

**DRAFT ARCHITECT'S AGREEMENT**  
**FOR ARCHITECTURAL AND PLANNING SERVICES**  
[CERTAIN SECTIONS REQUIRE PROJECT-SPECIFIC ADDITIONS OR REVISIONS]  
[--NAME OF PROJECT--]  
UNIVERSITY OF OREGON

This ARCHITECT'S AGREEMENT (the "Agreement") is made between  
the "Architect": \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: ( ) - \_\_\_\_\_  
Fax: ( ) - \_\_\_\_\_

and the "Owner": The STATE BOARD OF HIGHER EDUCATION  
acting by and through  
The UNIVERSITY OF OREGON  
c/o University Planning Office  
1276 University of Oregon  
Eugene, OR 97403-1276  
Telephone: (541) 346-5563  
Fax: (541) 346-6197

regarding the "Project": \_\_\_\_\_

(Architect and Owner are referred to collectively as the "Parties" and each as a "Party.")

**WHEREAS**, the Owner desires to have the assistance of Architect to provide all professional Services for the Project; and

**WHEREAS**, the Architect, with the aid of certain consultants (the "Consultants"), is willing and able to perform such professional Services in connection with the Project;

**NOW, THEREFORE**, Owner and Architect, for the considerations hereinafter named, agree as follows:

**1. RELATIONSHIP BETWEEN THE PARTIES**

- A. Scope of Project.** The Parties understand and agree that, for purposes of this Agreement, the scope of the Project includes the following:  
Architect will work collaboratively with the Project user group, Construction Manager/General Contractor and Owner, utilizing the Owner-generated programmatic information to\_\_\_\_\_.
- B. Scope of Services.** The Parties understand and agree that, for purposes of this Agreement, the scope of Services to be performed under this Agreement includes the following: Schematic Design, Design Development, Construction Documents, Bidding, Construction Administration, and Post-construction Services as more particularly described in Section 7 below.
- C. Critical Date Schedule.** The Parties agree that this Agreement shall be performed according to the following critical date schedule:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- D. Effective Date.** This Agreement is effective on the date it has been signed by every Party hereto and all necessary State of Oregon ("State") approvals have been obtained (the "Effective Date"). No services shall be performed or payment made prior to the Effective Date.
- E. Defined Terms.** In addition to any terms defined elsewhere in the body of this Agreement, certain terms that are capitalized and/or set forth in bold letters throughout the Agreement are defined as follows:  
"Additional Services" means additional Services performed by the Architect that are beyond the scope of the Basic Services described in Section 7, "Architect's Services," based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with an agreed-upon schedule of charges, and performed by the Architect after the Owner has given prior written authorization to proceed with performance of the Services and the Parties have executed an amendment or supplement to this Agreement, as more particularly described in Section 8, "Additional Services," of this Agreement.

"Basic Services" are those Services generally described in Section 7, "Architect's Services," of this Agreement, as well as such additional Basic Services as may be established by amendment.

"Bidding Phase" means the Services described in Section 7(x) below together with such additional Services as directed by the Owner.

"Construction Administration Phase" means the Services described in Section 7(x) below together with such Additional Services as directed by the Owner.

"Construction Contract" is defined as the contract entered into between the Owner and the CM/GC 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 CM/GC's performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and the accepted offer by a successful proposer in connection to any such solicitation documents. The accepted offer by a successful proposer in connection to any such solicitation documents.

"Construction Documents Phase" means the Services described in Section 7(x) below together with such Additional Services as directed by the Owner.

"Construction Manager/General Contractor" or "CM/GC" means the firm that will perform both contract management and construction services for the Project. The terms CM/GC and contractor shall be used interchangeably herein.

"Contract Documents" include the Construction Contract, any general conditions and supplementary general conditions to the Construction Contract, any amendments to the Construction Contract, the CM/GC's performance bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and the accepted offer by a successful proposer in connection to any such solicitation documents.

"Contractor" is defined as the general contractor that is awarded the contract to construct the Project.

"Design Development Phase" means the Services described in Section 7(x) below together with such Additional Services as directed by the Owner.

"Direct Construction Cost" means the cost to Owner of all divisions of construction, including portable equipment only if designed or specified by Architect for inclusion in the construction specifications. The Direct Construction Cost will not exceed the GMP established for the Project.

"Post-construction Phase" means the Services described in Section 7(x) below together with such Additional Services as directed by the Owner.

"Schematic Design Phase" means the Services described in Section 7(x) below together with such Additional Services as directed by the Owner.

"Reimbursable Expenses" are those expenses described in Section 3B of this Agreement.

"Services" are all those services to be performed by Architect under the terms of this Agreement.

"Work" is defined as the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the Project by the Contractor or Construction Manager/General Contractor that is eventually awarded the Construction Contract for the Project.

**F. Directives for Performance of the Services.**

- (1) Architect agrees to provide, with the assistance of the Consultants, the professional Services more particularly described in Section 7, "Architect's Services," below for this Project.
- (2) The Architect shall provide a schedule for the performance of the Services upon execution of this Agreement. The Architect agrees that time is of the essence in the performance of this Agreement.
- (3) The estimated Direct Construction Cost of the Project is \$\_\_\_\_\_ to \$\_\_\_\_\_. [OR] The construction budget for the Project is currently estimated at \$\_\_\_\_\_.
- (4) Architect agrees to fully cooperate with Owner to meet all Project budgets. Owner understands that Architect, in providing opinions of probable construction cost [and working collaboratively with the CM/GC to establish the GMP], has no control over the cost or availability of labor, equipment, or materials, or over market conditions or CM/GC's method of pricing, and that Architect's opinions of probable construction costs [and the GMP] are made on the basis of Architect's professional judgment and experience. Architect makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from Architect's opinion of probable construction cost. In the event the Architect's opinion of probable construction cost [and the estimated GMP] exceeds the budget for the Project listed in subsection 3 above by any amount during the design or construction phases, or in the event the bids or negotiated GMP for the Work exceed the budget for the Project listed earlier in this Section by more than 10 percent, Architect, upon notice from Owner and prior to the award of the Construction Contract, agrees to modify, at Architect's sole expense, Architect's Schematic Design documents, Design Development documents or Construction Documents (or with owners approval those portions of those documents where opinions of probable construction costs or [bids] [OR] [negotiated GMP] exceeded the budget or stipulated percentage). This redesign effort shall constitute Architect's sole

responsibility with respect to its opinions of probable construction cost [and the GMP], and Architect agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the opinion of probable construction cost, or the bids or negotiated [price] [OR] [GMP], so that they do not exceed the Project budget.

- (5) As part of the design services authorized under this Agreement, the Architect shall provide design services coordinated with and supporting an analysis of the building energy use through efficient implementation strategies for cost effective Energy Conservation Measures ("ECMs") at the Project, and all other design services related to energy-efficient design, as more particularly described in Section 7 of this Agreement.
- (6) Architect shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. Architect's performance of Services shall be as a professional Architect to Owner to perform the Services necessary for the Project, and to provide the technical documents and supervision required to achieve Owner's Project objectives.
- (7) In administering this Agreement, the Owner may employ the services of an independent project manager and other consultants as needed to fulfill the Owner's objectives.
- (8) Architect agrees to utilize the key personnel and Consultants identified on the attached Exhibit 1 in the performance of the Services for the Project. In addition to the full names, titles/ positions and a summary of the duties and Services to be performed by the key personnel and Consultants that are included in the attached Exhibit 1, the Architect agrees to promptly provide such additional information on the professional background of each of the assigned personnel and Consultants as may be requested by the Owner. The Architect acknowledges that the Owner's award of this Agreement to the Architect was made on the basis of the unique background and abilities of the Architect's key personnel and Consultants originally identified in the Architect's RFP proposal or cost proposal. Therefore, the Architect specifically understands and agrees that any attempted substitution or replacement of a key person or Consultant by the Architect, without the written consent of the Owner, shall constitute a material breach of this Agreement. In the event that key personnel or Consultants become unavailable to the Architect at anytime, Architect shall replace the key personnel and Consultants with personnel or Consultants having substantially equivalent or better qualifications than the key personnel or Consultants being replaced, as confirmed and approved by Owner. Likewise, the Architect shall remove any individual or Consultant from the Project if so directed by Owner in writing following discussion with the Architect, provided that Architect shall have a reasonable time period within which to find a suitable replacement. The Architect represents and warrants that the key personnel and Consultants identified on the attached Exhibit 1 are fully licensed to perform the particular Services assigned to them on the Project.
- (9) Architect shall make no news release, press release or statement to a member of the news media regarding this Project without prior written authorization from Owner.

**G. Suspension of Agreement by Owner.** The Parties understand and agree that the Owner may suspend the Parties' performance of this Agreement in the event any of the following circumstances arise:

- (1) Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Architect's Services;
- (2) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
- (3) Architect, or one of Architect's Consultants currently performing Services, no longer holds any license or certificate that is required to perform the Services;
- (4) The public interest otherwise requires suspension of performance of the Agreement, as reasonably determined by the Owner.

Any suspension of performance under this provision constitutes a temporary stoppage of performance of the Agreement, and does **not** constitute a termination of the Agreement pursuant to Section 18, "Termination of Agreement; Non-availability of Funds," of this Agreement. In the event that the condition(s) causing the suspension have been rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Agreement. In the event that the Owner determines that the conditions causing suspension of the Agreement are not likely to be rectified in a reasonable amount of time, the Owner retains the right to terminate this Agreement, pursuant to Section 18. In the event of a suspension of performance pursuant to this Section of the Agreement, the Architect agrees to remain contractually obligated to perform the Services under this Agreement for the same hourly rates set forth in Section 3C, "Compensation/ Additional Services," of this Agreement until \_\_\_\_\_, 200\_. If the Agreement is reactivated and the Architect is required to perform Services beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for the Architect and any Consultants and amend this Agreement accordingly.

## 2. ARCHITECT'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. **Standard of Care.** By execution of this Agreement, the Architect agrees to perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- B. **Performance Requirements.** By execution of this Agreement, the Architect specifically agrees to perform the Services in accordance with the following requirements:
  - (1) All plans, drawings, specifications, and other documents prepared by the Architect shall accurately reflect, incorporate and comply with all applicable statutes, rules, regulations, ordinances and other laws which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Architect);
  - (2) All plans, drawings, specifications, and other documents prepared by the Architect pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Services to be performed;
  - (3) The Project, if constructed in accordance with the intent established by such plans, drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended;
  - (4) The Architect shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents. While Architect 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 Architect throughout the period of performance under this Agreement to use due care and perform with professional competence. Architect will, at no additional cost to Owner, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by Architect. Except as provided in Section 8, "Additional Services," of this Agreement and at no additional cost, Architect further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project;
  - (5) The Owner's review or acceptance of documents, or authorization to continue to the next phase of design, bidding process participation, or construction administration, shall not be deemed as approval of the adequacy of the plans, drawings, specifications, or other documents. Any review or acceptance by the Owner will not relieve the Architect of any responsibility for complying with the standard of care set forth herein. The Architect is responsible for all Services to be performed under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services;
  - (6) The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided.
- C. **Architect's Representations and Warranties.** Architect represents and warrants to Owner that:
  - (1) Architect has the power and authority to enter into and perform this Agreement;
  - (2) When executed and delivered, this Agreement shall be a valid and binding obligation of the Architect enforceable in accordance with its terms;
  - (3) Architect shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
  - (4) The Architect is an experienced architecture firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement and to design or administer a project having this scope and complexity;
  - (5) The Architect has the capabilities and resources necessary to perform the obligations of this Agreement;
  - (6) The Architect either is, or in a manner consistent with the standard of care set forth in this Agreement will become, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project.

3. **COMPENSATION**

The maximum, not-to-exceed, total amount payable under this Agreement is \$\_\_\_\_\_ (the "Maximum Compensation"), for the combination of Basic Services and Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. Architect progress payments shall be made according to the provisions and schedule set forth in Section 4, "Payments," of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Architect shall perform the Basic Services, directly or through the Consultants, for the fixed fee of \$\_\_\_\_\_.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Architect for any allowable Reimbursable Expenses, up to a maximum amount of \$\_\_\_\_\_.  
Reimbursable expenses for the Project mean actual direct expenditures (without overhead, fee, markup or profit) made by Architect and the Consultants in the interest of the Project for the following items:

long-distance communications; reproductions, postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of Architect and the Consultants); mileage and travel expenses more particularly described below; data processing and photographic production techniques; and renderings, models and mock-ups requested by Owner. The Reimbursable Expenses will be reimbursed at cost, except travel expenses. Charges for travel expenses will be reimbursed at cost, but not in excess of the rate allowed State of Oregon employees. Travel expenses are only reimbursable when services are rendered in excess of 25 miles from Architect's or Consultant's office. As of the date of this Agreement, these rates are as follows:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$__ per mile
Lodging	\$__ per night excluding tax
Meals: (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$__
Lunch	\$__
Dinner	\$__

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

Architect must retain documentation of actual expenditures when requesting reimbursement of allowable expenses, except meals. No documentation of Reimbursable Expenses is required at time of invoice, although Owner reserves the right to audit at any time (see Section xx, "Access to Records," below).

- C. **Additional Services:** Owner will compensate the Architect for Additional Services performed by the Architect, whether directly or through its Consultants, beyond the scope of the Basic Services described in Section 7, " Architectural Services," based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement (except in the case of a suspension and reactivation of performance beyond the date agreed to by the Parties, as more particularly described in Section 1G, "Relationship Between the Parties/Suspension of Agreement by Owner"), but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

ARCHITECT:

Principals .....	\$__ /hr
Senior Architectural Designer .....	\$__ /hr
Architectural Designer.....	\$__ /hr
etc.	

CONSULTANTS:

Firm name/specialty	
hourly rates.....	\$__ /hr
etc.	

Firm name/specialty	
hourly rates.....	\$__ /hr
etc.	

Firm name/specialty	
hourly rates.....	\$__ /hr
etc.	

These charges shall also be used to determine amounts owed Architect in the event this Agreement is terminated as provided in Section 18D(1), "Termination of Agreement; Non-availability of Funds." Any amounts so derived may not exceed the limitations for each phase as specified by Section 4, "Payments," hereof.

**4. PAYMENTS**

Monthly progress payments shall be made by Owner upon Owner's acceptance of the Services performed and upon Owner's review and approval of invoices and required documentation. Payment shall be based upon invoices submitted by Architect for Services rendered and/or Reimbursable Expenses incurred during the preceding month. Provided, however, payments shall not exceed the maximum not-to-exceed total amounts payable set forth in Section 3A and 3B, which may be modified only by executed amendment(s) to this Agreement.

No documentation of Reimbursable Expenses is required at time of invoice, although Owner reserves the right to audit at any time (see section [25] below). Payment requests, invoices, and required documentation shall be

submitted in the form and format stipulated by Owner. One copy of each invoice, together with required documentation, must be delivered to the following address:

Campus Planning and Real Estate  
1276 University of Oregon  
Eugene, OR 97403-1276

Payments to the Architect 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.

Payments to the Architect for such Services performed and invoiced will be made for each phase as follows, with final payment for each phase subject to written acceptance of the phase by the Owner. The total of all payments for Basic Services shall not exceed the maximum amount set forth in Section 3.A. for Basic Services, and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in Section 3B. for Reimbursable Expenses. The total of all such payments, for Services and Reimbursable Expenses, shall not exceed the Maximum Compensation. Owner reserves the right to retain up to \_\_\_\_\_ percent (\_\_\_\_%) of the compensation limit set forth below for each phase, subject to Owner's acceptance of the Services and any deliverables for each phase.

- A. Pre-Design/Schematic Design Phase: not to exceed \$\_\_\_\_\_.
- B. Design Development Phase: not to exceed \$\_\_\_\_\_.
- C. Construction Documents Phase: not to exceed \$\_\_\_\_\_.
- D. Bidding Phase: not to exceed \$\_\_\_\_\_.
- E. Construction Administration Phase: not to exceed \$\_\_\_\_\_.
- F. Post-construction Phase: not to exceed \$\_\_\_\_\_.

No deduction shall be made from Architect's fee on account of penalty, liquidated damages, or other sums withheld from payment to the CM/GC.

#### 5. SERVICES OF ARCHITECT'S CONSULTANTS

The Consultants shall be paid by the Architect out of the Maximum Compensation, and the Parties understand and agree that the Owner has no direct or indirect contractual obligation or other legal duty to pay the Consultants or ensure that the Architect makes full and timely payment to the Consultants for Consultant services rendered on the Project. Services performed by the Architect through the Consultants shall be included on Architect invoices at the Architect's cost, without markup, at the request of the Owner. The Architect shall provide to the Owner copies of the Consultant's invoices submitted to the Architect, along with the Architect's requests for payment that are submitted to the Owner under this Agreement.

#### 6. TIME OF PERFORMANCE

This Agreement shall take effect on the Effective Date and Architect shall perform its obligations according to this Agreement, unless terminated or suspended, through final completion of construction and completion of all warranty work.

#### 7. ARCHITECT'S SERVICES . . . [--services determined by project--]

##### A. Pre-Design/Schematic Design Phase

In consultation with the Owner, and in compliance with the Owner's Design Criteria, Architect shall:

- (1) Identify applicable building codes, administrative, and permit processing requirements as relevant;
- (2) Verify, by on-site inspection unless specifically stated otherwise by the Owner, existing conditions and systems, including but not necessarily limited to utility services, architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the Work to be executed on the Project;
- (3) 3a: verify existing space program with User Group and expand their understanding of programmatic needs as required to inform the design process.  
3b: Working with the user group and with the prospective occupants, create a program describing the functional and esthetic needs of the users, resulting in a written document describing the space requirements, the proximity relationships, the daily and weekly scheduling relationships, the lighting, thermal comfort, technology, equipment, electrical power, and acoustical needs of the users. Create a space table or spreadsheet that lists space needs by net area and increases this to a total building requirement of gross area. Include space requirements for mechanical, electrical, and plumbing systems to the extent that these can be predicted.
- (4) Establish a schedule for the entire project, and a detailed schedule for Pre-Design/Schematic Design indicating proposed meetings, milestones, cost estimates, review documents, and approvals.
- (5) With the Owner, identify Owner's Design Criteria documents that will be the basis of the design including but not limited to the Program, the Project Description, Campus Plan and its sub-plans, the Campus Construction Standards, the Bicycle Management Program, and the Owner's standards for accessibility;

- (6) Based on the Project Description and Program Requirements, use an integrated design process to develop, through active participation of the User Group and with Owner's staff, Schematic Design studies consisting of drawings and other documents for the Owner's approval; Architect shall provide advance information [24 hr] before meetings (agendas, materials, etc., meeting minutes within 7 days after meetings, digital copies of all presentations, drawings, and meeting notes within 2 days, and/or establish project web site to make such information available to Owner. Owner will [confirm or strike] provide user meeting facilitation services during this phase;
- (7) Conduct [or participate in] a value analysis/value engineering session with the project User Group and Owner's technical staff early in the Schematic Design phase to establish cost/quality targets for major project elements;
- (8) Meet with Owner's staff to discuss initial selection of major building systems, including at a minimum structure, HVAC, exterior wall assemblies, roof assemblies, electrical service equipment, telecommunications equipment, interior finishes, and elevators;
- (9) Meet with City of Eugene ("City") staff, Owner's Campus Planning and Environmental Health and Safety staff, and Owner's Risk Management staff at a predevelopment meeting to review code compliance strategy addressing the overall Fire and Life Safety concept, preliminary fire access plan, historic preservation issues (if appropriate), and any Project-specific code items that have arisen during the design process; create and distribute summary notes within one week of this and other City meetings and phone calls. Identify possible areas that will require Alternative Means and Methods applications;
- (10) Assist Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project; Owner shall pay for all required appeals and plan review fees;
- (11) Working with the Owner's designated users, outline a Sustainability Plan that reflects the requirements of the Owner's sustainable design policies as described in the Campus Plan and as refined in meetings with the Owner. Including a summary of environmental values guiding the Project, environmental issues to be addressed, Project priorities and goals for each of those issues, metrics for evaluating the Project relative to those goals, and concepts for achieving the goals. Score the Project using the version of the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) identified by Owner;
- (12) Coordinate with Owner and Owner's energy analyst in the energy analysis of the Project, provide all documentation required for this analysis to the Owner for the Project. In coordination with the Project's Sustainability Plan, establish energy performance targets at or above targets listed in the Campus Plan. Working with the Owner and energy analyst, identify energy conservation measures for analysis, and describe how major building systems will work together to meet the energy performance goal. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by 35% or more, and shall be a "model of energy efficiency" as that term is described in the above-referenced administrative rules. Coordination of the Energy Analyst and analysis process shall require specific members of the design team to attend all energy meetings;
- (13) Perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% for Art Program," set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project;
- (14) Review the estimates of the probable Direct Construction Cost of the Project prepared by an independent cost estimator commissioned by the Owner and by the CM/GC. The Architect will assist the Owner in comparing and reconciling the two independent cost estimates, and the Architect shall have the responsibility to meet the Project budget requirements, all consistent with the requirements of Section 1F(4) above. Alter the design as necessary to bring the Project within the Direct Construction Cost budget, if needed;
- (15) With the assistance of the Campus Planning Office, meet with Owner's Campus Planning Committee as often as required during the Schematic Design phase, and no less than upon completion of the Schematic Design Phase to obtain a positive recommendation to the University of Oregon president that the schematic design, based upon the final schematic design document, be accepted;
- (16) When the reconciled cost estimate is in balance with the project budget, prepare xxx (x) 8-1/2" x 11" (with 11" x 17" fold-outs) bound copies and a digital copy of the draft schematic design report for Owner review, consisting at a minimum of the following elements: [examine order
  - a. Executive Summary;
  - b. Record of Design Process. Include in the schematic design document the alternative schematic design studies, the project goals, and applicable Campus Plan and project-specific patterns. (Include patterns reviewed, verified, and possibly modified from the Programming

- Document and Project Description, as well as patterns developed during the Schematic Design Phase) [make as an ordered sub-list]; [meeting minutes & other backup to appendix]
- c. Program Summary, including a tabulation of space assignments for each activity compared to identified needs and relationship diagrams;
- d. Narrative Summary of the schematic design, including brief descriptions of each component (e.g., site design, structural, mechanical, and electrical systems, etc.);
- e. Reduced plans, sections, and elevations (and/or photographs of models);
- f. Project schedule;
- g. Reconciled Cost estimate and summary of strategies used to balance the cost with the budget;
- h. The building code analysis
- i. An outline of a Sustainability Plan more particularly described above in Section 7B(8); and
- j. An approval/signature section [move to top of list].
- (17) Meet with Owner's User Group, Planning Office, Campus Operations, and other UO entities to review the draft schematic design document report; revise it as necessary to reflect Owner's desires.
- (18) Prepare modifications to the schematic design documents as may be required to obtain Owner's approval.
- (19) Provide five (5) bound copies, one (1) unbound copy, and one (1) digital pdf file of the final Schematic Design documents legible in black-and-white, format not to exceed 11" x 17".
- (20) Track Owner's comments and Architect's responses into subsequent phases of design.
- (21) Report to Owner proposed deviations from Owner's Construction Standards.

**B. Design Development Phase**

Upon notification of the Owner's approval of the Pre-Design/Schematic Design Phase, and upon written authorization from the Owner to proceed, the Architect, in compliance with Owner's Design Criteria as specified in the Project Description, the architectural program as modified during the Schematic Design Phase, and the Basis of Design documents established in the previous phase, shall:

- (1) Update the schedule for the entire project, and develop a detailed schedule for the Design Development phase indicating proposed meetings, milestones, cost estimates, review documents, bid package dates, permit application dates, and approvals.
- (2) Work collaboratively with the User Group to refine and complete the design for the project and select major materials and systems. Obtain User Group approval of that design; Architect shall provide advance information 24 hours before meetings (agendas, drawings, etc.), provide meeting minutes within 7 days after meetings, provide digital copies of all presentations, drawings, and meeting notes within 2 days, and/or establish project web site to make such information available to Owner.
- (3) Verify, by on-site inspection at the beginning of the Design Development Phase, existing conditions except information to be provided by Owner as required in Section XXXXX; (x) Incorporate and respond to Owner's comments from the Schematic Design Phase using comment tracking system established in Schematic Design phase.
- (4) Prepare drawings and other documents to fix and describe the size and character of the entire Project as to architectural, site development, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be appropriate and in accordance with governing codes and ordinances. Include diagrammatic representations of furniture arrangements;
- (5) Early in this phase, ensure that the Project complies with the 2010 American with Disabilities Act Standards for Accessible Design, latest version, and with Owner's published accessibility standards that support the Universal Access policies of the Campus Plan, and allows for access to programs, activities, and services in the most integrated setting possible. Review the project with an accessibility focus group and with the Owner's ADA compliance staff. The Owner will be responsible for interpretation of standards for compliance with Federal requirements.
- (6) Attend meetings with City of Eugene ("City") staff and Owner's Campus Planning, Risk Management, and Environmental Health and Safety staff to further review and refine the Fire and Life Safety concept, fire access plan, historic preservation issues (if appropriate), and all Project-specific code items that have arisen during the design process; create and distribute summary notes within one week of this and other City meetings. Draft all Alternative Means and Methods applications for Owner review. Ensure participation of Owner's Risk Management, Environmental Health, and Campus Planning staff in all meetings with the City,. Copy Owner's staff on all communications with City staff.
- (7) The Architect shall perform the following Services associated with the Owner's independent cost estimator and the CM/GC preparation of the probable Direct Construction Cost of the Project:



- a. Fully cooperate and coordinate with the Owner's independent cost estimator and the CM/GC in the preparation of the Direct Construction Cost estimates for the purpose of establishing a GMP estimate acceptable to Owner;
  - b. Review and verify any adjustments made by the CM/GC and the independent cost estimator to the previous estimates of probable direct construction costs for the Work, and report the Architect's findings and GMP estimate to the Owner;
  - c. In the event the Direct Construction Cost or GMP estimate prepared and reconciled by the Owner's independent cost estimator and the CM/GC exceeds the Owner's Direct Construction Cost budget, revise the Project design to allow construction of the Project within Owner's budget; the Architect understands and agrees that the Owner's independent cost estimator and the CM/GC will be providing a separate, independent cost estimate of probable Direct Construction Cost or GMP for the Project, the Architect will collaborate with the Owner's independent cost estimator and the CM/GC and consult with the Owner in comparing and reconciling the two independent cost estimates [generated during this Phase of the Services] in an effort to establish an estimated GMP acceptable to Owner, and the Architect shall have the responsibility to meet the Project budget requirements, all consistent with the requirements of Section 1.F.(4) above;
- (8) Assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project; Owner shall pay for all required appeals and plan review fees. Provide data to Owner to predict Systems Development Charges and building permit fees.
  - (9) Coordinate with Owner and Owner's Energy Analyst in the energy analysis of the Project, provide all documentation required for this analysis to the Owner for the Project to measure energy performance relate to targets previously established. Identify additional energy conservation measures for the Energy Analyst to evaluated and describe how major building systems will work together to meet the energy performance goal. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by 35% or more, and shall be a "model of energy efficiency" as that term is described in the above-referenced administrative rules. Coordination of the Energy Analyst and analysis process shall require specific members of the design team to attend all energy meetings.
  - (10) Assist Owner in negotiating rebates and incentives from utility companies (EWEB ) for energy conservation measures identified by Consultants;
  - (11) Working with the Owner's designated users, complete the Sustainability Plan outlined in Schematic Desgin, including a summary of environmental values guiding the Project, environmental issues to be addressed, Project priorities and goals for each of those issues, metrics for evaluating the Project relative to those goals, strategies for achieving the goals, and predicted performance in these areas. Score the Project using the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) version identified by Owner, Project shall be designed at a minimum to meet the point equivalent of a LEED Gold rating. [adjust this scope on each project based on division of LEED certification responsibilities between Owner and Architect]
  - (12) Perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% for Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.
  - (13) Perform all necessary services related to the selection and installation of new furniture purchased by the Owner for the Project. [include/expand if furniture services are included in the contract]
  - (14) Prepare any specifications required as part of the installation of the Owner's new furniture at the Project. [include /expand if furniture services are included in the contract]
  - (15) Prepare furniture plans for the Owner's use, related to coordinating, moving refinishing and relocating existing furniture at the Project site. [include /expand if furniture services are included in the contract]
  - (16) Invite Owner, CM/GC, and Owner's Consultants (Energy Analyst and Commissioning Agent) to attend all Architect's meetings with their consultants during this phase as well as subsequent phases.
  - (17) Conduct Design Development review meetings with the Owner and the CM/GC to present the project systems and materials and to review the project with Owner's maintenance and technical staff. Participate in meetings with User Group to agree on final configuration of the design and processes to follow to request changes after this agreement has been signed. Review and respond in meetings to all Owner's comments. Describe deviations from Campus Construction Standards and supply information to Owner as to why these deviations are recommended.
  - (18) Submit to the Owner \_\_\_ copies and digital pdf files of the following documents, information and other data:

- a. 50%-complete Design Development drawings and specifications;
- b. 100% complete Design Development documents, as follows:
- c. Preliminary recommendations for interior colors, finishes, and materials and binders containing samples of proposed interior finishes and color
- d. One-line diagrams for mechanical systems design(s), proposed major mechanical equipment selections, mechanical room layouts, proposed plumbing fixtures;
- e. One-line diagrams for electrical systems design(s), proposed light fixtures, electrical room layouts;
- f. Complete outline specification and Project manual describing all building materials and systems.
- g. Recommendations for deductive alternates equivalent to 10% of the base bid estimate;
- h. Recommendations for construction phasing to ensure continued operation of Owner's activities;
- i. Furniture and equipment layouts showing proposed location, size, and configuration of all public and common area furniture and all equipment in the Project;
- j. A Sustainability Plan more particularly described above Section in 7B(11);
- k. An up-date of the Fire and Life Safety requirements resulting from design development phase meetings with the City of Eugene, including draft language for Alternative Means and Methods applications that will be needed to obtain a building permit; and
- l. Electronic files of all documents submitted or presented in meetings, excluding samples, materials boards, and other such items including BIM models.

**C. Construction Documents Phase**

Upon notification of the Owner's approval of the Services performed under the Design Development Phase and upon written authorization from Owner to proceed, Architect, in compliance with the Design Criteria for University of Oregon Projects provided by the Owner, shall:

- (1) Prepare working drawings and specifications for up to two construction packages, setting forth all necessary plans, elevations, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship necessary to build the project design approved in the previous design phases;
- (2) Update the schedule for the entire project, and develop a detailed schedule for the Construction Documents phase indicating proposed meetings, milestones, cost estimates, review documents, bid package dates, permit application dates, and approvals.
- (3) Incorporate Owner's and CM/GC's comments from the Design Development Phase using the comment tracking system previously established for the project;
- (4) Ensure that the Project complies with the 2010 American with Disabilities Act Standards for Accessible Design, latest version, and with Owner's published accessibility standards that support the Universal Access policies of the Campus Plan, and allows for access to programs, activities, and services in the most integrated setting possible. Review the project with Owner's ADA compliance staff. The Owner will be responsible for review of accessibility and interpretation of standards for compliance with Federal requirements
- (5) Prepare Construction Documents as may be required to expedite the Work in phases developed in conjunction with Owner and CM/GC so as to take maximum advantage of weather and other factors to expedite the work and deliver greatest value. [Add language describing assumed number of construction phases and/or bid packages]
- (6) Prepare specifications setting forth descriptions of materials and equipment, methods of installation, and standards of workmanship. Include in the appropriate section of Division 1 of the specifications a complete listing of all warranties required under the technical portions of the specifications.
- (7) Working with the Owner's designated users, update the Sustainability Plan developed in earlier phases to reflect changes during this phase. Score the Project using the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) version identified by Owner, New construction shall be designed at a minimum to meet the point equivalent of a LEED Gold rating. [adjust this scope on each project based on division of LEED certification responsibilities between Owner and Architect]
- (8) Provide six (6) sets plus digital copies of 50%-complete Contract Documents for Owner and CM/GC review.
- (9) Provide the Owner and the CM/GC xxx (x) sets and digital files of the 95% complete Project Contract Documents for review and approval prior to advertising the Project for bid.
- (10) Incorporate and track Owner's written comments into the Contract Documents; submit xxx (x) sets of 100%-complete Contract Documents for final Owner and CM/GC review and approval and take

- responsibility for Owner's comments that are not made part of the 100%-complete Construction Documents."
- (11) The Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
    - a. Fully cooperate and coordinate with the Owner's CM/GC in the preparation of the Direct Construction Cost estimates.
    - b. Review and verify the CM/GC's estimate of probable Direct Construction Costs for the Work, and report the Architect's findings to the Owner.
    - c. In the event the Direct Construction Cost estimates prepared by the CM/GC exceed the Owner's Direct Construction Cost budget, revise the Project design to allow construction of the Project within Owner's budget.
  - (12) Assist Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project. Owner shall pay for all required plan review fees.
  - (13) Prepare bidding documents that include deductive alternates which, in combination with other budget elements identified by Owner, creates a 10% bidding contingency to ensure that if bids are 10% over the budget the project can be delivered within the budgeted amount without delay.
  - (14) Coordinate with Owner and Owner's energy analyst in the energy analysis of the Project, provide all documentation required for this analysis to the Owner and energy analyst. In coordination with the Project's Sustainability Plan, establish energy performance targets at or above targets listed in the Campus Plan. Working with the Owner and energy analyst, identify energy conservation measures for analysis and describe how major building systems will work together to meet the energy performance goal. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by 35% or more, and shall be a "model of energy efficiency" as that term is described in the above-referenced administrative rules. Coordination of the Energy Analyst and analysis process shall require specific members of the design team to attend all energy meetings.
  - (15) Perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.
  - (16) Submit to the Owner the following documents, information and other data:
    - a. 2 copies of a binder with final recommendations for interior colors, materials, and finishes;
    - b. structural calculations;
    - c. heat gain/loss and HVAC system design calculations;
    - d. electrical and lighting system design calculations; and
    - e. electronic files of all published drawing sets and BIM files.

#### **D. Bidding Phase**

Upon notification of Owner's approval of the Construction Documents Phase and upon written authorization from the Owner to proceed, Architect shall:

- (1) Furnish bidders and other interested parties access to a complete electronic set of the Construction Documents via FTP or HTTP.
- (2) Review the bids and assist in recommending the award of Construction Contract(s) for the Work.
- (3) Attend the pre-bid conference at the Project site.
- (4) Perform the following Services associated with this Phase and the Direct Construction Cost allowance of the Project:
  - a. Assist the Owner and the CM/GC in soliciting subcontractor bids; and
  - b. If the lowest acceptable bid exceeds the Direct Construction Cost allowance authorized by the Owner by 10%, then at the Owner's request, and at no additional cost to the Owner, the Architect shall modify the drawings and specifications in order that new bids may be solicited and a Construction Contract award made within said allowance, consistent with the requirements of Section 1.F(4) above.

#### **E. Construction Administration Phase**

Commencing with the award of a Construction Contract by Owner, Architect shall:

- (1) Attend the pre-construction conference at the Project site.
- (2) Furnish Owner and CM/GC with a conformed set of the Construction Documents, including working drawings and specifications, incorporating addenda, changes required by the permitting process, and alternates awarded in the bidding process. Provide this set in two paper copies to Owner plus one complete set of electronic files.

- (3) Provide general administration of the Work as contemplated by the provisions of the Construction Contract including assisting the Owner with evaluation of the feasibility of the CM/GC-provided project time schedule.
- (4) Attend progress meetings with the CM/GC and Owner on a weekly basis, or as needed and directed by the Owner. Site observation visits to be included as part of progress meetings. Submit to Owner's project manager a written report only if non-compliant, quality, and/or schedule issues are observed.
- (5) Arrange for periodic visits of Consultants to make similar determinations with respect to mechanical and other Work, as applicable.
- (6) Review and approve or take appropriate action regarding shop drawings and samples submitted by the CM/GC; such actions by Architect shall be taken with reasonable promptness to cause no delay in the Work.
- (7) Prepare any supplemental drawings or large-scale details needed to clarify the Construction Documents.
- (8) Respond promptly to requests from the CM/GC for assistance with unforeseen problems so as to minimize the Owner's exposure to claims for delay.
- (9) Advise and consult with the Owner, issuing appropriate instructions to the CM/GC.
- (10) Check proposed costs of any modifications to the Construction Contract and recommend acceptance or rejection to the Owner. Owner will prepare written change orders.
- (11) Endeavor to guard the Owner against defects and deficiencies in the Work of the CM/GC.
- (12) Notify the Owner of any Work which does not conform to the Construction Documents and recommend to the Owner that the CM/GC stop the Work whenever, in the Architect's opinion, it may be necessary for the proper performance of the Construction Contract.
- (13) Issue certification to the Owner and the CM/GC when all terms of the Construction Contract have been fulfilled to the Architect's satisfaction.
- (14) Conduct on-site observations to determine the date of final completion, receive written guarantees and related documents assembled by the CM/GC and issue recommendation for final acceptance and payment.
- (15) Assist the Owner in the implementation of the State of Oregon's 1% for art program, as applicable.
- (16) Provide information to and coordinate efforts with the Owner's contractors for testing and balancing, special inspections, commissioning, and energy analysis.
- (17) Upon completion of the Work, the Architect shall, at no additional cost to the Owner, update electronic drawings and submit the appropriate digital files as follows:
  - a. one (1) complete, full-size (no larger than 30" x 42"), reproducible drawing set on vellum reflecting significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the CM/GC to the Architect;
  - b. one (1) complete, reproducible set of electronic drawing files, compatible with [insert version of Revit or Autocad], including full BIM model if BIM software is used;
  - c. one (1) complete Binders containing samples of proposed interior finishes and colorindex of AutoCAD files and drawing layers;
  - d. one (1) complete set of digital files of drawings and specifications in PDF format;
  - e. two (2) complete full-size reproducible drawing set on bond paper; and
  - f. two (2) complete sets of as-built specifications;
  - g. prepare floor plans (Book Plans) of the Project in the Owner's format for administrative and space record keeping.

**F. Post-Construction Phase**

Upon substantial completion of the Construction Administration Phase and continuing thereafter as necessary, the Architect shall:

- (1) Work with Owner's commissioning agent and with CM/GC during the 12-month period after occupancy of the project to assist in final adjustments and corrections necessary in the function of the project and of the systems that support it.
- (2) Participate in an on-site review of the project near the end of the warranty period to identify all items with pending warranty issues.
- (3) With the Owner, CM/GC, Owner's energy analyst, controls subcontractor, and Architect's mechanical and electrical consultants, participate in an after-care session during the twelfth month of the warranty period. Review system operating data including metering, trend logs, instantaneous flow measurements, and other information to ensure that the building mechanical and electrical systems are operating consistently with the design intent. Compare performance data to assumptions used during design. Identify control adjustments and other minor changes that would substantially reduce energy consumption or otherwise enhance system performance.
- (4) Participate in post-occupancy reviews, including those related to design and construction processes, as conducted by the Owner.

**8. ADDITIONAL SERVICES**

- A. Copies of Construction Documents.** All copies of Construction Documents shall be furnished by Architect upon the written request of Owner, and will be reimbursed at the cost of reproduction if in excess of the number specified in Section 7, "Architect's Services," above.
- B. Conditions Required to Support Additional Compensation.** Architect shall be paid, subject to executed amendments or supplements, for extra expenses and services involved if:
  - (1) Substantial changes are ordered by Owner after Owner has acknowledged the acceptance of one or more of the planning phases described above (except changes which are ordered for the purpose of maintaining the Direct Construction Cost of the Project within the allowance specified in Section 1, "Relationship Between Parties");
  - (2) Damage occurs as a result of fire or other casualty to the structure;
  - (3) The CM/GC becomes delinquent or insolvent;
  - (4) Architect's attendance is required at City of Eugene public and/or planning board presentations;
  - (5) Owner requests detailed demolition drawings of existing structure(s) or if documentation must be made for salvage of existing materials, except as may be required to ensure that new construction may be fit to existing construction;
  - (6) Owner requests the selection and specification of furnishing(s) outside the scope of the Project's direct construction allowance;
  - (7) Owner requests Additional Services not identified under the Basic Services provision of this Agreement, such as study models, renderings, etc.;
  - (8) The Owner requests that the Architect provide design Services to have the Project LEED certified;
  - (9) The Owner requests that the Architect provide design Services associated with specialized signage for the Project beyond that required for code compliance;
  - (10) The Owner requests that the Architect perform all necessary Services related to the selection and installation of new furniture purchased by the Owner for the Project; or
  - (11) The Owner requests that the Architect prepare any specifications required as part of the installation of the Owner's new furniture at the Project.
- C. Payments at the time of Abandonment or Suspension.** If any Services performed by Architect are abandoned or suspended, Architect shall be paid for the Services rendered, under the provisions and limitations of Section 4, "Payments," in proportion to the amount of Services performed at the time of suspension or abandonment, provided the initiative for such abandonment or suspension is by Owner and does not result from a design error of Architect, a bid overrun, or other breach or default by Architect.

**9. SURVEY, BORINGS AND TESTS**

Owner shall, so far as the Services under this Agreement may require, furnish Architect the following information:

- A. Survey.** A complete and accurate survey of the Project site, giving the grades and lines of streets, pavements, and adjoining properties and/or scale drawings reasonably representing existing conditions;
- B. Project Site Conditions; Utilities.** The rights, restrictions, easements, boundaries, and contours of the Project site and full information as to sewer, water, gas and electrical service, existing utility tunnels, lines, etc., on site;
- C. Geotechnical Reports.** Geotechnical investigation reports with recommendations for soil-bearing capacities.  
Owner will pay for chemical, mechanical or other tests when required. Owner does not warrant the accuracy of any of the information so provided. Architect will not be held responsible for errors due to inaccuracy of any of the information so provided.

**10. ARCHITECT'S RESPONSIBILITIES IN REGARD TO ASBESTOS AND OTHER HAZARDOUS SUBSTANCES**

It is envisioned that this Project will not involve the removal of and destruction of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "Hazardous Substances"). It is understood and agreed that the Owner will contract separately for the identification and removal of any Hazardous Substances, 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 Architect 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 such Hazardous Substances.

- 11. INSURANCE PROVISIONS:** During the term of this Agreement, Architect shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities with an

A.M. Best rating of A- or better that are authorized to transact the business of insurance and issue coverage in the State of Oregon:

- A. **Workers' Compensation:** All employers, including Architect, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Architect shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. **Commercial General Liability:** Architect shall secure Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence / \$3,000,000 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:** Architect shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence, for bodily injury and property damage, including coverage for all 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:** Architect shall 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 plans, drawings, specifications and /or project manual, and all related work product of the Architect. 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, incident 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 available in the marketplace if less than 24 months. Architect 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, Architect shall furnish to the appropriate university official Certificates of Insurance as evidence of the insurance coverages required under this Agreement. The certificate(s) shall provide that the insurance policies have been endorsed / amended so that the insurance company or companies shall give a 30 calendar day notice (without reservation) to the Owner's representative set forth in Section 29, "Notice; Parties' Representatives," below if the applicable policy is canceled or materially changed, or if the aggregate limits have been reduced. The certificate(s) should state specifically that the insurance is provided for this Agreement. Insuring companies are subject to acceptance by the Owner.
- G. **Additional Insureds:** The Certificates of Insurance, except for Workers' Compensation and Professional Liability /Errors & Omissions, shall provide that the policies have been endorsed / amended so that the State of Oregon, Owner, and its institutions, officers, and employees are Additional Insureds with respect to Architect's services to be provided under this Agreement.

## 12. INDEMNITY

- A. **Claims for Other Than Professional Liability.** Architect shall indemnify, hold harmless and defend the Owner and its officers, agents, employees and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities of the Architect or the Architect's Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- B. **Claims for Professional Liability.** Architect shall save, defend, indemnify, and hold harmless Owner and its officers, agents, employees, and members from and against all claims, suits or actions, losses, damages, liabilities, costs, and expenses of whatsoever nature resulting from, arising out of, or relating to the professional negligent acts, errors, or omissions of Architect or its Consultants, partners, joint venturers, subcontractors, officers, agents, or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- C. **Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Architect, neither the Architect nor any attorney engaged by the Architect shall defend any claim in the name of the Owner, the State of Oregon, nor purport to act as legal representative of the Owner, the State of Oregon, without the prior written consent of the General Counsel of the University of Oregon. The Owner may, at anytime at its election assume its own defense and settlement in the event that it determines that the Architect is prohibited from defending the Owner, that Architect is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Architect if the Owner elects to assume its own defense.
- D. **Agency's Actions.** Subsections A and B above do not include indemnification by the Architect of the Owner for the Owner's activities, whether related to this Agreement or otherwise.

**13. LIMITATION OF LIABILITIES**

Except for any liability of the Architect arising under or related to the Architect's failure to perform according to the standard of care or any other liability arising under or related to the Architect's representations and warranties under Section 2, "Architect's Standard of Care; Representations and Warranties," of this Agreement, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Agreement or any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

**14. OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT**

- A. Work Product.** Copies of plans, specifications, reports, or other materials required to be delivered under this Agreement ("Work Product") shall be the exclusive property of Owner. Owner and Architect intend that such Work Product be deemed "Work made for Hire," of which Owner shall be deemed the author. If for any reason such Work Products are not deemed "Work made for Hire," Architect hereby irrevocably assigns to Owner all of its right, title, and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Architect shall execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. Architect forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use of subsequent modifications.
- B. Architect's Use of Work Product.** Architect, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may use for its sales and, in addition, unless specifically otherwise exempted, Architect may use standard line drawings, specifications, and calculations on other unrelated projects.
- C. Owner Reuse or Modification of Work Product.** If Owner reuses or modifies the Work Product without Architect's involvement or prior written consent, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, Owner shall indemnify, within the limits of the Tort Claims Act, Architect against liability for damage to life or property arising from the State's reuse or modification of the Work Product, provided Owner shall not be required to indemnify Architect for any such liability arising out of the wrongful acts of Architect or Architect's officers, employees, Consultants, subcontractors, or agents.

**15. SUCCESSORS AND ASSIGNS**

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Architect shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Architect shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by Sections 11, "Insurance Provisions"; 12, "Indemnity"; 13, "Limitation of Liabilities"; 14, "Ownership and Use of Work Product of Architect"; 17, "Mediation"; 18, "Termination of Agreement; Non-availability of Funds"; 19, "Tax Compliance Certification"; 21, "Foreign Contractor"; 22, "Compliance With Applicable Law"; 23, "Governing Law; Venue; Consent to Jurisdiction"; 24, "Independent Contractor Status of Architect"; 25, "Access To Records"; and 28, "No Waiver."

**16. NO THIRD PARTY BENEFICIARIES**

Owner and Architect 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.

**17. MEDIATION**

Architect 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. Architect further agrees to include a similar provision in all agreements with 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.

**18. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS**

- A. Mutual Agreement.** Owner and Architect, by mutual written agreement, may terminate this Agreement at any time. Owner, on 30 days written notice to Architect may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- B. Termination by Owner.** Owner may terminate this Agreement, in whole or in part, immediately upon notice to Architect, 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 Architect's Services;
  - (2) Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
  - (3) Architect no longer holds any license or certificate that is required to perform the Services;
  - (4) Architect commits any material breach or default of any covenant, warranty, obligation, or agreement under this Agreement, fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or so fails to perform the Services as to endanger Architect'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 Funding.** 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 Architect 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 Architect, 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 Architect notice of such non-availability of funds within thirty (30) days after it receives notice of such non-availability.
- D. Effect of Termination.** In the event of termination of this Agreement:
- (1) Pursuant to subsections A, B(1) or B(2) above, Owner, using the Schedule of hourly charges set forth in Section 3, "Compensation," and within the limitations specified in Section 8, "Additional Services," shall compensate Architect for all Services performed prior to the termination date, together with Reimbursable Expenses then due, and such amounts shall immediately become due and payable.
  - (2) Pursuant to subsections B(3) or B(4) above, Owner shall have any remedy available to it under this Agreement or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively, and in any order.
  - (3) For any reason, Architect shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to 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.
  - (4) For any reason, Architect shall be responsible to Owner for the quality of its Services and Work Product through the date of termination.

**19. TAX COMPLIANCE CERTIFICATION**

By signature on this Agreement, the undersigned certifies under penalty of perjury that the undersigned is authorized to act on behalf Architect and that Architect 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 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber And Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.

**20. DISCLOSURE OF SOCIAL SECURITY NUMBER**



Architect must provide Architect's Social Security number unless Architect provides a federal tax ID 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.

**21. FOREIGN CONTRACTOR**

If Architect is not domiciled in or registered to do business in the State of Oregon, Architect 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. Architect shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

**22. COMPLIANCE WITH APPLICABLE LAW**

Architect agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Architect specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Architect 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 Architect to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Architect of these obligations nor of the requirements of this Agreement. Architect further agrees to make payments promptly when due, to all persons supplying to such Architect labor or materials for the performance of the Services to be provided under 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; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Architect 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 Architect or Architect'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.

**23. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit, or proceeding (collectively "Claim") between Owner and Architect that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Lane County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution, or otherwise. ARCHITECT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

**24. INDEPENDENT CONTRACTOR STATUS OF ARCHITECT**

- A. Architect as Independent Contractor.** Architect shall perform all required Services as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the competed performance, Owner cannot and will not control the means or manner of Architect's performance. Architect is responsible for determining the appropriate means and manner of performing the Services.
- B. Agency Status.** Architect is not an officer, employee, or agent of the State or Owner as those terms are used in ORS 30.265.
- C. Benefits; Payment of Taxes.** Architect 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 Architect under this Agreement. Architect 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, Architect certifies that it is not currently employed by the federal government.

**25. ACCESS TO RECORDS**

For not less than three (3) years after Agreement expiration, 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 Architect and the Consultants which are directly pertinent to this Agreement 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, Architect shall retain

all pertinent records for not less than three (3) years or until all litigation is resolved, whichever is longer. Architect will provide full access to such documents in preparation for and during any such litigation.

**26. 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 Agreement did not contain the particular term or provision held to be invalid.

**27. 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 this Agreement.

**28. NO WAIVER**

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

**29. NOTICE; PARTIES' REPRESENTATIVES**

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Architect or Owner at the address or number set forth below, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Owner, such facsimile transmission must be confirmed by telephone notice to Owner's Representative named below. Any notice by personal delivery shall 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.

Representatives for Architect and Owner for purposes of notice and for other specific purposes provided for under this Agreement are [list names, addresses, telephones for Architect and Owner]

**30. CONFIDENTIALITY**

Architect shall maintain the confidentiality of information of Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Architect from establishing a claim or defense in an adjudicatory proceeding. Architect shall require the Consultants to execute similar agreements to maintain the confidentiality of information of Owner.

**31. CONFLICT OF INTEREST**

Except with Owner's prior written consent, Architect shall not engage in any activity, or accept any employment, interest, or contribution that would or would reasonably appear to compromise Architect's professional judgment with respect to this Project, including without limitation, concurrent employment on any project in direct competition with the Project, and will provide copies of any such agreements within ten (10) days of the full execution of such agreements.

**32. SURVIVAL**

All rights and obligations shall cease upon termination or expiration of this Agreement, except for the rights and obligations set forth in Sections 2, "Architect's Standard of Care"; 12, "Indemnity"; 13, "Limitation of Liabilities"; 14, "Ownership and Use of Work Product of Architect"; 18, "Termination of Agreement; Non-availability of Funds"; 23, "Governing Law; Venue; Consent to Jurisdiction"; 25, "Access to Records"; 30, "Confidentiality"; and 32, "Survival."

**33. COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

**34. 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. ARCHITECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND ARCHITECT AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the Effective Date.

**Architect:**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Federal Tax ID # \_\_\_\_\_

**Owner:**

STATE OF OREGON acting by and through the STATE BOARD OF HIGHER EDUCATION on behalf of the UNIVERSITY OF OREGON

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE

Business Transactions Section:

By \_\_\_\_\_  
Date \_\_\_\_\_

EXHIBIT 1

ARCHITECT'S KEY PERSONNEL AND  
CONSULTANTS

Key Personnel [modify categories as needed]

Principal: \_\_\_\_\_

Senior Architectural  
Designer: \_\_\_\_\_

Architectural  
Designer: \_\_\_\_\_

Urban Designer: \_\_\_\_\_

Sr. Project  
Manager: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Production Personnel/Project  
Architect: \_\_\_\_\_

Senior Interior  
Designer: \_\_\_\_\_

Interior  
Designer: \_\_\_\_\_

Clerical: \_\_\_\_\_

Consultants

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_