

DB Section 170 - Legal Relations and Responsibilities

DB170.00 General - Design-Builder shall give all required notices and comply with all Laws relating to the Work and to those engaged in the Work.

DB170.01 Other Agencies Affecting Agency Contracts - Representatives of regulatory bodies or units of government whose Laws may apply to the Work shall have access to the Work according to **DB General Provisions**, Subsection 150.20(f). These may include, but are not limited to, those in the following (a), (b), (c), and (d).

The following federal, State and local agencies are known to have enacted ordinances and regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

(a) Federal Agencies

- Agriculture, Department of
 - Forest Service
 - Soil Conservation Service
- Army, Department of the
 - Corps of Engineers
- Commerce, Department of
 - National Marine Fisheries Service
- Defense, Department of
- Energy, Department of
- Environmental Protection Agency
- Federal Energy Regulatory Commission
- Health and Human Services, Department of
- Housing and Urban Development, Department of
- Interior, Department of
 - Heritage, Conservation, and Recreation Service
 - Bureau of Indian Affairs
 - Bureau of Land Management
 - Bureau of Mines
 - Bureau of Reclamation
 - Geological Survey
 - Minerals Management Service
 - Office of Surface Mining, Reclamation, and Enforcement
 - US Fish and Wildlife Service
- Labor, Department of

DB 170.01(a)

Occupational Safety and Health Administration
Mine Safety and Health Administration

- Transportation, Department of
Coast Guard
Federal Highway Administration
- Water Resources Council

(b) State of Oregon Agencies:

- Administrative Services, Department of
- Agriculture, Department of
Natural Resources Division
Soil and Water Conservation District
- Columbia River Gorge Commission
- Consumer and Business Services, Department of
Insurance Division
Oregon Occupational Safety and Health Division
- Energy, Office of
- Environmental Quality, Department of
- Fish and Wildlife , Department of
- Forestry, Department of
- Geology and Mineral Industries, Department of
- Human Resources, Department of
- Labor and Industries, Bureau of
- Land Conservation and Development Department
- Parks and Recreation, Department of
- State Lands , Division of
- Water Resources Department

(c) Local Agencies:

- City Councils
- County Courts
- County Commissioners, Boards of
- Design Commissions
- Historical Preservation Commissions
- Planning Commissioners
- Port Districts
- Special Districts

(d) Oregon Tribal Governments

DB170.02 Permits, Licenses, and Taxes - As required to accomplish the Work, Design-Builder shall do the following:

- Obtain all necessary permits and licenses, unless otherwise specified in the **DB Special Provisions**
- Pay all applicable charges, fees, and taxes
- Give all notices required by applicable Laws or under the terms of the Contract
- Comply with ORS 274.530 relating to the lease of stream beds by the Oregon Division of State Lands
- License, in the State of Oregon, all vehicles subject to licensing
- Comply with ORS 477.625 and ORS 527.670 relating to clearing and fire hazards on forest lands
- Comply with all orders and permits issued by Authorities

DB170.03 Furnishing Right of Way and Permits – Agency will obtain and pay for the following when they are required by applicable Laws, the Plans, or Contract Specifications, unless otherwise specified in **DB Special Provisions**, SP170.03:

- All necessary ROW
- Permits required for crossing or encroaching upon navigable streams
- Permits required for removing materials from or depositing materials in waterways
- Permits required for operating in an Agency-controlled source of materials or disposal area
- System development fees charged by local Authorities
- Building construction permits, not including specialty work such as heating, ventilation, air conditioning, or electrical
- Cost of referencing and replacing endangered survey monuments

Work outside each Work Location requires approval of Agency. Acquisition of permits for Work outside each Work Location is the responsibility of Design-Builder.

DB170.04 Patents, Copyrights and Trademarks - Prior to use of designs, devices, Materials, or processes protected by patent, copyright, or trademark, Design-Builder shall obtain from the Entity entitled to enforce the patent, copyright, or trademark all necessary evidence of legal right.

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

DB170.05 Assignment of Antitrust Rights - Design-Builder irrevocably assigns to Agency any claim for relief or cause of action Design-Builder acquires during the term of the Contract, or which may accrue thereafter, by reason of any violation of the following:

- Title 15 (Commerce and Trade), United States Code

DB 170.05

- ORS 646.725
- ORS 646.730

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

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

In the event any payment is made to Design-Builder under any such claims for relief, Design-Builder shall promptly pay the full sum over to Agency. In the event Design-Builder fails to make such payment, Agency may deduct the amount from monies due or to become due to Design-Builder under the Contract.

DB170.07 Ownership of Work Product

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

(b) Design-Builder Intellectual Property - In the event that any Work Product is Design-Builder Intellectual Property or in the event any Design-Builder Intellectual Property is needed by Agency to reasonably enjoy and use any Work Product, Design-Builder hereby grants to Agency an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display

Design-Builder Intellectual Property, including the right of Agency to authorize contractors, consultants and others to do the same on Agency's behalf. At the request of Design-Builder, Agency shall take reasonable steps to protect the confidentiality and proprietary interests of Design-Builder in any Design-Builder Intellectual Property licensed under this Section, within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

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

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

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

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

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

DB 170.07(g)

standard line drawings, **Design-Builder Specifications**, and calculations on other, unrelated projects.

DB170.10 Required Payments by Design-Builder - Design-Builder shall comply with ORS 279C.505 and ORS 279C.515 during the term of the Contract.

(a) Prompt Payment by Design-Builder for Labor and Materials - As required by ORS 279C.505, Design-Builder shall comply with each of the following requirements:

- Make payment promptly, as due, to all Entities supplying labor or Materials under the Contract
- Pay all contributions or amounts due the Industrial Accident Fund, whether from Design-Builder or a Subcontractor, incurred in the performance of the Contract
- Not permit any lien or claim to be filed against the State or any political subdivision thereof on account of any labor or Materials furnished in performance of the Contract
- Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167

(b) Prompt Payment by Design-Builder to First-Tier Subcontractors - After Design-Builder has determined and certified to Agency that one or more of its Subcontractors has satisfactorily performed subcontracted Work, Design-Builder may request payment from Agency for the Work, and shall pay the Subcontractors within 10 Calendar Days out of such amounts as Agency has paid to Design-Builder for the subcontracted Work.

(c) Interest on Unpaid Amount - If Design-Builder or a first-tier Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract within 30 Calendar Days after Design-Builder's receipt of payment, Design-Builder or first-tier Subcontractor shall owe the Entity the amount due, plus interest charges commencing on the date payment was due and ending upon final payment, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

The rate of interest charged to Design-Builder or first-tier Subcontractor on the amount due shall equal three (3) times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 Calendar Days after the date when the payment was received from Agency or from Design-Builder. The amount of interest due may not be waived, but the rate of interest shall not exceed 30 percent.

(d) Agency's Payment of Design-Builder's Prompt Payment Obligations - If Design-Builder fails, neglects, or refuses to make prompt payment of any invoice or other demand for payment for labor or services furnished to Design-Builder or a Subcontractor by any Entity in connection with the Contract as such payment becomes due, Agency may pay the Entity furnishing the labor or services and charge the amount of the payment against monies due or to become due to Design-Builder under the Contract. (Agency has no obligation to pay these Entities, and ODOT will not normally do so, but will refer them to Design-Builder and Design-Builder's Surety.)

The payment of a claim by Agency in the manner authorized in this Subsection shall not relieve Design-Builder or Design-Builder's Surety from obligations with respect to any such claims.

(e) Right to Complain to the Construction Contractors Board - If Design-Builder or a Subcontractor fails, neglects, or refuses to make payment to an Entity furnishing labor or Materials in connection with the Contract, the Entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS 279C.580(5)(b).

(f) Notice of Claim Against Bond - An Entity claiming not to have been paid in full for labor or Materials supplied for the prosecution of the Work may have a right of action, first on Design-Builder's Public Works Bond and then, for any amount of a claim not satisfied by the Public Works Bond, on Design-Builder's bond, cashier's check, or certified check as provided in ORS 279C.600 and ORS 279C.605.

DB170.20 Contract Bonds

(a) Performance and Payment Bonds - The Performance and Payment Bonds shall be updated promptly as necessary to reflect the Contract Amount, scope of Work, and Contract terms and conditions as they may be amended from time to time by Change Order during the term of the Contract.

(b) Public Works Bond - Before beginning performance of any Work, Design-Builder and its Subcontractors shall each file with the Construction Contractors Board, and maintain in full force and effect for the duration of their respective contracts, a Public Works Bond in the amount of \$30,000, that meets the requirements of ORS 279C.800 to ORS 279C.870 and OAR 839-025-0015. Design-Builder shall include this requirement in each of its subcontracts. Prior to authorizing any Subcontractor to begin performance of Work, Design-Builder shall verify that a Public Works Bond is on file with the Construction Contractors Board.

All bonds required under the terms of the Contract must be signed by the Surety's authorized Attorney-in-Fact, and the Surety's seal must be affixed to each bond. A power of attorney for the Attorney-in-Fact shall be attached to the bonds, which must include bond numbers, and the Surety's original seal must be affixed to the power of attorney. Payment and Performance Bonds shall not be canceled without Agency's consent, nor will Agency normally release them prior to Contract completion. Public Works Bonds shall not be cancelled prior to completion of the Work for which the bond is required.

DB170.30 Hazardous Materials Reporting and Clean-Up of Spills - Design-Builder shall be responsible for reporting and cleaning up spills associated with construction of the Project, and shall report and respond to spills of Hazardous Materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other materials that are a threat to public health or the environment. Design-Builder shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Unreported spills identified after construction and associated with construction of the Project shall be cleaned up or remediated by Design-Builder. Failure to report or respond to a spill shall result in Design-Builder bearing the full cost of remediation or clean-up of such unreported spills.

Agency shall be responsible for any delay costs and expenses due to it or Design-Builder making a new discovery of Hazardous Materials that are not identified in the RFP or the Contract Documents. Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the RFP or the Contract Documents or that are caused by Design-Builder or any of its Subcontractors, employees, or agents.

All reporting required under this Subsection shall be made to the appropriate Authorities. Reports shall also be made immediately to Agency PM if on State ROW or to the property owner if outside-of-State ROW.

Agency shall be responsible for any delay costs and expenses due to it or Design-Builder making a new discovery of Hazardous Materials that are not identified in the RFP or the Contract Documents. Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the RFP or the Contract Documents or that are caused by Design-Builder or any of its Subcontractors, employees, or agents.

DB170.32 Protection of Navigable Waters - Design-Builder shall comply with all applicable Laws, including without limitation the Federal River and Harbor Act of March 3, 1899, and its amendments.

Design-Builder shall not interfere with waterway navigation or impair navigable depths or clearances, except as US Coast Guard or Army Corps of Engineers permits allow.

DB170.60 Safety and Health Provisions - Design-Builder shall perform all Work in a skillful manner with due regard to the safety and health of its employees and the public. Design-Builder shall comply with all Laws concerning safety, health, and sanitation standards. Design-Builder shall not require workers to perform Work under conditions that are hazardous, dangerous, or unsanitary.

(a) Occupational Safety and Health - In accordance with OR-OSHA and the United States Occupational Safety and Health Administration (OSHA) regulations, Design-Builder's employees shall be required to wear protective helmets (hard hats) when there is a possible danger of head injury from impact, from falling or flying objects, or from electrical shock and burns. Additionally, all employees working within an active Highway Right of Way must wear protective helmets and reflective safety vests at all times. Helmets are not required for employees within a completely enclosed cab constructed of steel frame and glass or inside an automobile. Helmets must meet current ANSI Standards for impact, electrical shock, and burn protection. For purposes of this Subsection, Design-Builder's employees shall be considered to include everyone on its payroll, as well as Subcontractors, Materials suppliers, and other personnel on the Project Site under the direction of Design-Builder.

It shall be the responsibility of Design-Builder to perform all necessary planning, supervision, safety committee, and training activities to ensure that all of the requirements of OR-OSHA and OSHA are fully met for all workers employed in the construction of the Project. Design-Builder shall provide to Agency prior to the start of Work satisfactory evidence that all current requirements of OR-OSHA and OSHA will be adequately addressed.

(b) Safety and Protection - During the term of the Contract Design-Builder shall be solely responsible for the means and methods for maintaining a safe work place for the workers and general public, and shall be solely responsible for conditions on the Project Site, including safety and security of all persons and property on Work Locations. This responsibility shall not be limited to normal business hours or other time constraints, or be reduced or diminished in any way because Design-Builder is not given sole possession of the Project Site. Design-Builder shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to, the following:

- (1)** All workers engaged on the Project, all persons working at or visiting the Project Site, and all other persons in the vicinity who may be affected, including the traveling public.
- (2)** The Project and all Equipment and Materials to be incorporated therein, whether in storage on or off the Project Site.
- (3)** Other property on Work Locations or adjacent thereto, including trees, shrubs, lawns, walks, pavements, Roadways, Structures, and Utilities, except as designated for relocation, removal, or replacement as part of the Work.

Design-Builder shall require its Safety Manager to verify by inspection that the requirements of this Subsection and Design-Builder's Safety Plan and safety procedures are being strictly complied with.

(c) Emergencies - In emergencies affecting the safety of persons, the Work, or property at the Project Site or adjacent thereto, Design-Builder, without special instruction or authorization from Agency, shall act at its discretion to prevent threatened damage, injury, or loss. Design-Builder shall give Agency prompt written notice of any such emergencies and Design-Builder actions taken in response thereto, as well as any significant changes in the prosecution of the Work or deviations from the Contract requirements caused thereby.

(d) Corrective Action - Design-Builder shall take Immediate action after an accident or incident to correct the Work methods and conditions that are the cause or contributing factors.

(e) Design-Builder's Project-Specific Safety Plan - Prior to commencement of any construction activities, Design-Builder shall submit to Agency PM for Review and Comment a written Project-specific Safety Plan that documents Design-Builder's safety policy and identifies and addresses specific health and safety concerns to be encountered on the Project Site and in performance of the Contract. Prior to commencement of any construction activities, and periodically thereafter, but not less than quarterly throughout the Project, Design-Builder's Project supervision staff shall meet with Agency PM to review and discuss the status of safety issues on the Project.

Design-Builder shall implement, review, and update the Safety Plan and introduce a program for assuring that the Project-specific Safety Plan is followed by all workers at all times. Design-Builder shall coordinate with all Authorities and relevant Entities as necessary to ensure compliance with the Safety Plan.

DB 170.60(e)

Agency may monitor and audit Design-Builder's safety performance.

Design-Builder's Safety Plan shall provide for the following:

- Planning, management, and design to avoid hazards
- Subcontractor safety management
- Detection of potential hazards
- Timely correction of hazards
- Dedication to the protection of the public and the workers
- Active participation of all persons involved with the Contract
- Dedicated safety staff
- Liaison with Agency's monitoring staff
- Site safety orientation, training, and safety meetings, including a plan for indicating attendance at safety orientation

Design-Builder shall ensure that all its employees and those of the subcontractors at all tiers (including labor-only) fully conform at all times to the provisions of the Safety Plan. In the event that Design-Builder's employees or its Subcontractors fail to conform to the provisions of the Safety Plan, Design-Builder shall take appropriate disciplinary measures. Such measures shall include suspension, removal of offending employees from the Project Site, and dismissal. The obligations and requirements of this Subsection shall be included in the terms and conditions of employment of all employees of Design-Builder and in all subcontracts at all tiers, including labor-only subcontractors.

(f) Content of the Project-Specific Safety Plan - The Safety Plan shall be comprehensive and include all required actions, activities, rules, and mitigation measures relative to the safety of persons and the Work. It shall include the following items:

- Policy statement indicating Design-Builder's commitment to safety, goals stated as maximum lost hours, and no-loss-of-life goals
- Identification of Agency and Design-Builder safety officers, including responsibility definitions, an organization chart, phone numbers, reporting procedures, safety inspection procedures, and audit programs
- References to all applicable Laws
- An education and training plan for required training of all workers, including a separate program and Hazardous Materials Communications Plan for workers involved with Hazardous Materials remediation, required toolbox meetings, and required posting of information
- Documentation of worker training, maintained at the Project Site
- Procedures to address Project health and safety concerns, including housekeeping, Materials handling and storage, personal protective Equipment, wall and floor/deck openings, scaffolds, ladders, welding, flame cutting, electrical Equipment, lock-out or tag-out, motor vehicles, heavy Equipment, small tools, concrete forms, steel erection, cranes and hoisting, Work platforms, fire prevention and protection, sanitation, confined space entry, blasting and explosives, proper shoring, work in trenches, and other items

- Industrial hygiene, including respiratory protection, noise, Hazardous Materials, MSDS, and lists of hazardous chemicals present
- Fire protection and prevention
- Emergency and rescue procedures, including detailed procedures for all types of emergencies, such as fall rescue, medical, fire, chemical spill, property damage, bomb threat, severe weather, flooding, explosion, and earthquakes
- Incident investigation, reporting, and record keeping
- Policy on substance abuse
- Security provisions
- Safety requirements and procedures for Design Professionals conducting site investigations and Verification Sampling and Testing
- Procedures for compelling worker compliance with health and safety requirements
- Identification of the safety organization, together with the reporting structure, channels of communications (including direct communication between Design-Builder's Safety Manager and Design-Builder's Project Manager), each member's responsibilities, and task subdivision clearly described

Those portions of the foregoing that are not Project-specific may be submitted as part of Design-Builder's health and safety program. Project-specific aspects shall be included in the Safety Plan.

The Safety Plan shall contain a list of the detailed safety procedures to be followed. Safety procedures shall be prepared separately for individual activities and included in appendices to the Safety Plan.

Design-Builder shall be responsible for ensuring that each Subcontractor employed on the Project complies with this requirement, and Design-Builder shall provide to Agency PM a Project-specific Safety Plan covering all Work to be done by each Subcontractor prior to the Subcontractor's starting Work. As an alternate, Design-Builder may provide a certification that all activities performed by, and workers employed by, Subcontractors will be subject to Design-Builder's Safety Plan. Submission of the required Safety Plan by Design-Builder and Review and Comment by Agency shall not be construed to imply approval of any particular method or sequence for addressing health and safety concerns, or to relieve Design-Builder from the responsibility for adequately protecting the health and safety of all workers involved in the Project, as well as members of the public affected by the Project.

(g) Submittal of the Safety Plan - Forty-five Calendar Days prior to the start of any On- or Off-Site Work or other construction activities, Design-Builder shall submit its Safety Plan to Agency PM for Review and Comment. Upon receipt of Review and Comment, Design-Builder shall issue the complete Safety Plan, which shall be based on Design-Builder's Safety Plan information contained in its Proposal and shall incorporate Agency comments and any other required updating. The Safety Plan is a living document and revisions and updates are expected. The Safety Plan shall be a controlled document, to be issued by Design-Builder to, at a minimum, the following:

- Agency PM
- Design-Builder's Project Manager
- Design-Builder's Safety Manager

DB 170.60(g)

- Subcontractors of all tiers, including labor-only subcontractors

Other controlled copies shall be distributed as determined by Design-Builder and Agency PM. Uncontrolled copies shall be issued as considered necessary by Design-Builder.

Design-Builder shall maintain a traceable record of the issuance of the controlled copies, including copy number and acknowledgement of receipt. Revisions of the Safety Plan shall be issued to all recipients of the controlled copies and managed in the same way as the controlled copies.

(h) Revisions to the Safety Plan and Procedures - Agency PM may require a revision to the Safety Plan or any safety procedure in order to ensure compliance with the Law or Contract requirements. Design-Builder shall, following discussion with Agency PM, issue such revision as soon as reasonably possible, but in no event later than two (2) Business Days after receipt of the instruction.

Design-Builder shall revise the Safety Plan and safety procedures in order to enhance the standards of safety being implemented on site, and to address changes in activities and experiences on the Project Site.

Every 12 months on or near the anniversary of NTP Design-Builder shall review its Safety Plan, and shall consider all sources of information relevant to safety planning and implementation, including accident reports, inspections, audits, suggestions from meetings, and other sources, such as Agency PM and hazard analysis reviews. Within seven (7) Calendar Days of finishing this review, Design-Builder shall issue a review report to Agency PM, giving the conclusions of its review and identifying any revisions to be made to the Safety Plan.

Within 30 Calendar Days of issuance of the review report, Design-Builder shall submit the revised Safety Plan to Agency PM for Review and Comment.

(i) Safety Plan to be Kept On Site – A copy of the current version of the Safety Plan shall be kept on site at each Work Location while Work is being performed, and an appropriate notice shall be posted at each Work Location notifying workers that the Safety Plan is available for examination.

(j) Design-Builder's Safety Organization - Design-Builder shall designate a member of its senior management, either a board member or managing partner, or a principal of the organization, who shall be responsible and directly accountable in all matters concerning safety. Design-Builder's Project Manager shall also be responsible and directly accountable to this designated board member, managing partner, or principal in all matters concerning construction safety.

Design-Builder's Safety Manager shall be responsible solely for the safety aspects of the Project, and shall report directly to the designated board member, managing partner, or principal. The Safety Manager shall implement, maintain, and monitor compliance with the Safety Plan and all safety procedures, and shall be present full-time on the Project Site. Design-Builder shall not commence any Work until the Safety Manager has been appointed. No Work shall be performed at a Work Location unless Design-Builder's Safety Manager or designated deputy is on site.

Design-Builder shall provide and maintain an organizational structure that shall ensure the effective performance of safety assurance functions by Design-Builder's safety staff. Design-Builder shall provide adequate numbers of supporting staff for the Safety Manager, including a deputy to act in his/her absence. Such staff shall be engaged solely in safety assurance, and shall be suitably qualified and experienced. Design-Builder shall also provide sufficient licensed Emergency Medical Technicians (EMTs) to provide adequate emergency medical care to personnel working at each Work Location and comply with OR-OSHA emergency response times.

Design-Builder shall ensure that all subcontractors at all tiers, including labor-only subcontractors, have adequate safety staffs. Each shall have a safety supervisor who shall have appropriate experience and training. Each subcontractor safety supervisor shall be responsible for implementing and maintaining its respective safety plan, which shall comply with Design-Builder's Safety Plan. Subcontractor safety supervisors shall devote a substantial amount of their time to such duties.

The Safety Manager and safety staff shall have authority to issue stop-work orders in the event of a perceived safety issue, concern, or observation, suspending Work until appropriate corrective action has been taken or the situation has been rectified. If Design-Builder considers the safety issue, concern, or observation to be of a minor nature, and the Safety Manager concurs, implementation of corrective action may be delayed up to 24 hours, and Work resumed.

Breaches of Design-Builder's Safety Plan or other conduct prejudicial to safety may be cause for Agency PM to issue a stop-work order or require the removal of any worker, including Design-Builder's Project Manager or Safety Manager, from the Project Site. Design-Builder shall not remove the appointed Safety Manager except as provided in **DB General Provisions**, Subsection 180.35(c).

(k) Safety Considerations in Design - Design-Builder shall identify and analyze the hazards and risks associated with the Work, including during construction, and the Project's ultimate use, and shall plan the Work and design the Project so as to eliminate, mitigate, or control such hazards. Such hazards shall be identified and logged in a database during the design process so that the Safety Manager can adequately prepare the Safety Plan. The log shall be provided during the Design Review process to Agency so that it can adequately prepare its staff for the Project.

(l) Inspections - In accordance with applicable Law, Design-Builder shall allow OR-OSHA and OSHA access to the Project Site for the purpose of conducting inspections. Design-Builder shall notify Agency PM of any inspections to be conducted by OR-OSHA, OSHA, or other health and safety Authorities, and of any resulting closing conference, and shall provide Agency PM with the opportunity to be present at such inspections and closing conferences. Design-Builder shall notify Agency in writing of the results of any health and safety inspections within one (1) Business Day of the completion of the closing conference resulting from such inspections. If any citations, warning letters, or recommendations are issued for alleged violations, a copy shall be provided to Agency PM within one (1) Business Day of receipt by Design-Builder, and a copy of the final disposition of such citations shall also be provided to Agency PM within one (1) Business Day of receipt by Design-Builder. Agency will provide Design-Builder with any observations it may make

DB 170.60(l)

regarding potential safety issues. Design-Builder's Safety Manager shall document the actions taken to prevent recurrence of the potential safety violation.

(m) Reporting of Industrial Accidents - Design-Builder shall provide Agency in writing, within 24 hours of the event, details of any accident or incident occurring wholly on the Project Site involving any worker performing Work or delivering Materials, Equipment, or supplies to the Project, provided that one of the following criteria is met:

- The accident or incident results in the death of a worker, or requires that a worker be hospitalized overnight for treatment of the injury
- The accident otherwise meets the notification requirements of OR-OSHA or OSHA

(n) Safety Reports - Design-Builder shall submit a monthly safety report with the monthly progress report and request for periodic payment.

(o) Asbestos Abatement - Pursuant to ORS 468A.720, Design-Builder or a Subcontractor that performs Work involving asbestos abatement shall possess a valid DEQ asbestos abatement license.

(p) Emergency Contact Person - Design-Builder shall designate someone to be available to respond to emergency calls. The name of the person and the telephone number at which he/she can be reached at any time shall be given to Agency PM and all police agencies in the area. Such person shall have full authority and capability to mobilize forces promptly as required to respond to an emergency and protect the public.

DB170.61 Industrial Accident Protection

(a) Workers' Compensation - Design-Builder shall provide workers' compensation coverage for on-the-job injuries.

(b) Longshoremen's and Harbor Workers' Compensation - If Work to be performed is over or adjacent to navigable waters, the Longshoremen's and Harbor Workers' Compensation Act (Chapter 18, Title 33 of the USC) may apply, and Design-Builder shall be responsible for complying with its provisions (which may include the provision of additional workers' compensation benefits to employees).

DB170.62 Labor Nondiscrimination - Design-Builder shall comply with all Laws concerning equal employment opportunity, including without limitation those prohibiting discrimination on the basis of race, religion, color, sex, disability, or national origin.

DB170.63 Payment for Medical Care - Design-Builder shall comply with ORS 279C.530 concerning payment for medical care and providing workers' compensation. Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services, or other needed care and attention, incident to sickness or injury, to its employees, of all sums that Design-Builder agrees to pay for the services, and all moneys and sums that Design-Builder collected or deducted from the wages of employees under any Law, contract, or agreement for the purpose of providing or paying for the services. All subject employers working under the Contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

DB170.65 Minimum Wage and Overtime Rates for Public Works Projects

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

For Work performed on Indian reservations, tribally-owned businesses and businesses owned by tribally-enrolled Native Americans are not subject to the Oregon Bureau of Labor and Industries overtime requirements. These businesses are subject to the Federal Contract Work Hours and Safety Standards Act, which states that employees must be paid time and one-half for all hours worked in excess of forty hours per week.

For all other Work, Design-Builder shall comply with the provisions of ORS 279C.800 through 279C.870 with regard to minimum and overtime wage rates, and shall require that each subcontract at every tier contain a clause requiring the subcontractor to so comply.

Design-Builder, or Design-Builder's Surety, shall file (and shall require each subcontractor or subcontractor's surety to file) with Agency certified statements in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each of its workers performing Work on the Project, and further certifying that none of its workers performing Work on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage established by the Commissioner of the Bureau of Labor and Industries for the Project. The certified statement shall be verified by the oath of Design-Builder or Design-Builder's Surety, or the subcontractor or subcontractor's surety for subcontracts, that Design-Builder or subcontractor has read such certified statement and knows the contents thereof, and the same is true, to Design-Builder's or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which Design-Builder or subcontractor has employed a worker on the Project shall be submitted once a month, by the fifth Business Day of the month. Design-Builder and subcontractors shall preserve the certified statements as Project Records for a period of six (6) years from the date of completion of the Contract.

Agency will retain 25% of any amount earned by Design-Builder on the Contract until Design-Builder has filed the certified statements required by ORS 279C.845 or the federal contract provisions (FHWA Form 1273). Agency will pay to Design-Builder the amount retained within 14 Calendar Days after Design-Builder files the required certified statements, regardless of whether a subcontractor has failed to file certified statements.

Design-Builder shall retain 25% of any amount earned by a first-tier Subcontractor until the first-tier Subcontractor has filed the certified statements required by ORS 279C.845 or FHWA Form 1273. Before paying any amount retained, Design-Builder shall verify that the first-tier Subcontractor has filed the required certified statement. Within 14 Calendar Days after the first-tier Subcontractor files the required certified statement Design-Builder shall pay the first-tier Subcontractor the amount retained.

DB 170.65(a)

Design-Builder shall comply with the pertinent provisions of ORS 279C.520 concerning hours of labor.

(b) When Federal Funds Are Involved - Design-Builder shall pay the wage rate and fringe benefits listed in the publication "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" from the US Secretary of Labor, unless a higher wage rate and fringe benefits are required pursuant to ORS 279C.800 through 279C.870, as indicated in the BOLI publication, "Prevailing Wage Rates for Public Contracts in Oregon Subject to BOTH State PWR Law and the Federal Davis-Bacon Act," which are incorporated herein by reference, and can be accessed at:

http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml

For federal-aid projects, Design-Builder shall comply with provisions of FHWA Form 1273, "Required Contract Provisions Federal-Aid Construction Contracts" (see **DB General Provisions**, Section 172) and ORS 279C.520 and ORS 279C.540.

With regard to overtime pay, Design-Builder shall comply with the provision affording the greatest compensation.

(c) When No Federal Funds Are Involved - Design-Builder shall comply with the requirements of the publication, "Prevailing Wage Rates for Public Works Contracts in Oregon," which are incorporated herein by reference, and can be accessed at:

http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml

Unless subject to the Federal Contract Work Hours and Safety Standards Act, as described in DB170.65(a), Design-Builder shall comply with the overtime requirements of ORS 279C.520, ORS 279C.540 and ORS 279C.845.

(d) Time Limitation on Claim for Overtime - Pursuant to ORS 279C.545:

(1) Design-Builder shall cause a circular, clearly printed in blackface pica type and containing a copy of ORS 279C.545, to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available on each Work Location and freely visible to any or all workers employed to perform Work.

(2) Design-Builder shall maintain such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

(e) Owner/Operator Data - Design-Builder shall furnish data for each owner/operator providing trucking services. The data must be provided before the time the services are provided and must include the following information without limitation for each owner/operator:

- Driver's name
- Copy of drivers license
- Vehicle identification number
- Copy of vehicle registration
- Motor vehicle license plate number
- Motor carrier plate number

- Copy of ODOT Motor Carrier 1-A Permit
- Name of owner/operator from the side of the truck

DB170.67 BOLI Fee - In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Agency to the Commissioner at the time the Agency enters into the Contract.

DB170.70 Insurance

(a) Insurance Coverages - Design-Builder shall obtain, at its expense, and keep in effect during the term of the Contract, the insurance coverages listed below. Design-Builder may, however, contractually obligate an appropriate Subcontractor to obtain, at the Subcontractor's expense or at Design-Builder's expense, and keep in effect during the term of the Contract, pollution liability coverage, asbestos liability, lead liability, or automobile liability with pollution coverages, or such other types of insurance coverage that Agency approves as types of insurance coverage that may be obtained by appropriate Subcontractors. If both Design-Builder and an appropriate Subcontractor will perform pollution-related Work or other Work that would be covered by the other above-described types of insurance permitted to be obtained by an appropriate Subcontractor, the insurance coverages listed below that correspond to such Work shall be obtained, at Design-Builder's or Subcontractor's expense, and shall cover the liability of Design-Builder and the Subcontractor, either under the same or separate insurance policies.

- **Commercial General Liability** - Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to Agency. This insurance shall include personal and advertising injury liability and products and completed operations coverage. Coverage may be written in combination with Commercial Automobile Liability Insurance, with separate limits for Commercial General Liability and Commercial Automobile Liability. Coverage shall be written on an occurrence basis. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70(a). The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provision. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract. If Design-Builder's Commercial General Liability Insurance limits are less than the required limits stated above, Design-Builder shall obtain Excess or Umbrella Liability Insurance with sufficient limits that when added to Design-Builder's Commercial General Liability Insurance limits the total combined limits of Commercial General Liability Insurance and Excess or Umbrella Liability Insurance equal or exceed the above-stated Commercial General Liability Insurance limits required for this Project. The above-stated combined single limit per occurrence and the above-stated annual aggregate limit must each be met. Excess or Umbrella Liability Insurance coverage shall extend to the same perils, terms, and conditions as the underlying Commercial General Liability Insurance coverage.
- **Pollution Liability** - If indicated in **DB Special Provisions**, SP170.70(a), Pollution Liability Insurance covering Design-Builder's liability, or the liability of an appropriate Subcontractor if the coverage is obtained by the Subcontractor, for bodily injury and property damage, and environmental damage resulting from sudden and accidental

DB 170.70(a)

pollution, gradual pollution, and related clean-up costs incurred by Design-Builder, or by the Subcontractor if the coverage is obtained by the Subcontractor, while performing Work required by the Contract. If the coverage is obtained by Design-Builder, the coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Pollution Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70(a). The annual aggregate limit shall not be less than the dollar amount indicated in the Special Provision. The policy shall be endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.

- **Asbestos Liability** - If indicated in **DB Special Provisions**, SP170.70(a), Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide an Asbestos Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, Design-Builder or Subcontractor shall provide separate Asbestos Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance, with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Lead Liability** - If indicated in **DB Special Provisions**, SP170.70(a), Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide a Lead Liability endorsement to the pollution liability coverage. If an endorsement cannot be obtained, Design-Builder or Subcontractor shall provide separate Lead Liability Insurance at the same combined single limit per occurrence and annual aggregate limit as the Pollution Liability Insurance, with the policy endorsed to state that the annual aggregate limit of liability shall apply separately to the Contract.
- **Commercial Automobile Liability** - Commercial Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial Automobile Liability and Commercial General Liability. Combined single limit per occurrence shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70(a). If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.
- **Commercial Automobile Liability with Pollution Coverage** - If indicated in **DB Special Provisions**, SP170.70(a), Design-Builder, or the Subcontractor, if the coverage is obtained by the Subcontractor, shall provide Commercial Automobile Liability Insurance with Pollution coverage covering Design-Builder's liability, or the liability of an appropriate Subcontractor if the coverage is obtained by the Subcontractor, for bodily injury and property damage, and environmental damage arising out of the use of all owned, non-owned, or hired vehicles while performing Work under the Contract. If the coverage is obtained by Design-Builder, the coverage may be written in combination with the Commercial General Liability Insurance, with separate limits for Commercial Automobile Liability with Pollution Coverage and Commercial General Liability. Combined single limit per occurrence

shall not be less than the dollar amount indicated in **DB Special Provisions**, SP170.70(a) or the amount required by the U.S. Department of Transportation, whichever is greater. If this coverage is written in combination with the Commercial General Liability, the policy shall be endorsed to state that the Commercial General Liability annual aggregate limit shall apply separately to the Contract.

Commercial Automobile Liability with Pollution Coverage is required for this Project because the Project includes pollution-related Work. If Design-Builder will be performing pollution-related Work, this coverage covering Design-Builder must be provided. If an appropriate Subcontractor, but not Design-Builder, will perform the pollution-related Work, Commercial Automobile Liability with Pollution Coverage covering the Subcontractor, but not Design-Builder, must be provided. However, Design-Builder shall provide Commercial Automobile Liability insurance coverage covering Design-Builder as provided in the Commercial Automobile Liability bullet above. If both Design-Builder and an appropriate Subcontractor will be performing pollution-related Work, Commercial Automobile Liability with Pollution Coverage covering both Design-Builder and the Subcontractor shall be provided, and Design-Builder may provide the coverage covering both Design-Builder and the Subcontractor, or Design-Builder and the Subcontractor may provide their own, separate, Commercial Automobile Liability with Pollution coverages.

- **Professional Liability** - If Design-Builder self-performs or provides in-house Design Services for this Project, Design-Builder shall obtain and maintain at its own expense during the term of this Contract, Professional Liability Insurance covering any damages caused by any error, omission or negligent acts of Design-Builder, its Subcontractors, agents, officers, or employees performing Design Services for the Project, in the dollar amount indicated in **DB Special Provisions**, SP170.70(a).

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

(b) Tail Coverage - If any of the liability insurance coverages of **DB General Provisions**, Subsection 170.70(a) are on a "claims made" basis, "tail" coverage will be required at the completion of the Contract for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Design-Builder shall furnish certification of "tail" coverage as described, or continuous "claims made" liability coverage for 24 months following Contract completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of the Contract. If continuous "claims made" coverage is used, Design-Builder shall keep the

DB 170.70(b)

coverage in effect for a duration of not less than 24 months from the end of the Contract. This will be a condition of Final Acceptance.

(c) Additional Insureds - The required liability insurance coverages shall include Agency, Agency's governing body, board, or Commission and its members, and Agency's officers and employees as Additional Insureds, but only with respect to Design-Builder's activities to be performed under the Contract. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The liability coverages of **DB General Provisions**, Subsection 170.70(a) that are permitted by Agency to be obtained by an appropriate Subcontractor shall include all of the foregoing as Additional Insureds, and shall also include Design-Builder and its officers and employees as Additional Insureds.

(d) Workers' Compensation - All employers, including Design-Builder and its Subcontractors, if any, that employ subject workers who are performing Work or providing labor or Materials under the Contract in the State shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Design-Builder shall ensure that each of its Subcontractors complies with these requirements. Design-Builder shall certify in the Contract that Design-Builder is registered by the Oregon Workers' Compensation Division either as a carrier-insured employer, a self-insured employer, an exempt employer, or is an independent contractor who will perform the Work without the assistance of others.

Design-Builder shall ensure that its insurance carrier files a guaranty contract with the Oregon Workers' Compensation Division before performing any Work.

(e) Notice of Cancellation or Change - Design-Builder shall not cancel, change materially, or take any action showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from Design-Builder or its insurer(s) to Agency. Design-Builder shall be responsible for ensuring that insurance coverage(s) obtained by an appropriate Subcontractor, as permitted by Agency under **DB General Provisions**, Subsection 170.70(a), are not cancelled, changed materially, or have any action taken by the Subcontractor showing intent not to renew the insurance coverage(s) without 30 days' advance written notice from Design-Builder or the insurer(s) to Agency. Any failure to comply with the reporting provisions of this insurance shall not affect the coverage(s) provided to Agency, county, city, or other applicable political jurisdiction, or to Agency's governing body, board, or commission and its members, and Agency's officers and employees.

(f) Certificate(s) of Insurance - As evidence of the insurance coverages required by this Contract, including those permitted by Agency under **DB General Provisions**, Subsection 170.70(a) to be obtained by an appropriate Subcontractor, Design-Builder shall furnish certificate(s) of insurance to Agency no later than the effective date of the Contract. As evidence of insurance coverages required by this Contract but permitted by Agency under **DB General Provisions**, Subsection 170.70(a) to be obtained by an appropriate Subcontractor, Design-Builder shall furnish certificate(s) of insurance to Agency for Review and Comment prior to the commencement of Work by Subcontractor. Agency will review the certificate(s) for compliance with the Contract requirements and respond within 28 Calendar Days after receipt. The Certificate(s) shall specify all of the parties who are Additional Insureds. Design-Builder shall obtain, or ensure that the appropriate Subcontractors obtain, insurance coverages required under this Contract from insurance

companies or entities acceptable to Agency and authorized to issue insurance in the State. Design-Builder, or the appropriate Subcontractor, but not Agency, shall be responsible for paying all deductibles, self-insured retentions and/or self-insurance included under these provisions.

(g) Builders' Risk - If indicated in **DB Special Provisions**, SP170.70(g), Design-Builder shall obtain, at its expense, and keep in effect during the term of the Contract, Builders' Risk insurance on an all risks of direct physical loss basis, including, without limitation, earthquake and flood damage, for an amount equal to at least the value indicated in the Special Provision. Any deductible shall not exceed \$50,000 for each loss, except that the earthquake and flood deductible shall not exceed 5% of each loss or \$50,000, whichever is greater. The policy shall include Agency as loss payee.

DB170.71 Independent Contractor Status - The service or services to be rendered under the Contract are those of an independent contractor. Design-Builder is not an officer, employee, or agent of the State as those terms are used in ORS 30.265.

DB170.72 Indemnity / Hold Harmless - To the fullest extent permitted by Law, and except to the extent otherwise void under ORS 30.140, Design-Builder shall indemnify, defend (with counsel approved by Agency), and hold harmless Agency, Agency's authorized representatives, Agency's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders, and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorneys' fees), demands, and actions of any nature whatsoever which arise out of, result from, or are related to (a) any damage, injury, loss, expense, inconvenience, or delay described in this Subsection; (b) any accident or occurrence which happens or is alleged to have happened in or about a Work Location or any other place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of Design-Builder to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by Design-Builder, or any breach of any agreement, representation, or warranty of Design-Builder contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of Design-Builder, a Subcontractor, or anyone directly or indirectly employed by them or any one of them, or anyone for whose acts they may be liable, for such portion of the claim, damage, loss, or expense not caused by a party indemnified hereunder; and (e) any lien filed upon the Project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a Party, Entity, or person described in this Subsection.

Design-Builder shall indemnify, defend (with counsel approved by Agency), and hold harmless Agency and its representatives from liability arising from or related to the violation of Laws by those engaged in any phase of the Work. This provision does not apply to Work performed by Agency employees.

In claims against any person or Entity indemnified under this Subsection by an employee of Design-Builder, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under this Subsection shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

DB 170.74

DB170.74 Employee Drug-Testing Program - As required by ORS 279C.505(2), Design-Builder shall have in place, and maintain for the duration of the Contract, an employee drug-testing program. Agency retains the right to audit and/or monitor the program. Upon request, Design-Builder shall furnish to Agency a copy of the employee drug-testing program.

DB170.78 Conflict of Interest - Design-Builder shall not give or offer any gift, loan, or other thing of value to any member of Agency's governing body or employee of Agency in connection with the award or performance of any Contract.

Design-Builder shall not rent, lease, or purchase Materials, supplies, or Equipment from or through any Agency employee or member of Agency's governing body.

Design-Builder and its Subcontractors, along with their officers, employees, and agents, are prohibited from acquiring any interest, including purchase options, in property within or adjacent to Work Locations that is reasonably anticipated to be impacted by the Project. Design-Builder and its Subcontractors, along with their officers, employees, and agents, are also prohibited from receiving any real estate fees, compensation, or benefit associated with the sale of a replacement dwelling to a displaced person in connection with any real estate acquisition activity related to this Project. Design-Builder shall include in all of its subcontracts these prohibitions. Any such acquisition of a property interest or receipt of fees, compensation, or benefit shall constitute a material breach of contract, and may result in the termination of the Contract by Agency.

Under Agency's Code of Conduct Policy regarding former employees, when an Agency employee has performed functions for Agency in any phase or stage of a procurement, including but not limited to drafting specifications, reviewing or scoring bids or Proposals, authorizing services or assigning work, or awarding a contract, and the employee leaves Agency and is employed by an Entity (including Design-Builder) that has a contract with Agency, or is a bidder or Proposer on a procurement with the intent of signing a contract with Agency, Entity shall be subject to specific restrictions described below for a one-year period from the date Agency employee last performed the functions cited above. This one-year prohibition applies to work performed under any such contract and failure to disclose such relationship or to remedy such potential violation shall result in the rejection of Entity's bid or Proposal or cancellation of the contract (including the Contract) with Agency at any time. It would also constitute grounds for cancellation of an Entity's prequalification with Agency and for a determination of Entity not being a responsible contractor for future procurements.

Entity (including Design-Builder) shall declare if a former Agency employee works for Entity, the job the employee previously performed for Agency, and the role the employee now serves for Entity. Use of the former Agency employee by Entity in any role relating to the same or substantially similar Agency procurement or contract for which the employee participated while employed by Agency is prohibited. This prohibition applies to an employee for only the one-year period immediately following the date the employee left Agency employment. Each such declaration by an Entity shall include a signed statement by the former Agency employee describing the proposed role of the employee in the particular procurement or contract.

DB170.79 Third Party Beneficiary - There are no third-party beneficiaries of the Contract.

DB170.80 Responsibility for Damage to Work

(a) Responsibility for Damage in General - Except as otherwise provided in this Subsection, Design-Builder shall perform Work, and furnish Materials and Equipment for incorporation into the Project, at Design-Builder's own risk, until the entire Project has been completed and Accepted by Agency. Design-Builder shall repair all damages to Work performed, Materials supplied, and Equipment incorporated into the Project, except as otherwise provided in this Subsection.

(b) Repair of Damage to Work - Design-Builder shall be responsible for promptly rebuilding, repairing, restoring, and making good damages to any portion of the permanent or temporary Work, regardless of whether Design-Builder has been relieved of responsibility pursuant to the provisions of this Subsection, unless Agency directs otherwise. Where Design-Builder has been relieved of responsibility for the damage, Work required to repair damage to the Work shall be considered Extra or Changed Work. Agency may elect to have such Extra or Changed Work performed by Agency forces or other means.

Where Design-Builder has not been relieved of responsibility for the damage pursuant to a provision of this Subsection, Design-Builder shall be responsible for promptly rebuilding, repairing, restoring, and making good damage to any portion of the permanent or temporary Work occurring before issuance of Third Notification with no additional compensation, except for repairs necessitated by damage caused by the following:

- Acts of God or Nature
- Actions of Authorities

(c) Partial Relief of Responsibility for Damage to Work Caused by Public Traffic - Once a portion of the Work is completed and opened to unrestricted public traffic, Design-Builder may request in writing to be relieved of responsibility for the cost of repair of damage caused by public traffic. If approved, Agency will issue written partial relief stipulating the scope and duration of Design-Builder's relief from responsibility for damage to Work caused by public traffic. Provided, that such damage was not caused or contributed to, in whole or in part, by Design-Builder's faulty design, substandard workmanship, inappropriate traffic control measures, or any other failure to comply with Contract requirements.

Nothing in the foregoing provision shall be construed to relieve Design Builder of its responsibility to make such repairs as may be necessary, or to protect and maintain the Work in accordance with all Contract requirements. The foregoing provision shall not be construed as interim or partial acceptance of Work performed.

(d) Vandalism - Design-Builder shall provide reasonable protection of the Work from vandalism until Third Notification. If reasonable protection has been provided, 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 Agency. Upon receipt, Agency will investigate, evaluate the amount of damages and their cause, and determine whether, and how much, Design-Builder will be recompensed.

DB170.82 Responsibility for Damage to Property and Facilities

(a) In General - As used in this Subsection, the term “Design-Builder” shall include Design-Builder’s agents, Subcontractors, and all workers performing Work under the Contract, and the term “damage” shall include without limitation soiling or staining surfaces by tracking or splashing mud, asphalt, and other materials, as well as damage of a more serious nature. Design-Builder shall be solely responsible for damages arising from the following:

- Design-Builder’s operations
- Design-Builder’s negligence, gross negligence, or intentional wrongful acts
- Design-Builder’s failure to comply with any Contract provision, Standard, or the Law

Agency may withhold funds due to Design-Builder or Design-Builder’s Surety until all lawsuits, actions, and claims for injuries or damages are resolved and satisfactory evidence of resolution is furnished to Agency.

(b) Protection and Restoration of Agency Property and Facilities - The following requirements apply to Highways, Structures, and other improvements that are existing, under construction, or completed:

- Design-Builder shall provide adequate protection to avoid damaging Agency property and Structures
- Design-Builder shall be responsible for damage to Agency property and Structures caused by or resulting from Design-Builder’s operations
- Design-Builder shall clean up and restore such damage by repair, rebuilding, replacement, or compensation, as determined by Agency

(c) Protection and Restoration of Non-Agency Property and Facilities - Design-Builder shall determine the location of non-Agency properties and facilities that could be damaged by Design-Builder’s operations associated with performing the Contract and shall protect them from damage. Design-Builder shall protect monuments and property marks until Agency has referenced their location and authorized their removal. Design-Builder shall restore non-Agency property and facilities damaged by its operations to the condition that existed before the damage at no additional compensation.

Design-Builder shall provide temporary facilities when needed (e.g., to maintain normal service or as directed by Agency) until the required repair, rebuilding, or replacement has been accomplished.

Design-Builder shall protect specific service signs (e.g., business logos and tourist-oriented directional signs) from damage, whether the signs are to remain in place or be placed on temporary supports. Design-Builder shall repair or replace damaged signs at no cost to Agency. Liquidated damages will be assessed against Design-Builder in the amount of \$200.00 per Calendar Day for each sign out of service for more than five (5) Calendar Days because of Design-Builder’s operations.

DB170.85 Responsibility for Defective Work - Design-Builder shall make good any defective Work.

(a) Latent Defects - Design-Builder shall remain liable for all latent defects resulting from causes other than fraud, reckless misrepresentations, or gross mistakes until the expiration of the Performance Bond, Warranty Bond, or warranty period, whichever expires last. Design-Builder shall remain liable for all latent defects resulting from fraud, reckless misrepresentations, or gross mistakes regardless of when those latent defects may be discovered and regardless of whether such discovery occurs outside any applicable Performance Bond, Warranty Bond, or warranty period.

(b) Warranties - Design-Builder warrants that all Work shall meet all Contract requirements, including applicable technical and Performance Specifications, from the date and for the period of time identified in each applicable Specification or elsewhere in the Contract Documents and that all Design Services shall be performed in accordance with the standard of care specified in Subsection 2.1.2 of the Design-Build Agreement. Design-Builder shall be responsible for making good the Work and for all repairs of damage to other improvements, natural and artificial structures, systems, Equipment, and vegetation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship. Design-Builder shall be responsible for all costs associated with site clean-up and remediation caused by, or resulting in whole or in part from, defects in warranted Materials, Equipment, or workmanship. This warranty provision shall survive expiration or termination of the Contract.

DB170.89 Protection of Utility, Fire-Control, and Railroad Property and Services; Repair, Roadway Restoration

(a) Protection of Utility, Fire Control, and Railroad Property and Services - Design-Builder shall avoid damaging the properties of Utilities, Railroads, railways, and fire-control Authorities during performance of the Work. Design-Builder shall cooperate with and facilitate the relocation or repair of all Utilities and Utility services, and of Railroad and fire control property and railways.

Design-Builder shall conduct no activities of any kind around fire hydrants until the local fire-control Authority has approved provisions for continued service.

Design-Builder shall immediately notify any Utility, Railroad, or fire control Authority whose facilities have been damaged.

If an Entity has a valid permit from the proper Authority to construct, reconstruct, or repair Utility, Railroad, or fire-control service in the Roadway, Design-Builder shall allow the permit holder to perform the work.

(b) Restoration of Roadway After Repair Work - Design-Builder shall restore the Roadway to a condition at least equal to that which existed before the repair work addressed under this Subsection was performed, as directed by Agency. Restoration will be paid, if applicable, as provided in the **DB Special Provisions** or may be paid as Extra Work.

DB170.92 Fencing, Protecting Stock, and Safeguarding Excavations - Design-Builder shall be responsible for loss, injury, or damage which results from its failure to restrain stock and persons. Design-Builder shall restrain stock to lands on which they are confined using temporary fences or other adequate means. Design-Builder shall provide adequate

DB 170.92

temporary fences or other protection around excavations to prevent animals and unauthorized persons from entering.

Design-Builder shall repair, at Design-Builder's expense and to Agency's satisfaction, fences damaged by Design-Builder's operations and the operations of Design-Builder's agents, employees, and Subcontractors.

DB170.93 Trespass - Design-Builder shall be responsible for its own, its agents' and employees', and its Subcontractors' trespass or encroachment upon, or damage to, property during performance of the Contract.

DB170.94 Use of Explosives - Design-Builder shall comply with all Laws pertaining to the use of explosives. Design-Builder shall notify anyone having facilities near Design-Builder's operations of Design-Builder's intended use or storage of explosives. Design-Builder shall be responsible for all damage resulting from its own, its agents' and employees', and its Subcontractors' use of explosives. (See **DB Standard Specifications**, Sections 00330.41(e) and 00335.)