

**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON**

**RESOLUTION NO. 2015-119**

Authorizing the County Chair to Execute a 2<sup>nd</sup> Amendment to the Architectural Contract with ZGF Architects and a 2<sup>nd</sup> Amendment to the Construction Contract with JE Dunn Construction for the Health Department Headquarters Project.

**The Multnomah County Board of Commissioners Finds:**

- a. The County Health Department is housed in the McCoy Building, an aging, retail building, in need of costly seismic upgrades and not well suited for provision of health services to the public. The County has searched for a replacement Health Department Headquarters (HDHQ) building for a number of years.
- b. In December of 2011, the Multnomah County Board of Commissioners approved Resolution 2011-141: FAC-1 Health Department Headquarters Preliminary Planning Proposal. Resolution 2011-141 directed the Health Department and Facilities to work with Home Forward to submit the proposal to the Portland Housing Bureau to secure the City-owned Easterly half of Block U for the project – the proposal was submitted on December 21, 2011.
- c. In May 2012, the Multnomah County Board of Commissioners approved Resolution 2012-060: Authorizing the County Chair to Execute an Intergovernmental Agreement (with Exhibits A through G) (IGA) with Home Forward Defining Roles, Responsibilities and Process Pertaining to the Development of a New Headquarters for the Multnomah County Health Department on the Easterly Half of Block U, Adjacent to the Newly Opened Bud Clark Commons.
- d. In November 2012, the Multnomah County Board of Commissioners approved Resolution 2012-191: Authorizing County's Acquisition of the Easterly Half of Block U, Couch's Addition (the Property), from the Portland Housing Bureau Through an Agreement for Disposition of Property (Disposition Agreement). By a First Amendment to the Disposition Agreement, dated June 25, 2014, the County and PHB agreed to extend the Closing Date for conveyance of the Property from June 30, 2014, to June 30, 2015, to provide additional time for the County to finish design and engineering of and obtaining entitlements for the Project.
- e. In November 2012, the Multnomah County Board of Commissioners approved Resolution 2012-192: Authorizing an Intergovernmental Agreement (Grant Agreement) with the Portland Development Commission (PDC), Accelerating PDC's Grant to the County of Tax Increment from the River District Urban Renewal Area (URA). As required by the URA, PDC made the Initial Payment to the County on or before June 30, 2014. By a First Amendment to the Grant Agreement, dated June 27, 2014, the County and PDC agreed to extend the deadline for the Final Payment from June 30, 2014, to June 30, 2015, to provide additional time for the County to finish design and engineering of and obtaining entitlements for the Project.

- f. Pursuant to the IGA and with the County's approval and direction, Home Forward, as owner, and ZGF Architects (Architect) entered into an AIA B101 – 2007 Standard Form of Agreement, for the Project, on December 19, 2012 (the "**Architectural Contract**"). Pursuant to the IGA and with the County's approval and direction, Home Forward, as owner, and JE Dunn Construction (Contractor) entered into an AIA A102 – 2007 Standard Form of Agreement between Owner and Contractor, for the Project, on July 16, 2013 (the "**Construction Contract**").
- g. On January 23, 2015, Home Forward and the County entered into a Termination and Release Agreement pertaining to the IGA (the "**Termination**"), and an Assignment and Assumption of Architectural and Construction Agreements, under which Home Forward assigned and the County assumed the owner's rights and obligations under the Architectural and Construction Contracts, pursuant to the terms and conditions of the Termination.
- h. The County worked with City Bureau of Planning and Sustainability to develop a proposal for zoning map amendments to increase the base height limit on the Property from 75 feet to 105 feet and to make the Property eligible for FAR bonuses. The City of Portland Planning and Sustainability Commission recommended approval of the zoning map amendments following a public hearing on April 28, 2015, and the City Council approved the amendments on June 24, 2015. The combined effect of the amendments allows the County to relocate substantially all of the HDHQ programs from the McCoy Building to the Property, consistent with the original Project goals
- i. By a Second Amendment to the Disposition Agreement, dated June 30, 2015, the County and PHB agreed to extend the Closing Date for conveyance of the Property from June 30, 2015, to December 30, 2016, to provide additional time for the County to reprogram, redesign, reengineer and obtain City entitlements for an expanded Project on the Property, which are all required pre-conditions to the County's acquisition of the Property from PHB.
- j. By a Second Amendment to the Grant Agreement, dated June 30, 2015, the County and PDC agreed to extend the deadline for the Final Payment from June 30, 2015, to December 30, 2016, to provide additional time for the County to reprogram, redesign, reengineer and obtain City entitlements for an expanded Project on the Property, which are all required pre-conditions to the County's acquisition of the Property from PHB.
- k. On June 10, 2015, County, as Owner, and Contractor entered into Change Order #1, increasing the Construction Contract Sum by \$35,156.00 to complete additional pre-construction services identified by Contractor in its proposal dated May 20, 2015, and identifying the Construction Contract as County Contract No. 4400001553.
- l. On July 9, 2015, County, as Owner, and Architect entered into Change Order #1, increasing the Architectural Contract Sum by \$135,000.00 to complete additional work and items identified by Architect in its proposal dated June 15, 2015, and agreeing to identify the Architectural Contract as County Contract No. 4400001552.

- m. **PCRB 47-0800 Amendments to Contracts and Price Agreements (1)(d)** requires the County's Purchasing Manager to obtain Board approval for increases of more than 20 percent to a contract for goods or services with an original price in excess of \$150,000.

**The Multnomah County Board of Commissioners Resolves:**

1. The County Chair is authorized to execute the 2<sup>nd</sup> Amendment to the Architectural Contract with ZGF Architects for the HDHQ Project, in substantially the same form attached hereto as Exhibit 1. Board approval is needed for any modifications or amendments that result in a material increase in the obligations of, or a material decrease in the benefits to, the County.
2. The County Chair is authorized to execute the 2<sup>nd</sup> Amendment to the Construction Contract with JE Dunn Construction for the HDHQ Project, in substantially the same form attached hereto as Exhibit 2. Board approval is needed for any modifications or amendments that result in a material increase in the obligations of, or a material decrease in the benefits to, the County.

**ADOPTED this 12<sup>rd</sup> day of November 2015.**



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

*Deborah Kafoury*

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Deborah Kafoury, Chair

REVIEWED:  
JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON

By *Kenneth M. Elliott*  
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Department of County Assets Director

## SECOND AMENDMENT TO AIA B101 – 2007 AGREEMENT BETWEEN OWNER AND ARCHITECT

### Multnomah County Health Headquarters Building County Contract No. 4400001552

THIS SECOND AMENDMENT TO AIA B101 – 2007 AGREEMENT BETWEEN OWNER AND ARCHITECT is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 ("Second Amendment") between MULTNOMAH COUNTY, a political subdivision of the State of Oregon ("County" or "Owner") and ZIMMER GUNSUL FRASCA ARCHITECTS, LLP, an Oregon limited liability partnership ("Architect"). Owner and Architect may be referred to jointly in this Second Amendment as the "Parties" and individually as a "Party."

#### RECITALS:

1. Effective May 24, 2012, County and Home Forward, formerly the Housing Authority of Portland, an Oregon municipal corporation ("Home Forward"), entered into an intergovernmental agreement, which was amended on January 4, 2013 (collectively, the "IGA") for the development of a new building to house the Multnomah County Health Department administration and clinical services functions (the "Project").
2. The Project is planned for construction on a 17,500-square foot site located in northwest Portland, Oregon, generally bounded by NW Sixth Avenue, NW Hoyt Street, and NW Irving Street, comprising the vacant, easterly portion of Block U, adjacent to the recently opened Bud Clark Commons, and further described as Lots 1, 4, 5 and 8, Block U, CITY OF PORTLAND, Multnomah County, Oregon (the "Property").
3. Pursuant to the IGA and with County's approval and direction, Home Forward, as owner, and Architect entered into an AIA B101 – 2007 Standard Form of Agreement, for the Project, on December 19, 2012 (the "Architectural Contract").
4. Beginning June 30, 2014, County, Home Forward and Architect evaluated the estimated Project costs, which were substantially higher than 2012 estimates; the design and programming constraints on the Property as then zoned; and alternate sites for County Health Department programs that could not be accommodated in the then-permitted building envelope on the Property.
5. On January 23, 2015, Home Forward and Multnomah County entered into a Termination and Release Agreement pertaining to the IGA (the "Termination"), and an Assignment and Assumption of Architectural and Construction Agreements, under which Home Forward assigned and Multnomah County assumed the owner's rights and obligations under the Architectural Contract, pursuant to the terms and conditions of the Termination.
6. Home Forward delivered written notice of the Assignment and Assumption of the Architectural Contract to Architect on February 4, 2015.
7. The Termination permitted County to reevaluate the entire Project strategy and file an application with the City of Portland for zoning amendments to increase the base height limit on the Property from 75 feet to 105 feet and to make the Property eligible for FAR bonuses.
8. The City of Portland Planning and Sustainability Commission recommended approval of the zoning amendments following a public hearing on April 28, 2015, and the City Council approved the amendments on June 17, 2015. The combined effect of the amendments allows County to relocate substantially all of the Health Department programs from the McCoy Building to the Property, consistent with the original Project goals.
9. On July 9, 2015, County, as Owner, and Architect entered into Change Order #1, increasing the Contract Sum by \$135,000.00 to complete additional work and items identified by Architect in its proposal dated June

15, 2015, and agreeing to identify the Architectural Contract as County Contract No. 4400001552. Change Order #1 was incorporated into a First Amendment to the County Contract dated July 9, 2015.

10. Owner and Architect desire to amend the Architectural Contract to address and enable expansion of the Project's program and design scope permitted by the zoning amendments and to update the proposed schedule and budget.

NOW, THEREFORE, in consideration of the foregoing Recitals, which shall be considered contractual in nature and effect, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Architectural Contract as follows:

#### AGREEMENTS:

1. All capitalized terms and phrases in this Second Amendment shall retain their meanings as defined in the Architectural Contract, unless otherwise defined herein. Text added by this Second Amendment shall be underlined and text deleted shall be stricken.
2. The Table of Articles on page 2 is modified, after Article 13, to read:

#### "14 PUBLIC CONTRACT PROVISIONS

##### "LIST OF EXHIBITS AND ATTACHMENTS

EXHIBIT A: INITIAL INFORMATION

EXHIBIT B: INSURANCE REQUIREMENTS FOR ARCHITECT AND SUBCONSULTANTS

EXHIBIT C: COMPENSATION AND HOURLY RATES OF ARCHITECT AND SUBCONSULTANTS

EXHIBIT D: SCOPE OF BASIC SERVICES

EXHIBIT E: SCOPE OF ADDITIONAL SERVICES

EXHIBIT F: PROJECT SCHEDULE

EXHIBIT G: ~~[DELETED.] INTERGOVERNMENTAL AGREEMENT BETWEEN MULTNOMAH COUNTY AND HOME FORWARD~~

ATTACHMENT 1: FAC-1 AMENDED PROJECT PLAN NOVEMBER 2015

ATTACHMENT 2: GEOTECHNICAL REPORT

ATTACHMENT 3: ENVIRONMENTAL REPORTS PACKAGE

ATTACHMENT 4: MULTNOMAH COUNTY FACILITIES SPECIFICATIONS STANDARDS REVISED APRIL 2015

3. Section 1.2 is modified, to read:

"§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Anticipated commencement of construction date:

\_\_\_\_\_ [to be determined] June 2014

- .2 Anticipated Substantial Completion date:

\_\_\_\_\_ [to be determined] December 2015

4. Section 2.3 is modified, to read:

**"§ 2.3** The Architect ~~has selected Lee Kerns to serve as~~shall identify a Project Manager authorized to act on behalf of Architect with respect to the Project. The Project Manager shall not be replaced without prior written approval of Owner."

5. Section 2.8 is modified, to read:

**"§ 2.8 Compliance with Laws.** Architect shall comply with any and all laws, codes, and regulations applicable to Architect's services. Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project. Architect's Instruments of Service (and in particular the Construction Documents produced by Architect) and the Work contemplated thereby (if executed in general accordance with the Instruments of Service) shall, consistent with the Standard of Care, comply with all applicable laws, codes, ordinances, rules, regulations, interpretation and requirements of federal, state and local authorities and agencies which are in effect at the time such Instruments of Service are submitted for action by such governmental authorities or agencies or which are known to be enacted or placed in effect on or prior to use or occupancy of the Project. All designs shall provide for adequate construction tolerances to permit construction of the Project in accordance with the foregoing requirements. To the extent there is any instance of inconsistency between the applicable foregoing federal, state or local laws, Architect shall address that instance of inconsistency by designing the Project to conform to the specific requirements under the foregoing laws," ~~that provide the greatest accessibility for persons with disabilities.~~

6. Section 3.1.2 is modified, to read:

**"§ 3.1.2** The Architect shall coordinate its services with those services provided by the Architect's Consultants, as well as the Owner and the Owner's consultants. The Architect shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information."

7. Section 3.2.1 is modified, to read:

**"§ 3.2.1** The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall assist Contractor, Owner's Representative and Owner in the preparation of a FAC-1 Amended Project Plan as the deliverable under Change Order #1 to the Architectural Contract. Upon completion by Architect, Contractor and Owner's Representative, and approval by Owner, the FAC-1 Amended Project Plan will be attached hereto as Attachment 1 and made a part hereof."

8. Section 3.4.1 is modified, to read:

**"§ 3.4.1** Based on the Owner's approval of the FAC-1 Amended Project Plan and the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved FAC-1 Amended Project Plan and Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels."

9. Section 3.5.3 is modified, to read:

~~"§ 3.5.3 During the development of the Construction Documents, the Architect shall assist Owner and Contractor in the development and preparation of the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction, as previously negotiated by Owner and Contractor, and Specifications and may include bidding requirements and sample forms."~~

10. Section 3.7.5.1 is modified, to read:

~~"§ 3.7.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time, by issuance of an Architect's Supplemental Instruction (ASI). The Architect shall prepare support documentation for Construction Change Directives and Change Orders, in coordination with the Owner's Representative, for the Owner's approval and execution in accordance with the Contract Documents and the Project construction administration plan; the Contractor will prepare Change Orders. The Architect also shall prepare and issue Modifications of Drawings and Specifications incorporated into or referenced in Change Orders, Construction Change Directives and orders for minor changes in the Work. The Architect shall assist and advise the Owner in evaluating proposals for changes in the Work."~~

11. Section 4.3.2 is modified, to read:

~~"§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall notify the Owner with reasonable promptness of the need for the following Additional Services and shall explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of any Additional Services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:~~

- ~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~
- ~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- ~~.4 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 calendar days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier." Substantial Completion is currently projected for the first quarter of 2016.~~

12. Section 5.1 is modified, to read:

~~"§ 5.1 The Owner and Architect shall work together to determine requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, construction schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements." Within 15 business days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.~~

13. Section 5.3 is modified, to read:

~~"§ 5.3 The Owner has identified Brett Taute, as the Owner's Project Manager, and Steve Cruzen, of Shiels Oblatz Johnsen, Inc., as the Owner's Representative, each of whom is shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.~~

14. Section 5.7 is modified, to read:

"§ 5.7 The Owner shall, at Owner's expense, contract directly with independent consultants to furnish tests, inspections and reports that the Owner is required to furnish by applicable law or the Contract Documents, which may but do not necessarily include structural, geotechnical field observation, soils tests mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

15. A new Section 5.8 is added, to read:

"Within 15 business days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights."

16. Section 5.10 is modified, to read:

"§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate directly with the Architect and Contractor and the Consultants through the Architect about matters arising out of or relating to the Construction Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services. Nothing in this Section 5.10 shall be interpreted to prevent or bar the Owner from communicating directly with the Contractor regarding any subject that the Owner reasonably desires to keep confidential between the Owner and Contractor and others involved in such communications."

17. Section 10.10.1 is modified, to read:

"§ 10.10 Notices. All notices given under this Agreement shall be in writing and shall be deemed properly given when delivered in person, delivered by commercial messenger or courier that maintains records of deliveries, or received by e-mail, as follows:

.1 If to the Owner:

Multnomah County Home Forward  
501 SE Hawthorne Blvd 135 SW Ash Street, 5<sup>th</sup> Floor  
Portland OR 97214 97209  
Attn: Brett Taute, Project Manager Julie Livingston  
Telephone: 503.988.3284 503.802.8424  
Email: [brett.t.taute@multco.us](mailto:brett.t.taute@multco.us) [julie.livingston@homeforward.org](mailto:julie.livingston@homeforward.org)

18. Section 11.1 is modified, to read:

"§ 11.1 For the Basic Services described under Article 3, the Owner shall compensate the Architect as specified in by paying the stipulated sum (lump sum) of two million, five hundred and twenty six thousand dollars (\$2,526,000.00). See Exhibit "C" – Compensation and Hourly Rates of Architect and Consultants for detail related to this stipulated sum.

19. Section 11.3 is modified, to read:

"§ 11.3 For Additional Services that are performed by the Architect and the Consultants during the course of the Project, under Section 4.3 or otherwise, the Owner shall compensate the Architect utilizing the hourly rates as provided in Exhibit C." Reasonable annual adjustments to these hourly rates will be considered by the Owner, but any adjustments to hourly rates must be agreed to by Owner and incorporated by written amendment.

20. Section 11.5 is deleted.

21. Section 13.2 is modified, to read:

"§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect, as modified;
- .2 [Intentionally deleted.]
- .3 Other documents, Exhibits A, C, D, E and F shall be replaced by revised Exhibits and 4 Attachments attached to this Second Amendment and made a part hereof and Exhibit G shall be deleted:  
(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Revised Exhibit A: Initial Information

Exhibit B: Insurance of Architect and Consultants

Revised Exhibit C: Compensation and Hourly Rates of Architect and Consultants

Revised Exhibit D: Scope of Basic Services

Revised Exhibit E: Scope of Additional Services

Revised Exhibit F: Project Schedule

Exhibit G: ~~Intergovernmental Agreement Between Multnomah County and Home Forward~~  
[Deleted]

Attachment 1: FAC-1 Amended Project Plan November 2015

Attachment 2: Geotechnical Report

Attachment 3: Environmental Reports Package

Attachment 4: Multnomah County Facilities Specifications Standards Revised April 2015

22. Section 14.1 is modified, to read:

"§ 14.1 The Public Contracting Code and ~~County's Home Forward's~~ Public Contracting Rules contain certain requirements for public contracts, including but not limited to certain required contract provisions. The required contract provisions are contained in this Article 14, and Owner and Architect agree to comply with all requirements of ORS chapters 279A, 279B and 279C; ~~County's Home Forward's~~ Public Contracting Rules; and other Oregon laws whether, or not such provisions are included in ~~this Section 13.7.8~~ or excised from this Article 14 or its subsections."

23. Except as expressly modified by this Second Amendment, the parties agree and acknowledge that the Architectural Contract is and remains in full force and effect and binding on the parties.
24. This Second Amendment may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the same counterpart. Each copy of this Second Amendment so executed shall constitute an original. This Second Amendment may not be modified except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto execute this Second Amendment effective as of the date first set forth above.

OWNER:  
MULTNOMAH COUNTY, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Deborah Kafoury,  
Chair

ARCHITECT:  
ZIMMER GUNSUL FRASCA ARCHITECTS, LLP,  
an Oregon limited liability partnership

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Reviewed:  
JENNY M. MADKOUR, COUNTY ATTORNEY FOR  
MULTNOMAH COUNTY

By: \_\_\_\_\_  
Kenneth M. Elliott, Assistant County Attorney

Revised EXHIBIT "A"  
Initial Information  
[to be attached]

Revised EXHIBIT "C"  
Compensation and Hourly Rates Of Architect and Subconsultants  
[to be attached]

Revised EXHIBIT "D"  
Scope of Basic Services  
[to be attached]

Revised EXHIBIT "E"  
Scope of Additional Services  
[to be attached]

Revised EXHIBIT "F"  
Project Schedule  
[to be attached]

ATTACHMENT 1  
FAC-1 Amended Project Plan November 2015  
[to be attached]

ATTACHMENT 2  
Geotechnical Report  
[to be attached]

ATTACHMENT 3  
Environmental Reports Package  
[to be attached]

ATTACHMENT 4  
Multnomah County Facilities Specifications Standards Revised April 2015  
[to be attached]



## SECOND AMENDMENT TO AIA A102 – 2007 AGREEMENT BETWEEN OWNER AND CONTRACTOR

### Multnomah County Health Headquarters Building County Contract No. 4400001553

THIS SECOND AMENDMENT TO AIA A102 – 2007 AGREEMENT BETWEEN OWNER AND CONTRACTOR is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 ("Second Amendment") between MULTNOMAH COUNTY, a political subdivision of the State of Oregon ("County" or "Owner") and J.E. DUNN CONSTRUCTION COMPANY, an Oregon corporation ("Contractor"). Owner and Contractor may be referred to jointly in this Second Amendment as the "Parties" and individually as a "Party."

#### RECITALS:

1. Effective May 24, 2012, County and Home Forward, formerly the Housing Authority of Portland, an Oregon municipal corporation ("Home Forward"), entered into an intergovernmental agreement, which was amended on January 4, 2013 (collectively, the "IGA") for the development of a new building to house the Multnomah County Health Department administration and clinical services functions (the "Project").
2. The Project is planned for construction on a 17,500-square foot site located in northwest Portland, Oregon, generally bounded by NW Sixth Avenue, NW Hoyt Street, and NW Irving Street, comprising the vacant, easterly portion of Block U, adjacent to the recently opened Bud Clark Commons, and further described as Lots 1, 4, 5 and 8, Block U, CITY OF PORTLAND, Multnomah County, Oregon (the "Property").
3. Pursuant to the IGA and with County's approval and direction, Home Forward, as owner, and Contractor entered into an AIA A102 – 2007 Standard Form of Agreement between Owner and Contractor, for the Project, on July 16, 2013 (the "Construction Contract").
4. Beginning June 30, 2014, County, Home Forward and Contractor evaluated the estimated Project costs, which were substantially higher than 2012 estimates; the design and programming constraints on the Property as then zoned; and alternate sites for County Health Department programs that could not be accommodated in the then-permitted building envelope on the Property.
5. On January 23, 2015, Home Forward and Multnomah County entered into a Termination and Release Agreement pertaining to the IGA (the "Termination"), and an Assignment and Assumption of Architectural and Construction Agreements, under which Home Forward assigned and Multnomah County assumed the owner's rights and obligations under the Construction Contract, pursuant to the terms and conditions of the Termination.
6. Home Forward delivered written notice of the Assignment and Assumption of the Construction Contract to Contractor on February 4, 2015.
7. The Termination permitted County to reevaluate the entire Project strategy and file an application with the City of Portland for zoning amendments to increase the base height limit on the Property from 75 feet to 105 feet and to make the Property eligible for FAR bonuses.
8. The City of Portland Planning and Sustainability Commission recommended approval of the zoning amendments following a public hearing on April 28, 2015, and the City Council approved the amendments on June 17, 2015. The combined effect of the amendments allows County to relocate substantially all of the Health Department programs from the McCoy Building to the Property, consistent with the original Project goals.
9. On June 10, 2015, County, as Owner, and Contractor entered into Change Order #1, increasing the Contract Sum by \$35,156.00 to complete additional pre-construction services identified by Contractor in its proposal dated May 20, 2015, and identifying the Construction Contract as County Contract No. 4400001553. Change Order #1 was incorporated into a First Amendment to the County Contract dated June 10, 2015.

10. Owner and Contractor desire to amend the Construction Contract to address and enable expansion of the Project's program and design scope permitted by the zoning amendments and to update the proposed schedule and budget.

NOW, THEREFORE, in consideration of the foregoing Recitals, which shall be considered contractual in nature and effect, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Construction Contract as follows:

**AGREEMENTS:**

1. All capitalized terms and phrases in this Second Amendment shall retain their meanings as defined in the Construction Contract, unless otherwise defined herein. Text added by this Second Amendment shall be underlined and text deleted shall be stricken.
2. CONTRACT No: C1369 and the Owner's name and address on page 1 are modified, to read:

~~"CONTRACT No: C1369~~ MULTNOMAH COUNTY CONTRACT No. 4400001553

**BETWEEN** the Owner:

*(Name, address and other information)*

<u>Multnomah County</u>	<u>Home Forward</u>
<u>c/o Facilities &amp; Property Mgt.</u>	<u>135 SW Ash Street</u>
<u>401 North Dixon Street</u>	<u>Portland, OR 97204</u>
<u>Portland, OR 97227."</u>	

3. Section 2.5 is modified, to read:

"§ 2.5 The Work shall include design professionals services provided on a design/build basis for the exterior envelope (limited to consultation with the Architect on metal panels design), mechanical, electrical, fire alarm, fire protection and plumbing portions of the Work. Such services shall be performed by design professionals licensed, registered and otherwise legally authorized to perform such services in Oregon, to the extent such licensure, registration and authorization are required by law to perform such services on such portions of the Work. Such services shall be performed by one or more employees or consultants of the Contractor or a Subcontractor. The Contractor shall ensure that all such design services and documents, during both the design and construction phases are coordinated with the services and documents of the Architect and its consultants in the interests of the Owner and the Project."

4. Subsections .1 and .2 of Section 4.3.2.2 LOSS OF USE LIQUIDATED DAMAGES are modified, to read:

- "1 1<sup>st</sup> thru 7<sup>th</sup> Calendar Day the sum of zero Dollars (\$0) for each partial day or full day of delay beyond the deadline for Substantial Completion; and
- "2 8<sup>th</sup> thru 14<sup>th</sup> Calendar Day the sum of fourteen hundred Dollars (\$1,400.00) for each partial day or full day of delay beyond the deadline for Final Completion; and"

5. Section 5.1.3 is modified, to read:

"§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: A cumulative limit of 25% for all Subcontractors and a 5% limit of any individual cost increase for any individual Subcontractor."

6. Section 5.2.1.2 is modified, to read:

"§ 5.2.1.2 In the event the sum of the final Cost of the Work plus the final Contractor's Fee is less than the final GMP, the savings in Cost of the Work shall devolve one hundred percent (100%) to the Owner, but the final Contractor's Fee shall remain based on the estimated Cost of Work in the final GMP."

7. Section 6.4 is modified, to read:

"§ 6.4 A Change Order shall be based upon a prior written agreement between Owner and Contractor. A Construction Change Directive requires written direction by the Owner, and associated costs may or may not be agreed to by the Contractor. Receipt of a Construction Change Directive signed by Owner, Architect and Owner's Authorized Representative is effective immediately, and Contractor shall proceed immediately to make the change(s) described therein. In order to be binding upon Owner, all Change Orders and Construction Change Directives must be properly completed in writing prior to commencement of the altered or additional Work, and prior to Contractor incurring any additional time or expense. Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a corresponding Change Order or Construction Change Directive is properly and timely prepared and executed as required by the Contract Documents in advance of the extra or different Work. Contractor hereby waives any argument that Owner's conduct (including, but not limited to, orally approving changes or extras) amounts to a waiver of the prior written change requirements of the Contract Documents."

8. Section 10.1.1 is modified, to read:

"§ 10.1.1 All Work shall be competitively bid, unless otherwise approved in writing in advance by Owner. For all portions of the Work (including those the Contractor proposes to self-perform), whose contract value is expected to exceed \$5,000, Contractor shall obtain (not only solicit) solicit and make a good faith effort to obtain bids from no fewer than three (3) qualified, independent Subcontractor bidders, unless the Owner agrees in advance to fewer than three (3) bids, for particular subcontracted or supplied Work. The Contractor shall solicit and make a good faith effort to obtain (not only solicit) bids from no fewer than threetwo (32) additional, qualified, independent Subcontractor bidders, unless the Owner agrees in advance to fewer than threetwo (32) bids, for portions of the Work that the Contractor desires to self-perform with its own personnel. In the event the Contractor provides bids for self-performed Work, such bids shall be prepared and submitted to Owner one day in advance of receipt of competitor's bids and considered in the same manner as if they were bids from Subcontractors. For the purposes of this Section 10.1.1 references to the Contractor's "own personnel" shall be construed to mean both (1) the Contractor's own personnel per se and (2) the Contractor's affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by officers of the Contractor. For subcontracts whose value is expected to be less than \$25,000, Contractor shall be entitled to negotiate them directly with certified MWESB Subcontractors."

9. Section 12.1.3 is modified, to read:

"§ 12.1.3 Provided that a complete and accurate Application for Payment is received by the Owner and Architect not later than the last day of a month, the Owner shall make payment of the approved amount to the Contractor not later than the 30 calendar days after receipt of a complete and accurate Application for Payment. In no case shall an Application for Payment be submitted prior to the 25<sup>th</sup> day of any month. If a complete and accurate Application for Payment is received by the Owner and Architect after the last day of a month, application date fixed above, payment shall be made of the approved amount by the Owner not later than thirty (30) days after the Owner and Architect receives the Application for Payment.  
*(Federal, state or local laws may require payment within a certain period of time.)"*

10. Section 12.1.5 is modified, to read:

"§ 12.1.5 Each Application for Payment shall be based on the most recent Sschedule of Vvalues (as defined in Section 9.2 of the General Conditions) submitted by the Contractor and approved by the Owner in accordance with the Contract Documents. The Sschedule of Vvalues shall allocate the entire GMP among the various portions of the Work, except that the Contractor's Fee, Change Orders, alternates, unit price Work, allowances and contingencies shall be

shown as separate items. The Schedule of Values shall comply with the General Conditions. The current ~~S~~chedule of ~~V~~alues as approved by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment."

11. Section 12.1.6 is modified, to read:

"§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Valuesschedule of values."

12. Subsection .1 of Section 12.1.7 is modified, to read:

"§ .1 Take that portion of the GMP properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the GMP allocated to that portion of the Work in the Schedule of Valuesschedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;"

13. Section 15.2 is modified, to read:

"§ 15.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate established by Oregon law for non-financial institutions and currently at 9% per annum or .75% per month."

14. Section 15.3 is modified, to read:

"§ 15.3 The Owner's representative:

<u>Brett Taute, Project Manager</u>	<u>Mike Andrews</u>
<u>c/o Facilities &amp; Property Mgt.</u>	<u>Home Forward</u>
<u>Multnomah County</u>	<u>135 SW Ash Street</u>
<u>401 North Dixon Street</u>	<u>Portland, OR 97204</u>
<u>Portland, OR 97227</u>	

15. Section 15.4 is modified, to read:

"§ 15.4 The Contractor's representative:

<u>Tom Heger, Alan Halleck</u>
<u>J.E. Dunn Construction Company</u>
<u>424 N.W. 14<sup>th</sup> Ave.</u>
<u>Portland, OR 97209</u>

16. Section 15.5.1 is modified, to read:

"§ 15.5.1 ORS Chapters 279A and 279C, the Owner's Public Contract Review Board Rules ("PCRB Rules") and the Portland Development Commission's Business and Workforce Equity Policies and guidance~~Home Forward Public Contracting Rules ("PDC Equity Policy~~Home Forward Rules") contain certain requirements for public contracts, including, but not limited to, certain required contract provisions. The required contract provisions are attached as Exhibit C and are incorporated herein by this reference. Furthermore, Contractor and Owner agree to comply with all requirements of ORS Chapters 279A and 279C, the PCRB Rules, the PDC Equity Policy~~Home Forward Rules~~ and other Oregon laws whether or not such provisions are included in Exhibit C and whether or not any such provisions are excised in Exhibit C."

17. **Exhibits C and F** attached to the Construction Contract are deleted and replaced, for all purposes related to the Construction Contract, by the revised Exhibits C and F, attached to this Second Amendment and incorporated herein by reference.

18. Section 15.5.4 is modified, to read:

**"§ 15.5.4** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. Contractor shall not discriminate ~~discrimination~~ against minority-owned, women-owned, or emerging small businesses. Contractor shall also include a provision in each subcontract requiring Subcontractors to comply with the requirements of this Section 15.5.4."

19. Section 16.1 is modified, to read:

**"§ 16.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

Exhibit A: Form of GMP Amendment

Exhibit B: Forms of Claim Waivers and Releases

Exhibit C (Revised):

Exhibit C-1

Provisions from the Public Contracting Code and the Multnomah County Public Contracting Rules

Exhibit C-2

PDC Equity Policy January 9, 2013~~Home Forward Rules~~

Exhibit D: Forms of Payment and Performance Bonds

Exhibit E: Electronic Technology

Exhibit F (Revised): Contractor's and Owner's Insurance Requirements

Exhibit G: Billing Rates

Attachment 1: FAC-1 Amended Project Plan November 2015

Attachment 2: Geotechnical Report

Attachment 3: Environmental Reports Package

Attachment 4: Multnomah County Facilities Specifications Standards Revised April 2015

20. Except as expressly modified by this Second Amendment, the parties agree and acknowledge that the Construction Contract is and remains in full force and effect and binding on the parties.

21. This Second Amendment may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on both parties, notwithstanding that both parties are not signatories to the same counterpart. Each copy of this Second Amendment so executed shall constitute an original. This Second Amendment may not be modified except by a writing signed by the parties.

IN WITNESS WHEREOF, the parties hereto execute this Second Amendment effective as of the date first set forth above.

**OWNER:**  
**MULTNOMAH COUNTY**, a political  
subdivision of the State of Oregon

By: \_\_\_\_\_  
Deborah Kafoury, Chair

**CONTRACTOR:**  
**J.E. DUNN CONSTRUCTION COMPANY**,  
an Oregon corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Reviewed:  
JENNY M. MADKOUR, COUNTY ATTORNEY FOR  
MULTNOMAH COUNTY

By: \_\_\_\_\_  
Kenneth M. Elliott  
Assistant County Attorney

Revised EXHIBIT "C-1"

Provisions from the Public Contracting Code and the Multnomah County Public Contracting Rules

EXHIBIT C-2

PDC Equity Policy January 9, 2013

[to be attached]

Revised EXHIBIT "F"

**CONTRACTOR'S AND OWNER'S INSURANCE REQUIREMENTS**

**I. CONTRACTOR'S INSURANCE**

Prior to entering into an Early Work Amendment or GMP Amendment, Owner intends to evaluate and compare the Contractor Controlled Insurance Program ("CCIP") proposed by the CM/GC, as discussed in Section 8.6.1.1 of this Contract, against coverage, premiums and other options then available through an Owner Controlled Insurance Program ("OCIP"). After consulting with the CM/GC and Owner's insurance carriers and brokers, Owner shall choose between a CCIP and an OCIP and the terms and conditions of the insurance program selected for Phase 2 of the Project shall then be set forth in this Exhibit F. Contractor shall be entitled to review and approve any proposed OCIP before it is substituted in place of the CCIP under this Exhibit F. Except as otherwise provided if Owner elects to purchase an OCIP and as a condition precedent to payment, Contractor shall at all times provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/VIII or better. Except for the CCIP or as otherwise expressly indicated in this Exhibit, Contractor shall contractually require its Subcontractors to at all times provide and maintain the insurance required herein.

**A. Contractor's Controlled Insurance Program ("CCIP")**

- (i) Contractor will implement and maintain a Contractor Controlled Insurance Program ("CCIP") for the Project on standard ISO forms and with no endorsements limiting or reducing coverage that are not reasonably satisfactory to Owner. The CCIP will provide primary and non-contributory, general liability coverage for the Project with a Project Specific Limit and Products-Completed Operations Coverage until the applicable statute of repose has run for the Project.
- (ii) The following persons and entities shall be Named Insureds under the CCIP: Multnomah County, Home Forward, Contractor, and all Subcontractors that perform work on the Project site that are eligible to be enrolled and the CCIP insurers shall waive all rights of subrogation to those entities.

The CCIP will provide coverage through the statute of repose in the state in which the Project is located and with the following limits:

Primary General Liability on a Project Specific Basis:

Combined Bodily Injury and Property Damage:

Primary:

Umbrella:

\$2,000,000 Per Occurrence

\$45,000,000 Per  
Occurrence

\$4,000,000 General  
Aggregate

\$45,000,000 General  
Aggregate

\$4,000,000 Completed  
Operations Aggregate

\$45,000,000 Completed  
Operations

\$1,000,000 Personal &  
Advertising Injury

\$100,000 Fire Damage to  
property rented to you

\$10,000 Medical Pay

(iii) The scope of CCIP coverage must meet the following:

- (1) Premises Operations must be included.
- (2) Elevators and Escalators must be included.
- (3) Coverage for Independent Contractors and work performed on Contractor's behalf by Subcontractors must be included.
- (4) Contractual Liability.
- (5) The Products and Completed Operations coverage shall be in place for the Project for the applicable statute of repose.
- (6) There can be no exclusions for cross-suit liability between Named Insureds.
- (7) There can be no exclusions for subsidence, collapse, explosion or underground property damage.
- (8) Exclusion j. Damage to Property in CG 00 01 04 13 shall be amended by endorsement as follows:
  - delete paragraph j.(1);
  - delete paragraph j. (2) and replace with "(2) Premises you sell, give away or abandon, if the 'property damage' arises out of any part of those premises. This exclusion does not apply if the premises are 'your work.'"
  - delete follow-on paragraph stating "Paragraph (2) of this exclusion does not apply if the premises are 'your work' and were never occupied or held for rental by you."
- (9) The CCIP policy limits shall not be eroded or wasted by defense costs.

**B. Business Auto (applicable to Contractor and all Subcontractors):**

- (i) Combined Bodily Injury and Property Damage  
\$1 Million Each Accident
- (ii) The following coverages must be included:
  - (1) Owned Automobiles
  - (2) Non-Owned and Hired Automobiles

**C. Professional Liability (applicable to Contractor Only):**

- (i) \$5 Million each claim
- (ii) \$5 Million aggregate
- (iii) Professional liability insurance described in this Section I.C and its Subsections (i), (ii) and (iii) will be maintained by Contractor for the duration of the applicable statute of repose in the state in which the Project is located.

**D. Contractor's Pollution Liability (applicable to Contractor only):**

- (i) \$1 Million per claim

**E. Evidence of Insurance and Certified Copies of Policies.** Evidence of Contractor's insurance shall be filed with Owner and be acceptable to Owner and Multnomah County prior to commencement of the Work. Multnomah County and Home Forward will be provided with actual copies of the CCIP policies. For those insurance coverages that are required to remain in force after final payment, additional evidence of insurance acceptable to Owner and Multnomah County showing continuation of such coverage shall be submitted with the final Application for Payment and upon each annual renewal. Without limiting its remedies, Contractor agrees that it will reimburse Owner for the costs of Owner's insurance provided for the Project in the event that Contractor fails to provide evidence of coverage as required herein. Upon Owner's request at any time, Contractor will immediately provide an actual certified copy of its insurance policies. Provision of the evidence of coverage and provision of copies of policies as required herein shall be a condition precedent to payment.

- F. Notice of Cancellation, Reduction or Expiration.** Contractor's insurance policies required by this Section I, other than those identified in Section A, shall be endorsed to provide that coverages or limits afforded under the policies will not be cancelled until at least 60 days' prior written notice (except for non-payment of premium, which will be 10 days' notice) has been given to ~~Home Forward~~ and Multnomah County. CCIP policies may be cancelled for reasons other than non-payment of premiums upon 60 days' notice of cancellation to Contractor and other certificate holders. In the event that the CCIP policy is cancelled, Contractor shall be responsible for obtaining, at its sole cost, replacement coverage with the same limits, duration of coverage and extent of coverages as set forth in the CCIP without any gap in coverage. Any premiums refunded by the insurer as a result of cancellation of the CCIP shall be applied to a subsequent insurance program providing replacement coverage with the same limits, duration of coverage and extent of coverages. Information concerning potential reduction of limits on account of claims made shall be furnished by the Contractor to Owner within three (3) business days of when Contractor learns that revised or reduced limits are likely. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the insured with reasonable promptness according to insureds' information and belief.
- G. Owner's Right to Terminate or Cure.** Failure of Contractor or a Subcontractor to secure and maintain insurance shall be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments and/or recoup payments already made to Contractor for work
- H. No Waiver by Owner.** The insurance requirements under this Section I can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, shall amount to Owner's waiver of the insurance requirements of this Section I.
- I. Other Insurance.** Contractor shall, and shall require that all Subcontractors, maintain:
- (i) Workers' Compensation: statutory  
  
Employer Liability: \$1 Million per person  
\$1 Million per accident  
\$1 Million per sickness/disease
  - (ii) Commercial General Liability (on a standard ISO Form) for offsite exposure or, for those Subcontractors not enrolled in the CCIP, for onsite and offsite coverage:
  - (iii) Combined Bodily Injury and Property Damage:  
\$1 Million Each Occurrence  
\$2 Million General Aggregate  
\$2 Million Products/Completed Operations Aggregate
  - (iv) Business Auto: \$1 Million.
  - (v) Excess/Umbrella Liability Coverage: \$5 Million for offsite exposure or, for those Subcontractors not enrolled in the CCIP, for onsite and offsite coverage.
- J. Waiver of Subrogation.** To the extent permitted by Oregon statute, all of Contractor's and all of its Subcontractors' insurance policies, except for professional liability policies, shall contain a waiver of subrogation in favor of Owner, ~~Home Forward~~ and the other persons and entities listed in Section I.K of this Exhibit.
- K. Additional Insureds.** All of Contractor's and Subcontractors' liability insurance policies (except those for professional liability, CCIP and employer's liability) shall contain an endorsement making the persons or entities listed in this Section I.K Additional Insureds. The coverage under the additional insured endorsement shall (i) be primary and noncontributory with respect to any insurance maintained by the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Section I, (iii) shall provide coverage to the additional insureds for the products-completed operations hazard, (iv) be for the same durations as the

coverages afforded to the primary insured as required by this Section I and (v) include a separation of insureds clause (as provided in Condition No. 7 – Separation of Insureds – on ISO Form CG 00 01 12 07, or its equivalent). The following persons or entities and their respective affiliates, subsidiaries, directors, officers, employees and agents shall be named as additional insureds:

Home Forward  
Multnomah County

- L. Deductibles, Self-Insured Retention and Co-Insurance Penalties.** Contractor and/or Subcontractors shall be responsible for any deductible, self-insured retention or co-insurance penalty under the policies required under this Section I, without any additional cost to Owner, except to the extent the loss was caused by the sole acts of Owner or those for whom Owner is responsible.

## **II. BUILDERS RISK INSURANCE**

Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Guaranteed Maximum Price, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. The policies shall name ~~Home Forward~~, Contractor and Multnomah County as loss payees. Such property insurance shall cover the work and shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of the Owner as a named insured and ~~Home Forward~~, the Contractor, Subcontractors and Sub-subcontractors of all tiers in the Project shall be additional named insureds as their interests may appear.

- A.** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, wind driven rain, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, subject to all terms of such policy and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.
- B.** If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles with the exception that Contractor shall pay for the deductibles associated with the first two occurrences asserted as claims under the policy at a maximum of \$25,000.00 per occurrence up to an aggregate of \$50,000.00. If there is available Contractor contingency, Contractor may utilize that contingency to pay for its obligated deductible responsibility. If contingency is not available the Contractor shall not be relieved of its obligation to pay the first two occurrence deductibles.
- C.** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.
- D.** The Owner shall have power to adjust and settle a builder's risk loss with insurers and Contractor will cooperate and cause its Subcontractors to cooperate with Owner to adjust any loss.
- E. Waivers of Subrogation.** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6 of the General Conditions, if any, and any of their subcontractors, sub subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent paid by property insurance obtained pursuant to this Section II (i) except such rights as they have to proceeds of such insurance held by the Owner. The policies shall provide such waivers of subrogation by endorsement or otherwise.
- F.** A loss insured under Owner's property insurance shall be adjusted by the Owner and made payable to the Owner and other loss payees, as their interests may appear, subject to all requirements of any applicable mortgagee clause and of

Section II. Contractor shall reasonably cooperate in the adjustment of any claim as necessary to effectuate the intent of this provision. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

- G. Builder's Risk coverage provided by Owner shall meet the minimum standards required by Contractor, as acknowledged by Owner prior to execution of this Contract.

Attachment 1

FAC-1 Amended Project Plan November 2015

[to be attached]

Attachment 2

Geotechnical Report

[to be attached]

Attachment 3

Environmental Reports Package

[to be attached]

Attachment 4

Multnomah County Facilities Specifications Standards Revised April 2015

[to be attached]