall finalize the minutes and submit them to the Agency Engineer, or the Agency Engineer's designated recipient(s), within 3 Calendar Days of receiving the Agency's comments.

(a) Preconstruction Conference - A maximum of 15 Calendar Days prior to beginning construction for each Design Unit, unless otherwise authorized in writing by the Agency, the Design-Builder shall meet with the Agency for a preconstruction conference at a time mutually agreed upon.

For Utilities scheduling meeting requirements prior to preconstruction conferences see DB174.10.

At the preconstruction conference, or at a mutually agreed upon time at least 10 Calendar Days prior to beginning ground disturbing activities, the Design-Builder shall meet with the Agency Engineer to discuss sensitive cultural sites on the Project. In attendance at this conference shall be:

- The Design-Builder's supervisory personnel.
- Any Subcontractors (including contract archaeological monitors) and supervisory personnel who will be involved in ground disturbing activities.
- Agency archaeology representative or region environmental coordinator.
- When applicable, tribal representative(s) or monitor(s).

(b) Progress Meetings - The Design-Builder shall participate in all monthly progress meetings and other meetings held at the request of the Agency to review and discuss the status of the Project. The monthly Progress Meetings will include discussion of differences in the Project Work Schedule from the Monthly Progress Schedule and the previous Monthly Progress Schedule updates. The causes, responsible party, impacts, and potential solutions to all issues identified will be addressed in the meeting with the intent of finding the most effective solutions to problems. The Design-Build Project Manager, Project Scheduler, Construction Manager, and other Key Personnel and appropriate field personnel as required by the Agency shall participate in the foregoing meetings.

The Design-Builder shall make and record meeting minutes and prepare an action item list that specifies who is responsible for resolving existing or pending issues and the date by which the issue must be resolved to avoid Project delays. The Design-Builder shall provide the meeting minutes and action item lists to the Agency for Review and Comment within 3 Calendar Days after the meeting. The Agency will return comments to the Design-Builder within 3 Calendar Days of receipt of meeting minutes and action item lists, and the Design-Builder shall finalize the minutes and action item lists and submit them to the Agency Engineer, or the Agency Engineer's designated recipient(s), within 3 Calendar Days of receiving the Agency's comments.

DB180.43 Notice to Proceed - NTP will be issued within 5 Calendar Days after the Contract is executed by the Agency.

Should the Agency fail to issue the NTP within such 5 Calendar Day period, the Design-Builder may apply for an adjustment of Contract Time according to DB180.80(c). The Agency will issue a First Notification acknowledging the date Work commenced on the Project.

DB180.44 Commencement and Performance of Work - From the time of commencement of the Work to the time of Final Acceptance, the Design-Builder shall:

- Provide adequate management, Design Services, Quality Management, Construction Services, Materials, Equipment, labor, Incidentals and supervision to perform and complete the Work within the Contract Time or the adjusted Contract Time;
- Perform the Work as vigorously and as continuously as conditions permit, and according to a Project Work Schedule that ensures completion within the Contract Time or the adjusted Contract Time;
- Not voluntarily suspend or slow down operations without prior written authorization from the Agency Engineer, and if approved submit a revised Baseline Schedule according to DB180.41 that ensures completion within the Contract Time or the adjusted Contract Time; and
- Not resume suspended Work without the Agency Engineer's written authorization.

DB180.45 Monthly Progress Submittals - The Contract Documents require submittal of various reports at various times during the term of the Contract, including but not limited to those as and when required under Sections DB154, DB155 and DB156. In addition to the Monthly Progress Schedule and monthly Project narrative described in DB180.41(g)(5), the Design-Builder shall submit each of the following to the Agency Engineer with the Design-Builder's monthly Pay Request submitted under Section DB195.

(a) Monthly Progress Reports - The Design-Builder shall submit monthly progress reports for each of the following:

- Quality reports (see DB154.20(c)) including but not limited to the following:
- Quality Certifications
- Nonconformance corrective actions
- Change Order status report
- Updated Contract Submittals List
- Summary of planned or unplanned Hazardous Materials and contaminated substance activities
- Summary of disagreements, written protest notices and claims

(1) Quality Reports - The Project Quality Manager shall certify that all Work shown as complete for the Progress Estimate period, including that of the Design Professionals, Subcontractors at all tiers, Suppliers, and fabricators, has been checked and inspected by the Project Quality Manager's quality staff, and that all Work complies with all Contract requirements. A log of nonconforming work (design and construction) with corrective actions identified shall be included. The Project Quality Manager shall also certify to the Agency that the Quality Plan and all measures, protocols, and procedures provided therein, are functioning properly and are being followed, and that Quality Management is functioning independently from the Work production.

In addition, the Project Quality Manager shall independently review the monthly progress submittals required by this DB180.45, and upon completion shall also certify to the Agency that the information is accurate and complete.

(2) Change Order Status Report - The Design-Builder shall submit a report of outstanding Change Order requests containing all of the following:

- The Design-Builder's and the Agency's Change Order identification numbers or coding;
- The subject matter;
- A brief description of the proposed change;
- Any outstanding issues to be resolved;
- The estimated cost and time implications (if any); and
- The projected resolution date.

(3) Contract Submittals List - Within 30 Calendar Days after NTP, the Design-Builder shall prepare and submit a Contract Submittals List covering all submittals required during the first 6 months of the Contract. Thereafter, the Design-Builder shall submit monthly updates. The monthly updated list must show the record of submittals made to date and the submittals due over the next three-month period as required by the Contract Documents.

(4) Summary of Hazardous Materials Activity - The Design-Builder shall submit a monthly summary of planned or unplanned activities related to Hazardous Materials and contaminated substances performed to date and to be performed.

(5) Summary of Disagreements, Written Protest Notices and Claims - The Project Quality Manager shall prepare and submit a monthly summary of all disagreements (DB199.10), all written protest notices filed with the Agency Engineer in accordance with DB199.20, and all claims filed by the Design-Builder in accordance with DB199.30. The summary must include all disagreements, protest notices, and claims filed between NTP and the end of the reporting month, and must include a description of the current status or resolution for each disagreement, protest, and claim.

DB180.50 Contract Time to Complete Work:

(a) Completion Dates - Interim Completion Dates and the Contract Completion Date are specified in DB180.50(h).

(b) Contract Time - The Contract Time will be expressed in:

Fixed Date Calculation - The calendar date on which the Work shall be completed.

(c) Reserved

(d) Recording Contract Time - All Contract Time will be recorded and charged to the nearest one-half day.

For Contracts with fixed completion dates, the Agency will furnish the Design-Builder a weekly statement of Contract Time charges after expiration of any Interim Completion Dates and after expiration of the final Contract Completion Date. The statement will show the number of Calendar Days of liquidated damages that have been assessed, if any.

These statements will include any exclusions from, or adjustments to, Contract Time.

(e) Exclusions From Contract Time - Certain Calendar Days will not be charged against Contract Time. These exclusions will be allowed when the Design-Builder is prevented from performing Work due to one of the following reasons, resulting in delay:

- Acts of God or Nature;
- Court orders enjoining prosecution of the Work;
- Strikes, labor disputes, or freight embargoes that, despite the Design-Builder's reasonable efforts to avoid them, cause a shutdown of the entire Project or one or more major operations. "Strike" and "labor dispute" may include union action against the Design-Builder, a Subcontractor, a materials Supplier, or the Agency; or
- Suspension of the Work by written order of the Agency for reasons other than the Design-Builder's failure or neglect.

(f) Time Calculation Protest - In the event the Design-Builder disputes the accuracy of the statement of Contract Time charges, it shall immediately contact the Agency and attempt to resolve the dispute. If the dispute cannot be resolved informally, the Design-Builder shall submit a formal written protest to the Agency within 7 Calendar Days of the date the Agency mailed or delivered the statement. Failure to submit a formal written protest within the 7 Calendar Day period constitutes the Design-Builder's approval of the time charges, or adjusted time charges, itemized in the statement.

(g) End of Contract Time:

(1) Interim Second Notification (Interim Completion)- When the Design-Builder believes that all On-Site Work associated with an Interim Completion Date, except for Punch-List Items and any required seeding establishment or plant establishment, has been completed, the Design-Builder may request in writing that the Agency conduct an inspection to determine whether the Work is complete. Upon determining that all On-Site Work, associated with an Interim Completion Date, except for Punch-List Items, and any required seeding establishment or plant establishment, has been completed, the Agency will issue Interim Second Notification. Interim Second Notification identifies the date that the time charges stop for that Interim Completion Date.

(2) Final Second Notification (Contract Completion) - When the Design-Builder believes that all On-Site Work required by the Contract, including Change Order Work and Extra Work, except for Punch-List Items, and any required seeding establishment or plant establishment, has been completed, the Design-Builder may request in writing that the Agency conduct an inspection to determine whether the Work is complete. Upon determining that all On-Site Work, except for Punch-List Items, and any required

seeding establishment or plant establishment, has been completed, the Agency will issue Final Second Notification.

The Final Second Notification will list the following:

- The date the time charges stopped
- Final trimming and cleanup (see DB140.90)
- Equipment to be removed from the Project Site
- Minor corrective Work not involving additional payment to be completed
- Documentation demonstrating that each Settlement Curb Ramp is compliant (either a passing ADA Curb Ramp Inspection form or Agency acceptance of crosswalk closure treatment, as applicable)
- Completion and submittal of all Design Documents, required certifications, bills, forms, warranties, certificates of insurance coverage, and other documents required to be provided to the Agency before Third Notification will be issued

Within 90 Calendar Days from issuance of Final Second Notification by the Agency, the Design-Builder shall complete all tasks listed in the Final Second Notification, except for any required seeding establishment or plant establishment. Unless otherwise agreed to by the Agency, failure of the Design-Builder to complete all tasks listed in the Final Second Notification, except for any required seeding establishment or plant establishment, within 90 Calendar Days from issuance of the Final Second Notification will result in the Agency rescinding the Final Second Notification and the counting of time charges will resume as of the expiration of said 90 Calendar Days.

(h) Contract Time - There are two Interim Completion Dates and one Contract Completion Date for this Project as follows:

(1) Interim Completion Date #1. The Design-Builder shall complete the first 300 Settlement Curb Ramps, not later than January 15, 2026.

(2) Interim Completion Date #2. The Design-Builder shall complete an additional 800 Settlement Curb Ramps (for a total of 1,100 Settlement Curb Ramps), not later than December 15, 2026. (Interim Completion Date)

(3) Contract Completion Date. The Design-Builder shall complete all Settlement Curb Ramps and any other Work to be done under the Contract, except for (seeding establishment) (and) (plant establishment), not later than December 30, 2027.

DB180.60 Notice of Delay - The Design-Builder shall notify the Agency of any delay that will likely prevent completion of all of the Work required by the applicable Interim Completion Date(s) or completion of all Work by the Contract Completion Date specified in DB180.50(h). The notice must be in writing and shall be submitted within 7 Calendar Days of when the Design-Builder knew or should have known of the delay. The notice must include, to the extent available, the following:

- The reasons or causes for the delay;

- The estimated duration of the delay and the estimated resulting cumulative delay in completion of all applicable Work;
- Whether or not the Design-Builder expects to request an adjustment of Contract Time due to the delay;
- Whether or not the Design-Builder expects to accelerate due to the delay; and
- Whether or not the Design-Builder expects to request additional compensation due to the delay.

Except for delays under DB180.50(e) and DB180.65, failure to include the foregoing information will constitute waiver of the Design-Builder's right to later make a request for additional Contract Time or additional compensation due to the delay.

DB180.65 Right-of-Way and Access Delays - Right-of-Way and access delays will be taken into consideration in adjusting Contract Time and in authorizing additional compensation if the performance of the Work is delayed because of the Agency's failure to make available to the Design-Builder:

- Planned Rights-of-Way;
- Agency-owned or Agency-controlled Materials sources that are offered in the Contract for the Design-Builder's use; or
- Access to, or rights of occupancy of, buildings and other properties the Design-Builder is required to enter or to disturb pursuant to Contract requirements.

If the ending date of an anticipated Right-of-Way or access delay is stated anywhere in the Contract Documents, only the delay occurring after that date will be considered for adjusting Contract Time or providing additional compensation.

DB180.70 Suspension of Work:

(a) General - The Agency may suspend the Work, or any part of the Work, for any of the following causes:

- Failure of the Design-Builder to correct unsafe conditions;
- Failure of the Design-Builder to carry out any provision of the Contract;
- Failure of the Design-Builder to carry out orders issued by the Agency or any regulatory Authority;
- Existence of conditions unsuitable to proper or safe performance of the Work;
- Lapse or failure to file the necessary Bonds or lapse or failure to provide or maintain the required insurance coverages; or
- Any reason considered by the Agency to be in the public interest.

When Work has been suspended for any reason, the Design-Builder shall not resume the suspended Work without the Agency's written authorization.

(b) Design-Builder's Responsibilities During and After Suspension - During periods of suspension of Work, the Design-Builder shall continue to be responsible for protecting and repairing the Work according to, but not limited to Section DB170, and for ensuring

that the Design-Builder's designated representatives responsible for the Project remain available according to, but not limited to DB150.40 and DB180.35(a)(2).

When Work is resumed after suspension, unless otherwise specified in the Contract, the Design-Builder shall perform the following at no additional compensation:

- Replace or repair Work, and Materials and Equipment to be incorporated into the Work, that were lost or damaged because of the temporary use of the Project Site by the public; and
- Remove Materials, Equipment, and temporary construction necessitated by temporary maintenance during the suspension, as directed by the Agency.

(c) Compensation and Allowances for Suspension - Compensation and allowance of additional Contract Time due to suspension of any portion of the Work will be authorized only for Agency-initiated suspensions for reasons other than the Design-Builder's failure or neglect. (See DB180.50(e), DB180.65, and DB195.40.)

DB180.80 Adjustment of Contract Time:

(a) General - Contract Time established for the Work will be subject to adjustment, either by increase or decrease, for causes beyond the control of the Design-Builder, according to the terms of this Subsection. After adjustment, the Contract Time will become, and be designated as, the "Adjusted Contract Time". Except as provided in DB180.65 above and DB195.40, an adjustment of Contract Time will be the Design-Builder's only remedy for any delay arising from causes beyond the control of the Design-Builder.

If the Project Work falls behind the latest Project Work Schedule and the Monthly Progress Schedule shows that completion dates will not be met, the Design-Builder shall provide a revised Baseline Schedule and written proposal that explains how the Design-Builder will get back on schedule. The Design-Builder may also include a request for adjustment of Contract Time or a written acknowledgement that liquidated damages will be incurred.

(b) Design-Builder's Request Not Required - The Agency may increase or decrease the Contract Time or the Adjusted Contract Time if Change Orders or Extra Work orders issued actually increase or decrease the amount of time required to perform the Work. The Agency may also increase Contract Time in the event of Right-of-Way and access delays (see DB180.65) and those delays due to causes beyond the Design-Builder's control specified in DB180.50(e). The Agency will promptly inform the Design-Builder of adjustments made to Contract Time according to this Subsection and will include the reasons for adjustment.

If the Agency anticipates delay during performance of the Contract, and specifies its expected duration in the Contract Documents, the Agency will only consider additional delay beyond the stipulated duration in determining whether to adjust Contract Time.

(c) Design-Builder's Request Required - In the event the Design-Builder believes that additional Contract Time is due, the Design-Builder shall submit to the Agency a timely request for adjustment of Contract Time. The Agency will not consider untimely requests. The Agency regards as timely only those requests for adjustment of Contract Time that:

- Accompany a proposed revision to the Project Work Schedule with Fragnets as described in DB180.41(g)(6), for comparison with the last revision of the Project Work Schedule; or
- Are made in accordance with DB180.80(a); or
- Are not otherwise deemed waived and is submitted within 45 Calendar Days after the date of Final Second Notification, if Final Second Notification has been issued.

The Agency will not grant an adjustment of Contract Time for events that occurred prior to the date of the last revision of the Accepted Baseline Schedule. The Agency will not authorize, nor will the Agency pay, acceleration costs incurred by the Design-Builder prior to its submittal of a request for adjustment of Contract Time to which the acceleration costs relate.

The Design-Builder's request for adjustment of Contract Time shall be submitted to the Agency on a form provided by, or in a format acceptable to, the Agency, and must include a copy of the written notice required under DB180.60. The request must include without limitation:

- Consent of the Design-Builder's Surety if the request totals more than 30 Calendar Days of additional Contract Time;
- Sufficient detail for the Agency to evaluate the asserted justification for the amount of additional Contract Time requested;
- The cause of each delay for which additional Contract Time is requested, together with supporting analysis and data;
- Reference to the Contract provision allowing Contract Time adjustment for each cause of delay;
- The actual or expected duration of delay resulting from each cause of delay, expressed in Calendar Days; and
- A schedule analysis based on the current Accepted Baseline Schedule for each cause of delay, indicating which Activities are involved and their impact on Contract completion.

(d) Basis for Adjustment of Contract Time:

(1) In the adjustment of Contract Time, the Agency will consider causes that include, but are not limited to:

- Failure of the Agency to submit the Contract to the Design-Builder for execution within the time stated in the RFP, or to submit the Notice to Proceed within the time stated in the RFP.
- Errors in information provided by the Agency upon which the Design-Builder was entitled to rely under the terms, provisions and conditions of the Contract;
- Performance of Extra Work;
- Failure of the Agency or Entities acting for the Agency to act promptly in carrying out Contract duties and obligations;

- Acts or omissions of the Agency or Entities acting for the Agency that result in unreasonable delay referenced in DB195.40;
- Causes cited in DB180.50(e); and
- Right-of-Way and access delays referenced in DB180.65.

(2) The Agency will not consider requests for adjustment of Contract Time based on any of the following:

- Contentions that insufficient Contract Time was originally specified in the Contract;
- Delays that do not affect any specified or adjusted Interim Completion Dates or Contract Completion Date;
- Delays that affect the Design-Builder's planned early completion, but that do not affect the specified or adjusted Contract Time;
- Shortage or inadequacy of Materials, Equipment, or labor;
- Late delivery of Materials and Equipment to be incorporated into the Work, except under those conditions referenced in DB180.50(e);
- Different area of Material source in DB160.40(a);
- Substitution of Equipment in DB180.31(c);
- Reasonably predictable weather conditions; or
- Other matters within the Design-Builder's control or Contract responsibility.

(e) Consideration and Response by Agency - The Agency will only consider a Design-Builder's request for adjustment of Contract Time submitted according to the requirements of DB180.80(c). The Agency may elect not to consider claimed delays that do not affect any specified or adjusted Interim Completion Dates or Contract Completion Date.

The Agency may adjust Contract Time for causes not specifically identified by the Design-Builder in its request.

The Agency will review a properly submitted request for Contract Time adjustment and within a reasonable time will advise the Design-Builder of the Agency's findings. If the Design-Builder disagrees with the Agency's findings, the Design-Builder may request review according to the procedure specified in DB199.40.

DB180.85 Failure to Complete on Time; Liquidated Damages:

(a) Time is of the Essence - Time is of the essence in the Design-Builder's performance of the Contract. It is essential and in the public interest that the Design-Builder prosecute the Work vigorously to Contract completion and within Contract Time or adjusted Contract Time.

The Agency does not waive any rights under the Contract by permitting the Design-Builder to continue to perform the Contract, or any part of it, after the Contract Time or adjusted Contract Time has expired.

(b) Liquidated Damages - Delays in the Design-Builder's performance of the Work will cause the Agency to sustain damages; increase risk to, inconvenience, and interfere with the traveling public and commerce; and increase costs to taxpayers. Because the Agency finds it is unduly burdensome and difficult to demonstrate the exact dollar value of such damages, the Design-Builder agrees to pay to the Agency, not as a penalty but as liquidated damages, the amount(s) determined as specified below for each Calendar Day the Work remains incomplete after the expiration of the Contract Time or adjusted Contract Time applicable to that Work.

Payment by the Design-Builder of liquidated damages does not release the Design-Builder from its obligation to fully and timely perform the Contract according to its terms, provisions and conditions. Nor does acceptance of liquidated damages by the Agency constitute a waiver of the Agency's right to collect any additional damages it may sustain by reason of the Design-Builder's failure to fully perform the Contract according to its terms, provisions and conditions.

If the Contract is terminated according to DB180.90(a), and if the Work has not been completed by other means on or before the expiration of Contract Time or adjusted Contract Time, liquidated damages will be assessed against the Design-Builder for the duration of time reasonably required to complete the Work.

There are three daily amounts of liquidated damages on this Project as follows:

- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(1) will be $ 2,300 per Calendar Day *.
- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(2) will be $ 8,600 per Calendar Day *.
- Liquidated damages for failure to complete the Work on time required by DB180.50(h)(3) will be $ 15,000 per Calendar Day *.

* Calendar Day amounts are applicable when the Contract time is expressed on the Calendar Day or fixed date basis.

(c) Lane Closures - Lane closures beyond the limits specified will inconvenience the traveling public and will be a cost to the Agency.

It is impractical to determine the actual damages the Agency will sustain in the event Traffic Lanes are closed beyond the limits listed in DB141.31(c)(9). Therefore, the Design-Builder shall pay to the Agency, not as a penalty, but as liquidated damages, $500 per 15 minutes, or for a portion of 15 minutes, per lane, for any lane closure beyond the limits listed in DB141.31(c)(9)d or the Accepted Design-Builder Specifications.

The Agency Engineer will determine when it is safe to reopen lanes to traffic. Assessment of liquidated damages will stop when all lanes have been safely reopened. Any liquidated damages assessed under these provisions will be in addition to those listed in DB180.85(b).

(d) Traffic Delays Beyond 20 Minutes - Stopping or holding vehicles beyond the limits specified will inconvenience the traveling public and will be a cost to the Agency.

It is impractical to determine the actual damages the Agency will sustain in the event traffic is stopped or held longer than the 20-minute limit listed in DB Standard Technical Specifications 00220.02. Therefore, the Design-Builder shall pay the Agency, not as a penalty, but as liquidated damages, $500 per 20 minutes, or for a portion of 20 minutes, for stopping or holding traffic longer than 20 minutes.

Assessment of liquidated damages will stop when the Agency Engineer determines that traffic is no longer stopped or held beyond the 20-minute limit. Any liquidated damages assessed under these provisions will be in addition to those listed in DB180.85(b).

DB180.90 Termination of Contract and Substituted Performance:

(a) Termination for Default - Termination of the Contract for default may result if the Design-Builder:

- Fails to comply with requirements for records;
- Violates any material provision of the Contract;
- Disregards applicable Laws and regulations or the Agency's instructions;
- Refuses or fails to supply enough Materials, Equipment, or skilled workers for prosecution of the Work in compliance with the Contract;
- Fails to make prompt payment to Subcontractors;
- Makes an unauthorized general assignment for the benefit of the Design-Builder's creditors;
- Has a receiver appointed because of the Design-Builder's insolvency;
- Is adjudged bankrupt and the court consents to the Contract termination;
- Otherwise fails or refuses to faithfully perform the Contract according to its terms, provisions and conditions; or
- Has liquidated and delinquent debt owed to the State or any department or agency of the State.

If the Contract is terminated by the Agency, upon demand the Design-Builder and the Design-Builder's Surety shall provide the Agency with immediate and peaceful possession of:

- The Project Site;
- All Design Documents and Work Products, both the final versions and also all Work Products that are under development. The Design-Builder shall provide full access to the foregoing, in all forms (electronic and paper), to the Agency; and
- All Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Design-Builder received progress payments under Section DB195.

If the Contract is terminated for default, neither the Design-Builder nor its Surety shall be:

- Relieved of liability for damages or losses suffered by the Agency because of the Design-Builder's breach of Contract; or
- Entitled to receive any further progress payments until the Work is completed. However, progress payments for completed Work that remain due and owing at the time of Contract termination may be made in accordance with the terms of Section DB195, except that the Agency will be entitled to withhold sufficient funds to cover costs incurred by the Agency as a result of the termination. Final payment to the Design-Builder will be made according to the provisions of Section DB195.

The Agency shall be entitled to electronic and paper copies of, and shall have the right to use, all Design Documents and Work Products of the Design-Builder, Subcontractors, consultants, and Suppliers performed to the date of termination (see Article 7) and the Design-Builder shall deliver copies of the same to the Agency upon request. The Design-Builder shall provide all Work Products that are stamped by the Professional of Record with the stamps and signatures intact.

If a termination under this provision is determined by a court of competent jurisdiction to be unjustified, the termination will be deemed a termination for public convenience.

(b) Substituted Performance - According to the Agency's procedures, and upon the Agency Engineer's recommendation that sufficient cause exists, the Agency, without prejudice to any of its other rights or remedies and after giving the Design-Builder and the Design-Builder's Surety at least 10 Calendar Days' written notice, may:

- Terminate the Contract;
- Substitute the Design-Builder with another Entity to complete the Contract;
- Take possession of the Project Site;
- Take possession of Materials on the Project Site;
- Take possession of all Design Documents and Work Products. The Design-Builder shall provide full access to the foregoing, in all forms (electronic and paper), to the Agency;
- Take possession of Materials not on the Project Site, for which the Design-Builder received progress payments under Section DB195;
- Take possession of Equipment on the Project Site that is to be incorporated into the Work;
- Take possession of Equipment not on the Project Site that is to be incorporated into the Work and for which the Design-Builder received progress payments under Section DB195; and
- Finish the Work by whatever method the Agency deems expedient.

The Agency shall be entitled to electronic and paper copies of, and shall have the right to use, all Design Documents and Work Products of the Design-Builder, Subcontractors, consultants, and Suppliers performed to the date of termination (see Article 7) and the Design-Builder shall deliver copies of the same to the Agency upon request. The Design-Builder shall provide all Work Products that are stamped by the Professional of Record with the stamps and signatures intact.

If, within the 10 Calendar Days' notice period provided above, the Design-Builder and/or its Surety corrects the basis for declaration of default to the satisfaction of the Agency, or if the Design-Builder's Surety submits a proposal for correction that is acceptable to the Agency, the Contract will not be terminated.

(c) Termination for Public Convenience - The Agency may terminate the Contract for convenience in whole or in part whenever the Agency determines that termination of the Contract is in the best interest of the public.

The Agency will provide the Design-Builder and the Design-Builder's Surety 7 Calendar Days' written notice of termination for public convenience. After such notice, the Design-Builder and the Design-Builder's Surety shall provide the Agency with immediate and peaceful possession of:

The Project Site;

- All Design Documents and Work Products, both the final versions and also all Work Products that are under development. The Design-Builder shall provide full access to the foregoing, in all forms (electronic and paper), to the Agency; and
- All Materials and Equipment to be incorporated into the Work, whether located on and off the Project Site, for which the Design-Builder received progress payments under Section DB195.

The Agency shall be entitled to electronic and paper copies of, and shall have the right to use, all Design Documents and Work Products of the Design-Builder, Subcontractors, consultants, and Suppliers performed to the date of termination (see Article 7) and the Design-Builder shall deliver copies of the same to the Agency upon request. The Design-Builder shall provide all Work Products that are stamped by the Professional of Record with the stamps and signatures intact.

Compensation for Work terminated by the Agency under this provision will be determined according to DB195.70(b).

(d) NEPA-Related Termination - See Design-Build Agreement Article 10.4 regarding NEPA-related termination of the Contract by the Agency.

(e) Agency's Termination of Contract/Non-availability of Funds - See Design-Build Agreement Article 10.3 regarding termination of the Contract by the Agency due to non-availability of funds.

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SECTION DB190 – PRICING AND MEASUREMENT OF PAY QUANTITIES

DB190.00 Pricing and Measurement Terms - This Section describes the pricing and measurement terms and specifies the means of determining the value of Work performed (Work progress).

The Parties will use a Schedule of Values for each Price Item shown in the Schedule of Prices to determine the value of Work performed. The Schedule of Values shall be approved by the Agency Engineer and shall be based on DB190.10.

The Schedule of Values for Design Services Price Items must be approved by the Agency Engineer prior to the first Pay Request for those Design Services Price Items. The Schedule of Values for Construction Services Price Items must be approved by the Agency Engineer prior to the first Pay Request including payment for those Construction Services Price Items. The approved Schedules of Values shall be used throughout the term of the Contract as the basis for measurement and payment.

Price Center Values and Price Item Values are set forth in Form SP (Exhibit A-2).

(a) Breakdown of Price Centers, Price Items; Price Item Values:

(1) Identification of Price Centers and Geographic Areas - The Schedule of Prices (Form SP – Exhibit A-2) identifies each Price Center and Price Item by title and identification number. The Price Center Geographic Areas are:

- Price Center A: ODOT Region 2 ADA North Area (Astoria, Newberg, Dundee, Clatsop County, and Yamhill County)
- Price Center B: ODOT Region 2 ADA Center Area (Independence, Monmouth, Corvallis, Philomath, Salem, Marion County, Polk County and Benton County), and
- Price Center C: ODOT Region 2 ADA South Area (Springfield, Coburg, Cottage Grove, and Linn County, and Lane County).

(2) Identification of Price Items - Price Centers are broken down into Price Items as identified on Form SP. Each Price Center contains Price Items for Design Services, quality management, construction mobilization, and Construction Services.

Some Price Centers may include multiple Construction Services Price Items in the Schedule of Prices to address Project-specific needs, as determined by the Agency.

(3) Price Item Schedule of Values - The approved Schedule of Values for each Price Item shall be used as a means to quantify the value of Work performed, per DB190.10.

DB190.10 Measurement and Determining Progress:

(a) Fixed-Price Work - “Fixed-Price” means the Work described shall be completed and accepted without measurement by the Agency unless changes are ordered in writing by the Agency Engineer.

If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Design-Builder's computations that overrun or underrun the Design-Builder's estimated quantities.

If the Agency issues Change Orders for changes in the Work, payment for those changes in the Work will be made according to DB195.20.

For each Price Center, the Parties will conduct a design development meeting for the purpose of establishing the level of detail required for the Schedules of Values for Price Items for Design Services, and quality management. See DB155.05.

The Schedule of Values for mobilization is established in DB190.10(a)(3).

The Schedule of Values for Price Items associated with Construction Services will be established in accordance with DB190.10(a)(4).

For all Work to be paid on a Fixed-Price basis under each Price Center, progress shall be determined as follows:

(1) Design Services Price Items - Progress for Design Services Price Items shall be determined by a Schedule of Values that is based upon the Design-Builder’s initiation of Design Services and the four subsequent major milestones associated with design: Definitive Design, Interim Design, Readiness-for-Construction (RFC), and As-Constructed Plans and Specifications. The Schedule of Values for Design Services Price Items consists of the following in Table DB190.10-1:

Table DB190.10-1 Design Services Price Item Schedule of Values*	
Design Milestone/Event	**Earns**
Design-Mobilization	10% of the Design Services Price Item Value for a particular PC
Submit Definitive Design	25% of the Design Services Price Item Value for a particular PC
Submit Interim Design	25% of the Design Services Price Item Value for a particular PC
Submit Readiness-for-Construction	30% of the Design Services Price Item Value for a particular PC**
Submit As-Constructed	10% of the Design Services Price Item Value for a particular PC
Total	100% of the Design Services Price Item Value for a particular PC

* If the Schedule of Prices includes a breakdown of the Design Services Price Item by Design Unit, the Schedule of Values included in Table DB190.10-1 shall apply to each Design Unit individually.

Modifications to the Design Services Price Item Schedule of Values proposed by the Design-Builder are subject to approval of the Agency Engineer.

(2) Quality Management Price Items – The Schedule of Values for quality management Price Items shall be as follows:

Quality Management Price Items:

- 20% of all Quality Management Price Items in the Schedule of Prices at Acceptance of the partial Quality Plan or if the partial Quality Plan is Accepted, then 5% of all quality management Price Items in the Schedule of Prices will be paid at Acceptance of the partial Quality Plan.
- 40% of the Quality Management Price Item will be pro-rated each month based on the percent completion of Price Items associated with Design Services for each PC.
- 40% of the Quality Management Price Item will be pro-rated each month based on the percent completion of Price Items associated with Construction Services for each PC.

(3) Construction Mobilization Price Items – The Schedule of Values for Mobilization Price Items shall be as follows:

- The amounts paid for construction mobilization in the Contract progress payments will be based on the percent complete of the original Price Item for Construction Services, excluding all Design Services and advances on Materials, as follows:
- When 5% is earned, 50% of the mobilization Price Item Value, or 5% of the original PC, whichever is less.
- When 10% is earned, 100% of the mobilization Price Item Value, or 10% of the original PC, whichever is less.
- When all Work is completed on a PC, the amount of the mobilization Price Item Value exceeding 10% of the original sum of that PC will be paid.

(4) Price Items Associated with Construction Services - Progress on Price Items associated with Construction Services shall be determined on a cumulative percent of Work complete basis.

The Design-Builder shall prepare and submit a proposed Schedule of Values to the Agency Engineer for Price Items associated with Construction Services for a Design Unit with the RFC submittal in accordance with DB155.15(c).

If the design for a Price Item associated with Construction Services is covered by more than one Design Unit, the Design Builder's proposed Schedule of Values may include a single comprehensive value for the Construction Services associated with any Design Units that have not yet reached the Readiness-for-Construction stage.

The Design-Builder shall submit proposed Schedules of Values to Agency Engineer with each successive Design Unit RFC submittal for the Price Item in accordance with DB155.14. The Design-Builder's proposed Schedules of Values with each successive Design Unit RFC submittal must breakdown the previously submitted single comprehensive value for the associated Construction Services. The total value of Construction Services included in the Design-Builder's proposed Schedule of Values for Design Units that have progressed to RFC submittal must not exceed the value of the Construction Services as determined by the Agency Engineer.

Unless otherwise approved by the Agency Engineer, Schedules of Values for Construction Services Price Items shall be based on an estimate of completed quantities against the original estimated quantities provided with the RFC submittal. Where appropriate, the Design-Builder may request that alternate bases be utilized for determining progress, such as a work element breakdown or a time basis.

In the event the Parties cannot agree on the Schedule of Values for Construction Services Price Items, the Agency Engineer will establish the Schedule of Values. The Agency Engineer's decision will be final.

(a) Quantities for Determination of Escalation/De-escalation - For each Pay Request, for determination of escalation/de-escalation, the Design-Builder shall include measurements of quantities for liquid asphalt, major fuel usage items and Steel Material items listed in DB195.10 through DB195.12 using the applicable measurement bases as described in Subsection (b) below.

(bd) Unit Priced Work - For Unit Priced Work, all progress payments, including the final, will be made for actual quantities of Work performed and Material placed in accordance with Contract requirements (except as provided under DB195.60), as determined per DB195.55.

Measurement of quantities for Unit Priced Work will be made on the following bases, unless otherwise specified in the Contract:

(1) Unit Basis - Unit will be each, unless otherwise specified in the Contract and will be determined by actual count of units in place.

(2) Length Basis - Length will be feet or mile, unless otherwise specified in the Contract and will be determined by measuring the length at least to the nearest 0.1 foot or at least to the nearest 0.1 mile, as applicable, unless otherwise specified in the Contract. Measurements will be limited to the dimensions shown or specified, or as directed by the Agency Engineer.

(3) Area Basis - Area will be square foot, square yard, or acre, unless otherwise specified in the Contract and will be determined by measuring the width and the length (or height) at least to the nearest 0.1 foot and computed at least to the nearest 0.1 square foot, nearest 0.1 square yard, or nearest 0.1 acre, as applicable, unless otherwise specified in the Contract.

(4) Weight Basis - Weight will be pound or Ton, unless otherwise specified in the Contract and will be determined as follows:

a. Pound - Pound weight will be determined by the net weight identified on the manufacturer's packaged labels, subject to periodic check weighing. Weight by pound will be measured at least to the nearest 1.0 pound unless otherwise specified in the Contract.

The Design-Builder shall provide a certificate with each shipment together with a certified copy of the weight of each delivery. If the check weight is less than the manufacturer weight by more than 0.4%, the discrepancy will be resolved by the Agency.

b. Ton - Ton weight will be determined on Design-Builder-provided scales as required under DB190.20 unless otherwise allowed by the Specifications. Weight by Ton will be measured at least to the nearest 0.01 ton unless otherwise specified in the Contract.

If bituminous materials, Portland cement, lime, and similar bulk Materials are shipped by truck or rail, the Supplier's shipping invoice with net scale weights, or volumes converted to weights, may be used for Pay Item quantity determination in place of weights determined on the Design-Builder provided vehicle scales.

Shipping invoice weights of the Supplier's truck or transport shall be subject to periodic check weighing on the Design-Builder's vehicle scales, or other scales designated, according to DB190.20. If the check weight is less than the Supplier weight by more than 0.4%, the discrepancy will be resolved by the Agency.

No payment will be made:

For quantities in excess of the Supplier weight

When Materials have been lost, wasted, or otherwise not incorporated into the Work

For additional hauling costs resulting from the check weighing

(5) Volume Basis - Volume will be cubic yard truck measure or in-place measure, gallons, foot board measure (FBM), or thousand foot board measure (MFBM), unless otherwise specified in the Contract and will be measured at least to the nearest

0.1 cubic yard, nearest 1.0 gallon, nearest 0.1 FBM, or nearest 0.1 MFBM, as applicable, unless otherwise specified in the Contract.

Truck measure will be the measured and calculated maximum "water level" capacity of the vehicle. Quantities will be determined at the point of delivery, with no allowance for settlement of Material during transit. When required to facilitate measurement, the vehicle load shall be leveled at the point of delivery. Payment will not be made for Material in excess of the maximum "water level" capacity. Deductions will be made for loads below the maximum "water level" capacity.

When bituminous materials are measured by volume, the volume will be measured at 60 °F or will be corrected to the volume at 60 °F using the correction factors found in the MFTP (ODOT TM 321).

(6) Time Basis - Time will be hour, Day, or year, unless otherwise specified in the Contract, and will be measured to at least the nearest 0.5 hour, nearest 1.0 Day, or nearest 1.0 year, as applicable, unless otherwise specified in the Contract.

(7) Standard Manufactured Items - If standard manufactured items, such as fence, wire, plates, rolled shapes, pipe, conduit and other similar items are specified in the Contract by properties such as gauge, unit weight, or section dimensions, the manufacturing tolerances established by the industry involved will be accepted unless more stringent tolerances are cited in the Contract.

(8) Lump Sum Basis - Lump sum, when used for Work added by Change Order, means the Work described shall be completed and accepted without measurement unless changes are ordered in writing by the Agency Engineer. If estimated quantities of the Work to be performed are listed in the Change Order, they provide only a basis for adjusting payment amounts. Estimated quantities are approximate only, and are made from a reasonable interpretation of the information included in the Change Order. Computations based on the details and dimensions shown in the Change Order are not guaranteed to equal estimated quantities.

If the Agency issues no Change Order, the Agency will make no pay adjustment for quantities based on the Design-Builder's computations that overrun or underrun the estimated quantities.

If the Agency issues Change Orders for changes in the Work, the Agency Engineer will measure such changes according to the standards set by DB195.20 to determine adjustment of payment.

DB190.20 Design-Builder to Provide Vehicle Weigh Scales:

(a) General - If the Contract requires measurement by weighing on vehicle weigh scales, the Design-Builder shall provide vehicle weigh scales and shall transport Materials to the scales. Subject to the Agency's approval, weights may be determined by plant or hopper scales according to DB190.30.

Design-Builder provided scales shall be furnished, installed and maintained by the Design-Builder or its Supplier, or, subject to the Agency's approval, may use commercial scales located in the vicinity of the Project.

Unless otherwise provided in the Contract, Price Items for Materials to be measured by weight must include all Design-Builder costs for providing, maintaining, inspecting, and testing scales; for furnishing appropriate weigh tickets; for self-printing scales; for electronic weigh memo systems(s); and for transporting Materials to the scales or to check weighing.

(b) Requirements - The scales must conform to ORS Chapter 618, or the laws of the state in which they are located, and NIST *Handbook 44*, and must be:

- Licensed by the Oregon Department of Agriculture, or by the analogous regulatory body for scales located outside the State;
- Technically suitable for weighing the Materials;
- Properly installed and maintained; and
- Accurate to the required tolerances.

The Project Quality Manager or the Construction Quality Manager shall perform check weighing on the weight of any Materials weighed by the Design-Builder. The Agency may require additional check weighing.

(c) Approaches - Vehicle scale approaches must be:

- At each end of the scale platform;
- Straight and in line with the platform; and
- Long enough to accommodate combination vehicles longer than the scale platform so that they are level and allow release of brakes before weighing.

(d) Inspections - The Design-Builder shall have all scales certified, that is, inspected and their accuracy tested, by the Oregon Department of Agriculture, an analogous regulatory body for scales located outside the State, or a scale service company as follows:

- Before use if installed at a new site;
- 60 Calendar Days after initial inspection;
- As otherwise required by the Oregon Department of Agriculture, or an analogous regulatory body for scales located outside the State; and
- When the Project Quality Manager, Construction Quality Manager, or the Agency Engineer directs additional inspections.

No Materials weighed on scales without current certifications in accordance with this Subsection will be accepted. The Design-Builder shall provide a copy of all required certifications to the Agency.

Testing by a scale service company within the State of Oregon shall comply with ORS Chapter 618.

If additional inspections directed by the Agency Engineer confirm that the scale accuracy is within the required tolerances, the Agency will pay the cost for inspecting and testing

the scales. If the scale accuracy is not within these tolerances, the Design-Builder shall pay the cost for inspecting and testing the scales.

(e) Inspection Results - If an inspection indicates the scales have been under-weighing (indicating less than the true weight), the Design-Builder shall notify the Agency in writing of such discrepancy. The Agency will make no additional payment to the Design-Builder for Materials previously weighed.

If an inspection indicates the scales have been over-weighing (indicating more than the true weight), the weights will be reduced for Materials received after the time the Agency Engineer determines the overweighing began or, if that is not possible, after the last acceptable certification of the scales. The reduction will be the amount of error in excess of the 0.2% maintenance tolerance allowed in the Contract.

(f) Design-Builder provided Weigh Technician - The Design-Builder shall provide a technician to operate Design-Builder provided weigh scales. The Agency may observe procedures and may require check weighing. The Construction Quality Manager shall observe procedures and require check weighing according to the following:

(1) Scale with Automatic Printer - If the scales have an automatic weigh memo printer or an approved electronic weigh memo system that does not require manual entry of gross weight information, the Construction Quality Manager and the Agency may periodically have a representative at the scales to observe the weighing procedures. In addition, the Construction Quality Manager and the Agency Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified in accordance with DB190.20(b) and DB190.20(d).

If a different scale is not available within a 30-mile round trip from the regular haul route, the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Design-Builder provided weight are acceptable.

The Agency Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighing will be paid by the Agency. The Design-Builder shall pay all other costs resulting from the check weighing ordered by the Agency, Project Quality Manager, or Construction Quality Manager, including without limitation the use of other scales.

When 2,000 Tons or less of all types of Materials are received from a scale, check weighing will be at the discretion of the Agency Engineer.

The Design-Builder shall make at least one check weighing on projects where more than 2,000 Tons of all types of Materials are received from a scale. If more than 50 Tons per Calendar Day of all types of Materials are received from a scale, the Design-Builder shall make random check weighings at least once every ten Calendar Days on which more than 50 Tons is received or at each interval that 10,000 Tons has been weighed, whichever occurs first, or as directed by the Agency Engineer. The check weighing frequency does not apply to total quantities less than 2,000 Tons of all types of Materials from a scale. The Design-Builder shall provide the Agency Engineer with the results of the check weighing.

(2) Scale without Automatic Printer - If the scales require manual entry of gross weight information, the Construction Quality Manager and the Agency may periodically have a representative weigh witness at the scales to observe the weighing procedures. The Design-Builder shall inform both the Construction Quality Manager and the Agency Engineer of their intent to use a scale without an automatic printer at least 3 working Days before weighing begins or before the Design-Builder changes to a scale that does not have an automatic printer. The Design-Builder shall pay costs for the weigh witness at $35.00 per hour. In addition, the Construction Quality Manager and the Agency Engineer may periodically check the weight for a load of Materials by directing the haul vehicle to reweigh on a different scale that has been inspected and certified according to DB190.20(b) and DB190.20(d).

If a different scale is not available within a 30-mile round trip from the regular haul route, the Agency will allow check weighing on an approved alternate basis. Check weights within 0.4% of the Design-Builder-provided weight are acceptable.

The Agency Engineer will resolve discrepancies found by check weighing. Agency employee costs for check weighing will be paid by the Agency. The Design-Builder shall pay all other costs resulting from the check weighing ordered by the Agency, Project Quality Manager, or Construction Quality Manager, including without limitation the use of other scales.

If more than 50 Tons per Day of all types of Materials are received from a scale, the Design-Builder shall make random check weighings at least every tenth Day on which more than 50 Tons is received, or at each interval that 10,000 Tons has been weighed, whichever occurs first, or as directed by the Construction Quality Manager or the Agency Engineer. The Design-Builder shall make at least one check weighing on all projects where Materials are received from a scale without an automatic printer. The Design-Builder shall provide the Construction Quality Manager and the Agency Engineer with the results of the check weighing.

(3) Duties of Weigh Technician - The Design-Builder's weigh technician shall:

- Determine twice a Day, or as otherwise directed by the Agency Engineer, the empty haul weights (tare weights) of hauling vehicles, unless vehicles are tared before each load;
- Furnish daily a listing of tare weights if ten or more loads are hauled during that Day;
- Furnish a note listing the net weights for each consecutive ten loads with the following load;
- Furnish a daily listing of net weights and total weight for each type of Material hauled during that Day; and
- Furnish a legible, serially numbered weigh memo for each load of Materials to the Materials receiver at the point of delivery, or as directed by the Agency Engineer. The memo shall identify the Project, the Materials, the date, net weight (gross and tare as appropriate), and identification of the vehicle and weigh technician. If approved by the Agency Engineer an electronic weigh memo system may be used. Requests to use an electronic weigh memo system shall be submitted to the Agency Engineer according to DB150.37,

providing sufficient detail for the Agency Engineer to perform an evaluation. If approved, the Design-Builder shall provide training, technical support, reports, and weigh memo information to the Agency Engineer at no additional cost to the Agency. The electronic weigh memo system shall be:

- Capable of recording and securely retaining the same required "weigh memo" information identified above. For retention see Article 8.3.
- Fully integrated with the provided weigh scale system.
- Designed in such a way that the data electronically read from scales cannot be altered by the Design-Builder, Subcontractor, Supplier, Agency Engineer, or other system users.
- Designed to allow the Agency Engineer remote access to all the weigh memo data in real-time and allow the Agency Engineer to add comments to the individual weigh memo regarding waste, temperature, stations, yield or other information. The system shall identify the system user or individual that adds comments to the electronic weigh memo or otherwise access the system. The Design-Builder shall provide the Agency Engineer a means to access the data if the Agency Engineer cannot use an Agency provided hand held device for access.
- Capable of providing all the weigh memo information, including any added comments, in an electronic data file the Agency Engineer can easily access without proprietary software.

(g) Agency-provided Weigh Technician - If the Design-Builder provides vehicle weigh scales without a weigh technician meeting the requirements of this Subsection, the Agency will provide a weigh technician at the Design-Builder's expense. The hourly cost for the weigh technician will be $35.00 per hour. The Design-Builder shall provide a weighhouse for the weigh technician as specified in the DB Standard Technical Specifications 00205.12. The Agency's weigh technician will:

- Determine tare weights;
- Prepare weigh memos for each load;
- Compile the weigh records; and
- Not participate in the production of Materials or the loading of haul vehicles.

DB190.30 Plant Scales - The Design-Builder, with the Agency Engineer's written approval, may weigh plant-mixed Materials on scales that have either:

- An automatic weight batching and mixing control printer system, or
- A weigh hopper printer system.

If approved by the Agency Engineer an electronic weigh memo system may be used in place of a printer system. See DB190.20(f)(3).

Any additional costs resulting from the use of these scales shall be at no additional cost to the Agency. Check weighing will be done in accordance with DB190.20(f).

Except for DB190.20(c) regarding approaches, the Design-Builder's use of plant scales shall comply with all provisions of DB190.20.

The Agency Engineer's approval for the Design-Builder's use of plant scales to determine pay weights will be rescinded if check weighing or scale inspections indicate the scales do not consistently determine weights within the tolerances allowed by state law.

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SECTION DB195 – PAYMENT

DB195.00 Scope and Limit:

(a) General - The Agency will pay only for Price Items incorporated into the Work or performed according to the terms, provisions and conditions of the Contract. Price Items listed in the Schedule of Prices do not govern payment.

Payment constitutes full compensation to the Design-Builder for furnishing all Design Services and Construction Services and Materials, Equipment, labor, and Incidentals necessary to complete the Work, and for all profit, risk, loss, damage, and expense arising from the nature or prosecution of the Work or from the action of the elements, subject to the provisions of Section DB170.

The Design-Builder shall include the costs of bonds and insurance for the Project in the Unit Price or Fixed-Price for each Price Item of Work to be performed.

(b) Essential or Incidental Materials or Work - When the DB Standard Technical Specifications state that the Price Center Value or Price Item Value is compensation for certain Materials or Work essential or Incidental to the Price Center or to the Price Item, the same Materials or Work will not be measured or paid under any other Price Center or Price Item.

DB195.10 Asphalt Cement Material Price Escalation/De-escalation – If the Work includes at least 150 Tons of liquid asphalt during the life of the Contract, an asphalt cement escalation/de-escalation clause will be in effect for all construction Price Items that include asphalt Materials identified in DB195.10(d).

At the time the Design-Builder submits its RFC Plans, Specifications and estimated quantities as required by Section DB155, the Design-Builder shall submit the estimated quantities for asphalt cement Materials identified in DB195.10(d) for the construction Price Items associated with the RFC submittal.

The installed asphalt cement Material quantities for subject Price Items must be measured by the Design-Builder in units consistent with the units used for the estimated quantities submitted with the Design-Builder's RFC Design Review submittal, as required by Section DB155.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under DB180.70, and its rights for termination of the Contract under DB180.90, and this escalation/de-escalation provision will not limit those rights.

(a) Monthly Asphalt Cement Material Price (MACMP) - The Monthly Asphalt Cement Material Price (MACMP) is established by the Agency each month. For the actual MACMP, go to the Agency website at:

https://www.oregon.gov/ODOT/Business/Pages/Asphalt-Fuel-Price.aspx

The MACMP is based on selling prices of asphalt cement published by Poten & Partners, Inc. for primarily PG 64-22 paving grades in the Portland, Oregon area and typical non-

modified paving grades in the Boise, Idaho area. The MACMP for a given month is the average of the weekly published prices for each area reported each Friday in that month. If any portion of the Project Site is located within the boundaries of ODOT Maintenance Districts 1 through 10 the MACMP will be based on the prices for the Portland, Oregon area. For Projects entirely in ODOT Maintenance District 13 or 14, the MACMP will be based on the prices for the Boise, Idaho area. For Projects entirely in ODOT Maintenance District 11 or 12 , the Design-Builder may elect to have the MACMP based on the prices of either the Portland, Oregon area or the Boise, Idaho area. If electing to use Boise, Idaho area prices for determination of the MACMP, the Design-Builder shall notify the Agency Engineer in writing of the Design-Builder's election before or within 7 Calendar Days after the date of the first preconstruction conference. This election, once acknowledged by the Agency Engineer, will be binding for the entire duration of the Contract. If no such written notification is made, the Portland, Oregon area prices will be used as the basis of the MACMP. The area selected as the basis of the MACMP, once chosen, will become the sole area to be used as the basis for all asphalt cement used on the Project.

If the weekly prices cease to be available from Poten & Partners, Inc. for any reason, the Agency, in its discretion, will select and begin using a substitute price source or index to establish the MACMP each month. The Agency does not guarantee that asphalt cement will be available for purchase at the MACMP.

(b) Base Asphalt Cement Material Price (Base) - The base asphalt cement material price for the Project is the MACMP published on ODOT's Asphalt and Fuel Pricing website (see DB110.05(e)) for the month immediately preceding the Proposal Due Date.

(c) Monthly Asphalt Cement Adjustment Factor - The Monthly Asphalt Cement Adjustment Factor will be determined each month as follows:

- If the MACMP is within ± 5% of the Base, there will be no adjustment
- If the MACMP is more than 105% of the Base, then:

  Adjustment factor = (MACMP) - (1.05 x Base)

- If the MACMP is less than 95% of the Base, then:

  Adjustment factor = (MACMP) - (0.95 x Base)

(d) Asphalt Cement Price Adjustment - A price adjustment will be made for the Materials containing asphalt cement listed below. The price adjustment as calculated in (c) above will use the MACMP for the month the asphalt is incorporated into the Project. The price adjustment will be determined by multiplying the asphalt incorporated during the month for subject Materials by the adjustment factor.

The Materials for which asphalt cement price adjustments will be made are:

Asphalt Cement Material(s)

PG 70-22ER Asphalt in ½ Inch ACP
PG 64-22ER Asphalt in ½ Inch ACP

The Design-Builder shall perform all calculations and accounting, and provide all documentation required to support the asphalt cement Material price escalation/de-escalation for the Agency's approval. This includes submission of asphalt cement Materials quantities along with supporting documentation, such as asphalt cement Materials quantity tickets as part of its monthly Pay Request, for each month that asphalt cement Materials are used on the Project. (See DB190.10(c).)

The Design-Builder shall submit monthly to the Agency the actual measured quantities of the asphalt cement Materials identified above installed for each subject Price Item. (See DB155.18 and DB190.10(c).)

DB195.11 Fuel Cost Price Escalation/De-escalation - A fuel escalation/de-escalation clause will be in effect during the life of the Contract.

At the time the Design-Builder submits its RFC Plans and Specifications, the Design-Builder shall submit the estimated fuel usage quantities for the major fuel usage Work activities identified in Table DB195.11-A below, that are not associated with Bridges or Structures as required by Section DB155. The Design-Builder shall also submit its estimated construction costs for all Bridges and Structures identified in Table DB195.11-A below. The Design-Builder's estimated construction costs for all Bridges and Structures are subject to the Agency Engineer's approval and will be used for calculating the fuel escalation/de-escalation price adjustments.

Construction Price Items including those major fuel usage Work described in DB195.11(d) will be subject to fuel escalation/de-escalation price adjustments as provided in this Subsection DB195.11. The Design-Builder shall measure installed quantities of major fuel usage items in units consistent with the units used for the estimated quantities submitted with the Design-Builder's RFC Design Review submittal, as required by Section DB155.

The Agency reserves all of its rights under the Contract, including, but not limited to, its rights for suspension of the Work under DB180.70, and its rights for termination of the Contract under DB180.90, and this escalation/de-escalation provision will not limit those rights.

(a) Monthly Fuel Price (MFP) - A Monthly Fuel Price (MFP) is established by the Agency each month. For the actual MFP, go to ODOT Asphalt and Fuel Pricing website (see DB110.05(e)).

The MFP for a given month is the average rack price obtained from the Oil Price Information System (OPIS) listing dated the first Monday of that month for ultra-low sulfur distillate No. 2 diesel fuel for Portland, Oregon. If the average rack price is not posted by OPIS or is otherwise not available to the Agency for the first Monday of any month for any reason, the Agency may use the average rack price posted by OPIS immediately before or after the first Monday of that month. If the average rack prices cease to be available from OPIS for any reason, the Agency in its discretion, will select and begin using a substitute price source or index to establish the MFP each month. The Agency does not guarantee that fuel will be available at the MFP.

(b) Base Fuel Price (Base) - The base fuel price for this Project is the MFP published on the ODOT Asphalt and Fuel Pricing website (see DB110.05(e)), for the month immediately preceding the Proposal Due Date.

(c) Monthly Fuel Adjustment Factor - A Monthly Fuel Adjustment Factor is determined each month as follows:

- If the MFP is within ± 25% of the Base, there will be no adjustment
- If the MFP is more than 125% of the Base, then:

  Adjustment factor = (MFP) - (1.25 x Base)

- If the MFP is less than 75% of the Base, then:

  Adjustment factor = (MFP) - (0.75 x Base)

(d) Fuel Price Adjustment - A fuel price adjustment for fluctuations in the cost of fuel will apply only to construction Price Items with major fuel usage Work activity categories that exceed the applicable minimum estimated fuel usage qualifier based upon the respective fuel factors and minimum qualifiers provided in the following Table DB195.11-A.

Table DB195.11-A
Fuel Escalation Table

Work Activity Category	Fuel Factor	Applicable DB Standard Technical Specifications
General Excavation*	0.29 Gal/Cu Yd	Section 00330
Embankment in Place**	0.29 Gal/Cu Yd	Section 00330
Subgrade Stabilization	0.33 Gal/Sq Yd	Section 00331
Stone Embankment	0.29 Gal/Cu Yd	Section 00390
Ditch, Foundation, Toe Trench, Borrow, Rock, Boulder, and Trench Excavation	0.29 Gal/Cu Yd	Sections 00330 and 00405
Cold Plane Pavement Removal	0.04 Gal/Sq Yd	Sections 00620 and 00621
Conc Pavement Grinding	0.04 Gal/Sq Yd	Section 00622
Base Aggregate	0.69 Gal/Ton	Sections 00640, 00641, and 00645
Lean Concrete Base	0.69 Gal/Sq Yd	Section 00660
Cement Treated Base	1.00 Gal/Ton	Section 00344
ACP Mixture	2.93 Gal/Ton	Sections 00740, 00744, and 00745
Aggregate Chip Seal	0.69 Gal/Ton	Sections 00705, 00710, 00711, and 00715
Emulsified Asphalt Tack Coat and Emulsified Asphalt Concrete Pavement	1.00 Gal/Ton	Sections 00730 and 00735
Portland Cement Concrete Pavement	1.00 Gal/Sq Yd	Sections 00755 and 00756
Other Portland Cement Concrete	0.11 Gal/Sq Ft	Section 00759
Portland Cement Concrete Curb	0.12 Gal/Ft	Section 00759
Portland Cement Concrete Curb and Gutter	0.22 Gal/Ft	Section 00759

* Fuel price adjustments for the General Excavation Work activity category is only applicable to Projects that result in a net overall excavation based on the Design-Builder's earthwork balance analysis for the entire Project.

** Fuel price adjustments for the Embankment Work activity category is only applicable to Projects that result in a net overall embankment (or borrow) based on the Design-Builder's earthwork balance analysis for the entire Project.

The Design-Builder is cautioned to consider that its operations may require more or less fuel.

A price adjustment (±) to the subject Price Items for fuel cost changes will be made monthly if the MFP differs 25% or more from the Base Fuel Price. This adjustment will be the product of the monthly fuel adjustment factor and the estimated monthly fuel used for the subject Price Item. The monthly fuel used will be determined by multiplying the quantities of Work (or the costs of the Work for Bridges and Structures) accomplished during the month for subject Price Items, by the appropriate fuel factors.

Fuel cost adjustments will continue to be made as specified and will not be revised for any reason, including the Design-Builder's election to use an alternative fuel (natural gas, wood pellets, propane, or other).

For subject Price Items with qualifying major fuel usage Work activities, the Design-Builder shall:

- Submit the Design-Builder's measurements and supporting documentation for actual quantities installed or performed of the qualifying major fuel usage Work activities with each monthly Pay Request, for each month that major fuel usage Work activities are performed for the subject Price Item.
- Perform all calculations and accounting, and submit to the Agency for approval, all documentation required to support any escalation/de-escalation Price Item price adjustments with each monthly Pay Request. (See DB155.18 and DB190.10(c).)

DB195.12 Steel Material Price Escalation/De-Escalation Clause - Subsections DB195.12, DB195.12(a), DB195.12(b), DB195.12(c), and DB195.12(d) contain the price escalation/de-escalation clause relating to steel materials (as defined in DB195.12(d)) that is included in this Contract. This exclusive steel material price escalation/de-escalation clause, and the steel escalation/de-escalation program described in DB195.12 through DB195.12(d), are in effect for the life of this Contract, regardless of the number of Price Items with qualifying steel material items, if any, that are included, and whether or not the Design-Builder elects to participate in the steel escalation/de-escalation program according to DB195.12(d).

(a) Steel Material Price Escalation/De-Escalation Participation - The Design-Builder may select individual qualifying steel material items shown on the Table of Steel Escalation form (Form TSE) to include in the steel escalation/de-escalation program for this Project by submitting to Agency Engineer within 45 Calendar Days after NTP a completed Form TSE and the Steel Materials Price Escalation/De-Escalation Program Participation Election form (referred to as the "election form" in this Subsection DB195.12), indicating each item of steel material for which Design-Builder elects to participate in the steel escalation/de-escalation program for the term of the Contract, and the estimated quantities of each selected qualifying steel material item. The Form TSE is located in ODOT's Fuel Index and Scheduling Program document, located on ODOT's Project Controls Office website (see DB110.05(e)).

Steel material items and estimated quantities shown must be based on the Work identified in the DB Technical Approach and any other preliminary plans available at the time of submittal of Form TSE. The Design-Builder's submitted Form TSE will identify those steel material items with sufficient quantities to qualify for a steel price adjustment. Estimated quantities of steel material items may be adjusted in conjunction with each RFC Plan submittal as identified in DB195.12(c).

The Design-Builder is not obligated to select any qualifying steel material items. If the Design-Builder elects to not participate in the steel escalation/de-escalation program for the Project, no response from the Design-Builder is required. If the Design-Builder fails to submit Form TSE in the manner and within the time limits stated in this Section DB195.12 (or the Design-Builder otherwise elects not to participate in the program), the Design-

Builder thereby elects not to participate in the program and forfeits all present and future rights to participate in the program for this Project.

The Agency reserves all of its rights under the Contract, including but not limited to, its rights for suspension of the Work under DB180.70 and its rights for termination of the Contract under DB180.90, and this steel material price escalation/de-escalation provision will not limit those rights.

Adjustments for fluctuations in the cost of steel material will apply only to those steel material items individually selected by the Design-Builder and identified on Form TSE, and will be made using the respective steel Cost Basis (CB) identified on Form TSE.

(b) Monthly Steel Materials Value (MV) and Base Steel Materials Value (BV) - The Monthly Steel Materials Value (MV) will be established by the Agency from the IDWPUSISTEEL1 Bureau of Labor Statistics (BLS), Producer Price Indexes (PPI), using non-seasonally adjusted indexes only. Preliminary numbers may be referenced on the IDWPUSISTEEL1 BLS PPI for 6 months or more before IDWPUSISTEEL1 BLS PPI determines they are final numbers.

The Base Steel Materials Value (BV) for the Project will be the MV published on the ODOT Estimating website (see DB110.05(e)) for the month immediately preceding the Proposal Due Date for this Project. The Agency will only publish values on the ODOT Estimating website for use after the IDWPUSISTEEL1 BLS PPI establishes the numbers as final numbers. The final values of MV and BV will be available at ODOT Estimating website (see DB110.05(e)).

The Agency has no control over when the IDWPUSISTEEL1 BLS PPI establishes final values. The Agency steel material price escalation/de-escalation adjustments made under DB195.12 through DB195.12(d) may not be reflected on payments made to the Design-Builder for up to 2 months after the applicable IDWPUSISTEEL1 BLS PPI values become final. The timing of steel material price escalation/de-escalation adjustments is an agreed term of this Contract and shall not constitute late payment under ORS 279C.570; nor shall the Agency be responsible for paying interest on any such steel material price adjustments.

If the Agency selected index ceases to be available for any reason, the Agency in its discretion will select and begin using a substitute price source or index to establish the MV each month. The MV will only apply to steel material items selected by the Design-Builder and provided in writing on the election form to the Agency Engineer. The Agency does not guarantee that steel material will be available at any stated or implied materials price.

(c) Monthly Steel Materials Price Adjustment - The Design-Builder shall submit an updated Form TSE with the RFC Plans and Specifications required by Section DB155. The updated Form TSE shall provide any updates to the estimated quantities for all steel material items identified on the previously submitted Form TSE, if applicable. The Agency will pay escalation/de-escalation on actual quantities incorporated in the Project not to exceed the quantities identified on Form TSE submitted in conjunction with the RFC Plans and Specifications submittal Accepted by the Agency.

Each Form TSE shall be signed and certified as to accuracy by the Project Quality Manager. The Agency will maintain the submitted Form TSEs on file for use in calculating the steel material price adjustments.

If the Design-Builder has properly submitted Form TSE to the Agency Engineer identifying steel material items to be included in the steel escalation/de-escalation program, along with the monthly actual incorporated quantities, and the Agency has Accepted the submitted Form TSE, a price adjustment evaluation will be made for all steel material items selected. No adjustments will be made using the BV or MV until such time as they are listed as final values by the IDWPUSISTEEL1 BLS PPI. The price adjustment as calculated in this provision for a given Price Item with qualifying steel material items included by the Design-Builder on the election form will use the MV for the month the Work associated with the qualifying steel material items for the subject Price Item is performed and added to the monthly Progress Estimate. A price adjustment for the subject Price Item will only be made if the MV for the month the Work associated with qualifying steel material items for the subject Price Item is performed and added to the monthly Progress Estimate differs by more than 10% from the BV. A price adjustment will be made, as and when required by DB195.12 through DB195.12(d), only for Price Items with qualifying steel material items included by the Design-Builder on the election form, if any, that were selected by the Design-Builder in the manner and within the time limits required under DB195.12(a).

The Monthly Steel Materials Price Adjustment will be determined as follows:

- If the MV is within 10% ± of the BV, there will be no adjustment.
- If the MV is more than 110% of the BV, then:
  PA = (((MV-BV) ÷ BV) - 0.10) x (CB x PIP)
- If the MV is less than 90% of the BV, then:
  PA = (((MV-BV) ÷ BV) + 0.10) x (CB x PIP)

Where:
PA = Price Adjustment, dollars
MV = Monthly Steel Materials Value from the BLS PPI for the month determined above (after becomes final)
BV = Base Steel Materials Value from the month of the Proposal Due Date (after becomes final)
PIP = Amount paid on the monthly Progress Estimate for the Work associated with the qualifying steel material item (included by the Design-Builder on the election form) for the subject Price Item performed during the month for which the adjustment is made
CB = Cost basis for the applicable steel material, in percent (see DB195.12(d))

(d) Payment of Price Adjustment - The Agency will make a price adjustment, if any, for all qualifying steel material items (included by the Design-Builder on the election form) incorporated into the permanent Structures of the Project within 2 months after the applicable values become final (i.e., price adjustment for steel material items incorporated into the Project in January will not be made until final values are posted in July). After the initial price adjustment for steel material items is calculated and posted to the monthly Progress Estimate, as applicable, subsequent monthly price adjustments, if any, will be calculated by the Agency.

For purposes of Subsection DB195.12 through DB195.12(d), “steel material” means structural and reinforcing steel, steel studs, sheet piling, guardrail, ductile iron pipe and other steel products listed on Form TSE used for the construction, reconstruction or major renovation of a road or Highway.

The Design-Builder shall perform all calculations and accounting, and submit to the Agency for approval, all documentation required to support any escalation/de-escalation of steel material items included by the Design-Builder on the election form. This includes submission of the Design-Builder’s measured quantities of the steel material items incorporated into the Project, along with supporting documentation, with each monthly Pay Request for each month that steel material items are incorporated in the Project and when the MV for the month when the steel material items were incorporated becomes final. (See DB190.10(c).)

The Design-Builder shall submit monthly to the Agency the actual quantities incorporated for each of the steel material items included on the election form. (See DB155.18 and DB190.10(c).) The Design-Builder’s quantity measurements for incorporated steel material items must be in units consistent with those identified on Form TSE.

DB195.20 Changes to Plans or Character of Work:

(a) Insignificant Changed Work - If the changes made under DB140.30 do not significantly change the character or cost of the Work to be performed under the Contract, and the Work involved in the change is measured on a Fixed-Price basis, the Parties shall agree upon the basis for payment for the Changed Work and the amount of adjustment, if any, prior to the Design-Builder commencing the Changed Work. If the basis and amount cannot be agreed upon, the Agency Engineer will make an equitable adjustment, which may increase or decrease the Contract Amount, if the insignificant change actually increases or decreases the cost for the Design-Builder to perform the Work. Any such adjustment may be less than, but will not be more than, the amount justified by the Agency Engineer.

If the changes made under DB140.30 do not significantly change the character or unit cost of the Work to be performed under the Contract, and if the Work involved in the change is measured on a Unit Price basis, the Agency will pay for such Work at the Unit Price or Change Order Pay Item value.

If the changes made under DB140.30 do not significantly change the character of the Work to be performed under the Contract, and if the Work involved in the change is measured on a lump sum basis, payment for the Changed Work will be determined:

- As described in the applicable Change Order;
- If not described there, and subject to the Agency Engineer’s approval, on a theoretical Unit Price determined by dividing the Design-Builder’s lump sum price by the estimated quantity of the item listed in the Change Order; or
- If neither of the above apply, the Agency Engineer will make an equitable adjustment, if any, which may increase or decrease the Contract Amount, if the insignificant change actually increases or decreases the cost for the

Design-Builder to perform the Work. Any such adjustment may be less than, but will not be more than, the amount justified by the Agency Engineer.

(b) Significant Changed Work - If the changes made under DB140.30 significantly alter the character, Fixed-Price cost, unit cost, or lump sum cost of the Work, the Agency will adjust the Contract. Adjustments will exclude any loss of anticipated profits. The Parties shall agree upon the basis for payment and the amount of adjustment prior to the Design-Builder commencing the Changed Work. If the basis and amount cannot be agreed upon, the Agency Engineer will make an equitable adjustment, which may increase or decrease the Contract Amount and Contract Time.

Any such adjustments may be less than, but will not be more than, the amount justified by the Agency Engineer on the basis of the established procedures set out in Section DB197 for determining rates. This does not limit the application of Section DB199.

The term “Significant Changed Work” shall apply only to that circumstance in which the character of the Work, as changed, differs materially in kind, nature, or cost from that involved or included in the Work.

DB195.30 Differing Site Conditions - Upon written notification, as required in DB140.40, the Agency Engineer will investigate the identified conditions. If the Agency Engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required to perform any Work under the Contract, an adjustment in Contract Amount or Contract Time, excluding loss of anticipated profits, will be made, and the Contract modified accordingly, in writing. The Agency Engineer will notify the Design-Builder as to whether or not an adjustment of the Contract is warranted.

No Contract adjustment which benefits the Design-Builder will be allowed unless the Design-Builder has provided the required written notice. Any such adjustments will be made according to DB195.20.

DB195.40 Unreasonable Delay by Agency - If the Design-Builder believes that performance of all or any portion of the Work is suspended, delayed, or interrupted for an unreasonable period of time in excess of that originally anticipated or customary in the construction industry, due to acts or omissions of the Agency or persons acting for the Agency, and that additional compensation, Contract Time, or both, are due the Design-Builder because of the suspension, delay or interruption, the Design-Builder shall immediately file a written notice of delay in accordance with DB180.60. The Design-Builder shall then promptly submit a properly supported request for additional compensation, Contract Time, or both, in accordance with the applicable provisions in DB180.60 through DB180.80 and Section DB199.

The Agency Engineer will promptly evaluate a properly submitted request for additional compensation. If the Agency Engineer determines that the delay was unreasonable, and that the cost required for the Design-Builder to perform the Contract has increased as a result of the unreasonable suspension, delay or interruption, the Agency Engineer will make an equitable adjustment, excluding profit, and modify the Contract in writing accordingly. The Agency Engineer will notify the Design-Builder of the determination and whether an adjustment to the Contract Amount is warranted.

Under this provision, no Contract adjustment will be allowed:

- Unless the Design-Builder has provided the written notice required by DB180.60;
- For costs incurred more than 10 Calendar Days before the Agency Engineer receives the Design-Builder's properly-submitted written request;
- For any portion of a delay that the Agency Engineer deems to be a reasonable delay, or for which an adjustment is provided for or excluded under other terms, provisions or conditions of the Contract; or
- To the extent that performance would nevertheless have been suspended, delayed or interrupted by causes other than those described in this Subsection.

DB195.50 Progress Payments and Retained Amounts:

(a) Progress Payments - The Agency's payment of progress payments, or determination of satisfactory completion of Price Items or Work or release of retainage under DB195.50(d), shall not be construed as Final Acceptance or approval of any part of the Work, and shall not relieve the Design-Builder of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

All paid quantities and amounts are subject to correction in the final payment. If the Design-Builder uses the paid quantities and amounts as a basis for making payments to Subcontractors and Suppliers, the Design-Builder assumes all risk and bears any losses that result.

If the estimated amount due to the Design-Builder for any given month is less than $1,000, the Agency will make no payment for that month unless requested by the Design-Builder.

The Agency will make progress payments only in accordance with the provisions of this Subsection and only if the following have occurred:

- A Pay Request conforming to Contract requirements, and all required accompanying submittals, including monthly progress submittals required under DB180.45, prepared in accordance with Contract requirements, have been submitted to the Agency Engineer.

(1) Submittal of Pay Requests and Source Documents - The Quality Management Team shall develop and prepare all source documents for Work performed through the last Calendar Day of the month.

For the purposes of this Section DB195, "source documents" means the field notes, calculations, receipts, invoices, and reports used to determine and justify the project pay quantities. See *ODOT Construction Manual*, Chapter 12D-2-a. Source documents must be prepared in accordance with the *ODOT Construction Manual*, Chapter 12D Quantities and as described in the Quality Plan.

On the same day each month, but no later than the 5th day of each month, or such other day of each month as agreed upon by the Design-Builder and Agency Engineer, the Project Quality Manager shall submit a Pay Request to the Agency Engineer for review. The Pay Request shall include a Progress Estimate of the Work completed through the

previous month, calculated based on the Project Work Schedule and the approved Schedules of Values, and all associated source documents.

The amount listed in the Pay Request for each Price Item shall be a percentage of the total Price Item rounded to the nearest 0.01. Source documents shall be provided to support partial payment of Price Items in accordance with the approved Schedules of Values.

The Project Quality Manager shall verify and certify satisfactory completion of all Work being submitted for payment and that the Work complies with all quality requirements of the Contract.

Notwithstanding the foregoing, the amount of each progress payment will not exceed the reasonable value of the Work performed, as may be determined by the Agency Engineer.

(2) Value of Materials on Hand - The Design-Builder shall include with its monthly Pay Request the amount and value of the Materials on hand already delivered and stored in accordance with the requirements of DB195.60 to be incorporated into the Project and not previously included in a Pay Request or otherwise paid by the Agency.

(3) Value of Work Accomplished - The sum of the values in DB195.50(a)(1) (not to exceed the reasonable value of the Work performed, as may be determined by the Agency Engineer) and DB195.50(a)(2) above will be collectively referred to in this Subsection as the "value of Work accomplished".

(4) Reserved.

(5) Reductions to Progress Payments - With each progress payment, the Design-Builder will receive a Contract payment voucher and summary detailing the amounts paid, reduced by the following:

- Amounts previously paid;
- Amounts deductible or owed to the Agency for any cause specified in the Contract; and
- Additional amounts retained to protect the Agency's interests according to Subsection (e) below.

(b) Retainage - The Agency reserves the right in its sole discretion to not withhold retainage from progress payments or to begin withholding retainage at any time. If the Agency withholds retainage from progress payments, the amount to be retained from progress payments will be 2.5% of the value of Work accomplished, and will be retained in one of the forms specified in Subsection (c) below. If the Agency determines that satisfactory progress is not being made on the Work, the Agency may withhold up to 5% of the value of Work accomplished from subsequent progress payments. No retainage will be withheld from Work performed as Force Account Work, escalation/de-escalation, bonuses, or other items decided by the Agency.

As provided in Article 11.3.1 in addition to any retainage, a withholding of 25% of amounts earned will be withheld and released according to ORS 279C.845 when the Design-

Builder fails to file the certified statements required in ORS 279C.845, FHWA Form 1273 and Article 11.

(c) Forms of Retainage - If the Agency withholds retainage, forms of acceptable retainage are specified below in Subsections (1) through (3). Unless the Design-Builder requests and the Agency accepts a form of retainage under Subsections (2) or (3), the Agency will use the "Cash, Alternate A" in this Subsection. If the Agency incurs additional costs as a result of the Design-Builder's election to use a form of retainage other than Cash, Alternate A, the Agency may recover such costs from the Design-Builder by a reduction of the final payment.

(1) Cash, Alternative A - Retainage will be deducted from progress payments and held by the Agency until final payment is made according to DB195.90, unless otherwise specified in the Contract.

Except as otherwise provided, the Agency will deposit the cash retainage withheld in an interest bearing account, established through the State Treasurer for the benefit of the Agency, as required by ORS 279C.560(5). Interest earned on the account shall accrue to the Design-Builder. Amounts retained and interest earned will be included in the final payment made according to DB195.90, unless otherwise specified in the Contract.

Any retainage withheld on Work performed by a Subcontractor will be released to the Design-Builder according to DB195.50(d).

(2) Cash Alternative B, (Retainage Surety Bond) -
The Design-Builder may submit a Surety bond in lieu of all or a portion of the retainage required under the Contract. The Agency will accept this Surety bond unless the Agency first finds in writing good cause for rejection based on unique project circumstances in accordance with ORS 279C.560(1)(c).

The Surety bond must be in substantially the form specified in ORS 701.435 (4) (Oregon House Bill 4006, 2024), and executed by a Surety bonding company that is authorized to transact Surety business in the State of Oregon and may not be a Surety obligation of an individual. The Surety bond and any proceeds of the Surety bond must be made subject to all claims and liens and in the same manner and priority specified for retainage under ORS 279C.550 to 279C.570 and ORS 279C.600 to 279C.625. Agency will reduce the cash retainage held by an amount equal to the value of the Surety bond and pay the amount of the reduction to the Design-Builder according to ORS 279C.570. Any retainage withheld on Work performed by a Subcontractor will be released to the Design-Builder according to DB195.50(d).

When the Agency accepts a Surety bond in lieu of retainage from the Design-Builder, the Design-Builder shall accept Surety bonds from Subcontractors or Suppliers from which the Design-Builder has withheld retainage. At any time before final payment a Subcontractor may submit a Surety bond to the Design-Builder and request that the Design-Builder submit a Surety bond as described above for the portion of the Design-Builder's retainage that pertains to the Subcontractor. The Surety bond the Subcontractor provides to the Design-Builder must meet the Agency requirements specified in the paragraph above. When a Design-Builder at a Subcontractor's request

obtains and submits a Surety bond under this subsection, the Design-Builder may withhold from payments to the Subcontractor an amount equivalent to the portion of the Design-Builder's Surety bond premium for which the Subcontractor is responsible in accordance with ORS 279C.560 (Oregon House Bill 4006, 2024).

Within 30 Days after a Subcontractor's request the Design-Builder shall provide a Surety bond as described above, and the Agency will accept the Surety bond unless:

- the Agency finds in writing good cause for rejection based on unique project circumstances in accordance with ORS 279C.560;
- a Surety bond is not commercially available;
- the Subcontractor refuses to pay to the Design-Builder the Subcontractor's portion of the Surety bond premium; or
- the Subcontractor refuses to provide the Design-Builder with a Surety bond that meets the requirements of ORS 279C.560(1)(b).

Notwithstanding DB195.50(d), within 30 Days of receiving a Surety bond from Design-Builder at a Subcontractor's or Supplier's request, Agency will release to the Design-Builder the amount held as retainage that is equivalent to the amount the Design-Builder submitted as a Surety bond. Design-Builder shall, within 30 Days after receiving a Surety bond from a Subcontractor or Supplier, release to the Subcontractor or Supplier the amount the Design-Builder holds as retainage that is equivalent to the amount of the Surety bond submitted, in accordance with ORS 279C.560(8).

(3) Bonds, Securities, and Other Instruments - The Design-Builder may deposit bonds, securities or other instruments with the Agency or in a bank or other financial institution, to be held by Agency instead of cash retainage for the benefit of the Agency, which the Agency will accept unless the Agency first finds in writing good cause for rejection based on unique project circumstances, in accordance with ORS 279C.560(1)(c).

If the Design-Builder deposits bonds, securities or other instruments, and Agency does not reject the bonds, securities or other instruments as permitted by ORS 279C.560(1)(c), the Agency will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments accrue to the Design-Builder.

Bonds, securities and other instruments deposited instead of cash retainage shall be of a character approved by the Director of the Oregon Department of Administrative Services, including, but not limited to:

- Bills, certificates, notes or bonds of the United States
- Other obligations of the United States or agencies of the United States
- Obligations of a corporation wholly owned by the federal government
- Indebtedness of the Federal National Mortgage Association
- General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon

- Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008

(d) Release of Retainage - As the Work progresses, release of the amounts retained under (b) above will only be considered for Price Items that have been satisfactorily completed. For purposes of this Subsection, a Price Item will be considered satisfactorily completed only if all of the Work for the Price Item is complete and all contractual requirements pertaining to the Price Item and Work have been satisfied. Work not included in a Price Item, or which constitutes part of an uncompleted Price Item, will not be regarded as satisfactorily completed Work for the purposes of this Subsection.

Beginning with the fourth month after First Notification and every third month thereafter, the Agency will release retainage for satisfactorily completed Price Items in the Schedule of Prices, or for satisfactorily completed Price Items or unit-priced Work added by Contract Change Order. Retainage will be released with the scheduled progress payment for the fourth month after First Notification and with the scheduled progress payment for each third month thereafter. Within 10 Calendar Days of receipt of retainage, the Design-Builder shall pay to each Subcontractor all such released retainage that pertains to the Work of that Subcontractor.

A determination of satisfactory completion of Price Items or Work or release of retainage shall not be construed as Acceptance or approval of the Work and shall not relieve the Design-Builder of responsibility for defective Materials or workmanship or for latent defects and warranty obligations.

The Design-Builder shall comply with all applicable legal requirements for withholding and releasing retainage and for prompt payments, including but not limited to those in ORS Chapters 279C and 701, and 49 CFR 26.29.

(e) Withholding Payments - The Agency Engineer may withhold such amounts from progress payments or final payment as may reasonably protect the Agency's interests until the Design-Builder has:

- Complied with all orders and directives issued by the Agency Engineer under or pursuant to the Contract;
- Corrected or cured its failure to comply with the Contract;
- Satisfied all legal actions filed against the Agency, the Agency's governing body and its members, and the Agency employees that the Design-Builder is obliged to defend. (See DB170.60.); and
- Paid all liquidated and delinquent debt owed to the State or any department or agency of the State. (In addition to Agency's other rights and remedies, the Agency may also undertake collection by administrative offset, or garnishment if applicable, of all monies due to recover such debt. Offsets or garnishment may be initiated after the Design-Builder has been given notice if required by law.)

Notwithstanding ORS 279C.555 or 279C.570 or DB195.50(d), if the Design-Builder is required to file statements on the prevailing rate of wages, but fails to do so, the Agency will withhold 25% of any amount earned as required in Article 11.

(f) Prompt Payment Policy - Payments shall be made promptly according to ORS 279C.560, ORS 279C.580 and other applicable legal requirements.

DB195.55 Unit Priced Work (If added by Change Order) - For Unit Priced Work added by Change Order, the Design-Builder shall submit a summary table of quantities with each Pay Request indicating Work Location; item number; and description, quantity, Unit Price, and total amount due for the period covered by the Pay Request. The Design-Builder shall attach copies of quantity measurement notes or field book entries. The Project Quality Manager shall sign and date the summary table.

DB195.60 Advance Allowance for Materials on Hand:

(a) General - If the total value of Materials on hand is at least $1,000 or the total value of a single class of Materials on hand is at least $500, the Agency Engineer may elect to authorize an advance allowance for the Materials in the progress payments.

The quantity of Materials eligible for advance allowance in any case shall not exceed the total estimated quantity required to complete the Project. The advance allowance for the Materials will not exceed the appropriate portion of the Price Item Value for the Price Item in which such Materials are to be incorporated.

In any event, the Agency will not make advance allowances, if any, on the Materials unless the following 3 conditions are satisfied:

(1) Request for Advance Allowance - If Materials on hand meet the requirement of (2) below, an advance allowance will be made if:

- A written request for advance allowance for Materials on hand has been received by the Agency Engineer at least 5 Calendar Days before the pay period cutoff date; and
- The request is accompanied by written consent of the Design-Builder's Surety, if required by the Agency.

(2) Stored or Stockpiled Conditions - The Materials shall have been delivered and/or acceptably stored or stockpiled in accordance with the Design-Builder Specifications and as follows:

- At the Project Site;
- On Agency-owned property;
- On property in the State of Oregon on which the property owner has authorized storage in writing. The written authorization must allow the Agency to enter upon the property and remove Materials for at least 6 months after completion of the Project. The Design-Builder shall furnish a copy of the written permission to the Agency; or
- On property outside the State of Oregon on which the property owner has authorized storage in writing, provided that such storage location is authorized in writing by the Agency Engineer. The written authorization must allow the Agency to enter upon the property and remove Materials for at least 6 months

after completion of the Project. The Design-Builder shall furnish a copy of the written permission to the Agency.

To be eligible for advance allowance, the Materials must:

- Conform to the Specifications and Plans;
- Have the required Materials conformance and Quality Compliance Documents on file (see Section DB165);
- Be in a form ready for incorporation into the permanent Work; and
- Be clearly marked and identified as being specifically fabricated, or produced, and reserved for use on the Project.

(3) Responsibility for Protection - The Design-Builder has full control and responsibility for the protection of Materials on hand from the elements and against damage, loss, theft, or other impairment until the entire Project has been completed and Accepted by the Agency.

If Materials are damaged, lost, stolen, or otherwise impaired while stored, the monetary value advanced for them, if any, will be deducted from the next progress payment.

If these conditions of DB195.60(a) have been satisfied, and the Agency Engineer elects to authorize an advance allowance, the amount of advance allowance, less retainage, will be determined by one of the following methods as elected by the Agency Engineer:

- Net cost to the Design-Builder of the Materials, f.o.b. the Project Site or other approved site; or
- Price (or portion of it attributable to the Materials), less the cost of incorporating the Materials into the Project, as estimated by the Agency Engineer.

(b) Proof of Payment - The Design-Builder shall provide the Agency Engineer with proof of payment to the Suppliers for purchased Materials within 30 Calendar Days of the date of the progress payment that includes the advance allowance.

If proof of payment is not provided, sums advanced will be deducted from future progress payments, and the Agency Engineer will not approve further prepayment advance allowance requests.

(c) Terminated Contract - If the Contract is terminated, the Design-Builder shall provide the Agency immediate possession of all Materials for which advance allowances have been received, as provided above. If, for any reason, immediate possession of the Materials cannot be provided, the Design-Builder shall immediately refund to the Agency the total amount advanced for the Materials. The Agency may deduct any amount not so refunded from final payment.

DB195.70 Payment under Terminated Contract - Payment for Work performed under a Contract that is terminated pursuant to the provisions of DB180.90, will be determined under (a) or (b) of this Section.

(a) Termination for Default - Upon termination of the Contract for the Design-Builder's default, the Agency will make no further payment until the Project has been completed. If

the Contract is assigned to the Surety or the Surety's substitute Contractor the Agency will make progress payments to the Entity to whom the Contract is assigned but may withhold an amount sufficient to cover anticipated Agency costs, as determined by the Agency Engineer, to complete the Project.

Upon completion of the Project, the Agency Engineer will determine the total amount that the defaulting Design-Builder would have been entitled to receive for the Work under the terms, provisions and conditions of the Contract, had the Design-Builder completed the Work (the "Cost of the completed Work").

If the Cost of the completed Work, less the sum of all amounts previously paid to the Design-Builder, exceeds the expense incurred by the Agency in completing the Work, including without limitation expenses for additional managerial and administrative services, the Agency will pay the excess to the Design-Builder, subject to the consent of the Design-Builder's Surety.

If the expense incurred by the Agency in completing the Work exceeds the Contract Amount, the Design-Builder or the Design-Builder's Surety shall pay to the Agency the amount of the excess expense.

The Agency Engineer will determine the expense incurred by the Agency and the total amount of the Agency damage resulting from the Design-Builder's default. The determination will be final as provided in Section DB150.

If a termination for default is determined by a court of competent jurisdiction to be unjustified, it shall be deemed a termination for public convenience, and payment to the Design-Builder will be made as provided below.

(b) Termination for Public Convenience:

(1) General - Full or partial termination of the Contract shall not relieve the Design-Builder of responsibility for completed or performed Work or relieve the Design-Builder's Surety of the obligation for any just claims arising from the completed or performed Work.

(2) Mobilization - If mobilization is not included as a separate Price Item within a Price Center, and is not otherwise allowable as a reimbursable item under the Contract, the Agency may pay the Design-Builder for mobilization expenses, including moving Equipment to and from the Project Site. If allowed, payment of mobilization expenses will be based on cost documentation submitted by the Design-Builder to the Agency Engineer.

(3) All Other Work - Subject to the limitations in (b)(1) above; the Agency will pay the Design-Builder at the price stipulated in the Contract for the number of the Price Items of completed Accepted Work. For Price Items partially completed, payment will be as mutually agreed, or, if not agreed, as the Agency Engineer determines to be fair and equitable. No claim for loss of anticipated profits will be allowed. The Agency will purchase Materials left on hand in accordance with DB195.80.

DB195.80 Allowance for Materials Left on Hand:

(a) Purchase of Unused Materials - If Materials are delivered to the Project Site, or otherwise acceptably stored at the order of the Agency Engineer, but not incorporated into the Work due to complete or partial elimination of Work by the Agency, Agency required changes in Plans, or termination of the Contract for public convenience pursuant to DB180.90, and it is not commercially feasible for the Design-Builder to return them for credit or otherwise dispose of them on the open market, the Agency may elect to purchase them. The Agency's purchase, if any, will be made according to the formula and conditions set forth below:

(b) Purchase Formula and Conditions:

(1) Formula - The Agency will apply the following formula in determining the Design-Builder's allowance for Materials left on hand:

The Design-Builder's actual cost, plus 5% overhead allowance, minus advance allowances under DB195.60, but no markup or profit.

(2) Conditions - The Agency will not purchase the Design-Builder's Materials left on hand unless the Design-Builder satisfies the following conditions:

- Requests Agency's purchase of unused Materials;
- Show that the Materials were acquired prior to the Agency change or termination;
- Shows that the Materials meet the requirements of the Specifications and Plans; and
- Provides receipts, bills and other records of actual cost of Materials delivered to the designated delivery points.

DB195.90 Final Payment:

(a) Final Pay Request - No later than 10 Calendar Days after Final Inspection of the Project, the Design-Builder shall submit a final Pay Request for Work completed that was not included in a prior Pay Request or otherwise paid by the Agency. The total amount due the Design-Builder will be determined according to the terms, provisions and conditions of the Contract, including without limitation any amounts due for Extra Work performed.

(b) Final Payment - The amount of final payment will be the difference between the total amount due the Design-Builder and the sum of all payments previously made. All prior progress payments shall be subject to correction in the final payment.

After computation of the final amount due, and after Final Acceptance of the Project, final payment will be mailed to the Design-Builder's last known address, as shown in the records of the Agency.

Beginning 30 Calendar Days after the date of Third Notification, interest will begin to accrue at the rate established by ORS 279C.570 on any money due and payable to the Design-Builder as final payment, determined as described above. No interest will be paid on money withheld due to outstanding amounts owed by the Design-Builder under the provisions of DB170.10.

(c) No Waiver of Right to Make Adjustment - The fact that the Design-Builder has submitted Pay Requests and the Agency has made any measurement, estimate, determination or certification either before or after completion of the Project, Final Acceptance, Agency assumption of possession of the Project Site, determination of satisfactory completion of the Work or release of retainage under DB195.50(d) or payment for any part of the Work, shall not prevent either party from:

- Showing the true amount and character of the Work
- Showing that any Pay Request, measurement, estimate, determination or certification is incorrect
- Recovering from the other Party damages that may have been suffered because the other Party failed to comply with the Contract

DB195.95 Error in Final Quantities and Amounts

(a) Request for Correction of Compensation - If the Design-Builder believes the quantities or amounts detailed in the final Contract payment voucher prepared by the Agency Engineer to be incorrect, the Design-Builder shall submit an itemized statement to the Agency Engineer detailing all proposed corrections.

This statement shall be submitted to the Agency Engineer within 90 Calendar Days from the date the voucher was mailed to the Design-Builder in accordance with DB195.90(b). Any request for compensation not submitted and supported by an itemized statement within the 90 Calendar Day period will not be paid by the Agency. This does not limit the application of Section DB199.

(b) Acceptance or Rejection of Request:

(1) Consideration of Request - The Agency will consider and investigate the Design-Builder's request for correction of compensation submitted in accordance with Subsection (a) above, and will promptly advise the Design-Builder of Acceptance or rejection of the request in full or in part.

(2) Acceptance of Request - If the Agency Accepts the Design-Builder's request(s) in full or in part, the Agency will prepare a post-final Contract payment voucher including all Accepted corrections, and will forward it to the Design-Builder.

(3) Rejection of Request - If the Agency rejects the request(s) in full, the Agency will issue a written notice of rejection and mail it to the Design-Builder.

(4) Design-Builder Objection to Revised Voucher or Notice of Rejection - If the Design-Builder disagrees with the revised voucher or notice of rejection, the Design-Builder may request review pursuant to the procedure set forth in DB199.40. If the Design-Builder fails to submit a request for Section DB199 review within 30 Calendar Days after the Agency mails a post-final Contract payment voucher or notice of rejection, the Design-Builder waives all rights to a claim based on errors in quantities and amounts.

If the Agency rejects the Design-Builder's request on the basis that the issue was not one that qualified for treatment under this Section, no review according to DB199.40 will be allowed.

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SECTION DB196 – PAYMENT FOR EXTRA WORK

DB196.00 General - Only Work not included in the Contract as awarded but deemed by the Agency Engineer to be necessary to complete the Project (see DB140.60), will be paid as Extra Work. Regardless of alterations and changes, any item of Work provided for in the Contract will not constitute Extra Work. Payment for alterations and changes to Work will be made in accordance with DB195.20.

Compensation for Extra Work will be paid only for Work authorized in writing by the Agency Engineer and performed as specified. Work performed before issuance of the Agency's written authorization will be at the Design-Builder's risk. Extra Work will be paid as determined by the Agency Engineer according to DB196.10 or DB196.20.

DB196.10 Negotiated Price - If the Agency Engineer can reasonably determine a price estimate for Extra Work, the Agency Engineer may then give written authorization to the Design-Builder to begin the Extra Work. As soon as practicable, but within 10 Calendar Days after that authorization, the Design-Builder shall respond in writing to the Agency Engineer's Extra Work price estimate by submitting to the Agency Engineer an Extra Work price quote. The price quote must detail the following items related to the Extra Work:

- Types and amounts of Materials
- Hours of Equipment use and hours of labor
- Travel
- Overhead and profit
- Other costs associated with the proposed Extra Work

Pending approval of the price quote, the Agency Engineer will maintain force account records of the Extra Work. As soon as practicable, but within 10 Calendar Days of receipt of a properly supported price quote, the Agency Engineer will review the price quote and advise the Design-Builder if it is accepted or rejected. The Agency Engineer will not accept a price quote that cannot be justified on a Force Account basis. If the Design-Builder's price is accepted, the Agency Engineer will issue a Change Order, and the Extra Work will be paid at the accepted price.

DB196.20 Force Account - If the Agency Engineer and the Design-Builder cannot agree on a price for the Extra Work, the Agency Engineer may issue an Extra Work order requiring the Extra Work to be paid as Force Account Work. Force Account Work records and payment will be made according to Section DB197.

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SECTION DB197 – PAYMENT FOR FORCE ACCOUNT WORK

DB197.00 Scope - The Materials, Equipment and labor rates and procedures established in this Section apply to Extra Work ordered by the Agency Engineer to be performed as Force Account Work. With the exceptions identified in DB197.01(b), these rates and procedures also apply to other Work when according to other Sections this Section DB197 applies, including without limitation the following:

- DB195.20 - Changes to Plans or Character of Work
- DB195.30 - Differing Site Conditions
- DB199.30(b) - Claims Requirements

DB197.01 General:

(a) Extra Work on a Force Account Basis - Before ordering Force Account Work, the Agency Engineer will discuss the proposed work with the Design-Builder and will seek the Design-Builder's comments and advice concerning the formulation of Force Account Work specifications. The Agency Engineer is not bound by the Design-Builder's comments and advice, and has final authority to:

- Determine and direct the Materials, Equipment and labor to be used on the approved Force Account Work; and
- Determine the time of the Design-Builder's performance of the ordered Force Account Work.

If the Agency Engineer orders the performance of Extra Work as Force Account Work, the Agency Engineer will record, on a daily basis, the Materials, Equipment, labor, and Special Services used for the Force Account Work during that Day. The Agency Engineer and the Design-Builder shall sign the record daily to indicate agreement on the Materials, Equipment, labor, and Special Services used for the Force Account Work performed on that Day.

The following shall be reflected on the daily record:

- Materials used in the Force Account Work as directed by the Agency Engineer, except those furnished and paid under rental rates for use of Equipment;
- Equipment that the Agency Engineer considers necessary to perform the Force Account Work. Equipment hours will be recorded to the nearest quarter hour;
- Labor costs, including that of Equipment operators and supervisors in direct charge of the specific operations while engaged in the Force Account Work;
- Special Services; and
- The Agency Engineer's and Design-Builder's signatures confirming its accuracy.

(b) Other Work - When according to other Sections this Section DB197 applies, the following exceptions apply to the Work under those other Sections, except for Extra Work ordered by the Agency Engineer to be performed as Force Account Work:

- DB197.01(a) does not apply.
- Cost Efficiency - The Agency will not be responsible for additional costs that are a direct or indirect result of the Design-Builder's inefficient means and methods or that reasonably could have been avoided if the Materials, Equipment, labor or services had been obtained at a more commercially reasonable cost.
- Standby Time - Equipment that is necessary for the Work but is not being operated to progress the Work will be considered to be on standby and will be limited to the standby rates and hour limitations in DB197.20(e). Equipment costs will be limited to a combination of operating time and standby time of not more than eight hours in a 24-hour period or 40 hours in a 1-week period. The Equipment must be onsite and available for use to be eligible for standby time.
- For a period of 7 or fewer Calendar Days: If a continuous period of standby time for a piece of Equipment does not exceed 7 Calendar Days, the accumulated standby cost for that continuous period of standby time shall be limited to the standby rates and hour limitations in DB197.20(e).
- For a period of more than 7 Calendar Days: Unless the Agency Engineer has otherwise agreed in advance in writing, if a continuous period of standby time for a piece of Equipment exceeds 7 Calendar Days, the accumulated standby cost shall be limited to:
- For the first 7 Calendar Days, the standby rates and hour limitations in DB197.20(e), and
- For the portion of the continuous period of standby time after the first 7 Calendar Days, the lesser of:
    - The standby rates and hour limitations in DB197.20(e); or
    - The cost for moving that piece of Equipment to and from the Project Site according to DB197.20(d).

DB197.10 Materials:

(a) General - The Design-Builder will be paid for Materials actually used in the Force Account Work as directed by the Agency Engineer, except for those furnished and paid for under rental rates included with the use of Equipment. Payments will be at actual cost, including transportation costs to the specified location, from the Supplier to the purchaser, whether the purchaser is the Design-Builder, a Subcontractor, or other forces. All costs are subject to the provisions of this Subsection.

(b) Trade Discount - If a commercial trade discount is offered or available to the purchaser, it shall be credited to the Agency, even though the discount may not have actually been taken. The Agency will not take any discounts for prompt or early payment, whether or not offered or taken.

(c) Not Directly Purchased from Supplier - If Materials cannot be obtained by direct purchase from and direct billing by the Supplier, the cost shall be considered to be the price billed to the purchaser less commercial trade discounts, as determined by the

Agency Engineer, but not more than the purchaser paid for the Materials. No markup other than actual handling costs shall be permitted.

(d) Purchaser-Owned Source - If Materials are obtained from a supply or source wholly or partly owned by the purchaser, the cost must not exceed the price paid by the purchaser for similar Materials furnished from that source on Price Items, or the current wholesale price for the Materials delivered to the Project Site, whichever is lower.

DB197.20 Equipment:

(a) General - Equipment approved by the Agency Engineer to perform the Force Account Work will be eligible for payment at the established rates only during the hours it is operated, or on standby if so ordered by the Agency Engineer. Equipment hours will be recorded on the daily record to the nearest quarter hour.

Except as modified by these provisions, Equipment use approved by the Agency Engineer will be paid at the rental rates given in the most current edition of the EquipmentWatch Cost Recovery (Blue Book) published by EquipmentWatch, a division of Penton Business Media, Inc., and available from EquipmentWatch (phone 1-800-669-3282) (see DB110.05(e) for website).

(b) Equipment Description - On the billing form for Equipment costs, the Design-Builder shall submit to the Agency Engineer sufficient information for each piece of Equipment and its attachments to enable the Agency Engineer to determine the proper rental rate from the Blue Book.

(c) Rental Rates (without Operator):

(1) Rental Rate Formula - Rental rates for Equipment will be paid on an hourly basis for Equipment and for attachments according to the following formula:

$$\text{Hourly Rate} = \frac{\text{Monthly Base Rate x Rate Adjustment Factor}}{176\ \text{hours/month}} + \text{Hourly Operating Rate}$$

Some attachments are considered “standard Equipment” and are already included in the monthly base rate for the Equipment. That information can be obtained from EquipmentWatch.

(2) Monthly Base Rate - The monthly base rate used above for the machinery and for attachments represents the major costs of Equipment ownership, such as depreciation, interest, taxes, insurance, storage, and major repairs.

(3) Rate Adjustment Factor - The rate adjustment factor used above will be determined by applying only the Model Year Adjustment to the Blue Book Rates. The Regional and User Defined Ownership/Operating Adjustments shall not apply.

(**4) Hourly Operating Rate** - The hourly operating rate used above for the machinery and for attachments represents the major costs of Equipment operations, such as fuel and oil, lubrications, field repairs, tires or ground engaging components, and expendable parts.

(5) Limitations - If multiple attachments are included with the rental Equipment and are not considered "standard Equipment", only the attachment having the higher rental rate will be eligible for payment, provided the attachment has been approved by the Agency Engineer as necessary to the Force Account Work.

Rental will not be allowed for small tools that have a daily rental rate of less than $5, or for unlisted Equipment that has a fair market value of $400 or less.

The above rates apply to approved Equipment in good working condition. Equipment not in good working condition, or larger than required to efficiently perform the Work, may be rejected by the Agency Engineer or approved and paid for at reduced rates.

(d) Moving Equipment - If it is necessary to transport Equipment located beyond the Project Site exclusively for Force Account Work, the actual cost to transport the Equipment to, and return it from, its On-Site Work Location will be allowed as an additional item of expense. However, the return cost will not exceed the original delivery cost. These costs will not be allowed for Equipment that is brought to the Project Site for Force Account Work if the Equipment is also used on Price Item or related Work.

If transportation of such Equipment is by common carrier, payment will be made in the amount paid for the freight. No markups will be allowed on common carrier transportation costs. If the Equipment is hauled with the Design-Builder's own forces, transportation costs will include the rental rate of the hauling unit and the hauling unit operator's wage. If Equipment is transferred under its own power, the rental rate allowed for transportation time will be 75% of the appropriate hourly rate for the Equipment without attachments, plus the Equipment operator's wage.

(e) Standby Time - If ordered by the Agency Engineer, standby time will be paid at 50% of the hourly rental rate calculated according to this Subsection, excluding the hourly operating rate. Rates for standby time that are calculated at less than $1 per hour will not be paid. Payment will be limited to not more than 8 hours in a 24-hour period or 40 hours in a one-week period.

(f) Blue Book Omissions - If a rental rate has not been established in the Blue Book, the Design-Builder may:

- If approved by the Agency Engineer, use the rate of the most similar model found in the Blue Book, considering such characteristics as manufacturer, capacity, horsepower, age and fuel type;
- Request EquipmentWatch to furnish a written response for a rental rate on the Equipment, which shall be presented to the Agency Engineer for approval; or
- Request that the Agency Engineer establish a rental rate.

(g) Outside Rental Equipment - If Design-Builder-owned or Subcontractor-owned Equipment is not available and Equipment is rented from outside sources, payment will be based on the actual paid invoice.

If the invoice specifies that the rental rate does not include fuel, lubricants, field repairs, or servicing, an amount equal to the Blue Book hourly operating cost may be added for those items that were excluded.

The Agency may reduce the payment when the invoice amount plus allowance is higher than the amount authorized under (c) through (f) of this Subsection.

The provisions of DB180.20(c), apply to owner-operated Equipment.

DB197.30 Prevailing Wage Labor and Direct Supervision - For the purposes of this Subsection DB197.30, "prevailing wage labor" or "prevailing wage laborers" means workers performing duties that are subject to prevailing wage statutes and requirements included in Article 11.

If it is unclear whether DB197.30 or DB197.35 applies to labor performed by a worker, the Design-Builder shall notify the Agency Engineer and the Agency will issue a determination which will be final.

The Design-Builder will be paid for all prevailing wage labor engaged directly on Force Account Work and for supervisors in direct charge of the specific construction force account operations as follows.

(a) Wages – The actual wages paid to prevailing wage laborers or supervisors as described above, if those wages are paid at rates not more than those paid to the same prevailing wage laborers for performance of Contract Work, or those wages paid for comparable labor currently employed on the Project, or at the recognized, current, prevailing rates in the locality of the Project.

The Design-Builder shall provide adequate documentation to demonstrate the actual hourly wages paid.

(b) Required Contributions - The actual cost of industrial accident insurance, unemployment compensation contributions, payroll transit district taxes, and social security for old age assistance contributions incurred or required under statutory law and these Specifications. The actual cost of industrial accident insurance is the National Council on Compensation Insurance (NCCI) rate for the assigned risk pool for the appropriate work class multiplied by the experience modification factor for the Design-Builder.

The Design-Builder shall provide adequate documentation to demonstrate the actual contributions paid.

(c) Required Benefits - The actual amount paid to, or on behalf of, workers as per diem and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when such other benefits are required by a collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on the Project.

The Design-Builder shall provide adequate documentation to demonstrate the actual benefits paid.

DB197.35 Non-Prevailing-Wage Labor - For the purposes of this Subsection DB197.35, "non-prevailing-wage labor" or "non-prevailing-wage laborers" means workers performing duties that are not subject to prevailing wage statutes and requirements included in Article 11, including but not limited to the following:

- Professionals of Record and other design personnel
- Utility coordinators
- Permitting coordinators
- Surveyors performing Work not subject to prevailing wage statutes and requirements included in Article 11
- Professional environmental service providers
- Personnel performing Quality Management Work not subject to prevailing wage statutes and requirements included in Article 11
- Supervisors in direct charge of the specific non-prevailing-wage-related force account activities

If it is unclear whether DB197.30 or DB197.35 applies to labor performed by a worker, the Design-Builder shall notify the Agency Engineer and the Agency will issue a determination which will be final.

The Design-Builder will be paid for all non-prevailing-wage labor engaged directly on Force Account Work as follows:

(a) Wages – The actual wages paid to non-prevailing-wage laborers excluding all items covered by the labor surcharge as described under DB197.35(b), if those wages are paid at rates not more than those paid to the same non-prevailing-wage laborers for performance of Contract Work, or those wages paid for comparable labor currently employed on the Project.

The Design-Builder shall provide adequate documentation to demonstrate the actual hourly wages paid.

(b) Labor Surcharge – A labor surcharge equal to 180 percent of the actual hourly wages will be paid in addition to the actual wages described above, which shall constitute full compensation for all state and federal payroll, unemployment and other taxes, workers' compensation, fringe benefits (including health insurance, retirement plans, vacation, sick leave, and bonuses) and all other payments made to, or on behalf of, the non-prevailing-wage laborer in excess of actual wages. The labor surcharge is inclusive of overhead and profit.

(c) Agency Engineer Pre-authorization – The Design-Builder will only be paid for non-prevailing wage labor that is engaged directly on Force Account Work for which the Design-Builder has received prior written authorization to proceed from the Agency Engineer. All such Work is subject to the Agency's verification and approval.

The markups included in DB197.80 are not applicable to non-prevailing-wage labor, however the Design-Builder is entitled to the 8% supplemental markup on each Force Account Work order that includes non-prevailing-wage labor performed by a Subcontractor.

DB197.40 Invoices for Special Services - Invoices for Special Services that reflect current market pricing may be accepted without complete itemization of Materials, Equipment, and labor costs if the itemization is impractical or not customary. The invoice for Special Services must show credit for commercial trade discounts offered or available.

No percentage markup will be allowed other than that specified in DB197.80.

DB197.80 Percentage Allowances - To the Design-Builder's actual costs incurred, as limited in this Section DB197, amounts equal to a percentage markup of such costs will be allowed and paid to the Design-Builder as follows:

Subsection	Percent
DB197.10 Materials	19
DB197.20 Equipment	19
DB197.30 Prevailing-Wage-Related Labor	29
DB197.40 Special Services	19

When a Subcontractor performs ordered Force Account Work, the Design-Builder will be allowed a supplemental markup of 10% on each Force Account Work order.

These allowances made to the Design-Builder will constitute complete compensation for overhead, general and administrative expenses, profit, and all other Force Account Work costs that were incurred by the Design-Builder, or by other forces that the Design-Builder furnished. No other reimbursement, compensation, or payment will be made.

DB197.90 Billings - Billings for Force Account Work by the Design-Builder shall be submitted for the Agency Engineer's approval on forms provided by the Agency or approved by the Agency Engineer. Billings for Materials (other than Incidental items out of the inventory of the Design-Builder or Subcontractors), rental Equipment from sources other than the Design-Builder or Subcontractors, and Special Services, must be accompanied by copies of invoices for the goods and services. The invoices shall be fully itemized showing dates, quantities, unit prices, and complete descriptions of goods and services provided. Invoices for amounts of $10 or less per invoice are not required, unless requested by the Agency Engineer.

Costs included on the billings must comply with DB197.01(a) and DB197.10 through DB197.40.

When a billing for Force Account Work has been paid at the Project level, no further corrections will be made because of further review if those corrections amount to less than $10.

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SECTION DB199 – DISAGREEMENTS, PROTESTS, AND CLAIMS

DB199.00 General - This Section details the process through which the Parties agree to resolve any disagreement concerning additional compensation or concerning a combination of additional compensation and Contract Time. (See DB180.80 for disagreements and claims concerning additional Contract Time only, and DB195.95 for disagreements and claims concerning correction of final compensation.) The Agency will not consider direct disagreements, protests, or claims from Subcontractors, Suppliers, or any other Entity not a party to the Contract.

DB199.10 Procedure for Resolving Disagreements - When disagreements occur concerning additional compensation or a combination of additional compensation and Contract Time, the Design-Builder shall first pursue resolution through the Agency Engineer of all issues in the dispute, including without limitation the items to be included in the written notice in DB199.20. If the discussion fails to provide satisfactory resolution of the disagreement, the Design-Builder shall follow the protest procedures outlined in DB199.20. If the Agency Engineer denies all or part of the Design-Builder's protest, and the Design-Builder desires to further pursue the issues, the Design-Builder shall submit a claim for processing according to DB199.30.

DB199.20 Protest Procedure - If the Design-Builder disagrees with anything required in a Change Order or other written or oral order from the Agency Engineer, including any direction, instruction, interpretation, or determination, or if the Design-Builder asserts a disagreement or dispute on any other basis, except DB195.95, that, in the Design-Builder's opinion, entitles or would entitle the Design-Builder to additional compensation or a combination of compensation and Contract Time, the Design-Builder shall do all of the following in order to pursue a protest and preserve its claim:

(a) Oral Notice - Give oral notice of protest to the Agency Engineer and outline the areas of disagreement before starting or continuing the protested Work.

(b) Written Notice - File a proper written notice of protest on form 734-2887 with the Agency Engineer within 7 Calendar Days after receiving the protested order. In the notice the Design-Builder shall:

- Describe the acts or omissions of the Agency or its agents that allegedly caused or may cause damage to the Design-Builder, citing specific facts, persons, dates and Work involved;
- Describe the nature of the damages;
- Cite the specific Contract provision(s) that support the protest;
- Include the estimated dollar cost, if any, of the protested Work, and furnish a list of estimated Materials, Equipment and labor for which the Design-Builder might request additional compensation; and
- If additional compensation is estimated to be due, include the estimated amount of additional time required, if any.

Failure to comply with these notice requirements renders the notice improper.

(c) Records - Keep complete records of all costs and time incurred throughout the protested Work, and allow the Agency Engineer access to those and other supporting records. Provide daily records of protested Work, on a weekly basis, on a schedule to be set by agreement with the Agency Engineer.

(d) Comparison of Records - Provide the Agency Engineer adequate facilities for keeping cost and time records of the protested Work. The Design-Builder and the Agency Engineer will compare records and either bring them into agreement at the end of each Day, or record and attempt to explain any differences.

(e) Work to Proceed - In spite of any protest, proceed promptly with the Work ordered by the Agency Engineer.

(f) Evaluation of Protest - The Agency Engineer will promptly evaluate all protests, after the Design-Builder has fully complied with the requirements described in DB199.20(b). If the protest is denied, the Agency Engineer will notify the Design-Builder in writing of the reasons for full or partial denial. If a protest is found to be valid, the Agency Engineer will, within a reasonable time, make an equitable adjustment of the Contract. Adjustment of time will be evaluated according to DB180.80.

The Agency Engineer has no responsibility for evaluating and may reject a protest that does not comply with DB199.20(b). If the protest is rejected, the Agency Engineer will notify the Design-Builder in writing of the reasons for rejection.

(g) Protest Evaluation by Third Party Neutral - If the Agency Engineer agrees that the Design-Builder has fully complied with the requirements described in DB199.20(b), and if the Agency Engineer fully or partially denies, in writing, the Design-Builder's protest according to DB199.20(f), the Design-Builder may request that a mutually selected Third Party Neutral review the protest. Procedures for selecting, using, and paying for the cost of the Third Party Neutral will be specified by Contract Change Order.

If the Design-Builder does not accept the Agency's Engineer evaluation of the protest, or either the Design-Builder or Agency Engineer disagrees with the resolution recommended by the Third Party Neutral, the Design-Builder may pursue a claim as described in DB199.30.

DB199.30 Claims Procedure:

(a) General - If the Design-Builder believes that additional compensation is due, or a combination of additional compensation and Contract Time, and has pursued and exhausted all the procedures provided in DB199.10 and DB199.20 to resolve a disagreement and protest, the Design-Builder may file a claim.

The Agency's Contract is with the Design-Builder. There is no contractual relationship between the Agency and any Subcontractors, Suppliers or any Entity other than the Design-Builder. It is the Design-Builder's responsibility to fully evaluate any claim before presenting it to the Agency. In addition, when a claim includes Work done or costs incurred by any Subcontractors, Suppliers, or any Entity other than the Design-Builder, the Design-Builder remains solely responsible for presenting the claim to the Agency.

Claims that include Work done or costs incurred by any Subcontractors, Suppliers, or any Entity other than the Design-Builder will not be considered by the Agency unless the Design-Builder has:

- Completed and provided its own written evaluation of the claim;
- Verified by its own independent review and evaluation of the amount of compensation sought; and
- Certified the claim according to DB199.30(b) (Part 10).

(b) Claims Requirements - At any time during the progress of the Work, but not later than 45 Calendar Days following the date of the Final Second Notification, the Design-Builder shall submit to the Agency Engineer in writing, claims for additional compensation or a combination of additional compensation and Contract Time additional to that specified in the Contract. For a claim not submitted within the 45 Day limit, that has not met the requirements of DB199.20, or is not filed as provided in DB199.30, the Design-Builder waives any claim for additional compensation or for additional compensation and Contract Time, and the Agency may reject the claim.

Written claims to the Agency Engineer by the Design-Builder shall be delivered to the Agency address shown in the Design-Build Agreement, unless a different address is agreed to by the Agency Engineer, and shall be delivered:

- By U.S. Postal Service first class mail or priority mail (which at the sender's option may include certified or registered mail return receipt requested); or
- By overnight delivery service of a private industry courier.

Claims will be considered as having been received by the Agency:

- At the time of actual receipt or 7 Calendar Days after the postmarked date when deposited for delivery by first class or priority mail, whichever is earlier; or
- At the time of actual receipt or 3 Calendar Days after deposit with a private industry courier for overnight delivery service, whichever is earlier.

The Agency reserves the right at any time and at any step in the claim decision or review process to request additional information, records or documentation related to the claim or the Contract either directly or through agents working toward resolution of the disputed or claimed events and issues.

Claims shall be made in writing, and shall include all information, records and documentation necessary for the Agency to properly and completely evaluate the claim.

To be considered, claims for additional compensation, or for additional compensation and Contract Time, shall be completed according to DB199.30 and shall be submitted with the required information and in the format below and labeled as required below for each claimed issue:

(Part 1) Summary (label page 1.1 through page 1.X) - In the summary, include a detailed, factual statement of the claim for additional compensation and Contract Time, if any, with necessary dates and locations of Work involved in the claim and the dates of when the event arose. Also include detailed facts supporting the Design-Builder's position relative to the Agency Engineer's decision (see DB199.20(f));

(Part 2) Proof of notice (label page 2.1 through page 2.X) - Submit a copy of form 734-2887, with all attachments, that was given to the Agency. Include the date when that written notice and the date when oral notice was given.

(Part 3) Copies of the Contract Documents identified in Design-Build Agreement Article 12 that support the Design-Builder's claim (label page 3.1 through page 3.X);

(Part 4) Theory of entitlement supporting the claim (label page 4.1 through page 4.X) - Include a narrative of how or why the specific Contract Documents identified in Design-Build Agreement Article 12 support the claim and a statement of the reasons why such Contract Documents support the claim;

(Part 5) Itemized list of claimed amounts (label page 5.1 through page 5.X) - Claimed damages that resulted from the event with a narrative of the theories and records and documents used to arrive at the value of the damages;

(Part 6) Additional Contract Time requests (label page 6.1 through page 6.X) - If the claim is for a combination of additional compensation and Contract Time, submit a copy of the Project schedule that was in effect when the event occurred and a detailed narrative which explains how the event impacted Contract Time. In addition, if an Agency-caused delay is claimed:

- Include the specific days and dates under claim;
- Provide detailed facts about the specific acts or omissions of the Agency that allegedly caused the delay, and the specific reasons why the resulting delay was unreasonable; and
- Provide a schedule evaluation that accurately describes the impacts of the claimed delay.

Also see DB180.80 for additional requirements regarding claims for Contract Time and causes that are eligible and ineligible for consideration;

(Part 7) Copies of actual expense records (label page 7.1 through page 7.X) - Include documents that contain the detailed records and which support and total to the exact amount of additional compensation sought. Include the information and calculations necessary to support that amount. That amount may be calculated on the basis of Section DB197, if applicable, or may be calculated using direct and indirect costs presented in the following categories:

- Direct Materials;
- Direct Equipment. The rate claimed for each piece of Equipment shall not exceed the actual cost. In the absence of actual Equipment costs, the Equipment rates shall not exceed 75% of those calculated under the

provisions of DB197.20. For each piece of Equipment, the Design-Builder shall include a detailed description of the Equipment and attachments, specific days and dates of use or standby, and specific hours of use or standby;

- Direct labor;
- Job overhead;
- General and administrative overhead; and
- Other categories as specified by the Design-Builder or the Agency;

(Part 8) Supporting records and documents (label page 8.1 through page 8.X) - Include copies of, or excerpts from the following:

- Any documents that support the claim, such as manuals standard to the industry and used by the Design-Builder; and
- Any daily reports or diaries related to the event, photographs or media that help explain the issue or event (optional), or all other information the Design-Builder chooses to provide (optional);

(Part 9) Certification (label page 9.1 through 9.X) - A certified statement, signed by a person authorized to execute Change Orders, by the Design-Builder, Subcontractor, Supplier, or Entity, originating the claim, as to the validity of facts and costs with the following certification:

Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim for additional compensation for Work on the Contract is a true statement of the actual costs incurred (in the amount of $_____, exclusive of interest) and is fully documented and supported under the Contract between the Parties.

Signature: _____

Date: _____*, 20___*

Subscribed and sworn before me this ____ day of _____*, 20___*

_____

Notary Public

My commission expires _____*.*

(Part 10) Design-Builder evaluation of a lower tier claim (label page 10.1 through 10.X) - If the claim includes Work done or costs incurred by any Subcontractors, Suppliers, or any Entity other than the Design-Builder, the following are required:

- Data required by the other Subsections of DB199.30(b);
- Copies of the Design-Builder's, Subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, separate evaluation of entitlement;

- Copies of the Design-Builder's, Subcontractor's, Supplier's and Entity's, at all tiers above the level of which the claim originates, independent verification and evaluation of the amount of damages sought; and
- A person authorized to execute Change Orders on behalf of the Design-Builder, Subcontractor, Supplier and Entity, at all tiers above the level of which the claim originates, must sign a statement with the following certification:

  Under penalty of law for perjury or falsification, the undersigned, (Name), (Title), (Company) certifies that this claim originating from the Subcontractor, Supplier or Entity (Company) for additional compensation for Work on the Contract is a reasonable statement, independently verified, of the costs incurred (in the amount of $_____, exclusive of interest) and is fully documented and supported under the Contract between the Parties.

  Signature: _____

  Date: _____, 20___

  Subscribed and sworn before me this ____ day of _____, 20___

  _____
  Notary Public

  My commission expires _____.

If the Agency Engineer determines that additional information, records or documentation is needed to allow proper evaluation of the claim submittal, the Agency Engineer will request the information, records or documentation. The Design-Builder shall submit to the Agency Engineer within 14 Calendar Days, or as otherwise agreed by the Parties, the required additional information, records and documentation.

If the Agency Engineer determines that the claim submittal with the additional information, records and documentation submitted is incomplete and not accepted as a claim, the Agency Engineer will notify the Design-Builder in writing and the submittal will be rejected and will not be considered under DB199.40.

(c) Records Requirements - The Design-Builder shall comply with Article 8.

(d) Compliance Required - Full compliance by the Design-Builder with the provisions of this Section is a condition precedent to the commencement of any lawsuit by the Design-Builder to enforce any claim.

DB199.40 Claim Decision; Review; Exhaustion of Administrative Remedies - The Agency intends to resolve all claims at the lowest possible administrative level. The Agency Engineer will also determine whether multiple claims should be advanced separately or together.

If the Agency Engineer denies the claim for additional compensation or a combination of additional compensation and Contract Time, in full or in part, according to DB199.40(a), the Design-Builder may request review of the denial. The disputed claim for additional

compensation or a combination of additional compensation and Contract Time may then be resolved, in full or in part, at any of the four progressive steps of claim review procedure as specified in (b) through (e) of this Subsection.

If the Agency Engineer has denied a claim, in full or in part, for Contract Time only according to DB180.80, or has denied a claim, in full or in part, for correction of final compensation according to DB195.95, those disputed claims may then be resolved, in full or in part, at any of the four progressive steps of claim review procedure as specified in (b) through (e) of this Subsection.

A person authorized by the Design-Builder to execute Change Orders on behalf of the Design-Builder at or above the total claimed amount must be present and attend all claim hearings. For all claims, all of the actions and review under each step of the review process shall occur before the review can be advanced to the next higher step.

The Agency Engineer may determine to skip the Step 1: Region Level Review, in which case the claim or claims will advance to Step 2: Agency Level Review.

(a) Decision by the Agency Engineer - The Agency Engineer will, as soon as practicable, consider, investigate, and evaluate a Design-Builder's claim for additional compensation, or for a combination of additional compensation and Contract Time, if submitted as required by DB199.30.

Once the Agency Engineer determines the Agency is in receipt of a properly submitted claim, the Agency Engineer will arrange a meeting, within 21 Calendar Days or as otherwise agreed by the Parties, with the Design-Builder in order to present the claim for formal review and discussion.

If the Agency Engineer determines that the Design-Builder must furnish additional information, records or documentation to allow proper evaluation of the claim, the Agency Engineer will schedule a second meeting, to be held within 14 Calendar Days or as otherwise agreed by the Parties, at which the Design-Builder shall present the requested information, records and documentation.

The Agency Engineer will provide a written decision to the Design-Builder within 30 Calendar Days of the last Agency Engineer-level meeting.

If the Design-Builder does not accept the Agency Engineer's decision, the Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing that the Agency Engineer arrange a review at Step 1 (see (b) below).

(b) Step 1: Region Level Review - The Design-Builder shall request that the Agency Engineer arrange a meeting with the Region-level reviewer in order to present the denied or partially denied claim for formal review and discussion. The meeting will take place within 21 Calendar Days of the Agency's receipt of the request, or as otherwise agreed by the Parties.

If the Region-level reviewer determines that the Design-Builder must furnish additional information, records or documentation to allow proper evaluation of the claim, the reviewer will schedule a second meeting, to be held within 14 Calendar Days, or as otherwise

agreed by the Parties, at which the Design-Builder shall present the requested information, records and documentation.

The Region-level reviewer will provide a written decision to the Design-Builder within 30 Calendar Days of the last Region-level meeting.

If the Design-Builder does not accept the Step 1 decision, the Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing that the Agency Engineer arrange a review at Step 2 (see (c) below).

(c) Step 2: Agency Level Review - The Design-Builder shall request a meeting with the Agency's Contract Administration Engineer (CAE) to present the claim for final Agency review. The presentation will take place within 21 Calendar Days of the Agency's receipt of the Design-Builder's written request, or as otherwise agreed by the Parties.

If the CAE determines that the Design-Builder must furnish additional information, records or documentation to allow proper evaluation of the claim, the CAE will schedule a second meeting to be held within 14 Calendar Days or as otherwise agreed by the Parties, at which the Design-Builder shall present the requested information, records and documentation.

The claim is subject to DB199.60, if not all of the records requested by the CAE were furnished.

The CAE will provide a written decision to the Design-Builder, subject to DB199.60, if applicable, regarding the claim within 30 Calendar Days of the final Step 2 meeting.

If the Design-Builder does not accept the Step 2 decision, the Design-Builder may, within 10 Calendar Days of receipt of the written decision, request in writing through the Agency Engineer that the claim be advanced to Step 3 or 4 (see (d) and (e) below), as applicable. For purposes of determining which process to use for claims under Step 3 or 4 concerning a combination of additional compensation and Contract Time or for Contract Time only, the value of the claim or portion of the claim for Contract Time will be assumed to be the appropriate Liquidated Damages as provided in DB180.85 multiplied by the number of Calendar Days in question. If applicable, advancement of the claim is subject to the provisions of DB199.60 regarding waiver and dismissal of the claim or portions of the claim.

(d) Step 3: Arbitration; Claims Review Board:

(1) Claims Less Than $50,000 - At this step, the claim will be resolved by binding arbitration before a single arbitrator according to the Construction Industry Arbitration Rules of the American Arbitration Association or such other arbitration service and rules as agreed by the Parties.

Arbitration filing costs and any arbitrator's fees will be divided equally between the Agency and the Design-Builder.

(2) Claims of $50,000 to $500,000 - At this step, the Design-Builder shall present the claim to a Claims Review Board (referred to as "Board") for consideration, review and recommended resolution. The Board will be comprised of three persons. The Agency

will establish and maintain, in consultation with representatives of the construction industry, a panel of more than 12 qualified individuals available to serve on Boards.

If a claim within the scope of this step is properly referred for Board consideration and review, copies of biographies of all persons on the panel will be sent to the Design-Builder. Within 20 Calendar Days after the biographies are mailed, the Design-Builder and the Agency Engineer shall each nominate, in writing, 3 individuals from the panel available to serve on the Board.

Within 10 Calendar Days after receipt of the nominations, the Design-Builder and the Agency Engineer shall (a) each appoint to the Board one of the three individuals by the other, and (b) inform each other of the appointment. The two appointees, now Board Members, shall select an individual from the panel to serve as the third Board Member.

If the two Board Members cannot agree on the selection of the third Board Member, the Circuit Court in the county in which the Agency's main office is located will resolve the dispute. In this event, the Agency Engineer will act through the Agency's legal counsel to request the Circuit Court to select an individual from the panel to serve as the third Board Member. Once the three Board Members have been selected, the three Board Members will decide which of the three will be the Board Chair.

The Board may request the Agency Engineer to designate a person not associated with the Contract to act as the recording secretary for the Board. The recording secretary is not a Board member, and will only assist the Board with administrative tasks related to its consideration and review of the referred claim.

The Agency and the Design-Builder will equally share the costs of the Board members. The Agency will pay the costs of the Board's recording secretary.

Members of the Board are to act impartially and independently in the consideration of facts and conditions surrounding the dispute. Board recommendations concerning the dispute are considered advisory only, shall not be binding on either Party, and shall not constitute evidence in any legal proceeding for any reason.

The Board will schedule and conduct an informal hearing at which the Design-Builder and the Agency will each have an opportunity to present evidence and argument. The Design-Builder and the Agency shall each submit a brief written summary of the claim to each Board member and the other Party at least 10 Calendar Days before the hearing. Unless directed otherwise by the Board Chair, the summary shall include, for each issue under dispute:

- A short statement describing the disputed issue;
- A short position statement by the Party on the issue;
- A clear and concise explanation of the contractual basis for that position, including specific reference to Contract Documents identified in Design-Build Agreement Article 12;
- A clear and concise description of the costs claimed for each issue, including without limitation specific documents demonstrating productivity, time and costs; and

- Exhibits, including without limitation copies of plan sheets, extracts from the DB General Provisions, DB Standard Technical Specifications, DB Special Provisions, and correspondence, photographs, or other evidence to support the position.

The proceedings will be conducted in a manner determined by the Chair, in consultation with the other Board members. Unless directed otherwise by the Chair, the hearing will be conducted according to the following guidelines:

- The hearing will be informal;
- The witnesses will not be sworn;
- The Design-Builder will present its case first;
- The Agency will then present its case;
- Both Parties will then have opportunity to present rebuttal;
- The Board may ask questions and, to promote open discussion of the issues, both Parties may respond or emphasize issues;
- The Parties' attorneys may observe the hearing and may respond to direct questions from the Board, but may not make factual presentations or legal arguments; and
- The Board will conclude the hearing when it appears to the Board Chair that each Party has had sufficient opportunity to support its case and the Board has no further questions.

Within 10 Calendar Days after conclusion of the hearing, the Board will forward to the Agency's designated representative and the Design-Builder the Board's written recommendation for resolution of the claim. Within 10 Calendar Days of its receipt of the Board's recommendation, the Agency will provide to the Design-Builder the Agency's written decision regarding the claim.

If the Design-Builder does not accept the Agency's decision regarding the claim, the Design-Builder may proceed to litigation as described in Step 4 (see (e) below).

(3) Claims Over $500,000 - If the Design-Builder and the Agency Engineer agree, the Parties may employ the Step 3 Board review process according to DB199.40(d)(2). If not, the Design-Builder may proceed to Step 4 (see (e) below).

(e) Step 4: Litigation - This step applies to:

- Claims over $500,000
- Appeals of arbitration awards issued in Step 3 at DB199.40(d)(1) above, according to ORS 36.600 through ORS 36.740
- Agency decisions issued under Step 3 at DB199.40(d)(2) above

The Design-Builder must follow each step in order, and exhaust all available administrative remedies before resorting to litigation. Lawsuits must be properly filed in a court of competent jurisdiction within 6 months from the date of the final decision that exhausted the Design-Builder's available administrative remedies under this Section DB199.

The Design-Builder shall comply with DB170.00.

DB199.50 Mediation - Notwithstanding the formal claims procedure specified above, the Parties may enter into nonbinding mediation by mutual agreement at any time, in which case the Parties may also agree to suspend the time requirements in Section DB199 pending the outcome of the mediation process. The rules, time and place for mediation, as well as selection of the mediator, shall be established by mutual agreement. Costs shall be divided equally between the Design-Builder and the Agency. Either Party may terminate mediation at any time upon 5 Calendar Days' notice to the other, after which the time requirements of Section DB199 shall be automatically reinstated and shall resume from the point at which the time requirements were suspended.

DB199.60 Review of Determination Regarding Records - If not all of the records requested by the CAE under DB199.40(c) Step 2 were provided, then the CAE will determine:

- If the records are of the type described in Article 8; and
- If the records have not been maintained or the records, or access to the records, has not been provided to the Agency as required by Article 8 and this Section; and
- If the records are material and necessary for proper evaluation of part or all of the claim; and
- The portions of the claim for which the records are material and necessary for proper evaluation.

If the CAE makes the foregoing determinations, then subject to the review process described below, all portions of the claim for which the CAE determined the records are material and necessary for proper evaluation are immediately waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the CAE may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the CAE makes this determination, the claim or portions of the claim will not be waived or dismissed under this provision.

If the Design-Builder does not accept the CAE's written determination that the records are material and necessary for proper evaluation of part or all of the claim, and the portions of the claim for which the records are material and necessary, the Design-Builder may, within 14 Calendar Days of receipt of the CAE's determination, request, in writing, a review of such determination by the Agency Construction Engineer (CE). If the Design-Builder does not request a review of the CAE's determination, the CAE's determination shall then become the Agency's final determination as of the expiration of the time limit to request review.

If the Design-Builder requests the review, the CE will schedule a review meeting within 14 Calendar Days, or as otherwise agreed by the Parties, of when the CE receives the written review request. The Agency and the Design-Builder will each have an opportunity to explain their respective positions at the review meeting in a manner determined by the CE.

Within 10 Calendar Days of the review meeting, the CE will issue a written proposed finding of whether the records not maintained or not provided to the Agency, or for which access

was not provided to the Agency, are material and necessary for proper evaluation of part or all of the claim. If the CE makes that finding, then the CE will also make a proposed written finding as to what portions of the claim the records are material and necessary and, therefore, waived and irrevocably dismissed.

Even if the records have not been maintained or the records, or access to the records, have not been provided to the Agency in a given instance, the CE may determine that sufficient records have been provided for the Agency to properly evaluate the claim in that instance. If the CE makes this determination, then the claim or portions of the claim will not be waived or dismissed under this provision.

The CE's proposed findings will be submitted to the Design-Builder and the Agency's Director. The Design-Builder may submit written objections concerning the proposed findings to the Director within 5 Calendar Days of receipt of such findings. If written objections are submitted, the Director may adopt or modify the proposed findings, and the Director's findings shall be the Agency's final determination. If no written objections are submitted within the 5 Calendar Day time limit, the CE's proposed findings shall then become the Agency's final determination as of the expiration of the time limit to submit written objections.

If the Agency's final determination is that the records are material and necessary for proper evaluation of part or all of the claim, then the claim or that portion of the claim for which the records are material and necessary is waived and irrevocably dismissed, unless the Design-Builder provides the records, or access to the records, to the CAE within 5 Calendar Days of the Agency's final determination. If the Design-Builder provides the records, or access to the records, within this time limit, the CAE will schedule a meeting with the Design-Builder within 14 Calendar Days or as otherwise agreed by the Parties, to discuss the records.

The Agency's final determination that records are material and necessary for proper evaluation of part or all of the claim, and the Agency's final determination of the portions of the claim for which the records are material and necessary, shall be final and binding.

If the entire claim is waived and irrevocably dismissed pursuant to the Agency's final determination there will be no further decision by the Agency on the claim or further review of the claim under DB199.40 and the claim will not be eligible for mediation under DB199.50. If only portions of the claim are waived and irrevocably dismissed pursuant to the Agency's final determination, the CAE will provide a written decision to the Design-Builder regarding the remaining portions of the claim within 30 Calendar Days of the final Step 2 meeting, or the Agency's final determination regarding the records, whichever is later. There will be no further decision by the Agency on or further review under DB199.40 of the portions of the claim waived and irrevocably dismissed pursuant to Agency's final determination and those portions will not be eligible for mediation under DB199.50.

ATTACHMENTS TO THE GENERAL PROVISIONS

GENERAL PROVISIONS
ATTACHMENT A – ENGINEERING DATA

DB General Provisions Attachment A – Engineering Data
Table of Contents

Refer to DB141.10 for additional information and limitations associated with the documents and information included herein:
https://www.oregon.gov/odot/Business/Procurement/Pages/Bid_Award.aspx

ATTACHMENT A - ENGINEERING DATA		
Document Name	***Filename***	***Zip File Name***
BASE DOCUMENTS		
Overlapping Projects	Overlapping Projects.pdf	
Constraints maps	AstoriaMapSeries_Constraints.pdf CoburgMapSeries_Constraints.pdf CorvallisMapSeries_Constraints.pdf CottageGroveMapSeries_Constraints.pdf DundeeMapSeries_Constraints.pdf IndependenceMapSeries_Constraints.pdf MonmouthMapSeries_Constraints.pdf NewbergMapSeries_Constraints.pdf PhilomathMapSeries_Constraints.pdf SalemMapSeries_Constraints.pdf SpringfieldMapSeries_Constraints.pdf	Constraints Maps.zip
Pre-closeout, 2nd Note, Curb Ramp Inspection	Pre-closeout, 2nd Note, Curb Ramp Inspection.pdf	
ROADWAY GEOMETRICS		
Inventory Matrix	Inventory Matrix.xlsx	
Existing Crosswalk Closure Approvals	(Individual file names not provided due to number of files.)	Existing Crosswalk Closure Approvals.zip
PERMANENT TRAFFIC CONTROL		
ODOT Region 2 Striping Strategy	Region 2 Striping Program Strategy.pdf	
Permanent Traffic Local Agency Standards	Permanent Traffic Local Agency Standards.pdf	
PAVEMENT		
Technical Advisory CO23-01(A)	ADA Curb Ramp Paving Technical Advisory.pdf	
SURVEY AND MAPPING		
Survey Data	(Individual file names not provided due to number of files.)	Astoria Survey Report.zip Corvallis Survey Report.zip Cottage-Grove Survey Report.zip Independence - Monmouth Survey Report.zip Newberg Survey Report.zip Salem Survey Report.zip Springfield Survey Report.zip

ATTACHMENT A - ENGINEERING DATA		
TEMPORARY TRAFFIC CONTROL		
Lane Closure Restrictions	Lane Closure Restrictions.pdf	
ENVIRONMENTAL COMPLIANCE		
Programmatic and Project NEPA documents	ADA Programmatic Prospectus.pdf PCE Determination.pdf PCEA Programmatic Categorical Exclusion Approval.pdf PCEA NEPA Supporting Files.zip Programmatic ESA NE Final.pdf	Programmatic and Project NEPA Documents.zip
Project Commitments List	Project Commitments List.pdf	
Baseline Reports	Newberg-Dundee Built Environment Report.pdf Astoria Built Environment Report.pdf Corvallis-Philomath Built Environment Report.pdf Salem-Keizer-Monmouth-Independence Built Environment Report.pdf Springfield-Cottage Grove Built Environment Report.pdf	Built Environment Historic.zip
Hazardous Materials Corridor Studies	Astoria Hazmat Study.pdf Corvallis.Philomath Hazmat Study.pdf Newberg.Dundee Hazmat Study.pdf Salem-Keizer-Monmouth-Independence Hazmat Study.pdf Springfield-Cottage Grove Hazmat Study.pdf	Hazardous Materials Corridor Studies.zip
Inadvertent Discovery Plan	Inadvertent Discovery Plan.pdf	
MAINTENANCE DURING CONSTRUCTION		
Removing Personal Property Directive	Guidelines for Removal of Personal Property.pdf	

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NORTHWEST OREGON 2024-2027 ADA CURB RAMPS, PHASE 2

GENERAL PROVISIONS

ATTACHMENT B – BOILERPLATE SPECIAL TECHNICAL PROVISIONS

Not attached.
Will be incorporated via Addendum.

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GENERAL PROVISIONS
ATTACHMENT C – REFERENCE DOCUMENTS

DB General Provisions Attachment C – Reference Documents
Table of Contents

Refer to DB141.10 for additional information and limitations associated with the documents and information included at the Alternative Contracting Tab:: https://www.oregon.gov/odot/Business/Procurement/Pages/Bid_Award.aspx

ATTACHMENT C - REFERENCE DOCUMENTS		
Document Title	***File Name(s)***	***Zip File Name***
BASE DOCUMENTS		
Project Information Sheets for overlapping projects - zip files	Zipped Information Sheets for: Astoria Corvallis Monmouth Newberg Salem Springfield Yamhill	Overlapping Projects Information Sheets.zip
Design-Build Specifications Terminology Diagram	DB Specifications Terminology Diagram.pdf	
Region 2 Outreach Contact List	Region 2 Outreach Contact List.pdf	
Proof of Concept Plans	Proof of Concept Plans.pdf	
ROADWAY GEOMETRICS		
Evaluation Matrix	Evaluation Matrix.xlsx	
Curb Ramp Inventory Evaluation KMZ	Curb Ramp Inventory Evaluation KMZ.kmz	
Access Management - Draft Access Management Methodology Letter - example	AccessMgtSample1ADraftMetodologyLetter.docx	
Access Management - Access Management Approval Letter – example	AccessMgtSample1BAMSTNarrApproval170401.docx	
Access Management - Yellow Letter - Potential Approach Modification - example	AccessMgtSample2YellowLetter.doc	
Access Management - Red Letter - Notice of Modification of Approach - example	AccessMgtSample3RedLetter.docx	
Access Management - Access Management Strategy (AMStrat) - example	AccessMgtSample4AMStratStrategy.docx	
Access Management - Official Project Access List (OPAL) Sample	AccessMgtSample5OPAL.xlsm	

ATTACHMENT C - REFERENCE DOCUMENTS		
Project Roadway Reference Document	Project Roadway Reference Document.pdf	
DRAINAGE		
Stormwater Memorandum Template	ADA Storm Memo Template.docx	
Drainage Exhibit Example	ADA Storm Memo Drainage Exhibit Example.pdf	
PERMANENT TRAFFIC CONTROL		
Signal Evaluation Matrix	Signal Evaluation Matrix.pdf	
Signal Field Notes	(Individual file names not provided due to number of files.)	Signal Field Notes_Astoria.zip Signal Field Notes_Brooks.zip Signal Field Notes_Corvallis.zip Signal Field Notes_Cottage Grove.zip Signal Field Notes_Independence.zip Signal Field Notes_Monmouth.zip Signal Field Notes_Newberg.zip Signal Field Notes_Salem.zip Signal Field Notes_Springfield.zip
LANDSCAPE AND AESTHETICS		
Landscape and Aesthetics Memo	Landscape and Aesthetics Memo.pdf	
TEMPORARY TRAFFIC CONTROL		
Preliminary Mobility Considerations Checklist	Preliminary Mobility Considerations Checklist.pdf	
Temporary Traffic Control Reference Doc	Temporary Traffic Control Reference Doc.pdf	
ENVIRONMENTAL COMPLIANCE		
Built Environment and Park Clearance Guidance	Built Environment Clearance Guidance.pdf Park Environmental Clearance Guidance.pdf	
UTILITIES		
Utility Owner within the Project Site	Utility Owner Contact List.xlsx (Individual Map file names not provided due to number of files.)	Utility Maps.zip

ATTACHMENT C - REFERENCE DOCUMENTS		

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