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# **OREGON STATE UNIVERSITY**

## **REQUEST FOR QUALIFICATIONS**

### **RFQ # 183708**

Shallow Seismic Evaluation

**CONTRACT ADMINISTRATOR:**

**Oregon State University**

Shoshana Shabazz

Construction Contracts Administration

Phone: (541) 737-0922

FAX: (541) 737-5546

ISSUE DATE: January 19, 2017

RFQ CLOSING (DUE) DATE: February 9, 2017, 3:00 PM, Local Time

NO LATE RESPONSES WILL BE ACCEPTED

### **SUBMITTAL LOCATION**

Oregon State University

Construction Contracts Administration

Attention: Shoshana Shabazz

644 SW 13<sup>th</sup> Street

Corvallis OR 97333

Introduction:

Oregon State University (“OSU”) is seeking qualifications from firms to provide surveying services for a Shallow Seismic Survey.

The Northwest National Marine Renewable Energy Center (NNMREC) at OSU, is developing the Pacific Marine Energy Center South Energy Test Site (PMEC-SETS), a grid-connected test facility, to evaluate utility scale wave energy converter (WEC) performance, environmental interactions, and survivability. Intended to be the first of its kind in the U.S., PMEC-SETS will help support the development and deployment of innovative marine hydrokinetic (MHK) systems that have the potential to be cost competitive with other forms of electricity generation.

As the nation’s first full-service, grid-connected facility for utility-scale WEC testing, PMEC-SETS will play an integral role in advancing wave energy from early-stage, ocean testing through final demonstration for commercialization, serving as an integrated research center as well as a training ground for future jobs in the ocean energy industry.

The offshore test site location has been identified and NNMREC is currently working to identify a suitable location for landing the subsea cables and transitioning them to terrestrial cables in a beach manhole (BMH). The subsea cables will be installed in horizontally directionally drilled (HDD) conduits running from the terrestrial landing site, located onshore approximately 300 meters from the surf zone, out into the ocean approximately to the 10-meter water depth contour.

Two potential cable landing sites south of Newport, Oregon, have been identified.

Description of Services Sought:

**OSU is seeking a firm to undertake the shallow seismic surveys described in the Statement of Work No. 160710LAM drafted by 3U Technologies (attached to this RFQ as Exhibit 1) to ensure the feasibility of HDD installation.**

The successful respondent will agree to provide shallow seismic surveying services for NNMREC in support of the Statement of Work **in Exhibit 1).**

Federal Funding Requirements:

Work under the contemplated contract is federally funded. OSU has received federal funds from Department of Energy (DOE). Compliance with the following Federal Provisions, will be required:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, “Equal Employment Opportunity,” as amended by E.O. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and sub grants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States”). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and sub grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to Compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*— Contract awards that exceed the small purchase threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's List of parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension.” This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

Compliance with applicable provisions national policies prohibiting discrimination: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by 10 CFR Part 1040; Executive Order 11246 [3 CFR, 1964 1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60; Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.); Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 ; The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).

Compliance with applicable provisions of the following national policies concerning live organisms: For human subjects, the Common Federal Policy for the Protection of Human Subjects, 10 CFR Part 745; 10 C.F.R.

Part 745; 10 C.F.R. Part 600, App. A; Uniform Relocation Assistance and Land Acquisition Policies Act, 42 U.S.C. § 4601 et seq.; 49 C.F.R. Part 24; Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq. (see particularly § 7104(g)); 2 C.F.R. Part 175; 10 C.F.R. Part 600, Appendix A; 10 C.F.R. § 602.10(c)

Compliance with the following environmental laws and regulations: The Clean Water Act 10 C.F.R. Part 600, Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. § 1251 et seq.; 33 U.S.C. § 1368; Exec. Order No. 11,738, 38 Fed. Reg. 25,161 (Sept. 10, 1973); The Clean Air Act 10 C.F.R. Part 600, Appendix A; Air Pollution Control Act (“Clean Air Act”), 42 U.S.C. § 7401 et seq; The Resource Conservation and Recovery Act (RCRA), 10 C.F.R. §§ 600.116 and 600.149; Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (see particularly § 6962), 10 C.F.R. Part 600, App. A; Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).

Compliance with Protection of Wetlands and Floodplains, 10 C.F.R. Part 1022; Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq.

Compliance with Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.; 15 C.F.R. Part 930.

Compliance with Coastal Barriers Resource Act, 16 U.S.C. § 3501 et seq.

Compliance with the following lobbying laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; An Act to Prevent Pernicious Political Activities (“Hatch Act” of 1939), 5 U.S.C. §§ 1501-1508, 7324-7326; 10 C.F.R. Part 601; 31 U.S.C. § 1352.

Compliance with the following health and safety laws, regulations, policies, and requirements: The Public Health Service Act 10 C.F.R. Part 600, Appendix A; Title XIV, Public Health Service Act, 42 U.S.C. § 300f et seq; 10 C.F.R. Part 600, Appendix A; Drug Abuse Office and Treatment Act, 42 U.S.C. § 290dd; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 U.S.C. § 290dd-1; Construction Work Hours and Safety Standards Act, 40 U.S.C. § 3701 et seq.; 10 C.F.R. § 602.10(b); NIH Guidelines for Research Involving Recombinant DNA Molecules.

Compliance with the following domestic preference laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Cargo Preference Act, 46 U.S.C. § 55305; 46 C.F.R. § 381.7; 10 C.F.R. Part 600, Appendix A; International Air Transportation Fair Competitive Practices Act (“Fly America Act”), 49 U.S.C. § 40118.

Compliance with the following project management laws, regulations, and policies: following project management laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; 31 U.S.C. § 3711; 10 C.F.R. Part 600, Appendix A; Single Audit Act, 31 U.S.C. § 7501 et seq; 10 C.F.R. § 600.31; 10 C.F.R. Part 733; 10 C.F.R. §§ 600.25 & 600.113; 2 C.F.R. Parts 180 & 901 (see particularly Subpart C Responsibilities of Participants” within each section); Paperwork Reduction Act, 44 U.S.C. § 3501 et seq; 2 C.F.R. Part 25.

Compliance with the following educational and cultural laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Indian Self-Determination and Education Act, 25 U.S.C. § 450 et seq. (see particularly § 450e(b)).

Make a good faith effort to comply with the following policies: 10 C.F.R. Part 600, Appendix A; Exec. Order No. 12,138, 44 Fed. Reg. 29,637 (May 18, 1979)

(“Creating a National Women’s Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women’s Business Enterprise”); 10 C.F.R. § 600.306; Metric

Conversion Act of 1975, 15 U.S.C. § 205a et seq.; Exec. Order No. 12,770, 56 Fed. Reg. 35,801 (July 29, 1991) (“Metric Usage in Federal Government Programs”)

Compliance with applicable provisions of the following, national policies:

Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040 (45 FR 40514, June 13, 1980), as proposed to be amended by 46 FR 49546 (October 6, 1981).

Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964—65 Comp., p. 345.

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).

Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).

Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), 40 CFR part 1500, as implemented by (45 FR 20694, March 28, 1980).

Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).

Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.

Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*).

Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).

10 CFR part 1022, “Protection of Wetlands and Floodplains.”

Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).

Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR part 930).

Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order 11593, “Protection and Enhancement of the Cultural Environment,” May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR part 800.

Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*).

Protection of Human Subjects, 10 CFR part 745.

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Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR parts 1, 2, and 3).  
Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).  
Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).  
Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR §381.7).  
International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).  
Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise," (May 18, 1979) 3 CFR 1979 Comp., p. 393.  
Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).  
Administrative and Fiscal Policy Requirements  
The Hatch Act (5 U.S.C. 1501-1508).  
Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 *et seq.*).  
OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.  
Federal Claims Collection Act of 1966, Pub. L. 89-508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*).  
OMB Circular A-88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.  
OMB Circular A-73, Audit of Federal Operations and Programs.  
Single Audit Act of 1984, Pub. L. 98-502.  
OMB Circular A-128, Audits of State and Local Governments.  
[47 FR 44108, Oct. 5, 1982, as amended at 50 FR 42361, Oct. 18, 1985; 51 FR 4297, Feb. 4, 1986]

Selection Process:

This RFQ and the selection process will be conducted pursuant to the terms of this RFQ and the Oregon State University Standard 580-063-0030, relating to the selection and retention of contractors for construction related services.

Compensation:

Compensation will be based on a total "not-to-exceed" amount for services at the time services and reimbursable expenses.

Response Requirements/Evaluation Criteria:

Indicate in writing the following information about your firm's ability and desire to perform this work. Firms will be rated based upon the weight assigned to each item as noted in the parentheses at the end of each statement below.

1. Provide a description of your firm. Include your firm's organizational chart (not the "project's" organizational chart). List the projects your firm is currently contracted for and what stage you are in terms of completion. (weight 10)



2. **Project Samples:** Describe three (3) projects you feel are comparable to this Project, which have been completed within the last 5 years and managed by the project manager proposed for this Project. Include a description of project type, location, size, duration and objectives; a list of key project staff and their roles; tasks performed by the Respondent to fulfill the project objectives; the project budget, and whether the schedule and budget were met. (Weight 15)
3. **Key Staff:** Identify the key personnel in your firm who will be assigned to this project, their responsibilities on previous projects, and specific responsibilities for this project. (weight 20)
4. Provide an example of a survey plan that your firm has utilized on a previous project. Include this information as an appendix, and as such will not count toward the ten (10) page limit. (Weight 20)
5. **Hourly Rates:** Provide your firms hourly rates that will be the basis of your fee proposal. Include all applicable for all job classifications that will be associated with the scope of work as indicated in Exhibit 1. Hourly rates shall be inclusive of labor, materials, and overhead and profit but not inclusive of reimbursable expenses as defined in the attached sample agreement. (Weight 20)
6. **Workforce Diversity Plan.**  
Provide a description and identification of Minority Business Enterprise (MBE), Women Business Enterprise (WBE) or Emerging Small Business (ESB) certifications for your firm and a description of your firm's nondiscrimination practices. Provide any historical information on MBE, WBE or ESB Joint Ventures, subcontracting or mentoring plan, and utilization history for projects completed within the past three (3) years.

Provide a narrative description of your current workforce diversity program/plan, and the plan for obtaining subcontracting and consulting diversity for this project. Include a description of the outreach program or plan, including a schedule of events and specific steps that will be taken to maximize broad based and inclusive participation and the plan to provide mentoring, technical or other business development services to subcontractors needing or requesting such services.

The successful respondent(s) shall perform the work and the contract with respect to diversity according to the means and methods described in its workforce plan described in the response, unless changes are requested and approved in writing in advance by OSU or are required by applicable laws, ordinances, codes, regulations, rules or standards. (Weight 10)

7. Provide the names, addresses and phone numbers of three clients for whom your firm has provided similar services within the past five (5) years. These references should be from projects that have relevance to the project identified in this solicitation. Please verify that the individuals identified have had direct contact with the referenced project, and the phone number is current. OSU may check with these references and/or may check with other references associated with past work of your firm. Please refrain from using OSU personnel in references. (Weight 5)

Selection Procedure and Timetable:

The selection procedure described below will be used to evaluate the capabilities of interested firms to provide the professional services to OSU for this project.

January 19, 2017	Issue RFQ
February 9, 2017 3:00 PM Pacific Time	RFQ response due
March 3, 2017	Estimated Notice of Intent to Award

Evaluation Process:

This RFQ will use a one-step process to select a firm to provide shallow seismic surveying. Evaluations of written qualifications submitted in response to this RFQ will be used to determine an Apparent Successful Respondent.

Each of the evaluation criteria has been assigned a weight of between 10 and 20. Each member of the evaluation committee will separately rank each response in each of the evaluation criteria between 1 and 5, and multiply that number by the weight assigned to the evaluation criteria. OSU will then total the weighted score from all of the criteria to obtain a total score for each response.

The evaluation committee will compare and discuss the individual evaluation committee member rankings. The committee will also discuss firm strengths and weaknesses and the individual evaluation committee member scorings. After discussions have concluded, committee members may adjust their scores. The evaluation committee scores will then result in the final consolidated ranking.

The evaluation committee may check references and adjust the scores based on the results of reference checks to determine the final ranking of respondents.

After the committee discussions are completed, the evaluation committee will select the Apparent Successful Respondent by ranking the responses based on all information received, presented, found and heard. OSU will commence fee proposal negotiations with the Apparent Successful Respondent. The Apparent Successful Respondent shall:

- Meet with OSU staff to understand detailed scope, schedule and budget of the work, and provide a fee proposal and schedule prior to commencing work.

OSU may negotiate the scope of Work and the contract price. **OSU will not entertain contract term negotiations.** If a fee proposal cannot be successfully negotiated, OSU reserves the right to conclude fee proposal negotiations, and negotiate a fee proposal with the second ranked respondent, etc., until OSU reaches agreement or elects to cancel this RFQ

Once the fee proposal is found to be satisfactory to OSU, A Notice of Intent to Award will be posted and OSU anticipates it will then enter into a “not-to-exceed” contract with a firm, who in OSU’s discretion, best meets the requirements and qualifications of the RFQ and whose fee proposal is in the best interest of OSU, to provide shallow seismic surveying. If a Contract cannot be completed after award, OSU may conclude contract negotiations, rescind its award to that respondent, and negotiate with the second ranked respondent, etc., until OSU reaches agreement or elects to cancel this RFQ.

**Responsibility Evaluation:**

OSU may investigate each respondent’s responsibility in accordance with the requirements of Oregon State University Standard 580-061-0130, and may consider information obtained from any source as part of its evaluation, at any time prior to execution of a contract. Submission of a signed response constitutes the respondent’s approval for OSU to obtain any information OSU deems necessary to conduct the evaluation including, but not limited to, credit reports and information discovered during reference checks.

Financial Information: OSU may notify respondents, in writing, of any financial documentation required, which may include recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity and credit information.

OSU may postpone the award or execution of a contract in order to complete its investigation and evaluation. Failure to promptly provide complete information requested will render the response nonresponsive. Failure of a respondent to demonstrate responsibility will render it non-responsible and constitute grounds for response rejection.

Submission:

Submit **four (4)** copies of your written response, along with an electronic version on a thumb drive to be received by the closing date and time listed in this document to:

Shoshana Shabazz  
Oregon State University  
**644 SW 13<sup>th</sup> Street**  
**Corvallis OR 97333**

Your response must be contained in a document **not to exceed ten (10) single sided pages (do not print on both sides)**, including pictures, charts, graphs, tables and text the respondent deems appropriate to be part of the review of the respondent's response. Resumes of key individuals proposed to be involved in this project are exempted from the ten (10) page limit and may be **appended to the end of your response**. No other supplemental information to the ten (10) page response will be allowed. Appended resumes of the proposed key individuals, along with a transmittal letter, table of contents, front and back covers, and blank section/numerical dividers, etc., will not be counted in the ten (10) page limit.

**Information should be presented in the same order as the above evaluation criteria. The response should be submitted with page size of 8 ½ x 11 inches with no fold-outs.** The basic text information of the response should be presented in standard business font size, and reasonable (we prefer one inch) margins.

**The electronic response should be sized appropriately for transfer (under 8 MB).**

**Your response must be signed by an officer of your firm with the authority to commit the firm and contain contact information including email address(es) for communication purposes.**

OSU may reject any response not in compliance with all prescribed public bidding procedures and requirements, and may cancel this solicitation or reject for good cause all responses upon a finding by OSU that it is in the public interest to do so.

Firms who are listed as an excluded party within the U.S. General Services Administration's Excluded Party List System or a firm that is listed on the Office of Federal Contract Compliance Programs Debarred Companies List are not permitted to submit a response to this RFQ and will be rejected if response from such a firm is received.

Please note that OSU will not accept responses or queries that require OSU to pay the cost of production or delivery.

OSU is an AA/EEO employer.

**Telephone, facsimile, or electronically transmitted responses will not be accepted.**

**Responses received after the closing date and time will not be considered.**

Pre-RFQ Conference Call in:

A voluntary pre RFQ conference call in will be held on January 25, 2017 at 3:00 PM. All questions asked at the conference must still be provided in writing by the deadline on January 27, 2017 at 3:00 pm. Only changes/clarifications posted in an addendum prior to the RFQ due date should be considered in your RFQ response. Directions or clarifications from any other source should not be relied upon and could cause your RFQ response to be rejected as non-responsive.

**For Audio Participants Please Dial:**

Phone number: 541-737-8725

Conference ID: 84371, followed by # sign.

Questions:

All questions and contacts with the University regarding any information in this RFQ must be addressed in writing, fax or email to Shoshana Shabazz at the address, email or fax listed in this document no later than January 27, 2017 at 3:00 pm. Questions or requests for clarification received after this deadline will not be answered.

Solicitation Protests:

You may submit a written request for clarification or change or protest of particular solicitation provisions and specifications and contract terms and conditions (including comments on any specifications or terms that you believe limits competition) to Kelly Kozisek c/o Shoshana Shabazz at [Shoshana.shabazz@oregonstate.edu](mailto:Shoshana.shabazz@oregonstate.edu) or to Oregon State University Construction Contracts Administration Attn: Kelly Kozisek c/o Shoshana Shabazz at 644 SW 13th Street, Corvallis, OR 97333-4238 . Requests and protests must be received no later than 3:00 p.m., January 23, 2017. Requests or protests must state the reasons for the request or protest and any proposed changes to the solicitation provisions and specifications and contract terms and conditions.

Change or Modification:

Any change or modification to the specifications or the procurement process will be in the form of an addendum to the RFQ and will be made available on the OSU Business and Bid Opportunities website. No information published in any other manner will serve to change the RFQ in any way, regardless of the source of the information. Any request for clarification or change or protest of anything contained in an addendum not received by the date and time stated in the addendum will not be considered.

Selection Protests:

Any respondent to this RFQ who claims to have been adversely affected or aggrieved by the selection of a competing respondent may submit a written protest of the selection to Kelly Kozisek c/o Shoshana Shabazz at [Shoshana.shabazz@oregonstate.edu](mailto:Shoshana.shabazz@oregonstate.edu) or to Oregon State University Construction Contracts Administration Attn: Kelly Kozisek c/o Shoshana Shabazz at 644 SW 13th Street, Corvallis, OR 97333-4238 . within five days after notification of that selection. Any such protests must be received by Ms. Shabazz no later than five days after the notification of selection has been made in order to be considered. The Notice of Intent to Award will be posted to the OSU Business and Bid Opportunity website.

Proprietary Information:

OSU will retain this RFQ and one copy of each original response received, together with copies of all documents pertaining to the award of a contract(s). These documents will be made a part of a file or record, which will be open to public inspection after OSU has announced an Apparent Successful Respondent(s) or all responses have been rejected. If a response contains any information that you consider to be a trade secret under ORS 192.501(2), you must mark each trade secret with the following legend: **"This data constitutes a trade secret under ORS 192.501(2), and must not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."**

The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance."

Therefore, non-disclosure of documents or any portion of a document submitted as part of a response may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the response, material designated as confidential must accompany the response, but must be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment will be publicly available regardless of any designation to the contrary. Any response marked as a trade secret in its entirety will be considered non-responsive and will be rejected.

Project Termination:

OSU reserves the right to terminate a project, the agreement, or both, at any time, upon thirty days' written notice.

Additional Requirements:

Pursuant to Oregon State University Standard 580-061-0030, by submitting a response, the respondent certifies that the respondent has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

Pursuant to Oregon State University Standard 580-061-0040, respondents are hereby notified that policies applicable to consultants and contractors have been adopted by OSU that prohibit sexual harassment and that respondents and their employees are required to adhere to OSU's policy prohibiting sexual harassment in their interactions with members of OSU's community.

Insurance Provisions:

During the term of the resulting contract, the successful respondent will be required to maintain in full force, at its own expense, from insurance companies authorized to transact the business of insurance in the state of Oregon, each insurance coverage/policy as set forth in the attached sample agreement.

Enclosures:

Sample Agreement

Exhibit 1 Statement of Work No. 160710LAM drafted by 3U Technologies

End of RFQ

CONSULTANT'S AGREEMENT  
PROJECT NAME  
OREGON STATE UNIVERSITY

This CONSULTANT'S AGREEMENT (the Agreement) is made between:

the Consultant:

and the Owner: Oregon State University  
Construction Contracts Administration  
644 SW 13<sup>th</sup> Ave.  
Corvallis OR 97333

Phone: (541) 737-0922  
FAX: (541) 737-5546

(The Consultant and the Owner are referred to collectively as the "Parties" and individually as a "Party")

WHEREAS THE OWNER DESIRES to have the assistance of the Consultant to provide \_\_\_\_\_ Services for the Project identified as \_\_\_\_\_ for Oregon State University at Corvallis, Oregon (the "Project"); and

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

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

**I. RELATIONSHIP BETWEEN THE PARTIES**

- A. **Effective Date.** This Agreement is effective on the date it has been signed by every party hereto. This is known as the Agreement effective date. No services shall be performed or payment made prior to the Agreement effective date.
- B. **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" are those Services described in Section III.C of this Agreement.

"Basic Services" are those Services generally described in sub-section C. of Section I of this Agreement, as well as such additional Basic Services as may be established by amendment.

"Contract Documents" include the Construction Contract, any general conditions and supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor's performance and payment bonds, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder to any such solicitation documents.

"Design Criteria" means the current version (as of the "Effective Date" of this Agreement) of the University's "Design Criteria for OSU Projects" provided to Consultant by the Owner and incorporated herein by reference.



“Direct Construction Costs” are the costs to the Owner of all divisions of construction, including portable equipment designed or specified by the Consultant in the construction specifications.

“Project Completion” means the final completion of all Services described in Section I.C of this Agreement.

“Reimbursable Expenses” are those expenses described in Section III.B of this Agreement.

“Services” are all those services to be performed by the Consultant 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 (the “Contractor”) that is eventually awarded the contract to construct the Project (the “Construction Contract”).

- C. **Services To Be Performed.** The Consultant agrees to provide, with the assistance of the Consultants, the professional services outlined below for this Project.

Such Services include

The Consultant shall perform the Services according to the following schedule:

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The Consultant agrees that time is of the essence in the performance of this Agreement.

- D. **Directives for Performance of the Services.**

1. The Consultant shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Consultant's performance of Services shall be as a professional Consultant to the Owner to carry out the activities of Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.
2. In administering this Agreement, the Owner may employ the services of an independent project manager, and potentially, other consultants as needed to fulfill the Owner's objectives.
3. The Consultant shall provide a list of all sub-consultants which the Consultant intends to utilize on the Project. The list shall include such information on the qualifications of the sub-consultants as may be requested by the Owner. The Owner reserves the right to review the sub-consultants proposed, and the Consultant shall not retain a sub-consultant to which the Owner has a reasonable objection.
4. The Consultant shall provide to the Owner a list of the proposed key Project personnel of the Consultant and its sub-consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner. In the event that key personnel or sub-consultants become unavailable to Consultant at any time, Consultant shall replace the key personnel and sub-consultants with

personnel or sub-consultants having substantially equivalent or better qualifications than the key personnel or sub-consultant being replaced, as approved by Owner. Likewise, the Consultant shall remove any individual or sub-consultant from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

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

## **II. CONSULTANT'S STANDARD OF CARE**

- A. By execution of this Agreement, the Consultant agrees that:
  1. The Consultant is an experienced professional firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement to design or administer a project having this scope and complexity; and will perform such Services pursuant to the standard of care set forth in subsections B. through G. of this Section II.
  2. The Consultant has the capabilities and resources necessary to perform the obligations of this Agreement.
  3. The Consultant either is, or will in a manner consistent with the standard of care set forth in this Agreement, become familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project, and that all drawings, specifications, and other documents prepared by the Consultant shall be prepared in accordance with its standard of care in an effort to accurately reflect and incorporate all such laws, rules, and regulations. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with all current laws, rules, regulations and ordinances 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 Consultant);
- B. Consultant represents and warrants to Owner that (1) Consultant 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 Consultant enforceable in accordance with its terms, (3) Consultant 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 Services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions;
- C. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with current laws, rules, regulations and ordinances 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 Consultant);
- D. All drawings, specifications, and other documents prepared by the Consultant pursuant to this Agreement shall accurately reflect existing conditions for the scope of the services to be performed;
- E. The Consultant shall be responsible for any negligent inconsistencies or omissions in the drawings, specifications, and other documents. While Consultant cannot guarantee that the various documents required under this Agreement are completely free of all minor human errors and omissions, it shall

be the responsibility of Consultant throughout the period of performance under this Agreement to use due care and perform with professional competence. Consultant will, at no additional cost to Owner, correct any and all errors and omissions in the drawings, specifications, and other documents prepared by Consultant;

- F. The Owner's acceptance of documents or authorization to continue to the next phase of design shall not be deemed as approval of the adequacy of the drawings, documents, plans or specifications. Any review or acceptance by the Owner will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein. The Consultant is responsible for all design Services under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services;
- G. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and/or warranties provided.

### III. 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. Consultant progress payments shall be made according to the provisions and schedule set forth in **Section V** of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Consultant shall perform the Basic Services, directly or through the Consultants, on a time and materials basis for a Maximum Not-to-Exceed fee of \$\_\_\_\_\_.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Consultant 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 the Consultant 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 the Consultant 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 the 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 Oregon State University employees. Travel expenses are only reimbursable when Services are rendered in excess of 25 miles from Consultant's or Consultant's office. As of the date of this Agreement, these rates are as follows. Charges for travel expenses will be reimbursed at the lowest of the following:

- (i) cost;
- (ii) the rate allowed Oregon State University employees; or
- (iii) the following rates:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$ 0.54 per mile

Lodging	\$128.00 per night plus tax
Meals: (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$14.25
Lunch	\$14.25
Dinner	\$28.50
Printing, photography, long distance telephone charges and other direct expenses	At cost

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures.

**C. Additional Services:** The Owner will compensate the Consultant for Additional Services performed by the Consultant, whether directly or through its Consultants, beyond the scope of the Basic Services described in **Section I.C**, based on hourly rates for Consultant personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement, but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

**CONSULTANT:**

Principals.....	\$ ____/hr
Senior Designer.....	\$ ____/hr
Designer.....	\$ ____ - ____/hr
Urban Designer.....	\$ ____ - ____/hr
Sr. Project Manager.....	\$ ____ - ____/hr
Project Manager.....	\$ ____ - ____/hr
Production Personnel/Project Consultant.....	\$ ____ - ____/hr
Senior Interior Designer.....	\$ ____/hr
Interior Designer.....	\$ ____ - ____/hr
Clerical.....	\$ ____/hr

**CONSULTANTS:**

_____	\$ ____/hr
_____	\$ ____/hr
_____	\$ ____/hr
_____	\$ ____/hr

These charges shall also be used to determine amounts owed the Consultant in the event this Agreement is terminated as provided in **Section XVI, D.1**. Any amounts so derived may not exceed the limitations as specified by **Section III** hereof.

#### **IV. TIME OF PERFORMANCE**

This Agreement shall take effect on the Effective Date and Consultant shall perform its obligations according to this Agreement, unless terminated or suspended, through final completion of the Project.

#### **V. FEE PAYMENTS**

Monthly progress payments shall be made upon presentation, to the Owner at the following address, of one copy of the Consultant's invoice, with required documentation, for professional services rendered and/or direct expenses incurred during the preceding month:

Administrative Services Accounting  
Oregon State University  
3015 SW Western Blvd.  
Corvallis, OR 97333

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

Upon completion of all Work under this Agreement and precedent to Owner's obligation to make final payment, Consultant shall certify, in writing, that the Consultant has completed Consultant's obligations under the Agreement by indicating "Final Billing" on final invoice to Owner.

Consultant shall deliver to Owner each MWESB Report described in this Section. Timely receipt of MWESB Reports shall be a condition precedent to Owner's obligation to pay any progress payments or final payments otherwise due.

1. Consultant shall submit annual MWESB Reports on June 30 of each year the Agreement is active ("Annual MWESB Report"). The Annual MWESB Reports shall include the total number of subcontracts awarded to MWESB enterprises as Sub-Consultants, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months.
2. Consultant shall submit a final MWESB Report as a condition of final payment ("Final MWESB Report"). The Final MWESB Report shall include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Project

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

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

other hazardous materials.

## VII. ACCESSIBILITY REQUIREMENTS

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

## VIII. INSURANCE PROVISIONS

During the term of this Agreement, Consultant 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 Consultant, 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. Consultant shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Consultant shall secure Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence/\$1,000,000 annual aggregate for bodily injury and property damage. It shall include personal injury coverage and contractual liability coverage for the indemnity provided under this Agreement.
- C. Automobile Liability** - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 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** - Consultant 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 Consultant. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have a combined single limit of not less than \$1,000,000 per claim, incident or occurrence \$1,000,000 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. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Owner's acceptance of and final payment for the Consultant's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the final acceptance of Work or Services and related warranty, if any.

**F. Certificate of Insurance.** Prior to the signature by the Owner to this Agreement, Consultant shall furnish to the appropriate university official Certificates of Insurance as evidence of the insurance 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 XXVII** 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 Oregon State University, and its board members, agents, officers, and employees are Additional Insureds with respect to the Consultant's Services to be provided under this Agreement.

## **IX. INDEMNITY**

- A. Claims for Other Than Professional Liability.** Consultant shall indemnify, hold harmless and defend the Owner and its colleges and universities and any public agencies for which Services are performed under this Agreement as supplemented or amended, and their 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 Consultant or the Consultant's sub-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.** Consultant shall save, defend, indemnify and hold harmless the Owner and its colleges and universities and any public agencies for which Services are to be performed under this Agreement as supplemented or amended, and their 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 Consultant or its sub-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 Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, nor purport to act as legal representative of the Owner, without the prior written consent of Oregon State University General Counsel. The Owner may, at any time at its election assume its own defense and settlement in the event that it determines that the Consultant is prohibited from defending the Owner, that Consultant 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 Consultant if the Owner elects to assume its own defense.
- D. Agency's Actions.** Sub-sections A. and B. above do not include indemnification by the Consultant of the Owner for the Owner's activities, whether related to this Agreement or otherwise.

## **X. LIMITATION OF LIABILITIES**

Except for any liability of the Consultant arising under or related to the Consultant's failure to perform according to the standard of care or any other liability arising under or related to the Consultant's representations and warranties under **Section II** 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.

**XI. [RESERVED]**

**XII. OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT**

- 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. The Owner and the Consultant intend that such Work Product be deemed "Work made for Hire", of which the Owner shall be deemed the author. If for any reason such Work Products are not deemed "Work made for Hire", the Consultant hereby irrevocably assigns to the 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. The Consultant shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Consultant 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. Consultant's Use of Work Product.** The Consultant, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for its sales and in addition, unless specifically otherwise exempted, the Consultant may use standard line drawings, specifications and calculations on other unrelated projects.
- C. Owner Reuse or Modification of Work Product.** If the Owner reuses or modifies the Work Product without the Consultant'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, the Owner shall indemnify, within the limits of the Tort Claims Act, the Consultant against liability for damage to life or property arising from the Owner's reuse or modification of the Work Product, provided the Owner shall not be required to indemnify the Consultant for any such liability arising out of the wrongful acts of the Consultant or the Consultant's officers, employees, sub-consultants, subcontractors, or agents.



### **XIII. 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, Consultant 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, Consultant shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by **Sections VIII-INSURANCE, IX-INDEMNITY, X -LIMITATION OF LIABILITIES, XII-OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT, XV-MEDIATION, XVI-TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XIX-FOREIGN CONTRACTOR, XX-COMPLIANCE WITH APPLICABLE LAWS, XXI-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXII-INDEPENDENT CONTRACTOR STATUS OF CONSULTANT, XXIII-ACCESS TO RECORDS and XXVI-NO WAIVER** of this Agreement.

### **XIV. NO THIRD PARTY BENEFICIARIES**

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

### **XV. MEDIATION**

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

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

### **XVI. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS**

**A. Mutual Agreement.** The Owner and the Consultant, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Consultant, 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 Consultant, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Consultant's 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. Consultant no longer holds any license or certificate that is required to perform the Services;
4. Consultant 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 Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.

**C. Owner 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 Consultant that this agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to Consultant, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Agreement, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give Consultant notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.

**D. Effect of Termination.** In the event of termination of this Agreement:

1. Pursuant to **Sub-sections A, B.1 or B.2** above, the Owner, using the Schedule of hourly rates set forth in **Section III** if applicable, and within the limitations specified in **Section V** shall compensate the Consultant for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
2. Pursuant to **Sub-sections B.3 or B.4** above, the 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, the Consultant shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all plans, specifications, CAD drawings on compact discs, 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, the Consultant shall be responsible to the Owner for the quality of its Services and work product through the date of termination.

**XVII. [RESERVED]**

**XVIII. DISCLOSURE OF SOCIAL SECURITY NUMBER**

Consultant must provide Consultant's Social Security number unless Consultant 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.

**XIX. FOREIGN CONTRACTOR**

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

**XX. COMPLIANCE WITH APPLICABLE LAW**

A. Consultant agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Consultant to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Consultant of these obligations nor of the requirements of this Agreement. Consultant further agrees to make payments promptly when due, to all persons supplying to such Consultant labor or materials for the 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 Consultant fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

**B. Federal Funding Requirements:**

**Work under the contemplated contract is federally funded. Oregon State University has received federal funds from Department of Energy (DOE). Compliance with the following Federal Provisions, as applicable:**

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by

regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

2. *Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States”). The Act provides that each contractor or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and sub grants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to Compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*— Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*— Contract awards that exceed the small purchase threshold and certain other contract awards shall not be made to parties listed on the nonprocurement portion of the General Services Administration's List of parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principals.

- C. Compliance with applicable provisions national policies prohibiting discrimination: Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by 10 CFR Part 1040; Executive Order 11246 [3 CFR, 1964 1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR Part 60; Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.); Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 ; The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).
- D. Compliance with applicable provisions of the following national policies concerning live organisms: For human subjects, the Common Federal Policy for the Protection of Human Subjects, 10 CFR Part 745; 10 C.F.R. Part 745; 10 C.F.R. Part 600, App. A; Uniform Relocation Assistance and Land Acquisition Policies Act, 42 U.S.C. § 4601 et seq.; 49 C.F.R. Part 24; Trafficking Victims Protection Act of 2000, 22 U.S.C. § 7101 et seq. (see particularly § 7104(g)); 2 C.F.R. Part 175; 10 C.F.R. Part 600, Appendix A; 10 C.F.R. § 602.10(c)
- E. Compliance with the following environmental laws and regulations: The Clean Water Act 10 C.F.R. Part 600, Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1251 et seq.; 33 U.S.C. § 1368; Exec. Order No. 11,738, 38 Fed. Reg. 25,161 (Sept. 10, 1973); The Clean Air Act 10 C.F.R. Part 600, Appendix A; Air Pollution Control Act ("Clean Air Act"), 42 U.S.C. § 7401 et seq; The Resource Conservation and Recovery Act (RCRA), 10 C.F.R. §§ 600.116 and 600.149;

Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. (see particularly § 6962), 10 C.F.R. Part 600, App. A; Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

- F. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
- G. Compliance with Protection of Wetlands and Floodplains, 10 C.F.R. Part 1022; Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq.
- H. Compliance with Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.; 15 C.F.R. Part 930.
- I. Compliance with Coastal Barriers Resource Act, 16 U.S.C. § 3501 et seq.
- J. Compliance with the following lobbying laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; An Act to Prevent Pernicious Political Activities (“Hatch Act” of 1939), 5 U.S.C. §§ 1501-1508, 7324-7326; 10 C.F.R. Part 601; 31 U.S.C. § 1352.
- K. Compliance with the following health and safety laws, regulations, policies, and requirements: The Public Health Service Act 10 C.F.R. Part 600, Appendix A; Title XIV, Public Health Service Act, 42 U.S.C. § 300f et seq; 10 C.F.R. Part 600, Appendix A; Drug Abuse Office and Treatment Act, 42 U.S.C. § 290dd; Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, 42 U.S.C. § 290dd-1; Construction Work Hours and Safety Standards Act, 40 U.S.C. § 3701 et seq.; 10 C.F.R. § 602.10(b); NIH Guidelines for Research Involving Recombinant DNA Molecules.
- L. Compliance with the following domestic preference laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Cargo Preference Act, 46 U.S.C. § 55305; 46 C.F.R. § 381.7; 10 C.F.R. Part 600, Appendix A; International Air Transportation Fair Competitive Practices Act (“Fly America Act”), 49 U.S.C. § 40118.
- M. Compliance with the following project management laws, regulations, and policies: following project management laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; 31 U.S.C. § 3711; 10 C.F.R. Part 600, Appendix A; Single Audit Act, 31 U.S.C. § 7501 et seq; 10 C.F.R. § 600.31; 10 C.F.R. Part 733; 10 C.F.R. §§ 600.25
- N. & 600.113; 2 C.F.R. Parts 180 & 901 (see particularly Subpart C Responsibilities of Participants” within each section); Paperwork Reduction Act, 44 U.S.C. § 3501 et seq; 2 C.F.R. Part 25.
- O. Compliance with the following educational and cultural laws, regulations, and policies: 10 C.F.R. Part 600, Appendix A; Indian Self-Determination and Education Act, 25 U.S.C. § 450 et seq. (see particularly § 450e(b)).
- P. Make a good faith effort to comply with the following policies: 10 C.F.R. Part 600, Appendix A; Exec. Order No. 12,138, 44 Fed. Reg. 29,637 (May 18, 1979) (“Creating a National Women’s Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women’s Business Enterprise”); 10 C.F.R. § 600.306; Metric Conversion Act of 1975, 15 U.S.C. § 205a et seq.; Exec. Order No. 12,770, 56 Fed. Reg. 35,801 (July 29, 1991) (“Metric Usage in Federal Government Programs”)
- Q. Compliance with applicable provisions of the following, national policies:

1. Nondiscrimination in Federally Assisted Programs, 10 CFR part 1040 (45 FR 40514, June 13, 1980), as proposed to be amended by 46 FR 49546 (October 6, 1981).
2. Nondiscrimination Provisions in Federally Assisted Construction Contracts, Part III of Executive Order 11246 (September 24, 1965), 3 CFR 1964—65 Comp., p. 345.
3. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).
4. Drug Abuse Office and Treatment Act of 1972, as amended (21 U.S.C. 1174).
5. Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*).
6. National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), 40 CFR part 1500, as implemented by (45 FR 20694, March 28, 1980).
7. Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).
8. Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.
9. Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*).
10. Sec. 102(a), Flood Disaster Protection Act of 1973 (Pub. L. 93-234, 87 Stat. 975).
11. 10 CFR part 1022, “Protection of Wetlands and Floodplains.”
12. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).
13. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR part 930).
14. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).
15. Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).
16. Sec. 106, National Historic Preservation Act of 1966, as amended (16 U.S.C. 470f); Executive Order 11593, “Protection and Enhancement of the Cultural Environment,” May 13, 1971, 3 CFR 1971 Comp., p. 154; Archaeological and Historic Preservation Act of 1966 (16 U.S.C. 469 *et seq.*); Protection of Historic and Cultural Properties, 36 CFR part 800.
17. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*).
18. Protection of Human Subjects, 10 CFR part 745.
19. Federal Laboratory Animal Welfare Act (7 U.S.C. 2131 *et seq.*) (9 CFR parts 1, 2, and 3).
20. Lead-Based Paint Prohibition (42 U.S.C. 4831(b)).
21. Sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).
22. Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) (46 CFR §381.7).
23. International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517).
24. Executive Order 12138, “Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating, and Implementing a National Program for Women's Business Enterprise,” (May 18, 1979) 3 CFR 1979 Comp., p. 393.
25. Sec. 403(b), Power Plant and Industrial Fuel Use Act of 1978, (42 U.S.C. 8373(b)); Executive Order 12185 (December 17, 1979, 3 CFR 1979 Comp., p. 474).
26. The Hatch Act (5 U.S.C. 1501-1508).
27. Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 *et seq.*).
28. OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.
29. Federal Claims Collection Act of 1966, Pub. L. 89-508, 89 Stat. 309 (31 U.S.C. 951 *et seq.*).
30. OMB Circular A-88, Coordinating Indirect Cost Rates and Audit at Educational Institutions.
31. OMB Circular A-73, Audit of Federal Operations and Programs.
32. Single Audit Act of 1984, Pub. L. 98-502.
33. OMB Circular A-128, Audits of State and Local Governments.
34. [47 FR 44108, Oct. 5, 1982, as amended at 50 FR 42361, Oct. 18, 1985; 51 FR 4297, Feb. 4, 1986]

## **XXI. 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 Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Benton 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. **CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

## **XXII. INDEPENDENT CONTRACTOR STATUS OF CONSULTANT**

- A. Consultant as Independent Contractor.** Consultant 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 completed performance, Owner cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services.
- B. Agency Status.** Consultant 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.** Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal or state taxes applicable to any compensation or payments paid to Consultant under this Agreement. Consultant will not be eligible for any benefits from these Agreement payments of federal Social Security, unemployment insurance or worker's compensation, except as a self-employed individual. If this payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

**XXIII. ACCESS TO RECORDS** Access to records are subject to CFR §600.148 and CFR §600.153; notwithstanding the preceding, for not less than three (3) years after the termination or full performance of this Agreement, the Owner, the Secretary of State's Office of the State of Oregon, the federal government, DOE, the Comptroller General of the United States, or any of their duly authorized representatives shall have access to the books, documents, papers, and records of the Consultant and the sub-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, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Consultant will provide full access to such documents in preparation for and during any such litigation.

## **XXIV. SEVERABILITY**



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

**XXV. FORCE MAJEURE**

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

**XXVI. NO WAIVER**

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

**XXVII. 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, or mailing the same, postage prepaid, to Consultant or Owner at the address 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 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 the Consultant and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

**Consultant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Owner:** Anita Nina Azarenko, Associate Vice President for Capital Planning and Facilities Services

**Address:** Oregon State University  
3015 SW Western Blvd.  
Corvallis OR 97333

**With a Copy to:** John Gremmels  
Capital Planning & Development  
Oregon State University  
3015 SW Western Blvd.  
Corvallis, OR 97333

**And a Copy to:** Construction Contracts Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.

Corvallis, OR 97333

**XXVIII. CONFIDENTIALITY.**

Consultant 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 Consultant from establishing a claim or defense in an adjudicatory proceeding. Consultant shall require the sub-consultants to execute similar agreements to maintain the confidentiality of information of Owner.

**XXIX. CONFLICT OF INTEREST.**

Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would or would reasonably appear to compromise Consultant'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.

**XXX. SURVIVAL**

All rights and obligations shall cease upon termination or full performance of this Agreement, except for the rights and obligations set forth in **Sections II** Consultant's Standard of Care, **IX** Indemnity, **X** Limitation of Liabilities, **XII** Ownership and Use of Work Product of Consultant, **XVI** Termination of Agreement; Non-Availability of Funds, **XXI** Governing Law; Venue; Consent to Jurisdiction, **XXIII** Access to Records, **XXVIII** Confidentiality, and **XXX** Survival.

**XXXI. 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.

**XXXII. MERGER CLAUSE**

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

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the day and year first above written.

\_\_\_\_\_, Consultant

Oregon State University, Owner

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

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

\_\_\_\_\_

Anita Nina Azarenko

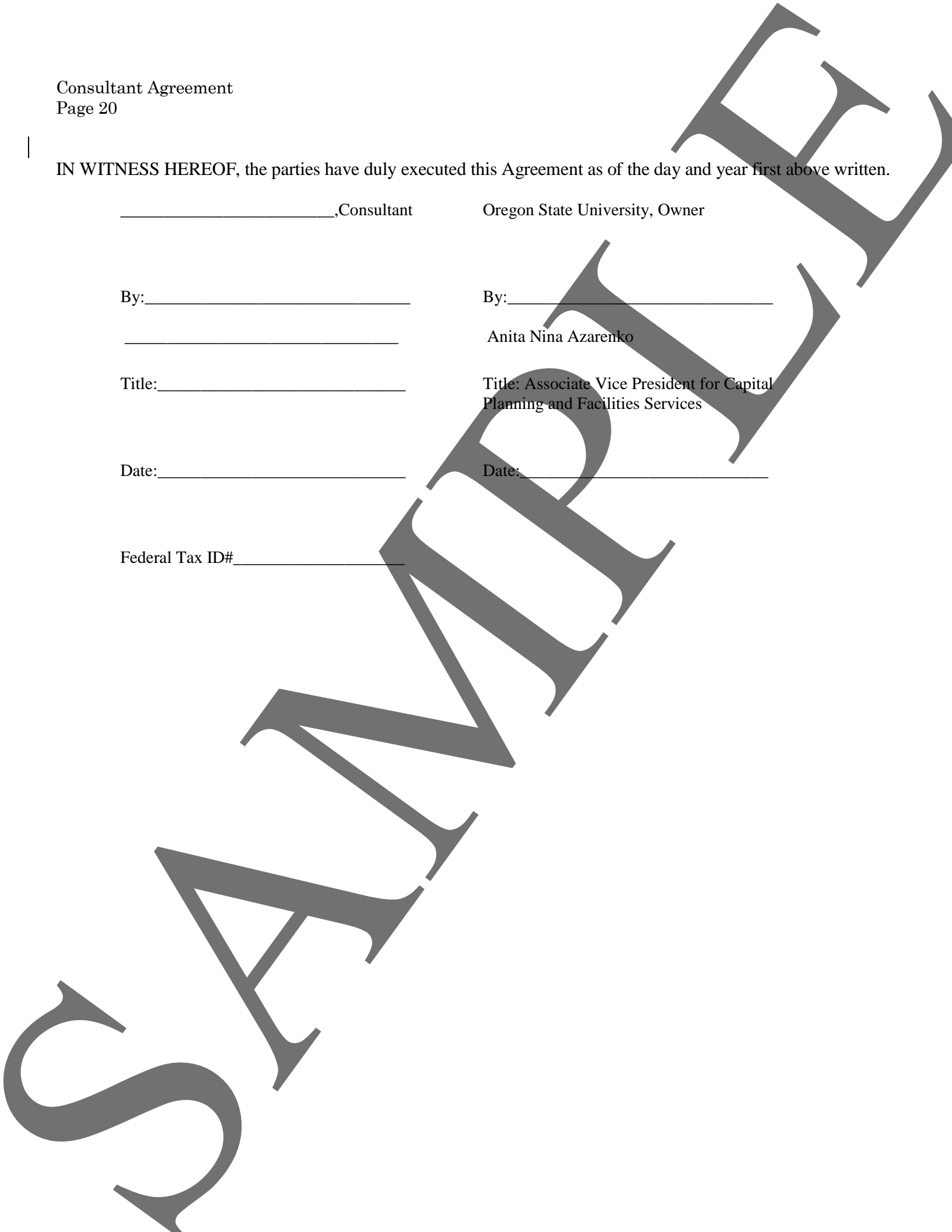
Title: \_\_\_\_\_


Title: Associate Vice President for Capital  
Planning and Facilities Services

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

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

Federal Tax ID# \_\_\_\_\_



	<b>Statement of Work</b> <b>Shallow Seismic Survey</b>	No. 160710LAM <b>EXHIBIT 1</b>
	<b>3U Technologies</b>	Page 1 of 4 <b>Page 1 of 4</b>
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### **Survey Scope of Work**

This primary survey will use seismic methods to map the subsurface conditions along a corridor that extends from up to two (2) onshore locations to the surf zone. The sites are located approximately 300 meters from the surf zone. The sites are approximately 12 miles to the south of Newport, Oregon.

*An optional nearshore survey would extend the surveys out into the ocean to the 10-meter water depth contour. **Sellers do not have to address this optional survey in their responses to the RFQ if it is beyond their capabilities.***

The accuracy and general procedures of all survey undertakings shall at least comply with, but not be limited to the highest order of accuracy defined by the relevant parts of the ASTM 5777 “Using Seismic Refraction method for Subsurface Investigation”. The vendor can employ alternative standards the meet or exceed the intent of ASTM 5777. In the event of a discrepancy between the standards being employed and this specification, the most stringent provision shall prevail.

Data is to be processed on-site to confirm that the data collected is complete and as accurate as possible while on-site. All data to be geo-referenced and time tagged. Quality control processes during data collection and processing should be in place to ensure that processed data is available for the entire area to be surveyed (100% coverage). The quality of all data generated to at least meet currently accepted standards of the industry. All data to be processed and provided in both raw and processed electronic formats. All data processing to use currently accepted standards of the industry.

Processed geophysical data to include interpretation by a geologist experienced with interpretation of seismic geophysical data.


The survey shall identify and show the position of all natural and manmade hazards and obstructions along or in the vicinity of the route that could impact the progress of an HDD bore along the route.

#### **ONSHORE SURVEY**

The onshore survey shall consist of a 50-meter wide swath centered on the survey route planning list, identified beach manhole location to the surf zone. The route shall be surveyed using shallow seismic methods (refraction, MASW, etc.). The vendor shall identify whether it can extend its seismic sensor array into the seawater. Navigation/positioning shall be provided by DGPS with accuracy better than  $\pm 5.0$  meters (as referenced to the seabed). Sufficient overlap between survey lines shall be attained to ensure 100% coverage of processed data in the swath area.

#### **OPTIONAL NEARSHORE SURVEY**

*The optional nearshore survey shall consist of a 100-meter wide corridor centered on the route from the surf zone to the 10-meter water depth contour.*

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*The route shall be surveyed using shallow seismic methods (refraction, MASW, etc.) Sufficient overlap between survey lines shall be attained to ensure 100% coverage of processed data in the swath area defined. Navigation will be provided by DGPS with positional accuracy better than  $\pm 5.0$  meters.*

**Route Development**

The on-site Buyer Representative may, during the survey, change the scope of work or desired cable route. Such changes may extend or decrease the total amount of work to be carried out under the survey contract to a minor degree. In this regard, any additional surveying costs due to ordered route deviation is billable to the Buyer according to the daily surveying rates in the proposal. Additional data processing expenses are not billable unless extra charts are required. If the additional surveying requires the need of additional charts, additional charting will be paid according to the per chart price quoted in the proposal. Where additional requirements of survey operations are not specifically ordered, it is expected that the Seller will perform the duties in the most efficient, economical, and professional manner possible consistent with accepted seismic survey practices.

**Site Survey**

One or more site surveys will be included in the survey route planning list provided by the customer. Unless otherwise specified in the survey route planning list, the site survey shall provide 100% coverage for the area identified. Interpretation of the site data shall focus on areas subsurface conditions might be problematic to HDD operation and/or installation of a 18 inch ID conduit from onshore out to the 10 m water contour.


**EQUIPMENT, OPERATIONS AND PERSONNEL**

**Equipment**

All equipment proposed for use on this Contract are to be identified by name and model number (as applicable) in the Seller’s Proposal. The Proposal should include Seller’s warrant of availability, and detailed physical and performance specifications for all proposed equipment.

**Vessels for Optional Nearshore Survey**

*Small boats used for the optional nearshore portion of this survey shall be appropriately and safely outfitted to perform the mission as specified by specification. Minimum safety requirements as required by the US Coast Guard shall be met. Provision shall be made for at least one (1) Buyer Representative during the inshore survey operations (small boat survey).*

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**Navigation Equipment**

The Seller shall indicate in their Proposal and Survey Plan the navigation system they intends to employ.

**Deliverable documentation format**

The Seller shall indicate in his Proposal the format of the deliverable documentation they intend to employ. Where possible it is desired to provide data integrated into a GIS database or otherwise linked with other GIS survey data that has been collected for the area.

**CHARTING AND REPORTING REQUIREMENTS**

The Seller shall also provide any data in an electronic file format that can be reviewed using common software tools (PDF, etc.) The seller shall identify deliverables they plan to provide.

**Final Chart and Report Requirements (D-0009)**

Final Charts and Report (D-0009) shall be delivered to Buyer in accordance with the Schedule for Deliverables.

**Final Report Copies**


The final report (Narrative and Charts) shall be completed and presented to the Buyer in accordance with the Schedule of Deliverables.

All charts shall be provided in a georeferenced PDF file format.

Subsurface strata layer reports shall be included in the final report for each segment. Obstruction Reports shall identify all hazards to HDD drilling operations and/or installation of a 18 inch ID Conduit from Onshore to 10 m water contour offshore. This report shall include a spreadsheet that identifies specific hazards, etc. This spreadsheet shall include a description of the hazards and the distances and directions of the hazards relative to the route.

**Digitized Survey Records**

The Seller shall provide electronic files of the final survey charts. These files are intended to allow the Buyer to store, edit and retrieve survey charts using GIS software tools (ARCGIS, Global Mapper, etc). The Seller shall also provide electronic files of the final survey report. All files shall be provided on USB Memory stick.

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