

# WEST CAMPUS ELECTRICAL INFRASTRUCTURE PROJECT

## Portland State University Request for Qualifications

### ELECTRICAL CONSULTING SERVICES



Portland State  
UNIVERSITY

Portland State University  
Facilities and Planning  
617 SW Montgomery Street, Suite 202  
PO Box 751  
Portland Oregon 97207-0751  
**June 26, 2012**

**WEST CAMPUS ELECTRICAL INFRASTRUCTURE PROJECT  
Portland State University**

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## SECTION 1 – ADMINISTRATIVE INFORMATION

### 1.01 INTRODUCTION

Portland State University (alternatively referred to as “Owner” or “PSU”) requests consultant qualifications to secure electrical consulting services for the West Campus Electrical Infrastructure Project (the “Project”). The Project is on the University campus in Portland, Oregon.

The RFQ and selection process is set forth in the Oregon University System (“OUS”) Oregon Administrative Rules for Construction Related Services 580-063-0025 and Chapter 580 Division 061.

The Owner reserves the right to reject any and all qualifications that do not comply with the policies related to this form of procurement and to negotiate terms and conditions of the Supplement, which are in the best interest of the state. The maximum fee for services shall be inclusive of all costs associated with the commissioning of the project, inclusive of consultant's reimbursable expenses.

Portland State University is a thriving and vibrant urban campus that serves approximately 25,000 students and 5,000 faculty and staff. Additionally, thousands of guests and community members utilize PSU year round. The 49-acre campus now includes over 50 buildings (a number that continues to grow) and provides the physical context for all University programs and activities.

PSU is the owner operator of a 12.47 KV electrical distribution loop that serves the following twelve buildings on the “west” campus. SRTC; Science Building -1 ; Cramer Hall; West Heating Plant; Neuberger Hall; Parking Structure-2; Parking Structure-1; University Services Building; Smith Memorial Center; Library East; Lincoln Hall; Extended Studies; Peter Stott Center; Millar Library; Research Greenhouse.

Most of the original switch gear and cabling is obsolete and in need of servicing and a complete condition assessment and repair. This effort will be broken out in 4 phases:

**Phase I** of the project (this RFQ) is to provide a distribution level West Campus one-line diagram and additional construction documents in order to create a testing protocol assessing the condition of the existing West Campus electrical infrastructure. Consultant shall assist PSU in creation of RFP for electrical testing services and assist PSU in estimating the costs of the associated testing. Consultant shall provide arc flash studies for each building on campus, as well as construction documents and support services for the installation of an emergency generator in the West Heating Plant. The anticipated completion date for Phase I is January 31, 2013.

**Phase II** of the project is for the electrical contractor awarded the project as a result of the RFP created in Phase I to perform testing on existing West Campus electrical infrastructure. Contractor is to report and recommend any upgrades to the existing system. Consultant shall provide construction support during this testing phase. The anticipated completion date for Phase II is February 15, 2013 with the major shut downs occurring during campus closure in December 2012.

**Phase III** of the project is based upon Phase II electrical testing results and PSU needs. The Electrical consultant is to create construction documents to provide necessary upgrades to the West Campus electrical system. Awarded consultant shall assist PSU in creation of RFP for construction services and assist PSU in estimating the costs of the associated construction. Consultant is to provide commissioning and construction support. The anticipated completion date for Phase III is July 1, 2013.

**Phase IV** of the project, the awarded electrical contractor shall construct needed West Campus electrical distribution upgrades. The anticipated completion for Phase IV is March 15, 2014 with the major shut downs occurring during campus closure in December 2013.

## **1.02 SCOPE OF PROJECT**

### PHASE I SERVICES:

#### General:

- A. All electrical shut downs are to be coordinated with PSU facilities.
- B. Consultant shall hire a qualified licensed electrician as a sub-consultant in order to assist in accessing electrical infrastructure.
- C. Consultant to provide cost estimating services either through their firm or via sub-consultant. Cost estimator shall help team budget for phase II of the project.
- D. Anticipated completion date for all tasks associated with Phase I Services shall be January 31, 2013.

#### Task 1:

- A. Complete a West Campus one-line diagram. Consultant to work with PSU in gathering existing as-built drawings and to create new drawings as needed when as-builts are not present. One line diagram shall not go into building level detail.
- B. Consultant is to provide a cabling diagram and their original performance characteristics and specifications.
- C. Consultant is to identify the main switchgear in each of our building's West Campus electrical system and their original performance characteristics and specifications.

#### Task 2:

- A. Consultant to specify a testing procedure which will assess the West Campus electrical infrastructure. Testing parameters includes performance, reliability and current code conformance. Consultant to provide additional parameters and documentation as needed.

#### Task 3:

- A. Consultant to assist PSU for the creation of an RFQ for Phase II of the project

#### Task 4:

- A. Consultant to provide a campus wide arc flash analysis for all campus buildings shown in appendix 4.02.

#### Task 5:

- A. Consultant to provide construction documents for the installation of an emergency generator for the campus West Heating Plant. Include construction support services.

Optional Services for Phases II through IV:

Via amendment to this contract consultant to provide additional consulting services for phases II, III and IV.

### **1.03 RESPONSE DATE**

To be considered for selection, Qualifications must arrive at Portland State University Facilities and Planning by **3:00 PM local time, July 10, 2012**. Proposers who mail packages should allow ample delivery time to ensure timely arrival. The address of Facilities and Planning is:

FOR DELIVERY:

Contracts Staff  
PSU Facilities and Planning  
617 SW Montgomery, Room 202  
Portland OR 97201

FOR MAIL: (Not Recommended)

Contracts Staff  
PSU Facilities and Planning  
PO Box 751  
Mail Stop FAP  
Portland OR 97207-0751

All questions and contact with PSU regarding this RFQ must be addressed in writing to:

Contracts Department  
PSU Facilities and Planning  
PO Box 751Portland, OR 97207-0751  
**fapcontracts@pdx.edu**

All questions must be received no later than **July 3, 2012, 5:00 pm local time**. All questions received, if any, will be addressed though release of an addenda no later than **July 5, 2012, 5:00 pm local time**.

Proposers selected may be requested to provide additional information, either informally or via interview process, to clarify their qualifications and to ensure mutual understanding of the scope of the work requirements and schedule.

### **1.04 SELECTION PROCEDURE AND TIMETABLE**

The selection procedure is intended to evaluate the capabilities of interested consulting firms to provide construction audit services to PSU for the Project. The Selection Committee will numerically evaluate the responses to the RFQ. On the basis of this evaluation, the highest scoring firms will be selected for final consideration through interviews and further investigation of references.

**Anticipated timetable is as follows:**

June 26, 2012	Advertisement of Request for Qualifications
<b>June 29, 2012, 1:00 pm Local Time</b>	<b>Non-Mandatory Meeting</b> <b>Meet at Facilities and Planning, 617 SW Montgomery Street Suite 202, Portland</b> **Note – Parking is difficult to find at PSU, please plan your time accordingly
July 3, 2012, 5:00 pm Local Time	RFQ Deadline for Questions & Solicitation Protests
July 5, 2012	Response to Questions & Solicitation Protests
<b>July 10, 2012, 3:00 pm Local Time</b>	<b>Deadline for Receipt of Qualifications by PSU Office of Facilities</b>

The following dates are anticipated timelines for award but are not binding:

July 12, 2012	Notification of finalists
July 16, 2012	Finalist Interviews
July 18, 2012	Notification of apparent successful Proposer
July 25, 2012, 5:00 pm Local Time	RFQ Selection protest deadline
July 26, 2012	Consultant Agreement Executed
October 1, 2012	Completion of WHP Emergency Generator and electrical testing protocol.
December 31, 2012	Project Substantial Completion
January 31, 2013	Project Final Completion

**1.05 INCURRED COSTS**

PSU is not liable for any costs incurred by Proposers in the preparation and presentation of their qualifications.

**1.06 EQUAL EMPLOYMENT COMPLIANCE REQUIREMENT; SEXUAL HARASSMENT**

By submitting a proposal/qualifications package, the proposer certifies conformance to the applicable federal, state and local laws, acts, executive orders, statutes, administrative rules, regulations, ordinance and related court rulings concerning Affirmative Action toward Equal Employment Opportunities. All information and reports required by the Federal or Oregon State or local Governments, having responsibility for the enforcement of the foregoing, shall be supplied to PSU upon request for purposes of investigation to ascertain compliance with the foregoing.

PSU is committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Businesses, and PSU strongly encourages its Consultants to use these businesses in providing services and materials for PSU contracts and projects.

Pursuant to OAR 580-061-0030, by submitting a proposal, the proposer certifies that the proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

Pursuant to OAR-580-061-0040, proposers are hereby notified that the OSBHE has adopted policies applicable to consultants and contractors that prohibit sexual harassment and that proposers and their employees are required to adhere to PSU's policy prohibiting sexual harassment in their interactions with members of PSU's community.

### **1.07 ESB/MBE/WBE**

PSU is committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Business, and PSU strongly encourages its consultants to utilize these businesses in providing services and materials for PSU contracts and projects.

### **1.08 INSURANCE REQUIREMENTS**

#### **INSURANCE PROVISIONS:**

During the term of the Agreement, CONSULTANT shall maintain in full force, at its own expense, from companies licensed to do business in Oregon, insurances as noted below:

- A. **Workers Compensation** - CONSULTANT, its consultants, if any and all employers working under the Agreement and supplements hereto are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- B. **General Liability** - CONSULTANT shall obtain, at the Consultant's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverages that are satisfactory to the Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under the Contract, and is made on an occurrence basis. Combined single limit per occurrence shall not be less than **\$1,000,000 each occurrence/\$2,000,000 annual aggregate**.
- C. **Automobile Liability** - CONSULTANT shall obtain, at Consultant's expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance covering owned, non-owned and hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Architect shall provide proof of insurance to Owner of not less than the following amounts: **\$1,000,000** each occurrence.
- D. **Professional Liability** - Consultant shall provide Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its drawings and project manual, and all related work products of Consultant, as it pertains to construction audit services provided under the Contract. Professional Liability insurance to be provided shall have a combined single limit of not less than **\$1,000,000** per claim.

If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the agreement for a duration of a minimum of 6 years.

CONSULTANT will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for a minimum of 6 years following completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Agreement. This will be a condition of the Final Acceptance of Work or Services and Related Warranty, if any.

Prior to the signature by the OWNER to the Agreement, CONSULTANT shall furnish to the OWNER, Certificates of Insurance as evidence of the insurance coverages required under the Agreement. The certificate(s) shall provide that the insurance company or companies shall give a 30 calendar day notice

(without reservation) to OWNER if the insurance is canceled or changed. The certificate(s) should state specifically that the insurance is provided for the Agreement or Amendments hereto.

The Certificates of Insurance, except for Workers' Compensation and Professional Liability, shall provide that the OWNER, and its institutions, officers and employees are Additional Insureds with respect to the CONSULTANT's services to be provided under the Agreement.

## **1.09 PROTESTS**

### **1. Solicitation Questions, Requests for Clarification or Change, and Protests:**

Prospective respondents may submit questions, requests for clarification, or requests for change or protest of particular solicitation provisions and specifications and conditions, (including the terms of the sample Consultant's Agreement, Appendix 4.01 and any comments on any specifications that a firm believes limits competition) in writing to David Hobbs, Assistant Director Contracts and Compliance, by e-mail at [fapcontracts@pdx.edu](mailto:fapcontracts@pdx.edu) or by fax at 503-725-4329 or by delivery or mail to the address indicated in Section 1.03.

These must be received no later than **July 3, 2012 5:00 PM local time**. Such requests for clarification or change or protest shall include the reasons for the request and any proposed changes to the solicitation provisions and specifications and conditions.

Questions and requests for clarification and change that are timely received will be answered via addenda. Protests will be answered directly with the protesting Proposer. Any changes arising from questions, requests for change or protests will be made only via addenda to the RFQ. Responses from PSU not contained in an official addendum to the RFQ are not binding on PSU. Proposers are encouraged to check on the status of such addenda prior to submission of their Qualifications.

### **2. Selection Protest:**

Any Proposer who responds to this RFQ and claims to have been adversely affected or aggrieved by the selection of competing Proposers shall have seven calendar days after notification of selection to submit a written protest to:

David Hobbs  
Assistant Director, Contracts and Compliance  
PSU Facilities and Planning  
617 SW Montgomery, Room 202  
Portland OR 97201  
Phone: (503) 725-3738  
Fax: (503) 725-4329

The written protest must be received by 5:00 PM local time on the seventh calendar day after notification of selection.

Protests will be answered directly with the protesting Proposer.

## **1.10 PUBLIC RECORDS**

PSU will keep this RFQ and one copy of each original proposal received in response to it, together with copies of all documents pertaining to the award of any contract, as part of file or record that is open to



public inspection . If a proposal contains any information that constitutes a trade secret under ORS 192.501(2), each sheet containing a trade secret must be marked with the following legend:

“This data constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies “unless the public interest requires disclosure in the particular instance.” ORS 192.501. Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law. These restrictions may not include cost or price information.

### **1.11 ADDENDA**

Although PSU encourages an open proposal process, prospective proposers need to be aware that the RFQ will be modified only by documents issued as addenda by PSU. No other direction or comments received by proposers, written or oral, will serve to change the RFQ.

**END OF SECTION 1**

## SECTION 2 - PROPOSAL REQUIREMENTS

### **2.01 GENERAL**

Submit six (6) copies of the proposal, containing the following items and providing the information as specified. Please respond to the requested information using the following same numbers and order in which the information is requested. This will allow us to easily compare the qualifications. Incomplete qualifications may not be considered. Qualifications are not to exceed 10 double-sided pages in length for a total of 20 pages. For sustainability reasons, please submit your response in loose leaf, single, unbound sets printed on recycled paper containing 100% post-consumer content. **Please Do Not Use Ring Binders and Dividers.**

#### **1. Team – 25points**

List the makeup of your team including the names and addresses of consulting design and support firms and electrical subcontractor. Briefly describe the functions and responsibilities of each team member and their experience with similar projects; creating a testing protocol in order to assess existing facility infrastructure electrical systems; facility infrastructure electrical system design and master planning; project and construction management; O&M experience. We will be looking for the experience level and background of team members and the degree to which previous experience demonstrates the ability to provide services in a professional and timely manner. Indicate who on your team will be the primary contact person for the University.

#### **2. Previous Experience – 40 points**

The Proposer must have significant experience in creating a testing protocol in order to assess existing facility infrastructure electrical systems and creating facility infrastructure electrical system designs and master planning including technical and management expertise on projects of similar scope. Provide past experiences with assessing facilities arc flash protocol and analysis. If the Proposer does not have sufficient expertise, it may subcontract with a qualified entity to do so. In such case, each anticipated subcontractor, together with its qualifications and area of expertise, shall be included and clearly designated in Proposer's Proposal.

#### **3. Samples of Work Product – 20 points**

List work products that Proposer or its members have produced. List the name of the project and the core team members who actually participated in the project. Samples shall preferably include:

- a. Creating a testing protocol in order to assess existing facility infrastructure electrical systems.
- b. Facility infrastructure electrical system master planning.
- c. Facility infrastructure electrical system design.

#### **4. Safety & Logistical Measures Plan – 30 points**

Conducting the activities contemplated in this RFQ will require carefully coordinated work, exercising the utmost in safety precautions. The proposer shall submit a plan for review, detailing the safety and logistical plan to be utilized.

#### **5. MWESB Participation Plan – 15 points**

PSU is committed to increasing opportunities for Emerging Small Businesses and Minority and Women Owned Businesses.

Include a Management Plan for the project as follows: Include your firms plan to increase the diversity of a business' workforce and to subcontract with or purchase from Historically Underrepresented Businesses. The Management Plan may include your firms' nondiscrimination practices, subcontracting strategy, workforce diversity plan, and outreach plan to increase participation by Historically Underrepresented Businesses.

Provide examples of your firms past performance in regards to workforce diversity and subcontracting plans.

The Management Plan, except for any percentage goals to utilize Historically Underrepresented Businesses, shall become part of the Contract.

**6. Optional Interview – 25 points**

Interviews may be conducted to allow the proposer to expand on each of the above categories.

**7. References – 15 points**

References will only be asked for from those proposers who are invited to interview.

**END OF SECTION 2**

### **SECTION 3 - EVALUATION AND SELECTION PROCESS**

#### **3.01 SELECTION COMMITTEE**

Qualifications will be evaluated by a committee. Selection Committee members will not be announced.

#### **3.02 EVALUATION CRITERIA**

The Selection Committee will evaluate each applicant's qualifications, background and experience to determine if, in the judgment of the Committee, the organization is adequately qualified to perform the Work.

The evaluation criteria to be used in the evaluation process are:

<b><u>ITEM</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>POINTS</u></b>
1.	Team	25 points
2.	Previous Experience	40 points
3.	Samples of Work Products	20 points
4.	Safety & Logistical Measures Plan	30 points
5.	MWESB Participation Plan	15 points
<b>Point Total</b>		<b>130 points</b>
6.	Optional Interview	25 points
7.	References	15 points
<b>Point Total (Non-Cumulative)</b>		<b>40 points</b>

#### **3.03 SELECTION PROCESS**

The proposal packages will be evaluated as follows:

- A. Review for inclusion of all elements specified in Proposal Requirements Section 2. Any qualifications which do not include all required elements may be rejected.
- B. Total point ratings will be assigned to the proposal packages using the criteria specified in Section 2.01.
- C. At the owners sole discretion a number of proposers who receive the highest point totals may be invited to give a presentation and interview with the Selection Committee and provide a list of references.
- D. If interviews are conducted, they will be scored on a point basis with 25 points maximum available for the interview plus 15 points for reference checks. These points are not cumulative with the points in the proposal evaluation.
- E. The proposer who receives the highest point total based on the proposal or if interviews and reference checks are conducted the firm with the highest point total after the presentation, interview and reference check will be issued a Notice of Intent to Award.

**END OF SECTION 3**

**APPENDICES**



## Appendix 4.01 Sample Consultant Agreement

various documents required under this Agreement are completely free of all minor human errors and omissions, it shall be the responsibility of Consultant throughout the period of performance under this Agreement to use due care and perform with professional competence. Consultant will, at no additional cost to Owner, correct any and all errors and omissions in the drawings, specifications, and other documents prepared by Consultant. Consultant further agrees to render assistance to Owner in resolving other problems relating to the design of or specified materials used in the Project;

- D. The Owner's acceptance of survey shall not be deemed as approval of the adequacy of the drawings, documents, plans or specifications. Any review or acceptance by the Owner will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein. The Consultant is responsible for all design services under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, in judgment relative to the services.

### III. COMPENSATION

The Owner agrees to compensate the Consultant for professional services and to reimburse for related direct expenses (the "Reimbursable Expenses") on a "**time and materials**", including sub-consultants, for Services in accordance with the provisions below:

#### REIMBURSABLE EXPENSES:

Reimbursable expenses for the project include actual expenditures made by the Consultant and Consultant's consultants, and will be reimbursed at cost, except travel expenses. **Charges for travel expenses and parking will NOT be reimbursed.**

Printing, photography, long distance  
telephone charges and other direct expenses At cost

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures. Consultant will be responsible for any parking expenses.

The MAXIMUM not to exceed COMPENSATION amount is  
\_\_\_\_\_ (\$ \_\_\_\_\_) unless an executed supplement to this  
Agreement is added to the scope.

### IV. TIME OF PERFORMANCE

This Agreement shall take effect when signed by both parties hereto. The work will be completed by \_\_\_\_\_.

### V. FEE PAYMENTS

Monthly progress payments shall be made upon presentation to the institution at the following address of three copies of the Consultant's invoice, with required documentation,

## Appendix 4.01 Sample Consultant Agreement

for professional services rendered and/or direct expenses incurred during the preceding month:

Facilities and Planning  
Portland State University  
PO Box 751  
Portland, OR 97207-0751

Payment requests shall be submitted in the form and format stipulated by the Owner.

### **VI. CONSULTANT'S RESPONSIBILITIES IN REGARD TO HAZARDOUS MATERIALS**

It is envisioned that this project will not involve the removal of and destruction of asbestos, asbestos-related or other hazardous materials. It is understood and agreed that the Owner will contract separately for the identification and removal of hazardous materials, either prior to the commencement of this project or at such time as such hazardous substances are detected. It is understood and agreed that the Consultant shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner and/or professional consultant and/or the contractor and/or subcontractor which the Owner selects relating to the abatement of asbestos, asbestos-related or other hazardous materials.

### **VII. ACCESSIBILITY REQUIREMENTS**

The Consultant shall ensure that the project complies with the American with Disabilities Act Accessibility Guidelines (ADAAG), latest version, and allows for access to programs, activities, and services in the most integrated setting possible. The Owner will be responsible for review of accessibility and interpretation of ADAAG for compliance with Federal requirements.

### **VIII. INSURANCE PROVISIONS**

During the term of this agreement, Consultant (Consultant) shall maintain in full force, at its own expense, from companies licensed to do business in Oregon, each insurance noted below:

- A. *Workers' Compensation* - Consultant, its consultants, if any, and all employers working under this agreement and supplements hereto are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- B. *Commercial General Liability* - Consultant shall secure Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence/\$2,000,000 annual aggregate for bodily injury and property damage. It shall include personal injury coverage and contractual liability coverage for the indemnity provided under this agreement.
- C. *Automobile Liability* - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence for bodily injury



## Appendix 4.01 Sample Consultant Agreement

and property damage, including coverage for owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance.

- D. *Professional Liability/Errors & Omissions* - Consultant will be required, under the terms of this agreement to provide the OWNER with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the project, its drawings and project manual, and all related work products of the Consultant. The policy may be either a practice based policy or a policy pertaining to the specific project. Professional Liability insurance to be provided shall have a combined single limit of not less than \$1,000,000 per claim, incidence or occurrence \$2,000,000 annual aggregate.
- E. *Tail Coverage* - If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the agreement for a duration of 24 months or the maximum time period the insurer will provide such if less than 24 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the Final Acceptance of Work or Services and Related Warranty, if any.
- F. *Certificate of Insurance* - Prior to the signature by the OWNER to this agreement, Consultant shall furnish to the appropriate University official Certificates of Insurance as evidence of the insurance coverage required under this agreement. The certificate(s) shall provide that the insurance company or companies shall give a 30 calendar day notice (without reservation) to the OWNER if the insurance is canceled or materially changed. The certificate(s) should state specifically that the insurance is provided for this agreement.
- G. *Additional Insureds* - The Certificates of Insurance, except for Workers' Compensation, shall provide that the OWNER, and its institutions, officers, and employees are Additional Insureds with respect to the Consultant's services to be provided under this agreement.

### **IX. MEDIATION**

Consultant and OWNER, in an effort to resolve any conflicts that may arise during the design or construction of the project or following the completion of the project, agree that all disputes between them arising out of or relating to this agreement or any supplements hereto, shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Consultant further agrees to include a similar provision in all agreements with sub-consultants retained for the project, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. All parties agree to exercise their best effort in good faith to resolve all disputes in mediation.

Each party will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be shared equally by all parties to the dispute.

### **X. INDEMNITY**

## Appendix 4.01 Sample Consultant Agreement

- A. Claims for Other than Professional Liability - Consultant shall save, defend, and hold harmless the OWNER (its colleges and universities, any public agencies for which work is to be performed under any supplement to this agreement, and its and their officers, agents, employees and members) from all claims, suits or actions of whatsoever nature, including intentional acts, resulting from or arising out of the activities of the Consultant and/or its consultants, partners, joint ventures, agents or employees acting under this agreement or any supplement hereto.
- B. Claims for Professional Liability - Consultant shall save, defend, and hold harmless the OWNER (its colleges and universities, any public agencies for which work is to be performed under any supplement to this agreement, and its and their officers, agents, employees and members) from all claims, suites or actions arising out of the professional negligent acts, errors or omissions of Consultant and/or its consultants, partners, joint ventures, agents or employees acting under this agreement or any supplement hereto.

### **XI. LIMITATION OF LIABILITIES**

Except for liability arising under or related to Article II, neither party shall be liable for any indirect, incidental, consequential or special damages under the contract or any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

### **XII. DEFINITION OF DIRECT CONSTRUCTION COST**

The direct construction cost herein referred to means the cost to the Owner of all divisions of construction, including portable equipment only if designed or specified by the Consultant for inclusion in the construction specifications.

### **XIII. DOCUMENTS**

The Consultant will prepare plans and specifications in accordance with generally accepted standards of professional practice for the intended use of the project.

### **XIV. SUCCESSORS AND ASSIGNS**

The Owner and the Consultant, each binds itself and themselves, their partners, successors, executors, administrators and assigns to the other party to this Agreement, and the successors, executors, administrators and assigns of such other party in respect of all covenants of this Agreement.

Except as above, neither the Owner nor the Consultant shall assign, sublet or transfer its or their interest in this Agreement without the written consent of the other.

### **XV. NO THIRD PARTY BENEFICIARIES**

Owner and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

**XVI. TERMINATION OF AGREEMENT/NON-AVAILABILITY OF FUNDS**

- A. The Owner and the Consultant, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Consultant, or the Consultant, on 30 days written notice to the Owner, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- B. Owner may terminate this Agreement, in whole or in part, immediately upon notice to Consultant, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Consultant's work;
  2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or Owner is prohibited from paying for such work from the planned funding source;
  3. Consultant no longer holds any license or certificate that is required to perform the work;
  4. Consultant commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the work as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.
- C. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available therefor and in that regard Owner represents and warrants to Consultant that this agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the project and make payments hereunder, Owner may terminate this Agreement, by notice to Consultant, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Agreement, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give Consultant notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.

## Appendix 4.01 Sample Consultant Agreement

- D. In the event of termination of the agreement: 1) the Owner shall compensate the Consultant for all services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable; and 2) the Consultant shall immediately cease all Work under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all plans, specifications, CAD drawings on diskettes, mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.

In the event of termination of this agreement, the Consultant shall be responsible to the Owner for the quality of its work product through the date of termination.

### **XVII. TAX COMPLIANCE CERTIFICATION**

By signature on this Consultant Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon tax laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

### **XVIII. DISCLOSURE OF SOCIAL SECURITY OR EMPLOYER IDENTIFICATION NUMBER**

Consultant must provide Consultant's Social Security number unless Consultant provides a federal employer identification number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

### **XIX. FOREIGN CONTRACTOR**

If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Consultant shall demonstrate its legal capacity to perform the work under this Agreement in the State of Oregon prior to entering into this Agreement.

### **XX. COMPLIANCE WITH APPLICABLE LAWS/GOVERNING LAW**

Consultant agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this Agreement. Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Consultant also shall comply with 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. Failure or neglect on the part of Consultant to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Consultant of these obligations nor of the requirements of this Agreement. Consultant further agrees to make payments promptly when due, to all persons supplying to such Consultant labor or materials for the prosecution of the work provided in this Agreement; pay all contributions or amounts due the Industrial Accident

## Appendix 4.01 Sample Consultant Agreement

Fund from such contractor incurred in the performance of this Agreement; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Consultant fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims.

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations, and will be accessible.

### **XXI. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION**

This Agreement shall be governed by and constructed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

### **XXII. EMPLOYMENT STATUS**

- A. Consultant shall perform all required work as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance, Owner cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the work.
- B. Consultant is not an officer, employee, or agent of the State or Owner as those terms are used in ORS 30.265.
- C. Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal or state taxes applicable to any compensation or payments paid to Consultant under this contract. Consultant will not be eligible for any benefits from these contract payments of federal Social Security, unemployment insurance or worker's compensation, except as a self-employed individual. If this payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

### **XXIII. ACCESS TO RECORDS**

For not less than three (3) years after contract expiration, the Owner, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Consultant which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this agreement, or any resulting construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Full access will be provided in preparation for and during litigation.

### **XXIV. SEVERABILITY**

## Appendix 4.01 Sample Consultant Agreement

The parties agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### **XXV. FORCE MAJEURE**

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the agreement.

### **XXVI. WAIVER**

The failure of the Owner to enforce any provision of this agreement shall not constitute a waiver by the Owner of that or any other provision.

### **XXVII. MERGER CLAUSE**

THIS AGREEMENT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER HEREOF. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONSULTANT AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

### **XXVIII. PREVAILING WAGE RATES**

Services under this Agreement that have been interpreted by the Oregon Bureau of Labor and Industry ("BOLI") as subject to the prevailing wage rate law, ORS 279C.800 *et seq.*, shall be compensated as following: the hourly rate specified in the consultant's Proposal for that specific Service, plus the difference between the PWR for that Service at the time a Supplement is issued and the PWR for that Service at the time that all Proposals were due. All other Services under this Agreement shall be compensated at rates specified in Consultant's Proposal.

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IN WITNESS HEREOF, the parties have duly executed this Agreement as of the date last written below.

CONSULTANT

\_\_\_\_\_

Tax ID No.: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF OREGON, ACTING BY AND THROUGH, THE STATE BOARD OF HIGHER EDUCATION, On Behalf of Portland State University, Owner

By: \_\_\_\_\_

David Hobbs

Assistant Director, Contracts & Compliance  
Facilities & Planning

Date: \_\_\_\_\_

SAMPLE