

**MASTER CONTRACT
FOR MOVING SERVICES
OREGON STATE UNIVERSITY**

This Contract, effective upon the last signature of a party to it, is between:

“Contractor”:

and “Owner”:

**The State of Oregon, acting by and through the State Board
of Higher Education, on behalf of the Oregon State
University**

Oregon State University
Oak Creek Building
Attention: Debera Massahos
3015 SW Western Blvd.
Corvallis OR 97331

(each, a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, Owner issued a request for proposals, RFP #169743, inviting moving services firms to provide services to Owner (the “Solicitation Documents”); and

WHEREAS, Owner having received and evaluated the responses to the Solicitation Documents, now desires to award this Contract to Contractor; and

WHEREAS, Contractor desires to provide moving services to Owner;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound agree as follows:

AGREEMENT

1. INCORPORATION OF TERMS AND DOCUMENTS

Contractor agrees to provide moving services (“Work”) to Owner in accordance with the Contract. The Contract consists of, in descending order of priority, the Supplements (defined below), these Master Contract for Moving Services Oregon State University terms and conditions, and the Solicitation Documents. The Supplements and Solicitation Documents are both incorporated herein by this reference.

2. WORK

Owner may request Work of Contractor pursuant to this Contract for specific projects (each, a "Project") throughout the Term (as defined below) of this Contract. Upon receipt of such a request (each such request, a "Request"), Contractor may respond to the Request for specific Work, as defined in the Request. Contractor's response shall state fixed-price or a maximum not-to-exceed price for the Work, in accordance with the Request, this Contract and the conditions of the Project.

Upon Owner's election to award a Project to Contractor, the scope and cost of the Work with regard to each such specific Project will be specified in a written Contract Supplement (each, a "Supplement") and a Notice to Proceed may be issued. Each such Supplement will be incorporated into the Contract upon full execution thereof. From time to time, Owner and Contractor may elect to amend a Supplement by way of an amendment to the Supplement (each such amendment, a "Supplement Amendment"). Each such Supplement Amendment will be incorporated into the Contract upon full execution thereof.

Contractor's Work shall comply with the Contract and applicable laws and shall be performed in accordance with the professional skill, care, and standards of other professionals performing similar work under similar conditions.

3. OWNER DOES NOT GUARANTEE THAT WORK WILL BE REQUESTED

Contractor acknowledges and agrees that Owner does not warrant or guarantee that any Work will be requested or authorized under this Contract. No Work shall be undertaken by Contractor pursuant to this Contract without a fully executed Supplement, detailing the specific Work associated with a Project.

4. MAXIMUM COMPENSATION FOR ALL WORK

Owner agrees to compensate Contractor for Work in accordance with the Contract. If Contractor is to be compensated on a time and materials basis, Contractor shall provide Owner with a listing of wage rates, material unit costs, and overhead charges for the Project in Contractor's response to Owner's Request for Work.

Pursuant to ORS 305.385 and OAR 150-305-100 and as a condition precedent to Owner's obligation to make any payment due Contractor under this Contract, Contractor shall provide Owner with its Social Security or federal employer identification number, as applicable.

5. TERM AND TERMINATION

The term of this Contract (the "Term") commences on the full execution hereof and expires on September 1, 2017, unless earlier terminated by Owner. Owner may terminate this Contract immediately upon Contractor's default under this Contract or for convenience upon thirty (30) days written notice to Contractor..

6. MINIMUM WAGE RATES.

Pursuant to ORS 279C.830(1)(c), Contractor shall pay workers at not less than the specified minimum

hourly rate of wage, and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the applicable state or federal prevailing rate of wage. If Contractor fails to pay for labor and services, Owner may make payment for Contractor and withhold the amount of any such payments from any amounts due Contractor under this Contract.

Prior to commencing any Work under this Contract, Contractor and all subcontractors (unless exempt) shall have filed a public works bond with the Construction Contractors Board, pursuant to ORS 279C.836. Contractor shall include in every subcontract a provision requiring all subcontractors to file a public works bond with the Construction Contractors Board prior to commencing any Work under this Contract.

Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work. Contractor shall pay daily, weekly, weekend and holiday overtime as required by ORS 279C.540.

Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement, and, that to the Contractor's or Subcontractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by this Section 6. The Owner shall pay to the Contractor the amount retained under this subsection

within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.

The Bureau of Labor and Industries (BOLI) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Contract:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, ____, 20__, as amended ____, 20__ [delete “as amended ____, 20__” if there have been no amendments since last rate change], which can be downloaded at the following web address:

[http://www.boli.state.or.us/BOLI/WHI/PWR/pwr_book.shtml]

The Work will take place in Benton County, Oregon.

7. PAYMENTS

Contractor shall submit invoices for payment and Owner shall make payments for Work completed by Contractor in accordance with this Section 7.

Owner shall make progress payments on the Contract monthly as Work progresses, in accordance with the requirements of this Section 7. Invoices for payment shall be based upon Work completed and Contractor shall itemize invoices, with separate amounts for each Supplement. Payment shall not be considered waiver of any damages. Owner shall pay to Contractor interest for overdue invoices at the rate of two-thirds of one percent per month on payment due the Contractor. Overdue invoices will be those that have not been paid within forty five (45) days from the latest of:

- (a) The date of the receipt of the accurate and complete invoice;
- (b) The date all services have been received; or
- (c) The date a Claim is made certain by agreement of the parties or by operation of law.

Notwithstanding the foregoing, in instances when there is any defect in any submitted invoice or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) days stating the reason or reasons the invoice is defective or the reasons for the dispute. A defective invoice, if corrected by the Contractor within seven (7) days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Payment of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective invoice, to reject the defective portion of the invoice and pay the remainder of the invoice for such amounts which are correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, Contractor shall arrange for receipt of the EFT/ACH payments.

Contractor shall submit to the Owner an invoice for each payment and, if required, receipts or other vouchers showing payments for materials and labor including payments to Subcontractors. Contractor shall include in its invoice a schedule of the percentages of the various parts of the Work completed, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: _____
Dated: _____”

The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner’s opinion to protect the Owner from loss because of:

- (a) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (b) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Contractor and such unpaid Persons under this provision, or directly to Subcontractors and suppliers at any level);
- (c) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price; or
- (d) damage to the Work, Owner or another contractor.

8. MWESB REPORTS

Contractor shall submit annual MWESB Reports on June 30 of each year the Contract is active. Contracts first executed by Contractor within ninety (90) Days before June 30 of the year of execution by Contractor may at the discretion of Owner be exempt from submitting the annual MWESB Report otherwise due on that June 30. The final MWESB Report shall be filed with the application for final payment.

9. INSURANCE

Contractor shall maintain in full force, at its own expense, and for the duration of the Term, any and all insurance required by this Contract. Insurance carried by Contractor under this Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer’s

Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

Contractor shall obtain, and keep in effect at Contractor's expense for the term of the Contract, Commercial General Liability Insurance covering bodily injury and property damage in the amount of \$1,000,000 per claim and \$2,000,000 per occurrence in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than \$1,000,000 per claim and \$2,000,000 per occurrence. Contractor and its Subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on site.

Additional Insured: The general liability insurance required shall include the Owner as additional insureds but only with respect to the Contractor's activities to be performed under this Contract.

If the Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify Owner by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Contractor agrees to stop Work pursuant to this Contract, unless all required insurance remains in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Contractor acknowledges and agrees that Owner reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to Owner.

As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are additional insureds or loss payees for this contract. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-

insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of any Supplement.

10. INDEMNITY

Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, employees, guests, visitors, invitees and agents.

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner and its respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section 10; (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under this Contract which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in this Contract or in any subcontract, (d) the negligent acts or omissions of the Contractor, a subcontractor or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 10. Owner's right to receive indemnification under this section is conditioned upon Owner giving reasonably prompt notice and assistance of any claim; provided however, that Owner's failure to provide notice and assistance does not limit Owner's right to indemnification except to the extent such failure or assistance materially affects Contractor's ability to defend the claim. In no event may Contractor enter into any settlement or similar agreement with a third party that affects Owner's rights or binds Owner in any way, without the prior written consent of Owner.

In claims against any person or entity indemnified under this Section 10 by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 10 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

11. AMENDMENTS

Any change to the terms and conditions of this Contract shall be made only upon a fully executed written Supplement or Amendment.

12. NOTICES

Except as otherwise expressly provided in this Contract, any notice required or permitted to be given under this Contract shall be given in writing and shall be delivered (a) by personal delivery, (b) by email, or (c) by mail (postage paid) to Contractor or Owner at the address or number set forth on the first page of this Contract or to such other address as either Party may from time to time specify in writing to the other Party. To be effective against Owner, such email transmission must be confirmed by telephone at the number set forth in the first page of this Contract. Any communication or notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery will be deemed to be given when actually delivered.

13. LICENSING; LEGAL CAPACITY TO CONDUCT BUSINESS

Contractor shall be licensed to do business in the State of Oregon and shall continuously maintain all licenses required by applicable laws for the operation of its business or performance of the Work under this Contract throughout the Term. Contractor shall demonstrate its legal capacity to do business and perform the Work in the State of Oregon before entering into any Supplement.

14. CHOICE OF LAW; JURISDICTION AND VENUE

This Contract, as it may from time to time be amended, shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between Owner and Contractor that arises out of or relates to performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Benton County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought only 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 way shall this Section 14 be construed as a waiver by Owner of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

15. TAX LAW COMPLIANCE

Contractor hereby certifies and affirms, under penalty of perjury as provided in ORS 305.385(6), that, to the best of Contractor's knowledge, Contractor 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.

16. EXECUTION AND COUNTERPARTS

This Contract and any Supplement or Amendment hereto may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

