

ARCHITECT'S AGREEMENT
EDUCATIONAL PERFORMING ARTS CENTER
OREGON STATE UNIVERSITY

This ARCHITECT'S AGREEMENT (the "Agreement") is made between

the "Architect":

Phone: (____) ____-____

FAX: (____) ____-____

and the "Owner":

Oregon State University
Construction Contracts Administration
644 SW 13th Ave.
Corvallis OR 97333

regarding the "Project:

(The Architect 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 Architect to provide certain professional services for the Project; and

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

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

I. RELATIONSHIP BETWEEN THE PARTIES

A. Scope of the Project. The scope of the Project includes the following: The Owner intends to construct a new building, as well as expand and renovate La Sells Stewart Center to support the Educational Performing Arts Center project ("the Center") to be located on the south side of the Oregon State University Corvallis, Oregon campus, on the corner of Western Avenue and 26th Street. The Center will bring together programs in the arts, including music, theater, the visual arts, and digital communications arts, creating a thriving center of creativity infused with science and technology. The Center will continue to pursue OSU's mission for outreach and engagement.

Key goals of the project include:

1. The Center will help elevate OSU to a comprehensive level of excellence that our aspirational peers currently feature as a key part of their international reputations.
2. The Center will bring together programs in the arts, including music, theater, the visual arts, and digital communication arts, creating a thriving center of creativity infused with science and technology.
3. The College of Liberal Arts will create highly transdisciplinary undergraduate and graduate degree programs that intersect the arts with engineering, communications and media.
4. OSU will serve as a statewide portal to the arts, collaborating with K-12 systems throughout the state to ensure that all Oregonians have better access and exposure to the arts.

Key components of the project include:

1. Teaching Space – Classrooms designed for collaboration in technology and media-rich environments.
2. Three Performance Spaces – 1) a newly constructed acoustically superior concert hall that doubles as a classroom, and 2) a revitalized Austin Auditorium, and 3) a smaller, black box performance space that can be configured in multiple ways, including as a theater and a teaching space.
3. Rehearsal Space – spaces for choir, symphony, band, and ensemble rehearsals, as well as for chamber music, individual lessons, and practice sessions.
4. Shop & Maker Space – electronic and computer studio for designing sound, lighting, animation, and video projections as well as for constructing props, sets, and other scenic items.
5. Mentoring Space – faculty offices and seminar rooms for creative work and one-on-one student attention
6. Art Museum & Gallery Space – a secure, dramatically lit environment with appropriate climate control galleries and storage facilities.
7. Office space for music and theatre faculty and administration
8. Box office space

B. Scope of Services. The scope of Services to be performed under this Agreement includes the following: Pre-Design/Programming, Schematic Design, Design Development, Construction Documents, Bidding/Permitting, and Construction Administration including Record Documentation and Project Closeout in support of the Project.

The scope of Pre-Design/Programming is further described in the Architect's proposal dated _____, signed by _____ attached hereto and incorporated herein by this reference as "Exhibit 1". Schematic Design, Design Development, Construction Documents, Bidding/Permitting and Construction Administration phase services are not authorized by the execution of this Agreement, but may be authorized only by a fully executed amendment to this Agreement when services are agreed upon by the Parties.

C. Critical Date Schedule. The Architect shall perform the Services according to the following critical date schedule:

Pre-Design/Programming – _____ weeks from Effective Date.

Schematic Design – To be determined at the time Schematic Design phase services are authorized by a fully executed amendment to this Agreement.

Design Development – To be determined at the time Design Development phase services are authorized by a fully executed amendment to this Agreement.

Construction Documents – To be determined at the time Construction Document phase services are authorized by a fully executed amendment to this Agreement.

Bidding/Permitting – To be determined at the time Bidding/Permitting phase services are

authorized by a fully executed amendment to this Agreement.

Construction Administration – To be determined at the time Construction Administration phase services are authorized by a fully executed amendment to this Agreement.

D. Effective Date. This Agreement is effective on the date it has been signed by every Party hereto (the “Effective Date”). No Services shall be performed or payment made prior to the Effective Date.

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

“Additional Services” means additional Services performed by the Architect that are beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with an agreed-upon schedule of charges, and performed by the Architect after the Owner has given prior written authorization to proceed with performance of the Services and the Parties have executed an amendment or supplement to this Agreement, as more particularly described in **Section VIII** of this Agreement.

“Basic Services” are those Services more particularly described in **Subsections A., B., C., D. and E. of Section VII.** of this Agreement.

“Construction Contract” is defined as the contract entered into between the Owner and the Contractor to provide all Work necessary to construct the Project, including the original base contract for construction of the Project, the Oregon State University General Conditions For Public Improvement Contracts, any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor’s performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder or proposer to any such solicitation documents.

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

“Contractor” is defined as the general contractor/construction manager (CM/GC) that is awarded the contract to construct the Project.

“Design Criteria” means the OSU Construction Standards in effect at the time of the Effective Date of this Agreement. Current OSU Construction Standard can be found here: <http://fa.oregonstate.edu/cpd-standards>

“Direct Construction Cost” means the cost to the Owner of all divisions of construction, including portable equipment only if designed or specified by the Architect for inclusion in the construction specifications.

“MWESB Report” means an accurate report by the Consultant to the Owner identifying all

Minority, Women and Emerging Small Business ("MWESB") enterprises, as those terms are defined in ORS 200.005, receiving sub-contracts throughout the course of Consultant's Services. Each MWESB Report shall only include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable.

"Reimbursable Expenses" are those expenses described in **Sub-section B. of Section III** of this Agreement.

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

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

F. Directives for Performance of the Services.

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

5. The Architect shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Architect's performance of Services shall be as a professional Architect to the Owner to perform the professional services necessary for the Project, and to provide the technical documents and supervision required to achieve the Owner's Project objectives.
6. In administering this Agreement, the Owner may employ the services of an independent project manager and other consultants as needed to fulfill the Owner's objectives.
7. The Architect shall utilize the key personnel and Consultants identified on the attached **Exhibit 2** in the performance of the Services for the Project. In addition to the full names, titles/positions and a summary of the duties and Services to be performed by the key personnel and Consultants that are included in the attached **Exhibit 2**, the Architect agrees to promptly provide such additional information on the professional background of each of the assigned personnel and Consultants as may be requested by the Owner. The Architect acknowledges that the Owner's award of this Agreement to the Architect was made on the basis of the unique background and abilities of the Architect's key personnel and Consultants originally identified in the Architect's RFQ Response. Therefore, the Architect specifically understands and agrees that any attempted substitution or replacement of a key person or Consultant by the Architect, without the written consent of the Owner, shall constitute a material breach of this Agreement. In the event that key personnel or Consultants become unavailable to the Architect at anytime, Architect shall replace the key personnel and Consultants with personnel or Consultants having substantially equivalent or better qualifications than the key personnel or Consultants being replaced, as confirmed and approved by Owner. Likewise, the Architect shall remove any individual or Consultant from the Project if so directed by Owner in writing following discussion with the Architect, provided that Architect shall have a reasonable time period within which to find a suitable replacement. **The Architect represents and warrants that the key personnel and Consultants identified on the attached Exhibit 2 are fully licensed to perform the particular Services assigned to them on the Project.**
8. Architect shall make no news release, press release or statement to a member of the news media regarding this Project without prior written authorization from Owner.

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

1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, as contemplated by OSU's budget and OSU determination, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the Architect's Services;
2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
3. Architect, or one of Architect's Consultants currently performing Services, no longer holds any license or certificate that is required to perform the Services; or

4. The public interest otherwise requires suspension of performance of the Agreement, as reasonably determined by the Owner.

Any suspension of performance under this provision constitutes a temporary stoppage of performance of the Agreement, and does **not** constitute a termination of the Agreement pursuant to **Section XIX** of this Agreement. In the event that the condition(s) causing the suspension have been rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Agreement. In the event that the Owner determines that the conditions causing suspension of the Agreement are not likely to be rectified in a reasonable amount of time, the Owner retains the right to terminate this Agreement, pursuant to **Section XIX**. In the event of a suspension of performance pursuant to this Section of the Agreement, the Architect agrees to remain contractually obligated to perform the Services under this Agreement for the same hourly rates set forth in **Section III.C** of this Agreement for a period of three years after the Effective Date of the Agreement. If the Agreement is reactivated and the Architect is required to perform Services beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for the Architect and any Consultants and amend this Agreement accordingly.

II. ARCHITECT'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. Standard of Care.** The Architect shall perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- B. Performance Requirements.** In addition to performing the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions, the Architect shall perform the Services in accordance with the following requirements:
 1. All plans, drawings, specifications, and other documents prepared by the Architect shall accurately reflect, incorporate and comply with all OSU Standards and policies, applicable statutes, rules, regulations, ordinances and other laws which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Architect);
 2. All plans, drawings, specifications, and other documents prepared by the Architect pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Services to be performed;
 3. The Project, if constructed in accordance with the intent established by such plans, drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended;
 4. The Architect shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents. While Architect cannot guarantee that the various documents required under this Agreement are completely free of all minor human errors and omissions, it shall be the responsibility of Architect throughout the period of performance under this Agreement to use due care and perform with professional competence. Architect will, at no

additional cost to Owner, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by Architect. Except as provided in **Section VIII** of this Agreement and at no additional cost, Architect further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project;

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

C. Architect's Representations and Warranties. Architect represents and warrants to Owner that:

1. Architect has the power and authority to enter into and perform this Agreement;
2. When executed and delivered, this Agreement shall be a valid and binding obligation of the Architect enforceable in accordance with its terms;
3. Architect shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
4. The Architect is an experienced architecture firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement and to design or administer a project having this scope and complexity;
5. The Architect has the capabilities and resources necessary to perform the obligations of this Agreement;
6. The Architect either is, or in a manner consistent with the standard of care set forth in this Agreement will become, familiar with all current OSU Standards and policies, laws, rules, and regulations which are applicable to the design and construction of the Project.

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

A. Basic Services: The Architect shall perform the Basic Services, directly or through the Consultants, on a time and materials basis not to exceed \$_____.

B. Reimbursable Expenses: The Owner shall reimburse the Architect for any allowable Reimbursable Expenses, up to a maximum amount of \$_____.

Reimbursable expenses for the Project mean actual direct expenditures (without overhead, fee, markup or profit) made by the Architect and the Consultants in the interest of the Project for the following items: long-distance communications; reproductions, postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of the Architect and the Consultants); mileage and travel expenses more particularly described below; data processing and photographic production techniques; and renderings, models and mock-ups requested by 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 Architect'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 for economy
Personal car mileage	\$0.535 per mile
Lodging	\$132.00 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 Architect for Additional Services performed by the Architect, whether directly or through its Consultants, beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement (except in the case of a suspension and reactivation of performance beyond the date agreed to by the Parties, as more particularly described in **Section I.G**), but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

ARCHITECT:

Principals.....\$ ___/hr
Senior Architectural Designer.....\$ ___/hr
Architectural Designer\$___ - ___/hr

Urban Designer\$___ - ___/hr
Sr. Project Manager\$___ - ___/hr
Project Manager\$___ - ___/hr

Production Personnel/Project Architect.....\$___ - ___/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 Architect in the event this Agreement is terminated as provided in **Section XIX, D.1**, or suspended pursuant to **Section I. G**. Any amounts so derived may not exceed the limitations for each phase as specified by **Section IV** hereof.

IV. PAYMENTS

The Owner shall make monthly progress payments to the Architect based upon invoices submitted by the Architect for Services rendered and Reimbursable Expenses incurred during the preceding month. Payment requests, invoices and required documentation shall be submitted in the form and format stipulated by the Owner. One copy of each invoice, with required documentation, must be delivered to the following address:

Administrative Services Accounting
OREGON STATE UNIVERSITY
3015 SW Western Blvd.
Corvallis, OR 97333

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

Payments to the Architect for such Services performed and invoiced will be made for each phase as follows, with final payment for each phase subject to written acceptance of the phase by the Owner. The

total of all payments for Basic Services shall not exceed the maximum amount set forth in **Section III.A.** for Basic Services, and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in **Section III.B.** for Reimbursable Expenses. The total of all such payments, for Services and Reimbursable Expenses, shall not exceed the Maximum Compensation. Owner reserves the right to retain up to five percent (5%) of the compensation limit set forth below for each phase, subject to Owner's acceptance of the Services and any deliverables for each phase. Notwithstanding "not to exceed" limits established below for each phase of Services, should an individual phase of design, beginning with Pre-Design/Programming, be completed without reaching the not-to-exceed limit for that phase, the balance remaining will be transferred to the next phase of work in succession through Project completion. At the completion of the Project, any remaining balance will revert to the Owner.

A. Pre-Design/Programming Phase: not to exceed \$_____.

Upon execution of an amendment to this Agreement authorizing the services of Schematic Design, Design Development, Construction Documents, Bidding and Construction Administration phase Services and Owner's written notice to proceed, the Maximum Compensation shall be allocated to the categories of Services listed below. Notwithstanding 'not-to-exceed' limits established for each phase of Services, should an individual phase of design, beginning with Schematic Design and including Reimbursable Expenses, be completed without reaching the not-to-exceed limit for that phase, the balance remaining will be transferred to the next phase of work in succession through Project completion. At the completion of the Project, any remaining balance will revert to the Owner.

B. Schematic Design Phase: not to exceed \$_____.

C. Design Development Phase: not to exceed \$_____.

D. Construction Documents Phase: not to exceed \$_____.

E. Bidding Phase: not to exceed \$_____.

F. Construction Administration Phase: not to exceed \$_____.

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

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.

G. MWESB Report Requirement

Architect 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. Architect 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. Architect 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.

V. SERVICES OF ARCHITECT'S CONSULTANTS

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

VI. TIME OF PERFORMANCE

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

VII. ARCHITECT'S SERVICES

A. Pre-Design/Programming

In consultation with the Owner, and in compliance with the Design Criteria for Oregon State University Projects provided by the Owner, the Architect shall:

1. identify applicable building codes, administrative, and permit processing requirements as relevant;
2. verify, by on-site inspection unless specifically stated otherwise by the Owner, existing conditions and systems, including but not necessarily limited to architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the Work to be executed on the Project;
3. in consultation with Consultant Team, Owner Representatives, and other designated persons, use all available information to evaluate the program requirements, and with appropriate data and graphics propose a series of improvements deemed necessary and desirable to satisfy the Program Requirements, including; space needs, budget, availability of utilities, effect of codes and ordinances, safety and energy requirements, handicapped access to all spaces, historical character of the building, etc.;
4. based on the revised program requirements, develop Pre-Design studies consisting of drawings, and other documents for the Owner's approval;

5. submit to the Owner an estimate, consistent with the requirements of **Section I.F.4** above and prepared by an independent cost estimator, of the probable Direct Construction Cost of the Project based upon current area, volume or other appropriate unit costs, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner.

B. Schematic Design Phase

Upon notifications of the Owner's approval of the Services performed by the Architect under the Pre-Design/Programming Phase, and upon written authorization from the Owner to proceed, the Architect, in consultation with the Owner and in compliance with the Design Criteria for Oregon State University Projects provide by the Owner, shall:

5. identify applicable building codes, administrative, and permit processing requirements as relevant;
6. verify, by on-site inspection unless specifically stated otherwise by the Owner, existing conditions and systems, including but not necessarily limited to architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the Work to be executed on the Project;
7. in consultation with Consultant Team, Owner Representatives, and other designated persons, use all available information to evaluate the program requirements, and with appropriate data and graphics propose a series of improvements deemed necessary and desirable to satisfy the Program Requirements, including; space needs, budget, availability of utilities, effect of codes and ordinances, safety and energy requirements, handicapped access to all spaces, historical character of the building, etc.;
8. based on the revised program requirements, develop Pre-Design studies consisting of drawings, and other documents for the Owner's approval;
9. provide documents suitable for submission to the City of Corvallis for the Oregon State University Physical Development Plan Review;
10. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project; Owner shall pay for all required appeals and plan review fees;
11. submit to the Owner an estimate, consistent with the requirements of **Section I.F.4** above and prepared by an independent cost estimator, of the probable Direct Construction Cost of the Project based upon current area, volume or other appropriate unit costs, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
8. if the Contractor for the Project is a Construction Manager/General Contractor ("CM/GC"), the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. In lieu of performing the Direct Construction Cost estimating Services described in Section VII.A.7 above, provide cost verification Services related to the probable Direct Construction Cost

estimates that will be prepared by the CM/GC, including but not limited to the following:

1) Review and verify the Direct Construction Cost estimates provided by the CM/GC during, or at the end of, the design phase of the Project; and

2) Coordinate these cost verification Services with the Direct Construction Cost estimating services to be provided by the CM/GC, in order to provide timely and accurate cost information to the Owner, in the most efficient manner reasonable under the circumstances.

b. Otherwise fully cooperate with the CM/GC during the value engineering process, constructability reviews, and otherwise during the design phase(s) and the construction phase(s) of the Project; and

c. In the event the Direct Construction Cost estimates prepared by the CM/GC exceed the Owner's Direct Construction Cost budget, revise the Project design to allow construction of the Project within Owner's budget.

OR

a. In performing the Direct Construction Cost estimating Services described in Section VII.A.7 above, coordinate the Architect's performance of those Services with the CM/GC, that will be performing Direct Construction Cost verification services under the CM/GC's contract with the Owner; and

b. Otherwise fully cooperate with the CM/GC during the design phase and the construction phase(s) of the Project.

9. submit to the Owner the following documents, information and other data:

a. written report of the results of a Fire and Life Safety review with the City of Corvallis

b. interior colors, materials and finishes recommendations;

c. a project schedule delineating the estimated time required for the Architect to complete the Design Development and Construction Documents Phases of the Project;

d. recommendations by the Consultants (structural, mechanical, electrical) of the technical requirements necessary to implement the Program Requirements;

e. equivalent LEED scorecard; and

f. preliminary plans, elevations, and other drawings necessary to describe the entire scope of the Project. These drawings may be used for local municipal review and campus review.

10. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the

Project and consisting of consultations with the Owner on selection of artwork, commissioning and completion of the artwork and integration with the overall design of the Project.

C. Design Development Phase

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

1. prepare drawings and other documents to fix and describe the size and character of the entire Project as to architectural, site development, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be appropriate and in accordance with governing codes and ordinances;
2. verify, by on-site inspection unless specifically stated otherwise by the Owner, prior to completion of the Construction Documents Phase, existing conditions as required to address significant constructability issues;
3. ensure that the Project complies with the State of Oregon Structural Specialty Code and with the 2010 ADA Standards for Accessible Design, applicable OSU Standards and policies, plus OSU best practices, 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 ADA for compliance with Federal requirements);
4. submit to the Owner, for approval, one independent cost estimate of probable Direct Construction Cost of the Project consistent with the requirements of **Section I.F.4** above and based upon the current unit costs referred to above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
5. if the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the Architect's findings to the Owner.

OR

- a. Fully cooperate and coordinate with the CM/GC in the Architect's preparation of the Direct Construction Cost estimates provided for in Sub-section 4 above.
6. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project and at the Architect's expense revise such documents if required for approval of the Plan by the City of Corvallis (Owner shall pay for all required appeals and plan review fees);

7. submit to the Owner the following documents, information and other data:
 - a. preliminary recommendations for interior colors, finishes, and materials;
 - b. one-line diagrams for mechanical systems design(s);
 - c. one-line diagrams for electrical systems design(s);
 - d. complete outline specification and Project manual;
 - e. recommendations for additive alternates equivalent to 10% of the base bid estimate;
 - f. recommendations for construction phasing to ensure continued operation of Owner's activities;
 - g. four copies of the energy analysis conforming to ORS 276.905 to 276.915 (State Agency Facility Energy Design) and ORS 469.010, more particularly described above;
 - h. equipment layouts showing location, size, and configuration of all equipment in the Project;
 - i. an up-date of the Fire and Life Safety requirements resulting from previous reviews with the City of Corvallis; and
 - j. a list of additive alternates, following consultations with the Owner; and
8. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.

D. Construction Documents Phase

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

1. prepare working drawings and specifications, setting forth all necessary plans, elevations, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship;
2. ensure that the Project complies with the State of Oregon Structural Specialty Code and with the 2010 ADA Standards for Accessible Design, plus OSU best practices, 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 ADA for compliance with Federal requirements);

3. prepare Construction Documents as may be required to expedite the Work in phases so as to take maximum advantage of weather and availability of facilities for demolition and reconstruction;
 4. prepare specifications setting forth descriptions of materials and equipment, methods of installation, and standards of workmanship, including (in the appropriate section of Division 1 of the specifications) a complete listing of all warranties required under the technical portions of the specifications;
 5. develop all required bidding information;
 6. provide the Owner 5 sets of the 100% complete Project manual, including specifications and drawings, for review and approval prior to advertising the Project for bid;
 7. submit to the Owner, for approval, a second independent cost estimate of probable Direct Construction Cost of the Project, consistent with the requirements of **Section I.F.4** above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
 8. if the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the Architect's findings to the Owner.
- OR**
- a. Fully cooperate and coordinate with the CM/GC in the preparation of the Direct Construction Cost estimates provided for in Sub-section 7 above.
 9. assist Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project (Owner shall pay for all required plan review fees);
 10. prepare bidding documents with 10% additive alternates.
 11. submit to the Owner the following documents, information and other data:
 - a. final recommendations for interior colors, materials, and finishes;
 - b. structural calculations;
 - c. heat gain/loss and HVAC system design calculations; and
 - d. electrical system design load calculations; and
 12. perform those design Services during this phase of the design for fine arts and crafts to be identified

and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.

E. Bidding Phase

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

1. furnish the Owner and CM/GC with one fully reproducible set of the Construction Documents, including working drawings and specifications for each bid package (assume four separate bid packages), complete as required for bid and construction purposes, along with one complete set of the construction documents in digital form (PDF format at a minimum resolution of 400dpi) (for additional copies, see **Section VIII**, Additional Services);
2. assist the Owner/CM/CG in soliciting bids;
3. if requested, review the bids and assist in recommending the award of Construction Contract(s) for the Work;
4. coordinate with the City of Corvallis to ensure that all plan review/building permit criteria are reflected in the final bid documents;
5. attend the pre-bid conference at the Project site; and
6. if the lowest acceptable bid exceeds the Direct Construction Cost allowance authorized by the Owner by 10%, then at the Owner's request, and at no additional cost to the Owner, the Architect shall modify the drawings and specifications in order that new bids may be solicited and a Construction Contract award made within said allowance, consistent with the requirements of **Section I.F.4** above.
7. If the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with this Bidding Phase and preparation of the probable Direct Construction Cost of the Project:
 - a. Assist the Owner and the CM/GC in soliciting subcontractor bids; and
 - b. In the event the direct construction cost estimates exceed the Owner's direct construction cost budget, revise the Project design to allow construction of the Project within Owner's budget.

F. Construction Administration Phase

Commencing with the Owner's issuance of a notice-to-proceed for construction of the Project, the Architect shall:

1. attend the pre-construction conference at the Project site;

2. provide general administration of the Work as contemplated by the provisions of the Construction Contract including assisting the Owner with evaluation of the feasibility of the Contractor-provided project time schedule;
3. make periodic visits to the Project site with such frequency as to ascertain the progress and quality of the Work, attend progress meetings with the Contractor, determine in general if the Work is proceeding in accordance with the Construction Documents, and submit a written report to the Owner within five (5) business days after each visit, with copies of each report to the Contractor;
4. arrange for periodic visits of Consultants to make similar determinations with respect to mechanical and other Work, as applicable;
5. review and approve or take appropriate action, with reasonable promptness to cause no delay in the Work, regarding shop drawings and samples submitted by the Contractor;
6. prepare any supplemental drawings or large-scale details needed to clarify the Construction Documents;
7. respond promptly to requests from the Contractor for assistance with unforeseen problems so as to minimize the Owner's exposure to claims for delay;
8. advise and consult with the Owner, issuing appropriate instructions to the Contractor;
9. check proposed costs of any modifications to the Construction Contract and recommend acceptance or rejection to the Owner (Owner will prepare written change orders);
10. endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor;
11. notify the Owner of any Work which does not conform to the Construction Documents and recommend to the Owner that the Contractor stop the Work whenever, in the Architect's opinion, it may be necessary for the proper performance of the Construction Contract.
12. issue certification to the Owner and the Contractor when all terms of the Construction Contract have been fulfilled to the Architect's satisfaction;
13. conduct on-site observations to determine the date of final completion, receive written guarantees and related documents assembled by the Contractor and issue recommendation for final acceptance and payment;
14. assist the Owner in the implementation of the State of Oregon's "1% For Art Program", as applicable;
15. upon completion of the Work, the Architect shall, at no additional cost to the Owner, update CAD drawings and submit the appropriate compact discs (including "bookplans" of the construction area made to Oregon State University standards) - compatible with Autocad Release latest version -, drawings reflecting significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect (the "Record Documents"), as further detailed in the OSU Construction Standards; and

16. review the completed Project near the end of any applicable warranty period(s) in order to identify defects of materials or workmanship and issue a written report to the Owner.

VIII. ADDITIONAL SERVICES

A. Copies of Construction Documents. The Architect shall furnish copies of all Construction Documents upon the written request of the Owner. The Owner shall reimburse the Architect at the cost of reproduction if in excess of the number specified in **Section VII** hereof.

B. Conditions Required to Support Additional Compensation. The Architect shall be paid, subject to executed amendments or supplements, for extra expenses and services involved if:

1. substantial changes are ordered by the Owner after the Owner has acknowledged the acceptance of one or more of the planning phases described above (except changes which are ordered for the purpose of maintaining the Direct Construction Cost of the Project within the allowance specified in **Section I**);
2. damage occurs as a result of fire or other casualty to the structure;
3. the Contractor becomes delinquent or insolvent and the delinquency or insolvency creates additional work for the Architect;
4. the Architect's attendance is required at City of Corvallis public and planning board presentations;
5. the Owner requests detailed demolition drawings of existing structure(s) or if documentation must be made for salvage of existing materials, except as may be required to ensure that new construction may be fit to existing construction;
6. the Owner requests the selection and specification of furnishing(s) outside the scope of the Projects' direct construction allowance; or
7. the Owner requests Additional Services not identified under the Basic Services provision of this Agreement, such as study models, renderings, etc.;
8. the Owner requests that the Architect perform Services related to:
 - a. selection and installation of new furniture purchased by the Owner for the Project;
 - b. preparation of any specifications required as part of the installation of the Owner's new furniture at the Project; or
 - c. preparation of furniture plans for the Owner's use, related to coordinating, moving refinishing and relocating existing furniture at the Project site.

C. Payments at the time of Abandonment or Suspension. If any Services performed by the Architect are abandoned or suspended, the Architect shall be paid for the Services rendered, under the provisions

and limitations of **Section I.G** and **Section IV**, in proportion to the amount of Services performed at the time of suspension or abandonment, provided the initiative for such abandonment or suspension is by the Owner and does not result from a design error of the Architect, a bid overrun, or other breach or default by the Architect.

IX. SURVEY, BORINGS AND TESTS

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

- A. Survey.** A complete and accurate survey of the Project site, giving the grades and lines of streets, pavements, and adjoining properties and/or scale drawings reasonably representing existing conditions;
- B. Project Site Conditions; Utilities.** The rights, restrictions, easements, boundaries, and contours of the Project site and full information as to sewer, water, gas and electrical service, existing utility tunnels, lines, etc. on site;
- C. Geotechnical Reports.** Geotechnical investigation reports with recommendations for soil bearing capacities.

The Owner will pay for chemical, mechanical or other tests when required. The Owner does not warrant the accuracy of any of the information so provided. The Architect will not be held responsible for errors due to inaccuracy of any of the information so provided.

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

The Owner anticipates that this Project will not involve the removal of and destruction of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "Hazardous Substances"). The Owner shall contract separately for the identification and removal of any Hazardous Substances, either prior to the commencement of this Project or at such time as such Hazardous Substances are detected. The Architect shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner, professional consultant, the contractor, or subcontractor which the Owner selects relating to the abatement of such Hazardous Substances.

XI. INSURANCE PROVISIONS

During the term of this Agreement, Architect shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities with an A.M. Best rating of A-VII or better that are authorized to transact the business of insurance and issue coverage in the State of Oregon,:

- A. Workers' Compensation** - All employers, including Architect, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Architect shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Architect shall secure Commercial General Liability insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). Architect shall ensure that each of its Consultants and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- C. Automobile Liability** - Architect shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, 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. Architect shall ensure that each of its Consultants and subcontractors complies with the same minimum requirements identified above.
- D. Professional Liability/Errors & Omissions** - Architect shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications or project manual, and all related work product of the Architect. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have limits of not less than \$3,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. Architect shall ensure that each of its Major Consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other Consultants and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$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 thirty-six (36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. Architect will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following Owner's

acceptance of and final payment for the Architect'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, Architect shall furnish to the appropriate university official Certificates of Insurance and required endorsements as evidence of the insurance coverages required under this Agreement. The insurance policies will be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if the applicable policy is suspended, voided, canceled or materially changed, or if the aggregate limits have been reduced, except when cancellation is for non-payment, then a ten (10) days' notice may be given, to the Owner's Representative set forth in **Section XXX** below. The certificate(s) should state specifically that the insurance is provided for this Agreement. Policies will be endorsed to show required cancellation provisions, and copies of the endorsement will be attached to the certificate of insurance. Insuring companies are subject to acceptance by the Owner.

G. Additional Insureds. All policies, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall be endorsed so that the Owner, and its officers, trustees, agents, and employees are Additional Insureds with respect to the Architect's Services to be provided under this Agreement.

XII. INDEMNITY

A. Indemnification. Architect shall indemnify, hold harmless and defend the Owner and its officers, board members, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities, including professional services, of the Architect or the Architect's Consultants, partners, joint venturers, subcontractors, officers, agents or employees, and caused by any willful or negligent error, omission, or act of the Architect, or any person employed by it, or anyone for whose acts the Architect is legally liable while acting under or pursuant to this Agreement or any supplement or amendment hereto. The Architect agrees to waive all rights of subrogation against the Owner and its officers, board members, agents, and employees for losses arising from the work performed by the Architect for the Owner.

B. Owner Defense Requirements. Notwithstanding the foregoing defense obligations of the Architect, neither the Architect nor any attorney engaged by the Architect shall defend any claim in the name of the Owner, nor purport to act as legal representative of the Owner, without the prior written consent of the Owner's 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 Architect is prohibited from defending the Owner, that Architect is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Architect if the Owner elects to assume its own defense.

XIII. LIMITATION OF LIABILITIES

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

XIV. RESERVED

XV. OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT

- A. Work Product.** Copies of plans, specifications, reports, or other materials required to be delivered under this Agreement ("Work Product") shall be the exclusive property of Owner. The Owner and the Architect intend that such Work Product is "Work made for Hire", of which the Owner shall be deemed the author. The Architect 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 Architect shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Architect forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.
- B. Architect's Use of Work Product.** The Architect, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for its sales and in addition, unless specifically otherwise exempted, the Architect 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 Architect's involvement or prior written consent, the Owner shall indemnify, in an amount up to two times the Maximum Compensation to be paid under this Agreement, the Architect 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 Architect for any such liability arising out of the wrongful acts of the Architect or the Architect's officers, employees, Consultants, subcontractors, or agents.

XVI. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Architect shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Architect shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by **Sections XI-INSURANCE, XII-INDEMNITY, XIII -LIMITATION OF LIABILITIES, XV-OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT, XVIII-MEDIATION, XIX-TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XX-TAX COMPLIANCE, XXII-FOREIGN CONTRACTOR, XXIII-COMPLIANCE WITH APPLICABLE LAWS, XXIV-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXV-INDEPENDENT CONTRACTOR STATUS OF ARCHITECT, XXVI-ACCESS TO RECORDS and XXIX-NO WAIVER** of this Agreement.

XVII. NO THIRD PARTY BENEFICIARIES

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

XVIII. MEDIATION

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

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

XIX. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS

- A. Mutual Agreement.** The Owner and the Architect, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Architect, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- B. Termination by Owner.** Owner may terminate this Agreement, in whole or in part, immediately upon notice to Architect, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
 1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at

levels sufficient, as contemplated by OSU's budget and OSU's determination, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the Architect's Services [Reserved];

2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
3. Architect no longer holds any license or certificate that is required to perform the Services;
4. Architect commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or so fails to perform the Services as to endanger Architect's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.

C. Owner Funding. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available therefor and in that regard Owner represents and warrants to Architect that this agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to Architect, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Agreement, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give Architect notice of such non-availability of funds within thirty (30) days after it 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**, and within the limitations specified in **Section V** shall compensate the Architect for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
2. Pursuant to **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 Architect 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, mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.

4. For any reason, the Architect shall be responsible to the Owner for the quality of its Services and work product through the date of termination.

XX. RESERVED

XXI. DISCLOSURE OF SOCIAL SECURITY NUMBER

Architect must provide Architect's Social Security number unless Architect provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.0010. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

XXII. FOREIGN CONTRACTOR

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

XXIII. COMPLIANCE WITH APPLICABLE LAW

Architect shall comply with all OSU Standards and policies, federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Architect specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Architect also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659a.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Architect to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Architect of these obligations nor of the requirements of this Agreement. Architect further agrees to make payments promptly when due, to all persons supplying to such Architect labor or materials for the performance of the Services to be provided under this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this Agreement; not permit any lien or claim to be filed or prosecuted against Owner on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Architect fails or refuses to make any such payments required herein, the Owner may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Architect or Architect's surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

XXIV. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This Agreement is to be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Architect that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of 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 Owner of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. **ARCHITECT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

XXV. INDEPENDENT CONTRACTOR STATUS OF ARCHITECT

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

XXVI. ACCESS TO RECORDS

For not less than three (3) years after the termination or full performance of this Agreement, the Owner, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Architect and the Consultants which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, Architect shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Architect will provide full access to such documents in preparation for and during any such litigation.

XXVII. SEVERABILITY

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.

XXVIII. 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.

XXIX. 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.

XXX. 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 Architect 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 Architect and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

Architect: _____

Address: _____

Owner: Anita Nina Azarenko, Associate Vice President for University Facilities,
Infrastructure and Operations

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

With a Copy to: OSU Project Manager
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 13th Ave.
Corvallis, OR 97333

XXXI. CONFIDENTIALITY.

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

XXXII. CONFLICT OF INTEREST.

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

XXXIII. 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** Architect's Standard of Care; Representations and Warranties, **XII** Indemnity, **XIII** Limitation of Liabilities, **XV** Ownership and Use of Work Product of Architect, **XIX** Termination of Agreement; Non-Availability of Funds, **XXIV** Governing Law; Venue; Consent to Jurisdiction, **XXVI** Access to Records, **XXXI** Confidentiality, and **XXXIII** Survival.

XXXIV. 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.

XXXV. 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 THE PARTY TO BE BOUND. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. ARCHITECT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE ARCHITECT AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Architect

By _____

Title: _____

Date _____

Federal Tax ID # _____

Oregon State University, Owner

By: _____

Michael J. Green

Title: Vice President for Finance and
Administration

Date _____

SAMPLE

EXHIBIT 2

ARCHITECT'S KEY PERSONNEL AND CONSULTANTS

Key Personnel

Principal: _____

Senior Architectural Designer: _____

Architectural Designer: _____

Urban Designer: _____

Sr. Project Manager: _____

Project Manager: _____

Production Personnel/Project Architect: _____

Senior Interior Designer: _____

Interior Designer: _____

Clerical: _____

Consultants

1. _____

2. _____

3. _____

4. _____