

**RETAINER CONTRACT SUPPLEMENT
OUS RETAINER CONTRACT FOR PROFESSIONAL CONSULTANTS
SUPPLEMENT No. OSU-XXX-P-13-XX
STRAND AG HALL RESTORATION
SPECIAL INSPECTION & TESTING**

This Retainer Contract Supplement dated _____, 2013 (the "Supplement") is entered into between:

"Consultant":

and "Owner": the State of Oregon, acting by and through the State Board of Higher Education, on behalf of:
Oregon State University
Construction Contract Services, Facilities Services
3015 SW Western Blvd
Corvallis, OR 97331

(each a "Party" and collectively, the "Parties") pursuant to that certain Retainer Contract entered into between the Parties terminating on January 31, 2015 (the "Retainer Contract"). Capitalized terms have the meaning defined in the Retainer Contract unless further defined in this Supplement.

1. DESCRIPTION OF THE PROJECT: The project to which this Supplement pertains is described as follows: Austin Hall Special Inspection & Testing (the "**Project**").

2. SERVICES TO BE PERFORMED: The Consultant shall perform the following services on the Project Special Inspection and Testing Services for fill, seismic density testing, structural steel, cast-in-place concrete, erection of precast members, welding, expansion anchors, epoxy anchors, and shotcrete placement for the building and provision of written reports of findings (the "**Services**").

Defined Terms. In addition to any terms defined elsewhere in this Supplement, certain terms that are capitalized and/or set forth in bold letters throughout the Agreement are defined as follows:

"**Additional Basic Services**" are those Services required by Owner to be performed by Consultant as a result of unanticipated conditions and which would impose unforeseen costs on Consultant that exceed the originally contemplated scope of the Services, but which nevertheless qualify as Services permitted to be performed under the Agreement, and which will require separate Owner authorization to proceed prior to their performance.

"**Construction Contract**" is the contract entered into between the Owner and the Contractor to provide all Work necessary to construct the Project, including the original base contract for construction of the Project, the Oregon University System General Conditions For Public Improvement Contracts, any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor's performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change

orders, any solicitation documents, and any response by a successful bidder or proposer to any such solicitation documents.

“**Construction Documents**” are the drawings, specifications and other documents setting forth in detail the requirements for construction of the Project, as well as the documents pertaining to bidding and contracting for the construction of the Project

“**Contractor**” is the general contractor that is awarded the contract to construct the Project.

“**Services**” are all those services to be performed by the Consultant under the terms of this Agreement.

“**Work**” is the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the Project by the Contractor that is eventually awarded the Construction Contract for the Project.

A. Directives for Performance of the Services.

1. The Consultant shall provide all Services for the Project in accordance with the terms and conditions of this Supplement. The Consultant's performance of Services shall be as a professional Consultant for the Owner to carry out the activities of materials testing and special inspections.
2. All tests and inspections performed as a part of the Services shall be performed in strict accordance with the procedures/methodology, requirements, and standards set by the applicable building code or ordinance, unless otherwise specified in this Supplement. In the absence of either a code or ordinance establishing applicable procedures/methodology, requirements, and standards, or a specific Supplement provision establishing a particular method or procedure to be used, the Consultant shall comply with the industry standard testing methods and inspection procedures applicable to the material tested or inspection performed.
3. In administering this Supplement, the Owner may employ the services of an independent project manager, and potentially, other consultants as needed to fulfill the Owner's objectives. Consultant shall cooperate with, and coordinate its Services with, the Project Engineer and such other consultants as the Owner and/or the Project Consultant may retain, as well as the Project construction contractor and its subcontractors, in order to complete the Services and Project in a timely, cost-effective, and efficient manner.
4. The Consultant acknowledges that the award of this Supplement was made on the basis of the unique background and abilities of the Testing Agents and the proposed key personnel that Consultant identified in Consultant's proposal for Services. Therefore, Consultant shall make available the Testing Agents and key personnel identified in its proposal. Any attempted substitution without

the written consent of Owner shall constitute a material breach of this Supplement. In the event that any Testing Agent or key personnel become unavailable for the performance of the Services at any time through no fault of Consultant, Consultant shall replace the Testing Agent or key personnel, as the case may be, with personnel having substantially equivalent or better qualifications than the Testing Agent or key personnel being replaced, as approved by Owner. Likewise, the Consultant shall remove any personnel or Testing Agents from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

5. Consultant shall make no news release, press release or statement to a member of the news media regarding this Project or its Services being provided pursuant to this Supplement without prior written authorization from Owner.

B. CONSULTANT'S STANDARD OF CARE

1. **Standard of Care:** Consultant shall perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
2. **Performance Requirements.** In addition to meeting the standard of care described above, Consultant shall perform the Services in accordance with the following requirements:
 - a. All tests, samplings and inspections by Consultant pursuant to this Supplement shall be performed in accordance with and comply with current codes, applicable testing criteria, procedures and methods, and all laws, rules, regulations, standards and ordinances which are applicable to the materials tested;
 - b. Consultant shall maintain adequate records of all inspections and tests, and shall cause all Testing Agents and key personnel to chart on forms satisfactory to the Project Engineer the test properties for the various materials and mixtures tested. Further, Consultant's documentation procedures shall be subject to the review and approval of the Project Engineer, and to compliance checks during the progress of the construction. All conforming and nonconforming inspections and test results shall be recorded, and shall be kept up to date and complete.
 - c. The testing and inspection records shall indicate the date of each inspection; the nature of each inspection and tests performed; the number and type of deficiencies found, if any; the quantities of material approved and rejected; and the nature of all corrective action taken. These records shall be incorporated into a report for each test or inspection performed. A copy of each test report shall be provided to the Owner, the CM/GC, the Consultant, the Project

Engineer, the City of Corvallis and any other entity/agency as may be required by the Construction Contract Documents.

- d. All charts, testing and inspection records, reports and other documents documenting the tests and inspections pertaining to the Services performed hereunder (collectively, the "Testing & Inspection Documents") shall become the property of the Owner upon completion of the Project. Failure to deliver the Testing & Inspection Documents required shall constitute material breach of this Supplement.
- e. The Consultant shall be responsible for inconsistencies and omissions in the reports and other documents Consultant is required to prepare under this Supplement. Consultant will, at no additional cost to Owner, promptly correct any and all errors and omissions in the Testing & Inspection Documents prepared by Consultant. Except as provided herein and at no additional cost, Consultant further shall render assistance to Owner in resolving problems relating to the failure of specified materials designated for use in the Project to comply with the requirements and specifications therefor.
- f. The Owner's acceptance of Testing & Inspection Documents or issuance of authorization to continue to the next phase of testing shall not be deemed as approval of the adequacy of completed inspections, tests, or documentation. Any review or acceptance by the Owner of the Services will not relieve the Consultant of responsibility for complying with its contractual obligations or the standard of care set forth herein.
- g. Consultant shall ensure that all laboratory equipment used for sampling and testing shall be in proper working order, accurately calibrated, and inspected and certified by the manufacturer or other appropriate inspection and certification entity as yielding reliable and accurate test results. Consultant shall promptly correct any equipment malfunctions and other factors that could contribute to erroneous test results and shall retest, at no additional cost to Owner, any materials involved in tests that potentially may have been affected by such equipment.
- h. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations and/or warranties provided.

C. CONSULTANT'S REPRESENTATIONS AND WARRANTIES

1. Consultant represents and warrants to Owner that:
 - a. Consultant has the power and authority to enter into and perform this Supplement;
 - b. When executed and delivered, this Supplement shall be a valid and binding obligation of the Consultant enforceable in accordance with its terms;

- c. Consultant shall, at all times during the term of this Supplement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
- d. The Consultant is an experienced materials testing and inspection firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Supplement for a Project having this scope and complexity; and will perform such Services in accordance with the terms and conditions of this Supplement, and pursuant to the standard of care set forth above.
- e. The Consultant has the capabilities and resources necessary to perform the obligations of this Supplement.
- f. The Consultant either is, or prior to performance of Services under this Supplement will become, familiar with all applicable current building codes and ordinances; relevant testing criteria either set by industry standards, by applicable law, or by the terms of this Supplement; appropriate testing and inspection methods and procedures; and all laws, rules, and regulations that are applicable to the design, installation, operational criteria and tolerances of the materials to be tested and inspected hereunder and performance of the equipment and systems involved in the Project. Consultant shall perform all inspections, samplings, and tests hereunder in accordance with such applicable current codes, testing criteria, methods and procedures, laws, rules, and regulations, and will prepare all reports and other documents required under this Supplement to accurately reflect that the materials inspected and tested conform to the requirements and specifications contained in this Supplement and set out in the Construction Contract Documents, and if not, what deficiencies exist and what corrective action is required

D. CONSULTANT'S SERVICES

Special Inspection and Testing Services for fill; seismic resistance; structural steel; cast-in-place concrete; erection of pre-cast members; welding; expansion anchors; epoxy anchors; and shotcrete placement for the building.

SHOTCRETE/REINFORCING STEEL

Prior to placing of reinforcing steel, verify that reinforcing is in compliance with the specifications and other Construction Contract Documents. Verify grade, size and placement of reinforcing steel fabric, and embedded items prior to closing off by form work and shotcrete or grout placement. Check condition of reinforcing and embedded items for bond integrity with concrete.

PRECAST CONCRETE INSPECTIONS

In the event of a non-prequalified fabricator, inspect welding of embedded items, weld quality/size and reinforcement. Review material test reports. Monitor the

placement and consolidation of the concrete. Verify proper mix design delivery and conduct slump, temperature, and air content tests. Fabricate strength cylinders on the plastic concrete for later testing of compressive strength in compliance with the specifications and other Construction Contract Documents.

STRUCTURAL STEEL INSPECTONS

In the event of a non-prequalified steel fabricator, verify the accuracy of materials test reports and mill certifications, written welding procedures, welder qualifications/certifications, electrodes, amps, volts, weld size, and quality according to the shop drawings and AWS D 1.1 of all embeds, columns, beams, and angles fabricated in the shop. Inspect field welding and epoxy anchorage of steel members in the field. Review materials test reports.

STRUCTURAL STEEL BOLTING INSPECTIONS

Review the ASTM A 325 or A 490 materials certifications for the bolts to be utilized in the construction. Inspect the bolted connections to insure snug, tight condition and placement. Utilize Skidmore-Whilhelm load indicating equipment to verify bolt tension values for slip-critical bolts. Insure that the requirements of the AISC (ninth edition) and the applicable building codes are met.

EPOXY AND WEDGE ANCHORS

Review materials submittals prior to use to insure that proper units, and epoxy are utilized in the construction. Inspect anchor placement, size, and cells prior to epoxy operations in compliance with the specifications and other Construction Contract Documents. Monitor epoxy placement and consolidation, and fabricate strength test specimens on epoxy for later testing utilized in the construction.

DENSITY TESTING

Provide in-place moisture/density testing of excavation backfill and subgrade/baserock course under concrete flatwork. Services shall be provided in accordance with project specifications.

CONCRETE SAMPLING

Sample and test concrete per project specification requirements and frequencies.

PREPARATION AND SUBMITTAL OF REPORTS

Maintain and track a constantly-updated log of non-conforming work and materials. Provide a report of final resolution of all non-compliance issues. Provide a letter of Project compliance as related to all materials testing work to the owner at the end of the Project. Written reports for each test performed shall be provided to the Owner, Architect, CM/GC and City of Corvallis.

COMPLIANCE WITH CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SCHEDULING

The CM/GC will notify Consultant of schedules with dates/times of required inspections and testing. Consultant's inability or failure to meet such scheduled inspection/testing dates and times will constitute material breach of this Agreement and may result in immediate contract termination.

Consultant shall notify the CM/GC in advance of any and all Project site visits to be performed by the Consultant's personnel, and shall coordinate such visits so as to avoid conflict with or delay of construction activities. All Project site visits and time shall be recorded in a manner agreed to by the Consultant and the CM/GC.

The Project description, scope of Services, and the fee breakdown are outlined in the proposal dated _____, 2013, and signed by _____ (attached hereto and incorporated by this reference as "Exhibit 1").

3. SCHEDULE. Consultant shall perform its Services according to the schedule developed in cooperation with the Owner in order to meet Project needs:

As directed by Owner in cooperation with Owner's contractor (the "Schedule").

4. INCORPORATED DOCUMENTS. This Supplement, the Retainer Contract and Exhibit 1 are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement excluding the Retainer Contract and Exhibit 1, 2) the Retainer Contract excluding this Supplement and Exhibit 1, and 3) Exhibit 1 excluding this Supplement and Retainer Contract.

5. COMPENSATION.

Owner shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a Time and Materials basis in accordance with the Retainer Agreement and the provisions of this Supplement.

The Maximum Compensation for the Consultant's performance of the Services and for reimbursement of the Reimbursable Expenses incurred by the Consultant for Phase 1, Initial Basic Services is \$_____.00 which includes \$_____.00 for Services and \$_____.00 for Reimbursable Expenses.

- A. Additional Basic Services: It is anticipated that this Agreement may be amended to authorize performance of such additional Basic Services as may be required or necessary, including but not limited to any costs necessary to provide all materials inspections and testing required by the City of Corvallis or under the International Building Code (or any specialty code thereunder) for the full construction of the Project and to ensure the integrity of all structural elements. The fees and maximum not-to-exceed compensation for additional Basic Services, if authorized by Owner, shall be established by amendment.

Monthly progress payments shall be made by the Owner based upon invoices submitted by the Consultant for Services rendered and/or Reimbursable Expenses incurred during the preceding month. Payment requests, invoices and required documentation shall be submitted in the form and format stipulated by the Owner. One copy of each invoice, with required documentation, must be delivered to the following institution at the specified address:

Facilities Services Accounting
OREGON STATE UNIVERSITY
3015 SW Western Blvd.
Corvallis, OR 97331

Payments to the Consultant will be made following the Owner's review and approval of the invoices and required documentation and acceptance of the Services performed and approval of the Reimbursable Expenses incurred.

Total Maximum Compensation, including the cost of any Additional Services that may the Parties may agree to through subsequent execution of a Supplement Amendment, shall not exceed the greater of \$1,000,000 or the maximum allowable under OAR 580-063-0025.

6. TERM. This Supplement is effective on the date it has been signed by every Party hereto and all required approvals have been obtained (the "Effective Date"). No Services shall be performed, or payment made, prior to the Effective Date.

Unless earlier terminated or suspended, Consultant shall perform its obligations according to this Supplement until Consultant's Services are completed and accepted by Owner. Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Consultant's Services, including completion of all warranty work. The Parties expressly agree that they may execute a Supplement Amendment and extend the date which Consultant's Services may be completed, which may include a date beyond the Term of the Retainer Contract.

Termination or suspension does not extinguish or prejudice Owner's right to enforce the Supplement with respect to any breach by the Consultant that has not been cured.

7. TAX COMPLIANCE CERTIFICATION. The Consultant hereby affirms, under penalty of perjury as provided in ORS 305.385(6), that, to the best of the Consultant's knowledge, the Consultant is not in violation of any of the tax laws described in ORS 305.380(4). For purposes of this certification, "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.

8. INSURANCE REQUIREMENTS.

Prior to the effectiveness of this Supplement, Consultant shall provide Owner with Certificates of insurance maintained in full force and effect at Consultant's expense. Further, each insurance for which a Certificate is required shall be maintained for the duration of the Term of this Supplement including any extensions or Supplement Amendments that may extend the Term of this Supplement. Insurance purchased by Consultant must be consistent with the following:

- A. **Workers' Compensation** – The Consultant, its Sub-consultants, if any, and any other employers providing work, labor or materials under the Supplement are subject employers under the Oregon Workers' Compensation Law and shall either comply with ORS 656.017, which requires such employers to provide Oregon Workers' Compensation coverage for all their subject workers working in Oregon or shall comply with the exemption in ORS 656.126.
- B. **Commercial General Liability** - The Consultant shall obtain, at the Consultant's expense, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Owner. This insurance shall include personal injury, products and completed operations, contractual liability, premises liability, and coverage for the indemnity provided under the Retainer Contract and is made on an occurrence basis. Consultant shall provide proof of insurance of not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in aggregate.
- C. **Automobile Liability** - The Consultant shall obtain, at the Consultant's expense, Automobile Liability Insurance covering all owned, leased, or hired vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall provide proof of insurance of not less than \$1,000,000 combined single limit.
- D. **Professional Liability/Errors & Omissions** - The Consultant shall provide Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by negligent error, omission, or any act in regard to the Project, its plans, drawings, specifications 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. The Consultant shall provide proof of insurance of not less than \$1,000,000.00 per occurrence and \$1,000,000.00 in aggregate.

9. NOTICE. Notices specific to the Services described on this Supplement will be given in writing by personal delivery, email, or mail (postage prepaid) to the Consultant or Owner at the address or email set forth above. Any notice so addressed and mailed (postage prepaid) will be deemed to be given five (5) calendar days after the date of mailing. To be effective against Owner, email transmission must be confirmed by telephone notice to Owner and will be deemed to be given upon such confirmation. Any notice by personal delivery will be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

10. OTHER TERMS. Except as specifically modified by the Supplement, all terms of the Retainer Contract remain unchanged and apply to the Project and the Services.

11. EXECUTION AND COUNTERPARTS. The Supplement may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Supplement.

IN WITNESS HEREOF, the Parties have duly executed this Supplement on the dates indicated below.

_____, Consultant

STATE OF OREGON, ACTING BY AND
THROUGH THE STATE BOARD OF HIGHER
EDUCATION, on behalf of Oregon State University

Print Name: _____

Print Name: Heather M. Cooney, CPPB

Signature: _____

Signature: _____

Title: _____

Title: Construction Contract Officer

Date: _____

Date: _____