

**OUS/OHSU COLLABORATIVE LIFE SCIENCES  
BUILDING**

**Portland State University**

Request for Proposals

**Construction Audit Services**



**Portland State**  
UNIVERSITY

Portland State University  
Facilities and Planning  
617 SW Montgomery Street, Suite 202  
PO Box 751  
Portland Oregon 97207-0751  
**January 12, 2012**

**OUS/OHSU COLLABORATIVE LIFE SCIENCES BUILDING  
Portland State University**

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**SECTION 1 – ADMINISTRATIVE INFORMATION**

**1.01 INTRODUCTION**

The Oregon University System (“OUS”), Portland State University (“PSU”), Oregon State University (“OSU”) and Oregon Health & Science University (“OHSU”) are collaborating on a new Collaborative Life Sciences Center Complex (the “Center”) to be located on Unit `C` of the Schnitzer Campus, owned by OHSU, through a ground lease between OHSU and a tenancy in common consisting of the building owners.

The goal is to build a state-of-the-art, minimum LEED Gold certified health science and life science teaching and research facility. It is envisioned to be a collaborative health science and life science instructional and research center, synergistically bringing together the state’s leading public and private academic and research resources in related sciences.

The new approximate 300,000+ square foot Collaborative Life Sciences Center Complex will include lecture halls, classrooms, labs, specialty research areas, and offices for instruction in the health professions and undergraduate and graduate education involving faculty and students from multiple institutions (collectively referred to as the “Project”).

In 2009, the State Legislature approved a Project limitation of \$200,000,000. In 2011, the State legislature approved \$110,000,000 in bond funding for the Project consisting of:

<b>XI-G</b>	<b>Non-Tax XI-F</b>	<b>TEFRA XI-F</b>	<b>Taxable XI-F</b>
		\$ 28.20	
\$ 29.50	\$ 6.50		\$ 2.30
\$ 20.50	\$ 4.60		\$ 1.70
			\$ 2.00
	\$ 14.70		
<hr/>	<hr/>	<hr/>	<hr/>
\$ 50.00	\$ 25.80	\$ 28.20	\$ 6.00

( in millions of Dollars)

In addition OHSU is contributing \$40,000,000 in donor funding for the Project, and another \$20,000,000 from OHSU reserves to fund work added via Amendment 1 to preconstruction Services.

Further funding is provided via \$10,000,000 from TriMet which provides matching funds for the XI-G bonds.

**Architectural Services:**

In 2011, the Owner entered into a contract (the “Architect Agreement”) with SERA Architects of Portland Oregon to provide design and engineering services for the Project. The contract covers Pre-Design/Schematic Design Phase; Design Development Phase,

Construction Document Phase, Construction Administration Services and Post Construction Services. The initial contract value was \$7,829,535. The contract has been modified by two amendments for a revised contract value of \$8,859,008.

**Construction Contracting Services:**

In 2011, the Owner entered into a contract (the “Project CM/GC Agreement”) with JE Dunn Construction of Portland Oregon to build the Project under a construction management/general contractor (CM/GC) framework with a Guaranteed Maximum Price (GMP). Construction work has begun with early work packages related to foundations and infrastructure in September 2011. The Project is slated for Substantial Completion on or before September 13, 2013. To date, Preconstruction Services, an amendment to Preconstruction Services and five Early Work Amendments have been executed for a current contract value of \$19,926,252.00. It is currently anticipated that the GMP will be in the range of \$121,400,000 - \$123,400,000.

In 2011, the Owner entered into an Intergovernmental Agreement with Tri-County Metropolitan Transportation District of Oregon (Tri-Met) to construct Tri-Met Facilities (the “Tri-Met Facilities Project”) adjacent to the Life Sciences Collaborative Building. In April 2011, the State Board of Higher Education authorized PSU to enter into a sole source contract with Stacey/Witbeck/Mowat for the construction of the Tri-Met Facilities Project (the “Tri-Met Facilities CM/GC Agreement”). To date a CM/GC contract with a GMP of \$ 9,835,218.51 has been executed.

**Relevant information:**

Although not a part of the scope of services covered by this RFP, there are several contracts between OHSU and SERA Architects and OHSU and JE Dunn Construction to design and construct additional space funded solely by OHSU. The work of these contracts is integrated within the Project.

The Owner, on behalf of the OUS/OHSU Collaborative Building Steering Committee, is requesting proposals from qualified firms to provide audit and control advisory services related to the Project and related contracts. The OUS/OHSU Collaborative Building Steering Committee is composed of representatives from Oregon Health and Science University, Portland State University and Oregon State University.

The RFP 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 will use the RFP process to evaluate each of the Proposers’ capabilities with respect to the evaluation criteria set forth in **Section 3**. Information may be obtained from various sources including interviews, proposals submitted in response to this document, and discussions with former and present clients of the Proposers. This Request for Proposals (“RFP”) shall not commit the Oregon State Board of Higher Education (“OSBHE”), OUS, PSU, OSU or OHSU to enter into any agreement, to pay any expenses incurred in preparation of any response to this RFP, or to procure or contract for any

supplies, goods or services. PSU, OSU, OHSU, OUS and the OSBHE reserve the right without liability to OSBHE, OUS, PSU, OSU or OHSU to cancel this RFP and to reject any proposal that does not comply with this RFP or applicable administrative rules, and to reject any and all responses received as a result of this RFP upon a finding that it is in the public interest to do so.

A sample copy of the Oregon University System's current standard Consultant Agreement is attached to this RFP (Appendix 4.01). The Owner will enter into negotiations with the selected firm to determine final scope, description of services, schedule and cost and, if the negotiations are successful, will enter into an Agreement substantially similar to the attached Agreement. All Proposers' must identify in their proposal any terms and conditions that they wish to negotiate. Failure to identify those terms they wish to negotiate may result in termination of negotiation with the selected firm. Proposers need to be aware that the Owner does not intend to engage in protracted negotiations nor to entertain what in its discretion it deems to be requests for excessive, inappropriate or unnecessary changes to the attached sample Consultant Agreement. If in its sole and absolute discretion the Owner determines the requested changes are excessive, inappropriate or unnecessary, the Owner reserves the right to terminate the negotiations and enter into negotiations with another firm from among the remaining firms interviewed.

## **1.02 SCOPE OF PROJECT**

Provide construction related audit services (the "Services") of the Architect Agreement, the Project CM/GC Agreement, and the Tri-Met Facilities CM/GC Agreement consisting of:

### **Phase I Services**

- Ensure allowability and proper allocation of costs by funding type. Assess alternatives for allocation of charges
- Provide details on documentation requirements for all agreements, including applications for payment
- Assess the use of Tri-Met funds and scope of the Tri-Met Facilities Project
- Assess the allocation of construction costs for shared/common space
- Ensure tax compliance and private use issues for use of tax-exempt bond financing
- Assess JE Dunn Construction's subcontracting process under the Project CM/GC Agreement
- Assess JE Dunn Construction's MWESB participation/outreach/ etc.
- Review overall process controls and documentation (change orders/payment applications/review/approval/audit services)
- Audit scopes of work self-performed by JE Dunn

### **Phase II Services**

- Ensure proper allocation of costs by funding type.

- Assess the application of Tri-Met funds and scope of the Tri-Met Facilities Project
- Assess the allocation of construction costs for shared/common space
- Ensure tax compliance and private use issues for use of tax-exempt bond financing
- Assess JE Dunn Construction's subcontracting process under the Project CM/GC Agreement
- Assess JE Dunn's MWESB participation/outreach/ etc.
- Audit scopes of work self-performed by each CM/GC
- Assess justification and process for sole sourcing of materials under the CM/GC Agreement.
- Assess justification and documentation for reimbursable costs
- Assess whether the billing processes comply with applicable contract requirements
- Determine if expendable charges were allowable and were capitalized correctly
- Review process controls and supporting documentation allowability and completeness (change orders/payment applications/review/approval/audit services)

### **Schedule**

Phase I services shall begin immediately and are anticipated to run through March 31, 2012.

Phase II services are optional and shall be at the Owner's discretion. Phase II services shall begin upon Substantial Completion of the Project and be completed within 90 days.

### **Deliverables**

During the course of performing the Services, Consultant will be required to conduct an update meeting for relevant PSU and OUS personnel prior to leaving the site at the close of each phase of fieldwork. Additional update meetings and an exit meeting will be required, but timing, frequency and location will be negotiated over the course of performance of the Services.

Consultant will be required to prepare a comprehensive management report at the completion of each phase which shall:

1. Include an executive summary of findings, impact, recommendations and best practices. This summary shall be limited to three pages in length and include sufficient information to serve as a standalone document. Tabular format would be acceptable.
2. Address the results of the contract compliance audits for the Project, and identify any cost exceptions. Appropriate supporting documentation should also be included as appendices to the report.
3. Provide observations on adequacy of internal controls and construction administration processes and identify opportunities for improvement. The recommendations should include, but not be limited to, identifying potential

contract control deficiencies, potential overcharge exposure on future contract billings, and control improvement recommendations.

**1.03 RESPONSE DATE**

To be considered for selection, Proposals must arrive at Portland State University Facilities and Planning by **3:00 PM local time, January 31, 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

Proposers selected may be requested to provide additional information, either informally or via interview process, to clarify their proposals 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 RFP. On the basis of this evaluation, the highest scoring firms will be selected for final consideration through interviews and further investigation of references.

**RFP schedule is as follows:**

<b>January 12, 2012</b>	<b>Advertisement of Request for Proposals</b>
<b>January 19, 2012 @ 5:00 pm</b>	<b>Solicitation Protest/Applicant questions due</b>
<b>January 31, 2012 @ 3:00 pm</b>	<b>Proposals Due</b>

**1.05 INCURRED COSTS**

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

### **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 **\$1,700,000 each occurrence/\$3,400,000 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: **\$1,700,000** 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 **\$1,700,000** 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 **January 19, 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 RFP. Responses from PSU not contained in an official addendum to the RFP are not binding on PSU. Proposers are encouraged to check on the status of such addenda prior to submission of their Proposals.

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

Any Proposer who responds to this RFP 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 RFP 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 RFP 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 RFP.

### **1.12 COOPERATIVE PURCHASING**

All Oregon University System (OUS) institutions and other public education agencies or institutions, including but not limited to OHSU, may utilize any contract(s) awarded as a result of this Request for Proposal. The OUS institutions, OHSU and other public agencies shall be individually responsible for their obligations to the awarded vendor(s). Likewise, the vendors shall be responsible to the OUS institution, OHSU and other public agencies for their obligations to the OUS institutions, OHSU and other public agencies pursuant to any ensuing contract(s). Any such purchases shall be between the vendor and the participating OUS institution, OHSU or other public agency and shall not impact the vendor’s obligation to PSU. Portland State University makes no representation or guarantee as to the volume of such additional purchases. It is currently intended that PSU will be entering into a contract with the apparent successful respondent to this RFP.

## **END OF SECTION 1**

## **SECTION 2 - PROPOSAL REQUIREMENTS**

### **2.01 GENERAL**

Submit eight (8) 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 proposals. Incomplete proposals may not be considered. Proposals are not to exceed 30 double-sided pages in length. 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. Audit Team - 30 points**

List the composition of your audit team, including the names and addresses of consulting and support firms, on-site personnel, and audit management staff. Describe the functions and responsibilities of each team member and their experience with similar projects. 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 the services in a professional and timely manner. Indicate who in your team will be the primary contact person for the Owner.

**2. Previous Experience – 30 points**

Provide descriptions of recent construction auditing services, including details of the scope of audit services, client relationships, construction delivery method (i.e., CM/GC, design-bid-build, etc.) and relevance to this project. Discuss the outcomes of the audits.

Outline your team's experience with Oregon University System contracting rules (or other Higher Education systems) and contracts.

**3. Overall Quality of the submittal – 10 points**

Scoring will be based on overall quality of the proposal and compliance with the requirements of the RFP

**4. MWESB Management Plan –10 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.

**5. References - 0 points**

List four clients for whom you have provided similar services in the past four years. These references should have had direct contact with the primary staff proposed on this project. Give a brief scope of work for each project. Provide the contact person's name and current telephone number.

**6. Insurance – 0 points**

Proof of insurance coverage, including Professional Liability Insurance as required by Section 1.08 and shall be provided with the proposal.

**7. Construction Audit Fees – 30 Points**

Provide Consultant Fees for the project by phase broken down by staff member and estimated hours. Additional breakdown of control advisory services and compliance audit services beyond the scope described above would be beneficial. PLEASE NOTE TRAVEL EXPENSES WILL NOT BE ALLOWED. Provide a complete rate schedule for the Consultant Team and all subconsultants. These rates shall be locked for the duration of the project.

**END OF SECTION 2**

**SECTION 3 - EVALUATION AND SELECTION PROCESS**

**3.01 SELECTION COMMITTEE**

Proposals will be evaluated by a committee appointed by the Collaborative Life Sciences Building Steering Committee. Selection Committee members will not be announced prior to interviews.

**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>Criteria</u></b>	<b><u>Points</u></b>
1.	Audit Team	30 points
2.	Previous Experience	30 points
3.	Overall Quality of the Proposal	10 points
4.	MWESB Management Plan	10 points
5.	References	0 points
6.	Insurance	0 points
7.	Construction Audit Fees	30 Points
<b>Total Possible Points</b>		<b>110 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 proposals 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 3.02.
- C. The proposers submitting the proposals who receive the highest point totals may be invited to give a presentation and interview with the Selection Committee.
- 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 by the Selection Committee including but not limited to the references included in the proposal. 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 are conducted the firm with the highest point total after the presentation and interview will be issued a Notice of Intent to Award.

**END OF SECTION 3**

## **APPENDICES**





Appendix 4.01 Sample Consultant Agreement

- B. While Consultant cannot guarantee that the 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 documents prepared by Consultant.
- C. 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.

**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**" or on a "**fixed fee**" basis, 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 must include documentation of actual expenditures.

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

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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. RESERVED**

### **VII. RESERVED**

### **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 \$1,700,000 each occurrence/\$3,400,000 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 \$1,700,000 each occurrence for bodily injury 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 \$1,700,000 per claim, incidence or occurrence \$3,400,000 annual aggregate.

## Appendix 4.01 Sample Consultant Agreement

- 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**

- 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,

## Appendix 4.01 Sample Consultant Agreement

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. RESERVED**

### **XIII. DOCUMENTS**

The Consultant will prepare documents 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

## Appendix 4.01 Sample Consultant Agreement

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.

- 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 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.

## Appendix 4.01 Sample Consultant Agreement

- 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**

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**



Appendix 4.01 Sample Consultant Agreement

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.

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: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF WORK**

SAMPLE