

THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE

RESOLUTION NO. 140

A RESOLUTION OF THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE (“AGENCY”) AUTHORIZING EXECUTION OF A CONTRACT FOR PURCHASE AND DESIGN/BUILD OF A CITY HALL AND CERTAIN INFRASTRUCTURE AND ACTING IN ITS CAPACITY AS ITS LOCAL CONTRACT REVIEW BOARD AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE CONTRACT WITH SPECHT DEVELOPMENT, INC. ON BEHALF OF THE AGENCY.

WHEREAS, on January 18, 2005, Wilsonville Urban Renewal Agency Board adopted Urban Renewal Resolution No. 123 authorizing execution of a Letter of Intent between the Urban Renewal Agency and Specht Development, Inc.; and

WHEREAS, on May 17, 2005, the voters of the City of Wilsonville approved Ballot Measure 3-171 entitled “Authorizes \$9,998,872 for City Hall; plus \$2,979,425 10-Year Interest Financing” by a margin of 83% yes votes to 17% no votes (the “Ballot Measure”); and

WHEREAS, the Ballot Measure, together with information submitted to the public, provided for the purchase of land and a design/build contract for development of a City Hall and certain related infrastructure based on a guaranteed maximum price with Specht Development, Inc.; and

WHEREAS, on August 1, 2005, Wilsonville Urban Renewal Agency Board adopted Urban Renewal Resolution No. 137 authorizing execution of a Revised Letter of Intent with Specht Development, Inc. regarding Purchase and Design/Build of a City Hall and Certain Infrastructure (“Project”); and

WHEREAS, on August 9, 2005, a Revised Letter of Intent was executed between the Urban Renewal Agency and Specht Development, Inc., which outlines the basic terms by which Specht Development, Inc., is prepared to develop the Project; and

WHEREAS, the Revised Letter of Intent calls for a Contract for Purchase and Design/Build of a City Hall and Certain Infrastructure; and

WHEREAS, on July 15, 2002, Wilsonville Urban Renewal Agency Board adopted Resolution No. 86 designating the Urban Renewal Agency Board as the Local Contract Review Board for the Urban Renewal Agency; and

WHEREAS, it is the intent of the Agency that this Contract for Purchase and Design/Build of a City Hall and Certain Infrastructure qualify as a sole source exempt contract under ORS 279B.075(d) of the State of Oregon Public Contracting Code or Model Rules and Section 2.312(1) of the Wilsonville Code; and

WHEREAS, Specht Development, Inc., controls a 7.24 acre parcel of land on the west side of Town Center Loop East (the "site") and proposes to design and construct for a new City Hall a 30,000 square foot building ("building") and certain infrastructure on a portion of the site in keeping with the aforementioned Letter of Intent of January 18, 2005, the May 2005 voter approved guaranteed cost, and the revised Letter of Intent of August 1, 2005; and

WHEREAS, this site's geographic location is unique as it is proximate to the existing City Hall and other civic buildings and parks, allows for a future 10,000 square foot addition to the building, and meets the City office and public meeting space needs; and

WHEREAS, Agency has negotiated a Guaranteed Maximum Price with Specht Development, Inc. that is cost-effective and a project schedule that meets both the Agency's and the City's urgent need to vacate their existing lease-expired office space; and

WHEREAS, with time being of the essence to maintain construction pricing and schedule, Agency desires to execute a Contract with Specht for the Purchase and Design/Build of a City Hall and Certain Infrastructure forthwith.

NOW, THEREFORE, THE URBAN RENEWAL AGENCY RESOLVES AS FOLLOWS:

1. Based on the above recitals and the contents of the documents and actions set forth therein, and the staff report of record in this matter, the Urban Renewal Agency acting as its Local Contract Review Board finds and concludes that allowing a sole-source procurement for the execution of the Contract for Purchase and Design/Build of a City Hall and Certain Infrastructure will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.
2. Board hereby approves the form of the Contract between the Urban Renewal Agency and Specht Development, Inc., and authorizes the Executive Director and such persons as she

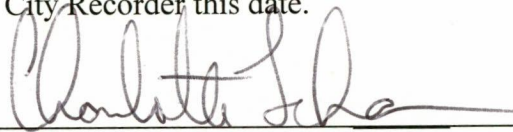
may direct to execute Contract for the Project, a copy of which is attached hereto and incorporated herein as if fully set forth as shown in Exhibit A.

3. For this Project, Board authorizes expenditures in the amount consistent with the adopted FY 2005-06 Budget as follows:

<u>Account</u>	<u>Amount</u>
900-49050-0000-8060	\$9,998,972
900-49050-0000-8061	\$1,800,000

4. As required by state law and in keeping with annual budget appropriations, that portion of the total project cost not included in the FY 2005-06 Budget shall be included in the FY 2006-07 Budget.

ADOPTED by the Wilsonville Urban Renewal Agency at a regular meeting thereof this 3rd day of October 2005, and filed with the Wilsonville City Recorder this date.



CHARLOTTE LEHAN, BOARD CHAIR

ATTEST:



SANDRA C. KING, MMC, City Recorder

SUMMARY of Votes:

Chair Lehan	Yes
Member Kirk	Yes
Member Holt	Yes
Member Scott-Tabb	Yes
Member Knapp	Yes

**CONTRACT FOR PURCHASE AND DESIGN/BUILD OF A CITY
HALL AND CERTAIN INFRASTRUCTURE**

Among

**THE URBAN RENEWAL AGENCY OF THE CITY OF
WILSONVILLE, a municipal corporation and political subdivision of
the State of Oregon,**

**THE CITY OF WILSONVILLE, OREGON,
a municipal corporation and political subdivision of the State of
Oregon,**

and

**SPECHT DEVELOPMENT, INC.,
an Oregon corporation
as Project Developer**

Dated as of October 3, 2005

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List of Exhibits

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Exhibit A-1	Allowances
Exhibit A-2	Ballot Measure Budget
Exhibit B	Project Schedule
Exhibit C	Legal Description and Depiction of Property
Exhibit D	List of Approved Design Development Documents
Exhibit E	Form of Application for Payment
Exhibit F	Title Report Dated August 18, 2005

CONTRACT FOR PURCHASE AND DESIGN/BUILD OF A CITY HALL AND CERTAIN INFRASTRUCTURE

This CONTRACT FOR PURCHASE AND DESIGN/BUILD OF A CITY HALL AND CERTAIN INFRASTRUCTURE (this "Contract") is entered into as of the ____ day of October, 2005 by THE URBAN RENEWAL AGENCY OF THE CITY OF WILSONVILLE, OREGON, a municipal corporation and political subdivision of the State of Oregon (the "Agency"), THE CITY OF WILSONVILLE, OREGON, a municipal corporation and political subdivision of the State of Oregon ("City"), and SPECHT DEVELOPMENT, INC., an Oregon corporation ("Specht") with reference to the following facts:

RECITALS

A. Urban Renewal Agency Resolution No. 123, adopted January 18, 2005, ("Resolution No. 123") authorized the Agency to enter into a Letter of Intent with Specht to develop project details for construction of a new city hall prior to a May 2005 community-wide vote.

B. Given the unique elements of the Specht proposal, as recited in Resolution No. 123, the parties intend and understand this Contract qualifies as an exempt sole source contract for the purposes of public contracting laws.

C. On May 17, 2005, the voters of the City of Wilsonville approved Ballot Measure 3-171 entitled "Authorizes \$9,998,872 for City Hall; plus \$2,979,425 10-Year Interest Financing" by a margin of 83% yes votes to 17% no votes (the "Ballot Measure"). The Ballot Measure, together with information submitted to the public, provided for the purchase of land and a design/build contract for development a city hall and certain related infrastructure based on a guaranteed maximum price.

D. Urban Renewal Agency Resolution No. 137 adopted on August 1, 2005, authorized execution of a revised letter of intent between the Agency and Specht regarding the purchase of land and the design/build contract for development of the new city hall and certain related infrastructure in keeping with the Ballot Measure (the "Revised Letter of Intent"). This resolution also confirmed the intent that the agreement would qualify as a sole source contract.

E. The Revised Letter of Intent calls for a Contract for Purchase and Design/Build of a City Hall and Certain Infrastructure.

F. The parties desire to enter into this Contract to establish certain rights, duties and responsibilities between the parties hereto for the design, development, financing, construction, ownership, operation and maintenance of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and in order to fulfill the foregoing objectives, the parties agree as follows:

CONTRACT

1. Incorporation of Recitals and Exhibits; Definitions

Each of the recitals set forth above is incorporated into this Contract as though fully set forth herein. Each of the Exhibits attached hereto and the documents referenced therein are incorporated into this Contract as though fully set forth herein. The City is executing this Contract solely for the limited purpose of being bound by its express rights and obligations hereunder. Capitalized terms used herein shall have the meaning set forth below.

"Contract" or "Agreement" means this Contract for Purchase and Design/Build of a City Hall and Certain Infrastructure among the Agency, the City (who is only executing this Contract for certain limited purposes), and Specht, as amended from time to time.

"Agency" means the Urban Renewal Agency of the City of Wilsonville. Where approval of the Agency is required, the reference shall mean the Agency Project Manager.

"Agency Project Manager" is defined in Section 5.3.

"Allowances" means the items and amounts described in Exhibit A-1 attached hereto.

"Architect" means Group MacKenzie, Inc., an Oregon corporation, architect for the Project, its employees, agents and subcontractors.

"Architect's Contract" means the agreement between Specht and Architect for the design of the Project dated April 15, 2005, a copy of which has been provided to the Agency.

"Business Days" means every day except Saturday, Sunday, and legal holidays recognized for employees of the City of Wilsonville.

"BOLI" is defined in Section 4.21.

"Certificate of Occupancy" means the Certificate issued by the City of Wilsonville Building Official and Fire Marshall indicating a building, or identified portions thereof, may be legally occupied.

"Change Order" means a written statement, signed by the Agency and Specht stating their agreement upon all of the following: (a) a described change in the Project resulting from a Scope Change or other change directed by the Agency or Specht; (b) the amount of the adjustment to the Project Budget, if any, resulting from the change; (c) the extent of the adjustment, if any, in the Project Schedule; (d) the adjustment in the GMP, if any, resulting from the change.

"City" means the City of Wilsonville, Oregon, a municipal corporation and political subdivision of the State of Oregon.

"City Hall Building" means the building located on the Project, which will be used as the Wilsonville City Hall.

"Commencement of Construction for the Project" is defined in Section 4.4.

"Construction Contracts for the Project" means the General Construction Contract entered into between Specht and General Contractor and all other contracts for construction of the Project or any portion thereof.

"Construction Documents" is defined in Section 4.2.2.1.

"Contingency" means a line item in the Project Budget that may be used by Specht for Project Costs pursuant to the terms of Section 4.9.3.1.

"Contract Documents" means this Contract including the exhibits and any all amendments hereto, and the Construction Documents for the Project, including any and all Change Orders.

"Contractors" means the General Contractor, and any other construction contractors, including material suppliers, for the Project.

"Design Development Documents" is defined in Section 4.2.1.

"Detailed Specifications" means all written detailed requirements for materials, equipment, construction systems, standards and workmanship for the construction of the Project.

"Developer's Fee" is defined in Section 4.19.

"Development Team" is defined in Section 4.1.

"Dispute Resolution" means that process set forth in Section 14 of this Contract.

"Drawings" include all graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project, and include plans, elevations, sections, details, schedules and diagrams for the applicable Project.

"Environmental Laws" means, as amended from time to time, the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq., Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 960 et seq., Federal Hazardous Materials Transportation Act, 42 U.S.C. Section 1801 et seq., Federal Clean Air Act, 42 U.S.C. Section 7401 et seq., Federal Water Pollution Control Act, as amended by the Federal Water Act of 1977, 33 U.S.C. Section 1251 et seq., Federal Insecticide, Fungicide and Rodenticide Act, as amended by the Federal Pesticide Act of 1978, 7 U.S.C. Section 136 et seq., Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., Federal Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., and any regulations promulgated thereunder.

"Final Acceptance" means the Agency's written approval that certain events, more fully defined in Section 7.2 of this Contract, have occurred with respect to the Project.

"Final Permits" means issuance of all Permits required for construction of the Project in accordance with the Contract Documents by the City of Wilsonville (in its capacity as permitting authority and not as a party to this Contract) and any other governmental agencies with jurisdiction over the Project and the expiration of any appeal periods, without appeal, following the issuance thereof.

"Force Majeure" means fire, drought, flood, landslide, hurricanes, lighting, storm, earthquake, other acts of God, unreasonable acts or failure to act by a governmental agency not within the control of Specht, unusually severe weather that cannot reasonably be anticipated to occur during the Project Schedule based on the frequency of events disclosed in historical weather records, civil disturbance, industry-wide labor disputes, war, freight embargo, riot, sabotage or epidemic.

"General Contractor" or "Project General Contractor" or "Skanska" means Skanska USA Building Inc., its employees, agents or any other Contractor performing work on the Property.

"GMP" means Guaranteed Maximum Price, as stated in dollars; the total amount of the Project Costs that Specht guarantees the Agency will not be exceeded, subject to additions and deductions for amounts payable by the Agency for Change Orders and as otherwise may be amended from time to time as provided in Section 4 in this Contract.

"Hard Costs" means the costs set forth in the General Contractor budget, which is part of the Project Budget attached hereto as Exhibit A.

"Hazardous Substances" means any material, waste, substance, industrial waste, toxic waste, chemical contaminant, petroleum, asbestos, polychlorinated biphenyls, radioactive materials or other substances regulated or classified by Environmental Laws as hazardous, toxic or lethal to persons or property.

"Indemnification Claim Notice" is defined in Section 9.3.

"Indemnified Party" is defined in Section 9.3.

"Liens" is defined in Section 6.1.

"Matter in Dispute" is defined in Section 14.1.

"Mediator" is defined in Section 14.3.1.

"Minor Change" means a change in the Project that is consistent with the intent of the Construction Documents that (i) does not affect the GMP, or add to the costs of the Agency not covered by the GMP, (ii) does not result in an extension to the Project Schedule, and (iii) does not result in a material change in the physical appearance or a reduction in the quality of the Project.

"Permits" means all land use approvals, building, engineering and other permits and approvals required for construction of the Project.

"Permitted Exceptions" is defined in Section 3.4.

"Project" means the City Hall Building, related utility improvements, and related right-of-way and traffic system improvements, as reasonably contemplated by the Design Development Documents.

"Project Budget" means the budget for development of the Project, a copy of which is attached to this Contract as Exhibits A, A-1, & A-2, as revised from time to time in accordance with this Contract.

"Project Costs" means all costs for the Project for which the Agency, subject to the GMP, is responsible to pay under this Contract.

"Project Requirements" means the Design Development Documents for the Project, and as otherwise specifically agreed to by the Agency and Specht.

"Project Savings" is defined in Section 4.20.

"Project Schedule" means the schedule for development and construction of the Project set forth on Exhibit B, as revised from time to time.

"Property" means certain real property located in the City of Wilsonville, Clackamas County, Oregon and legally described on Exhibit C attached hereto.

"Punch List" means a list of items required to be completed prior to Final Acceptance that are minor items which do not materially affect City's ability to occupy and use the Project for its intended uses.

"Requirements of Law" means all federal, state and local requirements relating to land and building construction, and occupancy including, without limitation, planning, zoning, environmental, air quality, flood hazard, fire safety, accessibility, non-discrimination and other governmental approvals, permits, and/or certificates as may be necessary from time to time to comply with all of the foregoing and other applicable statutes, rules, orders, regulations, laws, ordinances, and covenants, conditions and restrictions, which now apply to and/or affect the design, construction and/or existence and occupancy of the Project or any part thereof.

"Scope Change" means a change, initiated by the Agency or Specht, in the Project from the Construction Documents that is approved by Specht and the Agency and effectuated by a Change Order. Scope Changes may result in an increase to the GMP, an adjustment to the Project Schedule, and the costs thereof may be Project Costs as set forth in this Contract. Scope Change excludes a Minor Change.

"Shell Condition" means the condition of a floor of the City Hall Building, from which the final tenant improvement will commence. It includes a finished core condition ready for tenant occupancy. The core is based on elevator lobby, stair shafts, electrical closets, public restrooms and elevator shafts in an exterior wall fire taped condition. All non-rated walls will be unsheathed with sheet rock on the floor ready for tenant installation. Basic freeze protected HVAC systems and fire sprinklers are included. Electrical is based on stumble lighting with shell 2X4 fixtures on the floor. Further Shell Condition detail is set forth in the narrative included as Exhibit 3 to the Letter of Intent between the Agency and Specht Development, Inc.,

dated August 1, 2005, the heading of which reads Wilsonville City Hall Shell Narrative dated March 9, 2005.

"Specht" means Specht Development, Inc., an Oregon corporation, and its employees or agents. Where written approval by Specht is required, the reference shall mean Gregory L. Specht. For all other approvals, the reference shall mean Specht Project Manager.

"Specht Project Manager" is defined in Section 5.3.

"State" means the State of Oregon.

"Substantial Completion" means that the Project has been constructed in substantial accordance with the Contract Documents for the Project and (a) all elements required for the functioning of the Project shall be operational and in good working order and condition, including satisfying applicable Americans With Disabilities Act building requirements in effect as of the date of this Contract; (b) the buildings shall be weather tight; (c) the fire and life safety systems within the Project shall be installed and in good working order and condition; (d) the elevators shall operate and function in good working order and condition, but may still require touch up and cleaning; (e) the mechanical and electrical systems, including the HVAC system, shall be individually tested and in good working order, able to support the Project and shall also be tested to assure that Project's systems operate on an integrated basis, but the HVAC system may still require final balancing work; (f) the finish work is substantially completed, including, but not limited to any public lobbies, elevators, HVAC, plumbing, fire and life safety, sprinkler and electrical systems, doors, partitions, cabinetry, floor coverings, including removal of all construction debris; (g) all roadway improvements, decorative paving, site utilities, sidewalks, parking areas, other street improvements, lighting, and landscaping including irrigation are substantially completed and construction barricades and equipment have been removed; (h) the parking areas and all entrances and exits thereto are completed; (i) the access and security systems for the Project are installed and operational; (j) interior signage is installed; and (k) the City Hall Building has been purged for one week (new filters will be installed in all HVAC units and VAV boxes upon completion of City Hall Building purge); except in each case Punch List items that do not materially affect use and occupancy of the Project for their intended uses.

"Substantial Completion Date for the Project" means the date set forth in the Project Schedule, subject to extension for Unavoidable Delay.

"Temporary Certificate of Occupancy" means the Certificate issued by the City of Wilsonville Building Official and Fire Marshall indicating a building, or identified

portions thereof, may be legally occupied but only for a limited time period pending satisfaction of certain conditions:

"Title Company" means Chicago Title Insurance Company.

"Title Report" is defined in Section 3.4.

"Unavoidable Delay" means any delays in the performance by Specht or General Contractor of their respective obligations with respect to the construction of the Project, which result from causes beyond the control of the party whose obligations have been delayed and which could not have been avoided by the exercise of care and prudence by that party. Unavoidable Delay includes, without limitation, Force Majeure, the Agency's failure to meet the dates noted in the Project Schedule, Specht's failure to obtain Permits by the dates set forth in the applicable Project Schedule after using commercially reasonable best efforts as required by the terms of this Contract, and other delays that are specifically noted as Unavoidable Delays elsewhere in this Contract.

"Warranty Period" shall mean the period commencing on the later of (i) the date of receipt of the Temporary Certificate of Occupancy or (ii) the date of Substantial Completion and expiring one (1) year thereafter, regardless of manufacturers or installers warranties, with respect to (a) structural components, (b) window and storefront systems, and (c) the operation and balance of the HVAC and mechanical systems and controls, provided that, the Agency causes the systems and controls to be maintained by the installer, and further provided that the Agency makes no material change in its space planning that affects the load on such systems, or that in and of itself requires rebalancing of such systems. Notwithstanding the foregoing, Specht warrants the complete roofing system for a two (2) year period following issuance of the Temporary Certificate of Occupancy. If any longer warranty or guarantee period is specified for any particular equipment, materials or workmanship under any Construction Contract or subcontract in connection with the construction of the Project or under the laws of the State of Oregon, Specht shall assign the benefit of such warranty to the Agency upon the expiration of the appropriate Warranty Period.

2. Description of the Project

The Project consists of a two story building measuring approximately 30,000 square feet and will be designed, constructed and finished in the manner of a "Class A" suburban office building that reflects the image and quality required by the Agency. The design will also accommodate a future 10,000 square foot addition (not included in this Project).

Site improvements consist of an asphalt parking area, landscaping with irrigation systems, lighting and concrete pedestrian walks. The site work will include the installation of storm sewer, sanitary sewer, fire, water and domestic water utility services.

Improvements are planned for Town Center Loop East north of the Project and a new street, the working name of which is "City Hall Lane", which will bisect the Property. In connection with the Town Center Loop East improvements, the Agency and/or the City shall be responsible, at its sole cost and expense and not as a Project Cost, for causing all public and private utility franchises and providers to relocate their respective utilities per the Construction Documents.

3. Status of Existing Land Use Permits and Approvals

The 7.24 acre parcel preliminary partition is part of the Stage I Approval (DB-2005-06-00070) finalized on July 11, 2005. The Stage II/Site and Design/Master Sign Plan has been submitted and is scheduled for hearing September 12, 2005. A work session regarding the Stage II Application was held by the Development Review Board Panel B on July 11, 2005.

3.1 Required Land Use Permits

Specht shall apply for and diligently pursue all necessary City of Wilsonville permits and approvals for the Project on or before the date set forth in the Project Schedule.

3.2 Partition of the Property / Survey

The parties acknowledge that it will be necessary to partition the Property. Specht will cause a survey of the Property to be prepared. The survey shall be completed on or before the date set forth on the Project Schedule. The cost of the survey is included in the Project Budget. Partitioning of the Property shall be the responsibility of Specht.

3.3 Delivery of Property

The Agency shall deliver the Property to Specht, free of all encumbrances other than Permitted Exceptions, according to the Project Schedule by executing an assignment of Specht's right to purchase the Property from Kaiser Foundation Hospital ("Kaiser") and by purchasing the Property from Kaiser. Specht is responsible for preparing the document assigning property interest in a timely manner for the Agency's review. Specht's failure to do so shall not permit delay in project schedule. The Agency's failure to timely execute Specht's assignment shall constitute

an Unavoidable Delay for Specht, entitling Specht to delay the construction of the Project until such delivery occurs. Notwithstanding the foregoing, if the Agency is unable to deliver the entire Property by the date that is thirty (30) days after the date for such delivery set forth in the Project Schedule, the Agency will notify Specht, and the parties will attempt to negotiate in good faith towards appropriate changes in the Project Schedule and the Project Budget, including the Developer's Fee. If the parties are unable to agree within one hundred twenty (120) days of good faith negotiation, Specht's right and obligation to construct the Project pursuant to this Contract shall terminate, and the Agency shall be liable to Specht for (a) all of Specht's costs (including amounts due to Skanska) incurred in performing its obligations under this Contract until the date of termination, and (b) a termination fee of one hundred thousand dollars (\$100,000).

3.4 Title; Permitted Exceptions

The parties acknowledge receipt of the Sixth Supplemental Preliminary Title Report issued by Chicago Title Insurance Company, dated August 18, 2005 (the "Title Report"). The Agency shall accept the Property subject only to exceptions numbered 1-5, 8, 10, 14, 16, and 17 in the Title Report for the Project (collectively, the "Permitted Exceptions"). The Agency shall indemnify and hold Specht harmless from any and all claims, demands, suits, penalties, losses, damages, judgments or costs (hereinafter "Claims") arising out of or resulting from the special exceptions set forth in the Title Report.

4. Construction of Project

4.1 Approval of Development Team for Project

The following entities and individuals have been retained by Specht, and approved by the Agency, in connection with the Project:

- | | |
|----------------------------|---|
| 4.1.1 Architect: | Group MacKenzie, Inc.,
an Oregon corporation
Jeff Reaves and Jeff Humphreys |
| 4.1.2 Contractor: | Skanska USA Building Inc.
Gordon Childress and Ross Vroman |
| 4.1.3 Land Surveyor: | Northwest Surveying, LLC
Clint Stubbs |
| 4.1.4 Tenant Improvements: | TI Design Group

Linda Smith |

4.1.5 Geotech Engineers: Geotech Solutions Inc.

There shall be no change in the members of the Development Team or the named individuals without the prior written consent of the Agency, which consent shall not be unreasonably withheld so long as Specht demonstrates to the Agency's reasonable satisfaction that the individual or firm proposed as a replacement for the approved Development Team member has reasonably equivalent experience and qualifications as the approved Development Team member.

4.2 Project Design

The provisions of this Section 4.2 set forth the procedure for Specht's preparation and the Agency's review of plans, specifications, and drawings for the Project. These provisions are not applicable to the regulatory procedures for application, review, and issuance of permits and regulatory approvals of the Agency and other governmental organizations necessary for construction of the Project.

4.2.1 Design Development Documents (30% Set)

Specht has prepared design development documents for the Project (collectively, the "Design Development Documents") and the Agency approved these documents on August 25, 2005, pending incorporation of additional Agency comments, a list of which Design Development Documents is attached hereto as Exhibit D.

4.2.2 Construction Documents

4.2.2.1 Specht Preparation of the Construction Documents.

Specht shall cause the Architect and, to the extent necessary, other members of its Development Team to create construction documents for the Project, which shall include technical drawings, schedules, diagrams, plans and specifications setting forth in detail the requirements for construction of the Project and providing information customarily required for the use of the building trades (collectively, the "Construction Documents") based on the approved Design Development Documents as revised by Agency comments. These Construction Documents shall be consistent with and shall not materially alter the scope, GMP or the quality of the Project described in the Design Development Documents, unless otherwise approved by both parties.

4.2.2.2 Submittal of the Construction Documents to the Agency. Specht shall deliver the Construction Documents to the Agency for the Agency's approval no later than the date set forth in the Project Schedule.

4.2.3 Change Process

It is the intent of the Agency and Specht to only incorporate Scope Changes in the Construction Documents that are first approved by Change Order. Scope Changes to the Project shall be processed on an on-going basis as follows:

(a) Either the Agency or Specht may initiate a possible Scope Change to the Project, as applicable, by obtaining the verbal concurrence of the other party to consider such a Scope Change.

(b) If verbal concurrence is obtained, Specht shall prepare a (a) written description of the possible Scope Change (b) a preliminary estimate of the time and cost requirements of design work and all other anticipated costs associated with the Scope Change for the possible Scope Change, and (c) a recommendation regarding the allocation of any increased costs.

(c) If the preliminary estimate for a Scope Change is approved in writing by Specht and the Agency, Specht shall cause Architect and General Contractor to undertake the design and/or construction estimation of work required by the Scope Change.

(d) No later than five (5) business days after completion of the design and/or construction estimation work, Specht shall submit the results of such work to the Agency as a proposed Change Order.

(f) If the Agency or Specht disapproves of a Change Order proposed by the other party, the disapproving party shall so notify the other party within five (5) business days from receipt of the proposed Change Order and shall specify in writing those portions of the proposed Change Order that are disapproved (including a description of the reasons for the disapproval).

(g) If the Agency or Specht disapproves of a Change Order proposed by the other party, the Agency and Specht shall endeavor to expeditiously modify the proposed Change Order in a manner that responds to the reasons for disapproval. If, after a consultation between the Agency and Specht, agreement is not reached regarding the disapproval, either party may initiate Dispute Resolution for resolution of the issue, associated costs, cost allocation and/or time extension. Notwithstanding the dispute, Specht shall cause design work to continue on those portions of the Project that are not affected by the Matter in Dispute.

(h) Specht shall cause all Scope Changes approved by Change Order to be incorporated in the Construction Documents, as applicable, and shall

ensure that all Scope Changes that have not been approved by Change Order are not incorporated in said documents.

4.2.4 The Agency's Approval Process for the Construction Documents

4.2.4.1 Construction Documents. No later than fifteen (15) business days after receipt of a complete Construction Document package, the Agency shall either approve or reject the Construction Document so received. Construction Documents shall be deemed approved if the Agency does not so respond within such fifteen (15) business days. This approval does not replace review required for Section 4.3 Permits.

4.2.4.2 Criteria for Disapproval. The Agency may disapprove any of the Construction Documents, if the Agency reasonably determines (a) they are inconsistent with the approved Design Development Documents or (b) they are incomplete or in error.

4.2.4.3 Procedures for Agency Disapproval. If the Agency disapproves any of the Construction Documents submitted, the Agency shall so notify Specht within the respective fifteen (15) business-day periods above and shall specify in writing those portions of the Construction Documents that are disapproved (including a description of the reasons for the disapproval).

4.2.4.4 Steps Undertaken if Agency Disapproves. If the Agency disapproves any Construction Document, the Agency and Specht shall endeavor within ten (10) business days to modify the disapproved documents at issue in a manner that responds to the Agency's reasons for disapproval. If, after consultations with the Agency, Specht does not agree with the Agency's disapproval, Specht shall initiate Dispute Resolution for resolution of the issue and associated costs and time extension. Notwithstanding any other provisions in this Contract to the contrary, during dispute resolution under this Section 4.2.4.4, Specht shall not be required to submit the Construction Documents to the City of Wilsonville for Permits unless the Agency and Specht agree to submit the portions of the Construction Documents that are not affected by the Matter in Dispute to the City of Wilsonville for Permits.

4.2.5 Permit and Construction Documents

Specht shall cause the Architect and other design professionals to prepare the Construction Documents as required for submittal of the building permit and other permit applications in accordance with Section 4.3 hereof, and as required for construction of the Project by the General Contractor.

4.2.6 Priority of Documents

The construction of the Project requires execution and management to completion of multiple documents, some of which are attached as exhibits to this Contract. In case of conflicts or discrepancies among the documents, the Project Managers shall direct the Project work according to the following order of document priority: (1) permits, licenses and approvals from government agencies; (2) this Contract and amendments to same, with those of later date having precedence over those of an earlier date; and (3) within the drawings component of this Contract, the latest then-existing approved Drawing, whether Design Development Documents, or Construction Documents, as same may have been modified by Change Orders.

4.3 Permits

4.3.1 Costs Associated with Permits

Fees and charges paid to governmental entities for the Permits for the Project shall be paid by Specht in accordance with the "Permit and Fee Allowance" line item in the Project Budget. All costs in excess of the Permit and Fee Allowance associated with obtaining Permits shall be paid out of the Contingency, unless and until the entire Contingency has been exhausted (whether pursuant to this Section or for any other reason), in which case the GMP shall be increased by all permitting costs incurred in excess of the Permit and Fee Allowance, up to the amount by which the Contingency has been exceeded.

4.3.2 Permitting Delays

Specht anticipates issuance of Permits by the City of Wilsonville, subsequent to Specht's submittal of a complete application for all required permits, and Commencement of Construction for the Project within the time set forth in the Project Schedule. Not receiving the Permits as scheduled will be considered an Unavoidable Delay.

4.4 Commencement of Construction

Specht shall deliver to the General Contractor a notice to proceed with the construction of the Project as soon as the City of Wilsonville issues the necessary Permits ("Commencement of Construction").

4.5 Environmental Condition

Specht has prepared the Project Schedule assuming that there are no environmental conditions on the Property that could affect the Project Schedule. The Parties are relying on the Phase I Environmental Report dated February 2005 by PBS

Engineering & Environmental that concludes: "No recognized environmental conditions were identified in connection with the subject property." Delay in the Project Schedule caused by the discovery of any Hazardous Substances on the Property after Specht's entry onto the Property (including delay caused by the General Contractor's reasonable determination that it cannot safely proceed with work as provided above) and/or the Agency's inability or failure to give timely direction shall be considered an Unavoidable Delay. If the Hazardous Substances were caused by Specht, General Contractor, or other contractors of Specht, then the delay in the Project Schedule caused thereby shall be an Unavoidable Delay for which Specht shall be liable for the resulting costs as provided in Section 4.8(a) below. Specht shall use all commercially reasonable efforts to mitigate the scheduling impacts of any necessary environmental remediation so as not to delay Construction Completion beyond the Project Schedule.

4.6 Agency Financing

The Agency represents and warrants to Specht that it has funds in amounts sufficient to fund the Project based on the Guaranteed Maximum Price.

4.7 Evidence of Bonds and Insurance

Specht shall provide to the Agency a copy or certification, reasonably acceptable to the Agency, of all bonds and insurance policies required of Specht or members of their Development Team by this Contract, and the Agency shall provide to Specht a copy or certification, reasonably acceptable to Specht, of all insurance policies required of the Agency by this Contract.

4.8 Project Schedule; Unavoidable Delay

The Project Schedule shall be updated by Specht from time to time as reasonably required to reflect the current status of the Project, and a copy provided to the Agency. Unavoidable Delay may permit an extension of the Project Schedule, but does not necessarily result in or constitute a monetary claim for delay costs. Each party shall promptly notify the other of any event that might constitute Unavoidable Delay at the time it occurs. Specht shall, and shall cause the General Contractor and Development Team to, make all commercially reasonable efforts to mitigate, remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of their obligations under this Contract; provided, however, that Specht shall not be permitted to lessen the quality or scope of the Project in an attempt to mitigate delay. The costs associated with any Unavoidable Delay shall be allocated as follows: (a) if the Unavoidable Delay is caused by Specht or its Development Team, or in the event Specht is found to have been unreasonable in Dispute Resolution, or if the Unavoidable Delay is caused by

Specht's or its Development Team's failure to provide proper notice of a Scope Change, Specht shall be liable for the resultant costs from such Unavoidable Delay without reimbursement from the Agency; and (b) the Agency shall pay the costs resulting from all other Unavoidable Delays. The parties will work together in good faith in a spirit of cooperation to mitigate all costs resulting from Unavoidable Delay. If a dispute arises between Specht and the Agency regarding the existence of an Unavoidable Delay, the costs or cost responsibility associated with an Unavoidable Delay, or the time extension required due to an Unavoidable Delay, the Agency and Specht shall first consult with each other for the purpose of resolving the dispute. After such consultation, the Agency or Specht may initiate Dispute Resolution. The Dispute Resolution shall determine the cost allocation of the Unavoidable Delay pursuant to the division of cost responsibility set forth in subparagraphs (a) and (b) above.

4.9 Project Budget and Project Costs

4.9.1 General

The Project Budget is shown in Exhibits A, A-1, & A-2 attached to this Contract.

4.9.2 Modifications to Project Budget by Specht

The Project Budget may be modified from time to time as described in this Section 4.9. Line items may be added or deleted by mutual agreement of the Agency and Specht. Except as expressly limited by this Contract, if reasonably determined by Specht to be needed, Specht with the Agency's concurrence (which shall not be unreasonably withheld) may transfer any unused portion of any line item in the Project Budget (excluding all Allowance line items other than the Contingency) into any other line item in the Project Budget to be spent according to the terms of this Contract.

4.9.3 Contingency

4.9.3.1 The line item in the Project Budget for Contingency is \$300,000. Except as expressly limited by this Contract, if all of the Contingency has been spent, Specht may choose to transfer any unused portion of any Project Budget line item, excluding all Allowance line items, into the Contingency, to be spent as required according to the terms of this Contract within the GMP.

4.9.3.2 Specht shall have the right, subject to the Agency's reasonable approval, to use all or a portion of the Contingency for any Project Costs, excluding the Developer's Fee, associated with the Project Budget within the GMP except as expressly limited by this Contract. Specht will notify the Agency of any

proposed transfers from Contingency to another line item in the Project Budget on a per occurrence basis and shall account for such transfers on a monthly basis as part of its monthly applications for payment as described in Section 4.21.

4.10 Public and Private Utilities

To the extent not already included in the GMP, any hook-up fees, charges or fees for relocation of service lines, or other fees and charges from telephone or fiber franchises and any other utility providers are Agency operational costs and the Agency shall make payment directly to the applicable franchise or provider or shall cause such relocation to be made without payment of any fee. Specht shall reasonably coordinate construction of the Project with utility providers to facilitate timely relocation of utility lines.

4.11 Bonds

In addition to the bonds required in the General Construction Contract, Specht shall cause all bonds required for construction within the public right-of-way to be obtained in order to complete development of the Project.

4.12 Survey

Specht shall cause to be prepared all necessary survey work. Such survey work shall include but not be limited to a foundation survey of the Project, an as-built ALTA survey of the Project, and all exhibits necessary for recording created easements and required partition plat.

4.13 Miscellaneous Costs

As part of the GMP, Specht shall be reimbursed for all miscellaneous third party Project costs including but not limited to deliveries, long distance phone charges, third party copying charges, etc. Miscellaneous Costs will not include any costs not associated with the Project, mileage by Specht employees, copies made at Specht offices or local phone charges, or any other Specht office or administrative overhead or expenses.

4.14 Management

Specht shall use its best skills and attention to provide all project management services required to complete a high quality Project, free of defects, within the Project Schedule and at the lowest practicable cost to the Agency.

4.15 Hard Costs

4.15.1 Modifications to the Hard Cost Budget

The construction budget and services to be provided by General Contractor are set forth in the General Construction Contract between Skanska and Specht. Except as expressly limited by this Contract, Specht may permit the General Contractor to choose to transfer funds between line items in the General Construction Contract.

4.15.2 Treatment of Allowances in the Line Item Budget for Hard Cost

The line item budget for Hard Costs incorporates several Allowances, as set forth in the Project Budget, which are subject to the provisions of this Section 4.15.2. The Parties acknowledge that all Allowance items may be bid incrementally, over time. Unless otherwise agreed by the Agency and Specht (such agreement being subsequent to any required approvals by General Contractor), the budget for remaining Allowance items shall remain fixed until bid, and no transfers of budget between Allowance items and other cost items shall be permitted until final costs are established for each Allowance item..

4.16 Developer Overhead and Profit

Specht shall perform the obligations imposed upon it in this Contract for a Developer's Fee as detailed pursuant to Section 4.19 and, as it relates to the initial Project Budget attached hereto as Exhibit A, shown in the Developer Overhead and Profit line item.

4.17 Guaranteed Maximum Price and Project Costs

Specht shall develop the Project in accordance with the Project Requirements related to the Project and the Project Schedule at a total cost to the Agency that does not exceed the GMP for the Project pursuant to Section 4.18 herein. Except as provided in this Section 4, Specht shall pay any Project Costs in excess of the GMP, if any. All costs associated with the Project shall be Project Costs, subject to the GMP, and may be paid out of Contingency, with the following exceptions:

(A) Project Costs that increase the GMP (and may not be paid by the Agency out of the Contingency are as follows):

(1) Cost of Scope Changes that are not to be paid by Specht as provided below;

(2) Cost increases resulting from Unavoidable Delay that are not to be paid by Specht pursuant to subsection (B)(3) below;

(3) Cost increases caused by the gross negligence or willful misconduct of the Agency, its agents or contractors or the Agency's material breach of its obligations under this Contract;

(4) Cost increases resulting from the time taken for Dispute Resolution, that are not to be paid by Specht pursuant to subsection (B)(6) below.; and

(5) Cost increases resulting from the time taken for resolution of third-party appeals of Permits, except to the extent such cost increases arise out of the negligence or willful misconduct of Specht or the Development Team.

(B) Costs that shall not be considered Project Costs and are to be paid by Specht without reimbursement by the Agency are as follows:

(1) Cost increases caused by gross negligence, willful misconduct of Specht, its Development Team, their agents or sub-contractors or Specht's material breach of its obligations under this Contract;

(2) Cost of Scope Changes that have not been approved by the Agency;

(3) Cost increases resulting from Unavoidable Delay caused by Specht or its Development Team, in the event Specht is found to be unreasonable in Dispute Resolution;

(4) Costs of environmental conditions on the Property for which Specht is liable.

(5) Costs which could have been mitigated as required by Section 4.5, 14.7 and the definition of "Unavoidable Delay" through Specht's use of all commercially reasonable efforts;

(6) Cost increases resulting from time to time taken for Dispute Resolution, if Dispute Resolution results in a determination that Specht was unreasonable in its position in the dispute; and.

(C) Costs that shall not be considered Project Costs and are to be paid by the Agency are the following:

(1) Costs that are not to be paid by Specht as provided above, or that are not associated with the activities described in Sections 4.7 through 4.14 and therefore are not Project Costs.

(2) Costs of any appeal of a Permit beyond the City Council.

4.18 Guaranteed Maximum Price (GMP)

The GMP for construction of the Project is shown in the Project Budget attached hereto as Exhibit A

4.19 Developer's Fee

The GMP includes a "Developer's Fee" of \$914,386 for the City Hall Building and associated site improvements plus an additional fee equal to 10% of the cost of Right Of Way Improvements to Town Center Loop north of the Property.

4.19.1 Developer's Fee – Increase in GMP

If the Agency and Specht execute Change Orders that increase the Project Costs, Specht shall be entitled to an increase in the Developer's Fee equal to 10% multiplied by the cost of any additive change (net of savings in the Change Order implementing the additive change) in Project Costs.

4.19.2 Progress Payment Requirements

Each application for payment shall include a Developer's Fee request equal to a pro-rata amount of the Developer's Fee based on percentage of Project completed.

4.20 Project Savings

The amount, if any, by which the GMP exceeds the Final Project Costs, as defined in Section 7.2.2 is the "Project Savings." In this calculation, the GMP and the Final Project Costs includes any adjustments by Change Orders. The Agency will retain all the Project Savings.

4.21 Progress Payments

The Agency and Specht agree that the Contract Documents and the Project Budget will be the basis for progress payments. Specht shall generally make monthly applications for payment; provided, however, that Specht shall be entitled to make occasional extraordinary applications for payment if required. Each application for payment shall include a breakdown which demonstrates reasonable, identifiable, and measurable components and percentages of the work performed by Specht and the

General Contractor and its subcontractors provided, however, that certain soft costs such as design, predevelopment and predesign costs shall be based on actual invoices as the work is completed. The application shall substantially be in the form of Exhibit E. The Agency shall make progress payments monthly as the work on the Project progresses, based upon the percent completed as shown on the application. So long as the Agency receives a complete application for payment on or before the 25th of each month, the Agency shall issue payment on or before the Friday ending the week which includes the 5th of the following month. For purposes of this Section 4.21, an application shall be deemed complete only after both the Agency Project Manager and the Specht Project Manager have approved the application for payment, including verification by the Agency Project Manager of all Bureau of Labor and Industries (BOLI) wage payment documentation for the period; provided, however, that if both the Agency Project Manager and the Specht Project Manager cannot agree or if there are inconsistencies or errors related to wage payments as identified by the Agency Project Manager, Specht shall be entitled to submit application and receive payment on the undisputed items in the applicable payment application. The Agency shall pay any disputed amount or undocumented wages withheld from the payment within ten (10) business days after successful resolution of the matter between the parties. The Agency reserves the right to withhold payment for work which has been demonstrated as failing to conform with the Contract Documents. Progress payments shall not be considered an acceptance or approval of any of the work or a waiver of any defects therein. The Agency shall reserve as retainage from progress payments five percent (5%) of the portion of payment for work performed by the General Contractor and its subcontractors; provided, however, the General Contractor may deposit bonds and securities in lieu of the retainage. Said deposit shall be without cost to the Agency and shall be made in a bank or trust company approved by the Agency. The character and nature of the bonds and/or securities shall be as approved by ORS 279.420. General Contractor may establish an interest bearing account for deposit of retainage in a bank in a manner authorized by ORS 279.420. Interest shall accrue to General Contractor. Specht shall cause General Contractor to notify the Agency of the elected retainage option for the Project. Retainage shall be withheld and released generally in accordance with ORS 279.400 to 279.445. Notwithstanding the foregoing, the Agency may release retainage associated with Project site preparation and utility work performed by the General Contractor and its subcontractors upon completion and acceptance of the work.

4.22 Correction of Work and Warranty Work

Specht shall promptly correct or cause to be corrected work known by Specht to be defective or failing to conform to the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed, and shall without additional charge, correct or cause to be corrected work

found to be defective or non-conforming within the Warranty Period, which obligation shall include (i) placing in satisfactory condition all warranted work, (ii) correction of all damage to the City Hall Building, Project, and any contents thereof that is the result of the use of materials, equipment or workmanship which are defective or otherwise not in accordance with the Contract Documents, and (iii) correction of any portion of the City Hall Building, Project, and any contents thereof disturbed in fulfilling Specht's warranty hereunder. Specht's warranty shall not apply to any damage or destruction of any building or other warranted items in the Project caused by (a) abuse, (b) modifications not executed by Specht, (c) improper or insufficient maintenance, (d) improper operation, (e) normal wear and tear and normal usage, or (f) Force Majeure, unless said damage or destruction is a direct result of Specht's failure to construct any building or other structure in the Project pursuant to the Agency approved Construction Documents. Specht shall furnish a plan to be approved by the Agency that clearly identifies the kind and quality of material and equipment, and the type and approach to the work that it proposes to use in carrying out any warranty work. Work shall not proceed, nor be considered complete, without the Agency's written approval. The Agency shall give Specht notice of defects with reasonable promptness. In addition to Specht's warranty, all manufacturer's warranties shall pass to the Agency. Systems, such as HVAC or Generators, will not be accepted as complete until they have been fully tested and shown to be operating as designed.

Repairs, replacements or changes made under Specht's warranty shall be warranted for the longer of the specified warranty period or one year, beginning on the date of substantial completion of the repairs, replacements, or changes.

If Specht fails within ten (10) days after written notice to proceed to comply with the terms of this warranty, the Agency may have the defects corrected and Specht shall be liable for all reasonable expenses incurred. In case of an emergency where delay would cause serious loss or damage, repairs may be made without notice to Specht and Specht shall pay the reasonable cost thereof.

4.23 Cooperation

Specht and the Agency shall, throughout the construction of the Project, cooperate with each other and with Specht's Development Team and perform their respective responsibilities, obligations and services in a timely manner to facilitate the timely and efficient performance of the work and so as not to delay or interfere with any other party's performance of its obligations under the Contract Documents for the Project. Specht shall permit the Agency's vendors and contractors to enter the Property to perform work on the Project during the course of construction prior to Substantial Completion; provided, however, that Specht shall maintain control of the Project at all times prior to Final Acceptance.

5. Construction Matters

5.1 Agency Approval of Change to Architect's Contract or General Construction Contract

Specht shall not make any material changes to the Architect's Contract or the General Construction Contract without the Agency's consent.

5.2 Compliance with Public Contracting Laws; Prevailing Wages

Specht and the Agency agree that Specht shall comply with all Requirements of Law, and this Contract shall include by this reference all applicable provisions of state and local laws. Specht shall further ensure that all Requirements of Law associated with a public improvement are met, including but not limited to the inclusion within the applicable General Construction Contract and any other Construction Contract of all state laws applicable to public improvements constructed on behalf of (and owned by) the Agency and the payment of prevailing wages and including compliance with State Requirements of Law regarding applicable forms to be completed by General Contractor. The General Contractors' Contract will comply with all applicable state and local laws, including but not limited to ORS 279.312, 279.314, 279.316, 279.320, 279.334, 279.435, 279.445 and 279.555. The General Contractor must expressly agree to comply with Title VI of the Civil Rights Act of 1964; the Americans With Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Specht shall cause the General Construction Contract to require that all contractors and subcontractors employed on the Project shall be paid the prevailing rate of wages and require the General Contractor to comply fully with the provisions of ORS 279.348 through and including 279.365. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries ("BOLI"), shall be included as attachments to the General Construction Contract. In addition, both the Architect's Contract and the General Construction Contract shall contain provisions consistent with this Contract.

5.2.1 Certified Statements

In accordance with ORS 279.354, Specht shall cause the General Contractor and every subcontractor to submit written certified statements with the Agency, on the form prescribed by the Commissioner of BOLI, certifying the hourly rate of wage paid each worker which the General Contractor has employed on the Project and further certifying that no worker employed on the Project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the General Construction Contract, which certificate and statement shall be verified by the oath of the General Contractor, or the subcontractor that the General Contractor,

has read such statement and certificate and knows the contents thereof and that the same is true to the General Contractor or subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior month 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.

5.2.2 BOLI Fee

Pursuant to ORS 279.375 and in accordance with administrative rules promulgated by the Commissioner of BOLI, which statute and rules may or may not be applicable to the Project, the General Contractor may be required to pay a fee to BOLI equaling 1/10 of one percent (1%) of the Construction Contract for the Project amounts. The regulations provide that the fee is not to be less than One Hundred Dollars (\$100) nor more than Five Thousand Dollars (\$5,000), regardless of the construction contracts amounts. If ORS 279.375 and its implementing regulations are applicable to the Project, the fee shall be paid by General Contractor on or before the first progress payment or sixty (60) days from the date work first begins on the Construction Contract for the Project, whichever first occurs. The fee, if any, is payable to the Bureau of Labor and Industries and shall be mailed or otherwise delivered to the Bureau at the following address:

Bureau of Labor and Industries
Wage and Hour Division
Prevailing Wage Unit
800 N.E. Oregon Street, #32
Portland, Oregon 97232

5.3 Project Managers

The project manager for the Agency for the Project shall be Constance J. Sylvester or, in her absence, her designee (the "Agency Project Manager"), who shall be given full authority to bind the Agency. The project manager for Specht for the Project shall be Robert Burns (the "Specht Project Manager"). If any of such persons is no longer affiliated with the Agency or Specht, respectively, each party shall designate a new experienced Project Manager and notify each of the other parties of such new manager.

5.4 Review and Inspections

5.4.1 Independent Consultants

The Agency shall have the right, but not the obligation, to have an independent consulting architect, engineer or other appropriate consultant retained to inspect, observe and test the construction, materials, products and equipment of the Project or any portion thereof as it progresses and to review the construction work and its compliance with the Contract Documents. The costs of such independent consultant shall be paid by the Agency.

5.4.2 Notice

If during the course of construction the Agency shall determine that the construction is not proceeding in accordance with the Contract Documents, the Agency shall use best efforts to give notice in writing to Specht, specifying the particular deficiency or omission and Specht shall thereupon take, or cause to be taken all steps necessary to seek to enforce the General Construction Contract, and/or the Construction Document to correct same. The failure to give such notice shall not give rise to any liability for the Agency and shall not be considered a waiver of any right of the Agency under this Contract.

5.4.3 Records

Specht shall maintain or cause to be maintained at the Property, one record copy of all Contract Documents, all drawings, specifications, addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction together with approved shop drawings, product data, samples and similar required submittals. Specht shall maintain or cause to be maintained records of principal building layout lines, elevations of the footings, floor levels and key site elevations and shall, at the request of the Agency, cause same to be certified by a qualified surveyor or professional engineers. All such records shall be made available to the Agency upon request and, upon completion of the Project, copies of same shall be delivered to the Agency.

5.4.4 Progress Meetings

Specht shall schedule and organize a weekly progress meeting on the Property. A representative of the General Contractor, Specht, the City, and the Agency shall attend each meeting. The work schedule shall be updated as necessary and provided for review at the weekly progress meetings.

6. Liens

6.1 Covenant Against Liens

Specht covenants and agrees that it shall not suffer or permit any lien, charge, security interest or encumbrance (collectively, "Liens") to be attached to, upon or against the Property, including without limitation, Liens arising out of the possession, use, occupancy, construction, repair, or rebuilding of the Property or by reason of the furnishing of labor, services, materials, or equipment to the Property or to Specht. Specht agrees to indemnify, protect, defend and hold the Agency harmless from and against all liabilities, losses, damages, expenses and costs (including reasonable attorneys' fees and costs) incurred in connection with any such Lien associated with the Project, except for any Liens arising because of work performed by contractors engaged directly by the Agency. Specht's obligations pursuant to this Section 6.1 shall survive the expiration or earlier termination of this Contract.

6.2 Covenant to Remove Liens

Specht will promptly, and in all events within thirty (30) days following the attachment of same, remove and discharge any and all Liens which attach to, upon or against the Property or any portion thereof. Specht reserves the right to contest the validity or amount of any such Lien in good faith provided that, within thirty (30) days after the filing of such Lien, Specht discharges said Lien of record or posts a bond covering said Lien as an encumbrance against the Property. In the event Specht shall fail to so remove any such Lien, the Agency may take such action as the Agency shall reasonably determine to remove such Lien and all costs and expenses incurred by the Agency including, without limitation, amounts paid in good faith settlement of such Lien and attorneys' fees and costs, and shall be paid by Specht, within ten (10) days following request. The parties' obligations pursuant to this Section 6.2 shall survive the expiration or earlier termination of this Contract.

7. Completion of the Project

7.1 Substantial Completion

Specht shall give notice in writing to the Agency at least fifteen (15) days prior to the date upon which Specht anticipates Substantial Completion of the Project. During the fifteen (15) days period after the delivery of the estimated completion notice, the Agency, Specht, Architect and General Contractor shall meet on one or more occasions, if necessary, and tour to inspect and review the Project to determine whether Substantial Completion has occurred. Upon Substantial Completion of the Project, Specht shall notify the Agency in writing, which notice shall include a copy of Architect's Certificate of Substantial Completion AIA Document G704. Within

fifteen (15) days of receipt of the notice of Substantial Completion, the Agency, Specht, Architect and General Contractor shall meet and prepare the Punch List for the Project. Specht shall cause all Punch List items to be completed promptly in accordance with the Contract Documents.

7.2 Final Acceptance

Specht shall give notice in writing to the Agency at least fifteen (15) days prior to the date upon which the Project shall be ready for Final Acceptance. "Final Acceptance" means that each of the following items shall have occurred:

7.2.1 Completion of Punch List Items

All Punch List items have been completed to the reasonable satisfaction of the Agency. Architect shall have issued confirmation in writing that all Punch List items have been completed and that the Project is otherwise complete.

7.2.2 Certification of Final Project Costs

Specht shall have submitted a cost certification of the final Project Costs (the "Final Project Costs").

7.2.3 Construction Lien Releases

The period for filing construction liens has expired or releases or discharges of construction liens in form and substance satisfactory to the Agency have been obtained by Specht from all Contractors in accordance with the General Construction Contractor.

7.2.4 Certificate of Occupancy

Specht shall have obtained a Certificate of Occupancy for the Project.

7.2.5 Certificate of Completion

Upon Final Acceptance, the Agency shall furnish Specht with Certificates of Completion. The Certificate of Completion shall be a conclusive determination that the parties' Contracts with respect to Specht's construction obligations for the applicable Project have been met. The Certificate shall be in a form that enables it to be recorded in the official records of Clackamas County, Oregon.

8. Specht Obligations for O&M Manuals and Training

Prior to submission of any request for the retainage (except retainage associated with Project site preparation and utility work performed by the General Contractor and its subcontractors), Specht shall submit two completed operation and maintenance manuals ("O&M Manuals") for review by the Agency Project Manager. The Agency shall not release retainage until the Agency receives O&M Manuals approved by the Agency Project Manager according to this section. Each O&M Manual shall include all manufacturer's catalogues, color brochures, guidebooks, instructions, manuals, price lists, product and equipment data; all paint finishes and schedules, textile samples, carpet and flooring samples and all other submittals; a copy of all keys, combinations, and passwords; schematic diagrams of systems, appropriate equipment indices, record and shop drawings (both hard copy and AutoCAD 2000 format electronic copy); a phone list of all consultants, manufacturers, installers and suppliers used on the Project; other descriptive installation, operation and maintenance material and training information; all special or unique installation/removal hardware, tools or equipment, and an index of all spare parts; all manufacturer's warranty registration materials, warranty documents, and copies of the Contractor's warranties and warranty bonds; and any other useful information or item for any and all equipment, products and work components related to this Contract. The Agency Project Manager shall review and return one (1) O&M Manual for any modifications or additions required. The General Contractor shall then incorporate the Agency's comments and requested additional information and, provide five (5) complete and approved sets of O&M Manuals to the Agency Project Manager. Further, after issuance of notice of Substantial Completion but before Final Acceptance, Specht shall provide, at no additional charge to the Agency, an on-site training session for each system or major component thereof for designated City or the Agency in-house maintenance and end-user department personnel to ensure proficiency in the operation and maintenance of all equipment, products and components of the work constructed or installed under this Contract. Specht shall schedule training sessions at least two weeks in advance of the date of training to allow the City and the Agency personnel adequate notice. The O&M Manual shall be used as a basis for training. Training shall be formal sessions, held after the equipment and/or system is completely installed, tested, and operational in its normal operating environment and before occupancy of the City Hall Building.

9. Indemnification

9.1 Specht's Indemnification

Specht shall indemnify the Agency and its elected and appointed officials and employees from any and all claims, demands, losses, damages, and judgments arising out of or in any way resulting from Specht's officers, employees, agents, contractors

and/or subcontractors of all tiers, negligent acts or omissions or intentional misconduct, or performance or failure to perform this Contract. Specht's obligations under this Section 9 shall include, but not be limited to:

9.1.1 Acceptance of Tender of Defense

The duty to promptly accept tender of defense arising out of the negligent acts and intentional misconduct of Specht.

9.1.2 Duty to Indemnify and Defend

The duty to indemnify and defend the Agency from any claims brought by or on behalf of any of Specht's employees or agents.

9.1.3 Damages and Injury

Specht shall indemnify and defend the Agency from all damages and injury which shall be caused to owners of property on or in the vicinity of the construction of the Project or which shall occur to any person or persons or property arising out of this Contract caused by the Contractors. The costs incurred by Specht for insurance to cover the obligations in this Section 9, and for payment of the deductibles relating to such insurance shall be Project Costs, up to the GMP.

9.1.4 Judgment and Award

In the event the Agency incurs any judgment, award, and/or costs arising therefrom, including attorneys' fees, to enforce the provisions of this Section 9, all such fees, expenses, and costs shall be paid by Specht.

9.2 Negligence of the Agency

Notwithstanding the provisions contained in Section 9.1 above, Specht's obligation to indemnify the Agency shall not extend to any claim, demand or cause of action to the extent caused by the negligence of the Agency or breach of this Contract by the Agency.

9.3 Notice of Claim

Any person making a claim for indemnification pursuant to this Section 9 (an "Indemnified Party") must give Specht written notice of such claim (an "Indemnification Claim Notice") promptly after the Indemnified Party receives any written notice of any action, lawsuit, proceeding, investigation or other claim (a "proceeding") against or involving the Indemnified Party by a government entity or other third party, or otherwise discovers the liability, obligation or facts giving rise to

such claim for indemnification; provided that the failure to notify or delay in notifying Specht will not relieve Specht of its obligations pursuant to this Section 9 except to the extent that Specht's ability to defend against such claim is actually prejudiced thereby. Such notice shall contain a description of the claim and the nature and amount of such loss (to the extent that the nature and amount of such loss is known at such time).

10. Insurance Requirements

10.1 For All Coverages

Each insurance policy shall be written on an "occurrence" form.

10.2 Each Party Shall Assess Own Risks

Each party shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage. Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained within this provision shall affect and/or alter the application of any other provision contained within this Contract.

10.3 Specht's Insurance

Prior to execution of this Contract, Specht shall procure and maintain until Final Acceptance and/or shall cause all Contractors to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by Specht, its agents, employees, Contractors and/or subcontractors. Specht or its consultants, as applicable, shall pay the cost of such insurance. Coverage shall include:

10.3.1 Commercial General Liability

Commercial General Liability coverage in an amount not less than \$5,000,000 per occurrence and aggregate for bodily injury and property damage with a deductible of not more than \$100,000 and in any combination of primary and excess coverage policies.

10.3.2 Builder's Risk Insurance

Property Insurance written on a builder's risk "all-risk" or equivalent policy form in the amount equal to the total value for the entire Project on a replacement cost basis. Coverage shall be provided for (a) the perils of earth movement and flood;

(b) "expediting expense"; (c) all materials to be stored off-site and while in transit to the job site; (d) all labor and materials to be used for completion of the Project; (e) "cold testing" of all building systems; (f) the City's, the Agency's, and Specht's loss of use of the Project due to delays in the Project completion caused by covered peril losses to the Project; (g) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades. Coverage may be provided under one or more policies. The builder's risk policy or policies shall include Specht, General Contractor and its subcontractors, other contractors, and the Agency and the City as insureds. Specht shall keep the builder's risk policy or policies in place until Substantial Completion of the Project. It is understood and agreed that any amounts paid to the Agency or the City under the builder's risk policy or policies, other than amounts paid on account of damages incurred by the Agency or the City as a result of delays in completion of the Project, shall be made available to Specht for completion of the Project.

10.3.3 Workers' Compensation

Workers' Compensation coverage, as required by the State of Oregon, statutory limits.

10.4 Agency's Insurance

For the purposes of the insurance requirements referred to in this Contract, with respect to the City and the Agency it is deemed, understood, and agreed that City and/or Agency's coverage of the specific types of risks through their participation in the mutual risk sharing pool known as City County Insurance Services Trust is acceptable to meet the specified requirements. Prior to execution of this Contract, the Agency shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the performance of work hereunder by the Agency, its elected and appointed officials, agents, employees and volunteers. The Agency shall pay the cost of such insurance. Coverage shall include:

10.4.1 General Liability

Commercial General Liability coverage in an amount not less than \$3,000,000 per occurrence and aggregate for bodily injury and property damage

10.4.2 Workers' Compensation

Workers' Compensation coverage, as required by the State of Oregon, statutory limits.

10.5 Other Insurance Provisions

The insurance policies and coverage by any mutual risk sharing pool required by this Contract are to contain or be endorsed to contain the following provisions where applicable:

10.5.1 Liability Policies

The Agency, Specht and their respective officers, officials, employees and agents (including Agency volunteers) are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of Specht or the Contractors in connection with this Contract. Specht and its respective officers, officials, employees and agents are to be covered as additional insureds under the Agency's liability insurance; provided, however, that the Agency's insurance shall not provide coverage for the willful misconduct or the negligent acts or omissions of Specht or the Contractors.

10.5.1.1. To the extent of Specht's negligence, insurance coverage shall be primary insurance as respects the Agency and its respective officers, officials, employees and agents. Any insurance and/or self-insurance maintained by the Agency and its respective officers, officials, employees and/agents shall not contribute with Specht's insurance or benefit Specht in any way.

10.5.1.2. Specht's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

10.5.2 All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the Agency.

10.5.3 Acceptability of Insurers

Unless otherwise approved by the Agency, all insurance to be obtained by Specht is to be placed with insurers with a Best's rating of no less than "A", or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investors Service.

If at any time any of the foregoing policies shall be or become unsatisfactory to the Agency due to a change in form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Agency because they no longer meet the above criteria, Specht shall upon notice to that effect from the Agency promptly

obtain a new policy, and shall submit the same to the Agency, with certificates and endorsements, for approval.

The Agency's coverage shall be through the City County Insurance Services Trust mutual risk sharing pool and, with respect to Workers Compensation coverage, the State Accident Insurance Fund.

10.5.4 Verification of Coverage

Specht shall furnish or cause the General Contractor to furnish the Agency with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the Agency and are to be received and approved by the Agency prior to the Commencement of Construction. The Agency reserves the right to require complete certified copies of all required policies at any time.

10.5.5 Subcontractors

Specht shall require or cause the General Contractor to require all subcontractors to provide evidence of insurance reasonably satisfactory to the Agency. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

10.5.6 Waiver of Subrogation

The Agency and Specht each agree that neither will have any claim against the other for any loss, damage or injury that is covered by insurance carried by either party or required to be carried hereunder, whether or not actually carried, except if the loss, damage or injury arises out of such party's sole negligence or willful misconduct. This waiver shall be valid only if the insurance policy or terms of the mutual risk sharing pool in question expressly permits waiver of subrogation or if the insurance company or mutual risk sharing pool, as appropriate, agrees in writing that such a waiver will not affect coverage under the policies. Each party agrees to use commercially reasonable efforts to obtain such an agreement from its insurer or mutual risk sharing pool if the policy does not expressly permit a waiver of subrogation.

11. Construction Liens

Upon Final Acceptance of the Project and upon the Agency's request during the progress of the Project, Specht shall submit evidence that all payrolls, material

bills and other indebtedness relating to the work have been paid. Specht shall notify the Agency upon the filing of any lien or the service of any notice in connection with the Project.

12. Damage and Destruction; Condemnation

12.1 Damage and Destruction of Project

After the happening of any casualty to the Project, Specht shall give the Agency prompt written notice thereof generally describing the nature and cause of such casualty and the extent of the damage or destruction to the Project or any portion thereof. If, prior to Final Acceptance, damage or destruction occurs to the Project, Specht shall cause reconstruction and restoration of the Project in accordance with the Contract Documents and the provisions of this Contract. Except as provided in the following sentence, the deductible payable in such event shall be paid out of the Contingency. The deductible payable in the event of the negligence or willful misconduct on the part of Specht or its Development Team shall be paid by Specht.

12.2 Condemnation of Project

In the event of a partial condemnation of the Project to the extent that the Project may still be constructed in accordance with the Contract Documents, or may be constructed in accordance with the Contract Documents as modified by changes acceptable to Specht and the Agency, Specht shall, to the extent practicable, proceed to construct the Project in accordance with the Contract Documents, as modified, if applicable. To the extent condemnation proceeds are not used to repair or restore the Project, such condemnation proceeds shall be paid to the Agency.

13. Default

13.1 Specht Default

The following events shall constitute an "Event of Default" by Specht:

13.1.1 Material Obligation

If Specht shall fail to perform, or cause the performance of any of its material obligations under this Contract;

13.1.2 Supervision

If Specht refuses or fails to adequately supervise the Project, or if Specht ceases work on the Project for a period of fourteen (14) consecutive days (subject to Unavoidable Delay);

13.1.3 Noncompliance with Laws

If Specht disregards and fails to comply with laws, ordinances or rules, regulations or orders of a public authority or their designees having jurisdiction over the Project;

13.1.4 Permit Revocation

If, due to the actions or negligence of Specht, any Permit required for construction of the Project shall be revoked or canceled;

13.1.5 Liens

If there shall occur any lien or other encumbrance on the Property or the Project which is not removed or bonded around within thirty (30) days;

13.1.6 Defective Workmanship

If Specht knows there is defective workmanship or materials within the Project and fails to take or recommend action to cause cure of such defects;

13.1.7 Transfer

If Specht shall have assigned, pledged or encumbered its rights, duties or obligations under this Contract in violation of this Contract;

13.1.8 Bankruptcy

If Specht files a petition for bankruptcy or if it makes a general assignment for the benefit of Specht's creditors, or if a receiver is appointed on account of Specht's insolvency and any such petition or appointment is not dismissed within sixty (60) days.

13.2 Agency Remedies upon Event of Default

Upon any Event of Default by Specht, the Agency shall give Specht written notice of the same, whereupon following receipt of such written notice, Specht shall have the time period specified herein or if no time period is specified, thirty (30) days, within which to commence all necessary action to cure any such Event of Default, (and if such cure is commenced, proceed to diligently complete such cure within a reasonable period of time), except with respect to Events of Default set forth in Section 13.1.3 for which the cure period shall be ten (10) business days, or Section 13.1.8, for which no cure period exists beyond the time period stated therein. In the event Specht fails to cure such Event of Default within the time period set forth

above and subject to Section 13.3, the Agency shall be entitled to exercise one or more of the following remedies:

13.2.1 Specific Performance

The Agency shall have, in addition to a claim for damages for such breach or default, and in addition to and without prejudice to any other right or remedy available under this Contract or at law or in equity, the right to demand specific performance of this Contract;

13.2.2 Damages

Bring an action for damages;

13.2.3 Termination

Terminate this Contract with or without liability at the Agency's option to Specht upon ten (10) days prior written notice.

13.3 Late Delivery of Project

If Specht does not obtain a Temporary Certificate of Occupancy for the City Hall Building by the target date set forth in the Project Schedule, as such target date may be revised to reflect (i) delays in issuance of the Temporary Certificate of Occupancy caused by the Agency or the City and (ii) Unavoidable Delays for which Specht is expressly not liable under Section 4.8, Specht shall be liable to the City and the Agency only for the actual damages incurred by each as a result of such delay. Specht shall provide written notice to the Agency if it anticipates that it will be late in obtaining the Temporary Certificate of Occupancy in order to allow the City and the Agency to mitigate any damages they may incur as a result of such late delivery.

13.4 Rights and Remedies Cumulative

Except as otherwise expressly stated in this Contract, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party.

14. Dispute Resolution

14.1 Policy

The parties shall use good faith efforts to resolve all claims, disputes and other matters in question between the parties arising out of or relating to this Contract, or the performance of services thereunder (each a "Matter in Dispute") using the procedures set forth herein. The time periods allowed for an action under this Section 14 shall be superseded by any longer or shorter period for that action specifically provided to the contrary in this Contract or in the case that the applicable parties agree otherwise in writing.

14.2 Initiation of Resolution

If a Matter in Dispute arises, the aggrieved party shall promptly notify the other party to this Contract in writing of the dispute, but in any event within five (5) days after the dispute arises. If the parties shall have failed to resolve the Matter in Dispute within five (5) days after delivery of such notice, unless otherwise agreed to in writing, the parties shall submit the Matter in Dispute to Mediation as provided in Section 14.3 below as a condition precedent to pursuing other alternative dispute procedures or litigation.

14.3 Mediation

If prior to Final Acceptance a dispute arises between the Agency or Specht regarding construction of the Project, the adequacy of any drawings or specifications, or the responsibility for any costs including costs associated with Change Orders, contractor claims or any other matter arising under this Contract, the parties shall proceed in good faith to resolve such dispute as expeditiously as possible and shall cooperate so that the progress of design and construction of the Project is not delayed. If, however, the parties are unable to resolve the dispute, they agree to utilize the mediation process contained herein, which will be nonbinding but a condition precedent to having said dispute decided in court by a judge or jury; provided, however, that the Agency and Specht may agree in writing to waive this condition.

14.3.1 Mediation Process

The Agency or Specht, by delivering written notice to the other, may refer any dispute described above to Jacob Tanzer of Arbitration and Mediation, whose address is: 4405 S.W. Warrens Way, Portland, Oregon 97221, whom the Agency and Specht have mutually designated to act as mediator to resolve such dispute. If Jacob Tanzer is unwilling or unable to serve as mediator, the Agency and Specht shall promptly

designate another mutually acceptable mediator. (Jacob Tanzer and any such successor mediator are hereinafter referred to as "Mediator").

14.3.2 Consideration of Disputes or Claims

Upon receipt by the Mediator of written notice of a dispute, either from the Agency or Specht, the Mediator shall convene a hearing to review and consider the dispute. The Agency and Specht shall be given the opportunity to present their evidence at this hearing. The Agency and Specht are encouraged to provide exhibits, calculations and other pertinent material to the Mediator prior to the hearing for review.

14.3.3 Construction Site Visit

The Mediator may visit the site of the Project to keep abreast of construction activities and to develop familiarity with the work in progress. The frequency, exact time, and duration of these visits shall be as mutually agreed upon among the Mediator, the Agency and Specht, but only as necessary to address a dispute. In the case of an alleged changed condition or construction problem, it will be advantageous, but not absolutely necessary for the Mediator to view such conditions. Photographs and descriptions of these conditions by the parties will suffice, if a site visit by the Mediator would cause delay to the construction of the Project.

14.3.4 Procedures

Upon the first referral to the Mediator of a dispute hereunder, the Mediator shall, with the Contract of the parties, establish procedures for the conduct of any hearings for consideration of disputes and claims. The conduct of the Mediator's business shall, in general, be based on this Contract and if applicable, the Construction Documents.

14.3.5 Independence of Mediator

It is expressly understood that the Mediator is to act impartially and independently in the consideration of facts and conditions surrounding any dispute presented by the Agency and Specht, and that the recommendations concerning any such dispute are advisory only. The Mediator's recommendations shall be based on the pertinent Contract provisions, and the facts and circumstances involved in the dispute. The recommendations shall be furnished in writing to the parties.

14.3.6 Agency Responsibility

The Agency shall furnish the Mediator one copy of all documents it might have, other than those furnished by Specht, which are pertinent to the performance of the Mediator.

14.3.7 Coordination

The parties will coordinate to effectively assist the Mediator's operation.

14.3.8 Specht Responsibility

Specht shall furnish the Mediator one copy of all Construction Documents including all applicable contracts, interpretative geotechnical report, progress schedule and updates, monthly progress reports, and other documents pertinent to the performance of the Contract and necessary to the Mediator's work.

14.3.9 Payment

The fees charged by the Mediator shall be shared equally by the parties. Payments shall be full compensation for work performed, services rendered, and for all materials, supplies, travel, office assistance and support and incidentals necessary to serve. Payment for services rendered by the Mediator and for the Mediator's expenses shall be at the rate or rates established by the Mediator, which in any event shall not exceed the usual and customary rate or rates prevailing in Clackamas County, Oregon, for mediation services of the sort described herein. The Mediator may submit invoices for payment for work completed not more often than once per month during the progress of the work. Such invoices shall be in format approved by all parties, and accompanied by a general description of activities performed during that period. The value of work accomplished for payment shall be established from the billing rate and hours expended by the Mediator. The invoiced amount shall be divided equally between the parties and clearly stated. A copy is to be sent to the Agency and Specht for payment. Satisfactorily submitted invoices shall be paid within thirty (30) days.

14.4 Litigation

Only after the mediation has concluded may either party seek resolution of the matter in dispute through litigation and for any such litigation, jurisdiction and venue shall thereafter be in the Circuit Court of the State of Oregon, Clackamas County.

14.5 Costs and Attorneys' Fees

In the event legal action is taken or commenced between the parties hereto, declaratory or otherwise, for the enforcement of any of the covenants, terms and conditions of this Contract, the prevailing party will be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the Mediator, the court at trial or on any appeal or review, in addition to all other amounts provided by law.

14.6 Delay and Delay Costs Resulting from Dispute Resolution

Except as otherwise specifically provided in this Contract, if Dispute Resolution results in a Project delay:

14.6.1 Unavoidable Delays

Except for a delay described in Section 14.6.2, any delay caused by Dispute Resolution shall be deemed Unavoidable Delay that results in a time extension for Substantial Completion of the respective Project, and the Agency shall pay the costs associated with such delay.

14.6.2 Other Delays

If Specht or the General Contractor is found to have taken an unreasonable position in the Dispute Resolution, any delay caused by that Dispute Resolution shall not be deemed Unavoidable Delay and Specht shall pay, without any reimbursement from the Agency, any cost increases that result from the time taken for said Dispute Resolution.

14.7 Obligation to Diligently Prosecute Completion of Project During Dispute Resolution

Except as provided in Section 14.7.1 below, and in Section 4.2.4.4, and 4.2.3(g) during Dispute Resolution, Specht shall (a) to the extent practicable, continue the Project according to the Project Schedule and (b) not delay Project activities that are unreasonably capable of proceeding.

14.7.1 Items in Dispute

After Commencement of Construction for the Project, as to the item in dispute, Specht shall not be required to continue construction on that item unless Specht agrees it is practicable to do so. Specht and the Agency shall use all commercially

reasonable efforts to mitigate any delays or increased costs that may be caused by disputes.

14.8 Waiver

Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

15. Information and Materials Regarding the Project

Specht shall, upon completion of Specht's services or any sooner termination of this Contract, keep available for a period of three (3) years all written data and information generated by or for Specht in connection with the Project, including all Drawings and Detailed Specifications, other drawings, plans, books, records, contracts, Contracts and all other documents and writings in its possession relating to its services or the Project. Such data and information and all such documents shall at all times be the property of Specht, but copies shall be provided to the Agency upon request.

16. Prohibition Against Transfers of Interest in Specht or Assignment of this Contract

16.1 Personal Services Contract

Specht acknowledges that the Agency is relying upon the personal knowledge, expertise and experience of Specht and Specht's Development Team in entering into this Contract, and that its rights under this Contract may not be assigned nor its duties and obligations delegated without the prior written consent of the Agency, which shall not be unreasonably withheld, conditioned or delayed.

16.2 No Assignment of Contract

Specht shall not voluntarily or involuntarily sell, transfer, convey, assign or otherwise dispose of its rights under this Contract, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

17. Taxes and Contributions

Specht assumes full and exclusive responsibility and liability for withholding and paying as may be required by law all federal, state and local taxes and

contributions with respect to, assessed against, or measured by Specht's earnings hereunder, or salaries or other contributions or benefits paid or made available to any persons retained, employed or used by or for Specht in connection with its services, and any and all other taxes and contributions applicable to its services for which Specht may be responsible under any laws or regulations, and shall make all returns and/or reports required in connection with any and all such laws, regulations, taxes, contributions and benefits.

18. Miscellaneous

18.1 Burden and Benefit

The covenants and Contracts contained herein shall be binding upon and inure to the benefit of the successors and permitted assigns of the respective parties hereto.

18.2 No Continuing Waiver

Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

18.3 Nondiscrimination

Specht will not discriminate and shall ensure that Architect, General Contractor and all other Contractors engaged by Specht in connection with the Project do not discriminate in employment on the basis of race, color, creed, religion, political ideology, age (except legitimate minimum age and retirement provisions), sex, martial status, sexual orientation, national origin, veteran status or the presence of any sensory, mental or physical handicap (unless based on a bona fide occupational qualification) in regard to any position for which the employee is qualified in compliance with all applicable federal, state and local laws, rules and regulations. This requirement shall apply to, but not be limited to the following: employment, recruitment or recruitment advertising, lay-off, demotion or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. Any violation of this provision shall be considered an Event of Default under this Contract and the Agency shall have all of the rights and remedies provided under Section 13 of this Contract.

18.4 Neutral Authorship

In connection with the execution and delivery hereof, each party has been represented by counsel. Each of the provisions of this Contract has been reviewed and negotiated, and represents the combined work product of the parties hereto. No presumption or other rules of construction which would interpret the provisions of this Contract in favor of or against the party preparing the same shall be applicable in connection with the construction or interpretation of any of the provisions of this Contract.

18.5 Terminology

All personal pronouns used in this Contract, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and vice versa as the context may require.

18.6 Complete Contract

This Contract together with the exhibits annexed hereto or referred to herein is intended to be the entire Contract of the parties with regard to the subject matter hereof and may only be amended with the written consent of the parties.

18.7 Severability

Each provision of this Contract shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Contract is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Contract that are valid.

18.8 Relationship of Parties

Specht and the Agency shall not be construed as joint venturers or general partners, and neither shall have the power to bind or obligate the other party except as set forth in this Contract. Specht shall have no right or authority, express or implied, to commit or otherwise obligate the Agency in any manner whatever except to the extent specifically provided herein or specifically authorized in writing by the Agency.

18.9 No Third Party Rights

The provisions of this Contract are intended solely for the benefit of, and may only be enforced by, the parties hereto and their respective successors and permitted assigns. None of the rights or obligations of the parties herein set forth (or implied) is

intended to confer any claim, cause of action, remedy, defense, legal justification, indemnity, contribution claim, set-off, or other right, whatsoever upon or otherwise inure to the benefit of any Contractor, Architect, subcontractor, worker, supplier, mechanic, architect, insurer, surety, guest, member of the public, or other third parties having dealings with either of the parties hereto or involved, in any manner, in the Project.

18.10 Assignment; Encumbrance or Pledge

Neither this Contract nor any rights or duties hereunder nor any benefits derived herefrom may be assigned, delegated, pledged or encumbered to any other person or entity by either party hereto without the express written consent of the other, which consent may be withheld by either party in the exercise of its absolute discretion.

18.11 Notices

Any notices or other communications required or permitted by this Contract or by law to be served on, given to, or delivered to either party hereto by the other party, shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the party to whom it is addressed or in lieu of such personal service, three (3) business days after it is deposited in the United States mail, first-class postage prepaid, certified or registered, return receipt requested, addressed as follows, or sent via facsimile transmission with machine confirmation of receipt followed by a "hard copy" mailed, regular mail, within one (1) business day to the fax number listed as follows:

Agency: Urban Renewal Agency of the City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, Oregon 97070
ATTN: Constance J. Sylvester
Telephone: 503-682-4960
Facsimile: 503-682-7025

With a copy to:

City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, Oregon 97070
ATTN: Michael E. Kohlhoff
Telephone: 503-682-1011
Facsimile: 503-682-1015

Specht: Specht Development, Inc.
15400 SW Millikan Way
Beaverton, Oregon 97006
Attention: Gregory L. Specht
Telephone: 503.646.2202
Facsimile: 503.626.8903

with a copy to: Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209
Attention: Richard A. Cantlin
Telephone: 503.727.2000
Facsimile: 503.727.2222

Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

18.12 Non Waiver of Governmental Rights

Nothing contained in this Contract shall require the Agency to take any discretionary action relating to development of the improvements to be constructed on the Property as part of the Project, including, but not limited to, zoning and land use decisions, permitting, or any other governmental approvals.

18.13 Captions

The captions of this Contract are for convenience and reference only and in no way define, limit or describe the scope or intent of this Contract.

18.14 Counterparts

This Contract may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Contract.

18.15 Further Assurance

Each party hereto agrees that it will execute or furnish such documents and further assurances to the other or to proper authorities as may be necessary for the full implementation and consummation of this Contract and the transactions contemplated hereby.

18.16 Authority

Each of the persons signing below represent and warrant that they have the requisite authority to bind the party on whose behalf they are signing.

18.17 Employees of Specht

Specht is acting under this Contract as an independent contractor and nothing herein contained, or any acts of Specht or the Agency, nor any other circumstances, shall be construed to establish Specht as agent of the Agency. Specht shall be responsible for its employees or other persons performing services to be performed by Specht hereunder and for determining the manner and time of performance of all acts to be performed by Specht hereunder.

18.18 Time Is of the Essence

Time is of the essence in this Contract.

18.19 Applicable Law

This Contract shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

18.20 Statutory Disclosure

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 39.930.

[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Contract effective as of the date first above written.

AGENCY:

THE URBAN RENEWAL AGENCY OF THE
CITY OF WILSONVILLE, OREGON

By: _____
Name: _____
Title: Executive Director

CITY:

CITY OF WILSONVILLE, OREGON

By: _____
Name: _____
Title: City Manager

Attest: _____

Name: _____
Title: City Recorder

SPECHT:

SPECHT DEVELOPMENT, INC.

By: _____

Name: Gregory L. Specht

Title: President