

AGREEMENT

**AGREEMENT FOR YAMHILL COUNTY PUBLIC WORKS VEHICLE WASHING STATION
RENOVATION PROJECT
(Yamhill County and Haworth, Inc.)**

THIS AGREEMENT ("Agreement") is made effective the last date set forth adjacent to the signatures of the parties below between **Yamhill County**, a political subdivision of the State of Oregon (referred to as "Owner" in this Agreement) and **Haworth, Inc.**, an Oregon corporation, located at 13500 SW Highway 99W, McMinnville, Oregon 97128, referred to as "Contractor" in this Agreement) for the project known as Yamhill County Public Works Vehicle Washing Station Renovation Project for which proposals were opened on March 20, 2014 (referred to in this Agreement as the "Project").

STATEMENT OF PURPOSE AND IDENTIFICATION OF CONTRACT DOCUMENTS

A. Owner has budgeted funds to perform the Project. Owner conducted a competitive request for proposal process to select the most responsive and responsible proposer to complete the Project. Contractor was selected as the most responsive and responsible proposer. This Agreement is made to specify the mutual obligations of Owner and Contractor for completion of the Project.

B. This Agreement includes by reference the following Contract Documents that are part of the Project:

- (A) Specifications and Request for Proposals, February 19, 2014
- (B) Special Provisions, if any
- (C) Request for Proposal Schedules and Signature Page (attached)
- (D) Bid Bond
- (E) Prevailing Wage Rates effective January 1, 2014, as amended
- (F) Addenda (if any)
- (G) Performance and Payment Bond
- (H) Notice of Intent to Award
- (I) This Agreement
- (J) Agreement Amendments (if any)
- (K) Insurance Certificates
- (L) Notice to Proceed
- (M) Change Orders (if any)
- (N) Notice of Substantial Completion or Project Acceptance
- (O) Warranty Period

AGREEMENT: In consideration of the mutual covenants contained below, Owner and Contractor hereby agree as follows:

1. **Scope of work and services; filing of payment and performance bond.** The Contractor shall commence and complete the construction of the Project in strict accordance with the Contract Documents identified above. The Contractor acknowledges receipt of all Contract Documents in existence at the date it executed this Agreement. Contractor represents to Owner that Contractor has made a reasonable inspection of the Project site and is reasonably familiar with the Project site conditions that might affect Contractor's performance of the Project pursuant to this Agreement. Services provided by Contractor under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised

by members of the same profession currently practicing under similar conditions. The Contractor shall file a suitable payment and performance bond with Owner before Contractor (or any subcontractors of Contractor) commences Project work and services.

2. **Agreement performed at Contractor's expense as Independent Contractor.** The Contractor shall furnish all of the materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project as described in the Contract Documents. The Contractor is an independent contractor under this Agreement.

3. **Commencement and completion date.** The Contractor shall commence the work and services required by the Contract Documents upon Owner's issuance of a Notice to Proceed and will complete the same by no later than September 15, 2014 unless the Agreement is extended or otherwise modified by written notice or executed Change Order.

4. **Termination.** Owner may terminate this Agreement if the Contractor fails to comply with a material term of this Agreement or for any other reason considered to be in the public interest. In addition, Owner may immediately terminate this Agreement due to a lack of available funding. If this Agreement is terminated, the Owner will pay for all work and services accepted by the Supervisor, as defined in Section 16, prior to termination.

5. **Penalty for failure to meet deadline.** The parties agree that Owner has a substantial interest in the timely completion of the Project and all work and services to be performed under this Agreement in accordance with the agreed upon schedule. However, the parties agree that the damages to be anticipated from the failure of Contractor to complete this Agreement in the specified time are uncertain and difficult to establish. The parties therefore desire to liquidate Owner's damages for Contractor's failure to complete the Project and all work and services on time. The parties therefore agree that the Contractor is liable for and shall pay as liquidated damages to Owner the sum of \$474.00 (equal to Agreement Price times .005) per day for each calendar day to commence on the first calendar day after the required completion date under this Agreement and to continue after each and every calendar day until all work is satisfactorily completed as specified in the Contract Documents.

6. **Compensation.** The Contractor agrees to perform all of the work and services described in the Contract Documents and to comply with the terms therein at the rates set forth in Contractor's responsive proposal schedule for the fixed sum of \$94,818 ("Agreement Price") unless the Agreement Price is modified by executed Change Order. Payment shall be made by Owner in two separate payments following receipt and approval of an invoice detailing work completed in each separate billing by the Yamhill County Director of Public Works, or as otherwise provided in the General Conditions, subject to a 5% retainage. Upon satisfactory completion of Project tasks the Contractor shall notify the Supervisor in writing that Contractor has completed performance under this Agreement and shall request payment of applicable retained amounts. Upon receipt of written notice, Supervisor will review the Project work and services completed to date and if acceptable, Supervisor shall authorize payment of applicable retained amounts.

7. **Prevailing wages; certified statements.** The Contractor hereby certifies, and it shall be a condition of the Payment and Performance Bond, as provided by ORS 279C.800 through 279C.870, that in performing this Agreement the Contractor will pay and cause to be paid and all subcontractors will pay and cause to be paid not less than the prevailing rate of wages as of the date of the Request for Proposals, per hour, per day, and per week for and to each and every worker who may be employed in and about the performance of this Agreement. In the event the Contractor is obligated to abide by prevailing wage requirements imposed by federal

law, the Contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141 et seq). The Contractor shall file with the Owner certified statements as required under ORS279C.845 with regard to payment of prevailing wages. Pursuant to ORS 279C.845(7) until Owner receives the certified statements, Owner shall retain 25% of any amount earned by the Contractor as required by law. Owner shall pay Contractor any retained amounts under this Section within 14 days of receipt of certified statements.

8. **Incorporation of statutory provisions required for public contracts.** The Contractor certifies it will comply with all applicable Public Contract Laws to include ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and 279C.580 (3) and (4). ORS 279B.200 through 279B.240 and ORS 279C.500 through 279C.545 and ORS 279C.580(3) and (4) are incorporated into this Agreement by reference.

9. **Workers' compensation.** The Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all of their subject workers.

10. **BOLI fee.** In accordance with ORS 279C.825, as amended in 2009, the Owner shall pay a fee to the Bureau of Labor and Industries (BOLI), Wage and Hour Division, Room 1160, Prevailing Wage Unit, 800 NE Oregon Street, #32, Portland, Oregon 97232. The fee is an amount equal to one-tenth of one percent (0.1 percent) of the Agreement Price, with a minimum fee of \$250.00 and a maximum fee of \$7,500.00. The fee shall be paid at the time Owner enters into this Agreement. The fee shall be paid in accordance with the administrative rules of BOLI.

11. **Certification of compliance with laws.** The Contractor certifies, under penalty of perjury, that Contractor is not in violation of any federal, state or local tax laws, rules or regulations or any federal, state or local laws, rules, codes or regulations applicable to the Project and that Contractor will remain in compliance with all such laws, codes, rules and regulations during the entire term of this Agreement.

12. **Certification of reading and understanding of documents.** The Contractor certifies that it has read and fully understands all Contract Documents including Solicitation Documents and terms and conditions. The Contractor understands and acknowledges that in signing this Agreement the Contractor waives all rights to plead any misunderstandings regarding the same.

13. **Payment.** The Owner agrees to pay the Contractor in the manner and at such times as set forth in the General Conditions such amounts as required by the Agreement, unless otherwise modified by written notice or executed Change Order.

14. **Warranty Period.** Where the warranty period is not otherwise stated in the General Conditions, the warranty period is 365 days commencing upon the date Project Acceptance is issued by Owner.

15. **Public Works Bond.** Before commencing work on the Project, the Contractor shall have a public works bond as described in ORS 279C.836 filed with the Construction Contractors Board. Contractor shall include a provision in any subcontract for the Project that the subcontractor shall also have a public works bond filed with the Construction Contractors Board before commencing work on the Project.

16. **Status of the Project Supervisor.** Russ Heath, Fleet Manager, is the Project Supervisor (the "Supervisor"). The Supervisor or his designee shall perform technical inspections of work and services and shall have authority to stop the work or services whenever such stoppage is necessary to insure proper execution of the Agreement. The Supervisor or his designee may reject all work and materials that do not conform to the Agreement and shall decide questions that arise in the execution of the Project work or services. The Supervisor has authority to reject or accept the Project work or services.

17. **Prohibition of Discrimination.** In hiring employees for performance of work under this Agreement neither Contractor, any subcontractor nor any other person acting on their behalf shall by reason of race, religion, age, color, creed, physical handicap or sex discriminate against a person who is qualified and available to perform work or services to which employment relates.

18. **Risk of Loss.** The risk of loss or damage to the subject matter of this Agreement arising from any cause whatsoever, including acts of God, shall be upon the Contractor until such time as the Owner has accepted the work and services as provided in this Agreement.

19. **Indemnification.** Contractor shall indemnify, defend and save harmless Owner from and against any suits, actions, legal or administrative proceedings, demands, claims, liabilities, fines, penalties, losses, injuries, damages, expenses or costs, including interest and attorney fees, in any way connected with any injury to any person or damage to any property occasioned in any way by Contractor's or Contractor's subcontractors' prosecution of work or services under this Agreement.

20. **Insurance.** Contractor, at its expense, shall obtain the following insurance coverage and keep them in effect during the entire term of this Agreement:

1. Workers Compensation Insurance in compliance with statutory requirements;
2. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) on an occurrence basis, with not less than \$1,000,000 per occurrence for bodily injury and property damage liability, with an annual aggregate limit of \$2,000,000;
3. Professional Liability Insurance, including Errors and Omissions coverage, with a per occurrence and aggregate limit of not less than \$1,000,000, to protect against all loss suffered by Owner or third parties, including financial and consequential loss, caused by error, omission, or negligent acts related to the Project work or services provided under the Agreement.
4. Commercial Automobile Liability Insurance, with a combined single limit, or the equivalent of not less than \$1,000,000 per occurrence, for bodily injury and property damage with respect to Contractor's vehicles, whether owned, hired, or non-owned, assigned to, or used by Contractor in connection with the services provided under the Agreement;

The required insurance coverages shall be (i) with insurance companies admitted to do business in the state of Oregon and rated A or better by Best's Insurance Rating, and (ii) acceptable to Owner. Evidence of such insurance will be furnished to Owner before commencing Project work or services. The certificates of insurance shall indicate (a) the types of insurance coverage, (b) the identity of all persons or entities covered, (c) the amounts of

insurance coverage, and (d) the period of insurance coverage. Any required insurance coverage shall provide that it may not be canceled except after at least 30 days written notice to Owner.

The Commercial General Liability and Commercial Automobile Liability shall (i) name Owner, its directors, officers, and employees, as additional insureds, (ii) provide that it is primary insurance with respect to the interests of Owner and that any insurance maintained by Owner is excess and not contributory, and (iii) include a cross-liability and severability of interest clause and a waiver of subrogation clause.

21. **Nonwaiver.** No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of Owner to enforce at any time any of the terms of this Agreement, or to exercise any option which is provided, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of any part of this Agreement, or the right of Owner to thereafter enforce each and every provision.

22. **Contractor's Representation.** Contractor, by entering into this Agreement, represents that its proposal for this Project is made without connection with any person, firm or corporation making or refraining from making a proposal for the same or similar project and was in all respects fair and without collusion or fraud.

23. **Severability.** If any clause or section of this Agreement is declared by a court of competent jurisdiction to be void or voidable, the remainder of this Agreement shall remain in full force and effect.

24. **Dispute resolution through mediation and arbitration.** Any dispute between the parties to this Agreement shall be resolved according to the following process:

(a) The parties first shall submit to mediation of the dispute to be conducted by a mutually acceptable mediator. If the parties cannot agree on a mediator, they shall request a mediator to be appointed by the U.S. Mediation and Arbitration service in Portland, Oregon. The mediator's charges and expenses shall be borne equally by the parties. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

(b) If the dispute is not resolved in mediation, the parties shall then submit the dispute to binding arbitration. Arbitration shall be conducted in accordance with the rules set forth in the Oregon International Commercial Arbitration and Conciliation Act, ORS 36.450 to 36.558, 2007 replacement part. The decision of the arbitrator shall be final and binding on the parties. The party that does not prevail, as determined by the arbitrator, shall pay the arbitrator's fees and expenses in arbitration. All other expenses, including attorney fees and costs, shall be borne exclusively by the party requiring the service or for which payment is to be made.

25. **Attorney fees and costs.** Except as provided in Section 24(b), in the event that either party to this Agreement shall take any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, each party shall be wholly responsible for its own expenses which it may incur in taking such action, including costs and attorney fees, whether incurred in a suit or action or appeal from a judgment or decree therein or in connection with any non-judicial action.

26. **Applicable laws.** This Agreement is executed in the State of Oregon and is subject to Oregon law and jurisdiction in Yamhill County.

27. **Subcontractors bound.** Contractor covenants and agrees to bind any and all Subcontractor(s) for performance of work under this Agreement. Any reference to Contractor shall include any and all Subcontractor(s) ad infinitum.

28. **Written changes required.** The rights and duties under this Agreement shall not be modified, delegated, transferred, or assigned, except upon written signed consent of both parties.

29. **Successors bound.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

THIS AGREEMENT AND THE CONTRACT DOCUMENTS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN, REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE OR SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed on the date indicated by their duly authorized officials, this Agreement in duplicate, each of which shall be deemed an original on the date executed by all parties.

HAWORTH INC.


Vince Haworth, President

Date: June 9, 2014

Federal EIN #93-1078712

Contractor
Registration No: 82433

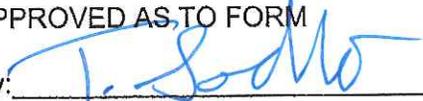
YAMHILL COUNTY, OREGON


Chair

Date: 6-19-14


John F. Phelan, Director
Department of Public Works
Date: 7/1/14

APPROVED AS TO FORM

By: 
Timothy S. Sadlo
Senior Assistant County Counsel

Accepted by Yamhill County
Board of Commissioners on
6/19/14 by Board Order
14-323

Section 7: Fee - This section shall list the Guaranteed Maximum Price lump sum fee to provide the proposed services. Please detail fee schedule by per project component identified in section 4.4. (Note: provide this information in a separate enclosed sealed enveloped marked "Fee Proposal".)

3.3 PROPOSAL RESPONSE FORM

Submitted by: Haworth Inc.
Address: 13500 SW Hwy 99W McMinnville OR 97128
Date: 3/20/2014 Phone number: 503-472-2452

The undersigned, through the formal submittal of this proposal response, declares that he or she has examined all related proposal documents and read the instruction and conditions, and hereby proposes to furnish proposals for providing:

**Yamhill County RFP
Public Works Vehicle Washing Station Renovation
YAMHILL COUNTY, OREGON**

as specified, in accordance with the proposal documents herein.

The Proposer, by his signature below, hereby represents as follows:

- (a) No officer or employee of Yamhill County is personally interested directly or indirectly in this proposal or the compensation to be paid hereunder, and no representation, statement or statements, oral or in writing, of the County, its Commissioners, officers, agents, or employees induced the proposer to make this proposal;
- (b) This proposal is made without connection with any person, firm or corporation making a proposal for the same project, and is in all respects, fair and without collusion or fraud;
- (c) The proposer agrees to accept as full payment for the services specified herein, the amount as shown in his or her proposal as the guaranteed maximum price; and
- (d) Vendors will use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

Resident Proposer, as defined in ORS 279A.120

Non-Resident Proposer, Resident State: _____

The names of the principal officers of the corporation submitting this proposal, or of the partnership, or of all

HAWORTH INC.

Commercial & Industrial General Contractor

March 20th 2014

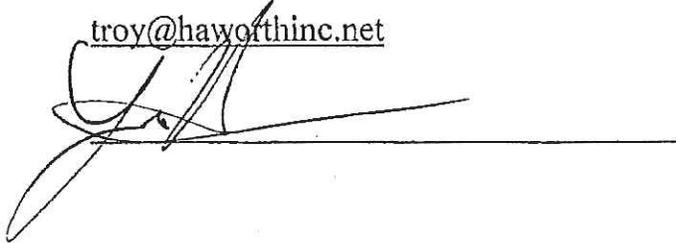
Company Info:

Haworth Inc.
13500 SW Hwy 99W
McMinnville, OR 97128

Federal EIN #93-1078712
CCB# 82433

Contractors Representative:

Troy Haworth - Supervisor
13500 SW Hwy 99W
McMinnville, OR 97128
503-472-2452 Ph.
503-472-8478 Fax
troy@haworthinc.net



Public Works Vehicle Washing Station Renovation

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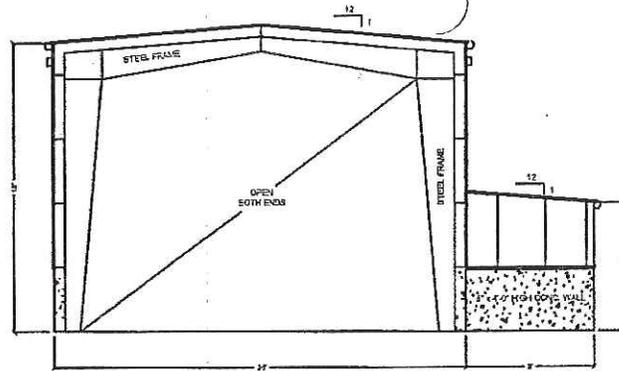
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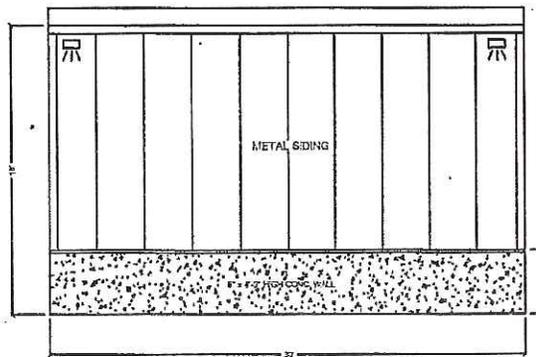
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- | | |
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|------------------------------|--|



SOUTH ELEVATION
SCALE: 1/4" = 1'-0"



WEST ELEVATION
SCALE: 1/4" = 1'-0"

HAWORTH INC.
EQUIPMENT LIST

JLG 3246 SISSOR LIFT
GENI 3246 SISSOR LIFT
JLG 45' MAN LIFT
CAT TH63 FORK LIFT
CAT 315 DL EXCAVATOR
CAT 325 DL EXCAVATOR
CAT 277 SKID STEER
CAT 279 SKID STEER
CAT D4G DOZER
CAT 14G ROAD GRADER
CAT 416 IT BACKHOE
CAT 304 CCR MINI EXCAVATOR
(1) 4 AXLE KENWORTH 12 YD DUMP TRUCK
(1) 3 AXLE KENWORTH DUMP TRUCK
(5) EQUIPMENT TRAILERS
(10) WORK TRUCKS

Services Proposed

Haworth Inc. proposes the following Scope of Work as listed in the Items below:

- 1) Disconnect power to existing Equipment Building. (MW&L to remove rental lights & poles)
- 2) Demo existing Car Wash, Concrete Slab and Trench Drain
- 3) Demo existing Equipment Building
- 4) Excavate and prep site for new 26' x 30' Structure.
- 5) Install new Utility Vault 576 Basin with 4 section steel grated top.
- 6) Install new Sanitary Sewer line from new 576 Basin to existing Oil/Water Separator and all associated piping.
- 7) Pour new footings and concrete slab for new 26' x 30' steel wash structure and new Equipment Room.
- 8) Provide a new 26' x 30' Steel Structure with 18' eave height and attached Equipment Room as per drawings submitted.
- 9) Building and Equipment Room to have 4' high and 8" thick poured concrete walls.
- 10) Provide (4) LED light fixtures inside building and (4) LED Floods on exterior of building.
- 11) Provide new underground electrical service to Building and Equipment Room.
- 12) We propose to relocate the new building as per drawings submitted due to possible turning radius conflicts and congestion with existing Card Lock.
- 13) Also in our Proposal we are moving the power underground to prevent any overhead conflicts that may occur.
- 14) We have chosen the Utility Vault 576 Basin with 4 - section Grate to allow collection of sediment and the settling of suspended solids in the water. Without this retention time and trap basin system the 4" line to the Oil/Water Separator the Separator will become plugged and fail quickly. I also believe the McMinnville Waste Water Treatment Facility will require some type of Trap Style Basin in the Wash Rack Facility.

[see also, attached May 16, 2014
e-mail for added materials/labor]

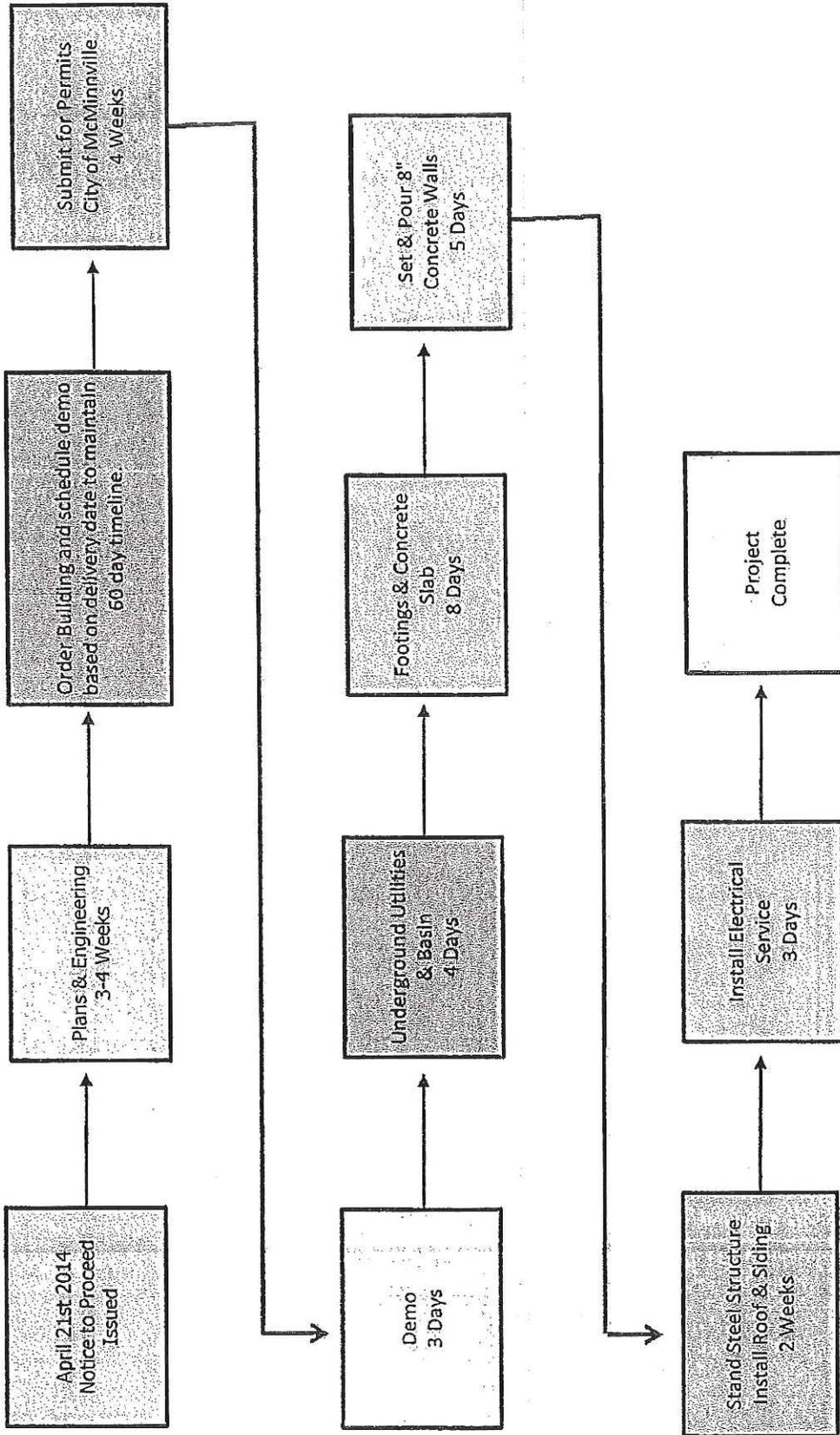
SUB CONTRACTOR LIST

Haworth Inc. self performs most all phases of construction. The following is a list of items we will be performing and the items we will be subcontracting out and the subcontractors information.

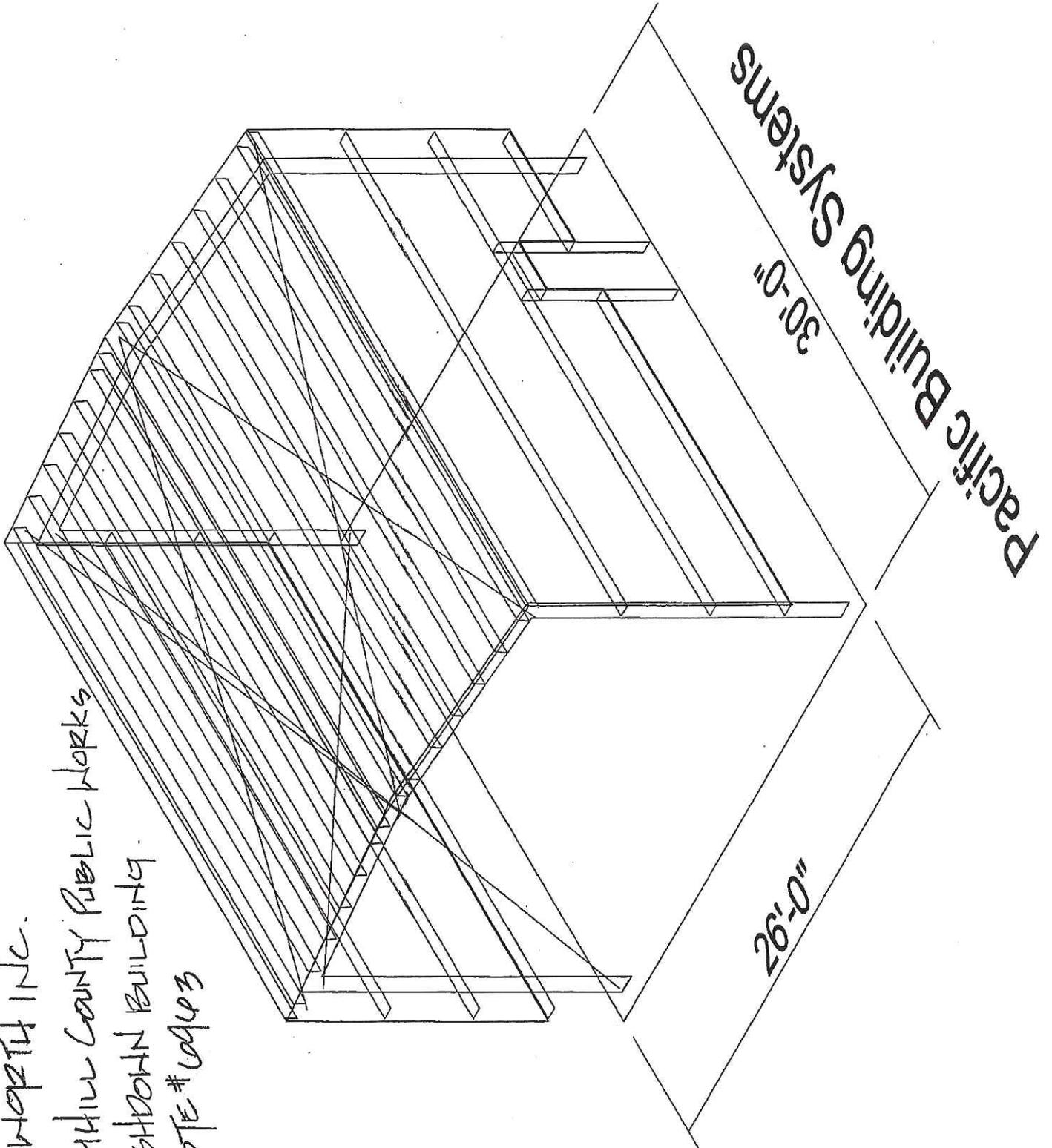
- 1) Demo – Haworth Inc.
- 2) Underground Utilities – Haworth Inc.
- 3) Site Excavation – Haworth Inc.
- 4) Concrete Footings & Slab – Haworth Inc.
- 5) Structural Steel erection – Haworth Inc.
- 6) Metal Roof & Siding – Haworth Inc.
- 7) Gutters & Downs – Haworth Inc.
- 8) Equipment Installation – Haworth Inc.
- 9) Electrical – Farnham Electric - 1050 NE Lafayette Ave. McMinnville 503-472-2186
- 10) Plumbing – Gormley Plumbing – 1715 NE Lafayette Ave. McMinnville 503-472-4101

PUBLIC WORKS VEHICLE WASH STATION

FLOW CHART - SECTION 3



HANWORTH INC.
YAMHILL COUNTY PUBLIC WORKS
WASHINGTON BUILDING
QUOTE # 04043



TENTATIVE PROJECT SCHEDULE

**YAMHILL COUNTY PUBLIC WORKS
VEHICLE WASHING STATION RENOVATION**

	NOTICE TO PROCEED
6/9/2014 - 6/23/2014	PLANS & ENGINEERING
06/23/14 - 7/14/2014	PERMITS
07/14/14 - 7/17/2014	DEMO
07/17/14 - 7/22/2014	UNDERGROUND UTILITIES
07/23/14 - 7/30/2014	FOORTINGS & SLAB
07/31/14 - 8/8/2014	POUR WALLS
08/11/14 - 8/20/2014	STEEL BUILDING
08/19/14 - 8/25/2014	ELECTRICAL
8/29/2014	JOB COMPLETE

