



Oregon State
University

Attention Consulting Firms

If you are downloading the RFQ from the website, continue to monitor the website for addenda. Failure to incorporate any addenda into your submittal may cause your submittal to be considered non-responsive.

Thank you.

OREGON STATE UNIVERSITY

REQUEST FOR QUALIFICATIONS

PACIFIC MARINE ENERGY CENTER SOUTH ENERGY TEST SITE (PMEC-SETS) UTILITY CONNECTION AND MONITORING FACILITY (UCMF) MEDIUM VOLTAGE ELECTRICAL DESIGN

ISSUE DATE: April 18, 2018

RFQ CLOSING (DUE) DATE: May 17, 2018, 10:00 am, Pacific Time

NO LATE RESPONSES WILL BE ACCEPTED

CONTRACT ADMINISTRATOR:

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1.0 Introduction:

Oregon State University is seeking qualifications from consultant teams for the medium voltage electrical design of a Utility Connection and Monitoring Facility (UCMF), in support of the development of the Pacific Marine Energy Center South Energy Test Site (PMEC-SETS).

2.0 Project Description:

2.1 PMEC-SETS Overview

Oregon State University intends to construct PMEC-SETS, a wave energy test site approximately 6 NM offshore, south of Newport, Oregon. Wave Energy Converters (WECs) anchored at offshore test berths will be linked via four medium voltage subsea and terrestrial power cables to the UCMF. A fifth cable providing auxiliary power and fiber optic communications to offshore instrumentation will also be installed between the test berths and the UCMF. The UCMF will be a newly constructed OSU facility where a connection will be made to the Central Lincoln People's Utility District (CLPUD) electric utility grid. The UCMF will also include office space, storage, and other PMEC facilities.

The planned locations of the PMEC-SETS test berths, subsea and terrestrial cables, and the UCMF are shown in Figure 1. From the offshore test berths, subsea cables will be installed to a shore landing site at Driftwood Beach State Recreation Site, about 12 miles south of Newport OR. Underground terrestrial cables will be spliced to the subsea cables at the shore landing site, and will be installed between the shore landing site and the UCMF approximately 0.3 miles to the south. The total length of the subsea and terrestrial cables connecting each test berth to the UCMF will be approximately 12 miles. The UCMF will include WEC power measurement equipment, protective switchgear, transformers, utility metering equipment, and space for custom test berth-UCMF cable termination equipment. The UCMF will be the connection point to the CLPUD electrical grid. PMEC-SETS, including all cabling and the UCMF will be designed for an output power capability of 20 MW. During initial operation, however, the UCMF connection will be made directly to a local CLPUD 12.5 kV distribution feeder and the PMEC-SETS output will be limited to 10 MW maximum. An upgrade to a 20 MW grid connection will be made after a direct connection of the UCMF to a CLPUD substation is possible. This upgrade will likely be several years in the future after a new substation is built near the UCMF.

PMEC-SETS will be a Federal Energy Regulatory Commission (FERC) licensed generation facility. OSU has an agreement with Bonneville Power Administration (BPA) to integrate PMEC-SETS into BPA's Balancing Authority Area. BPA will install revenue meters and associated equipment at the UCMF for metering purposes.

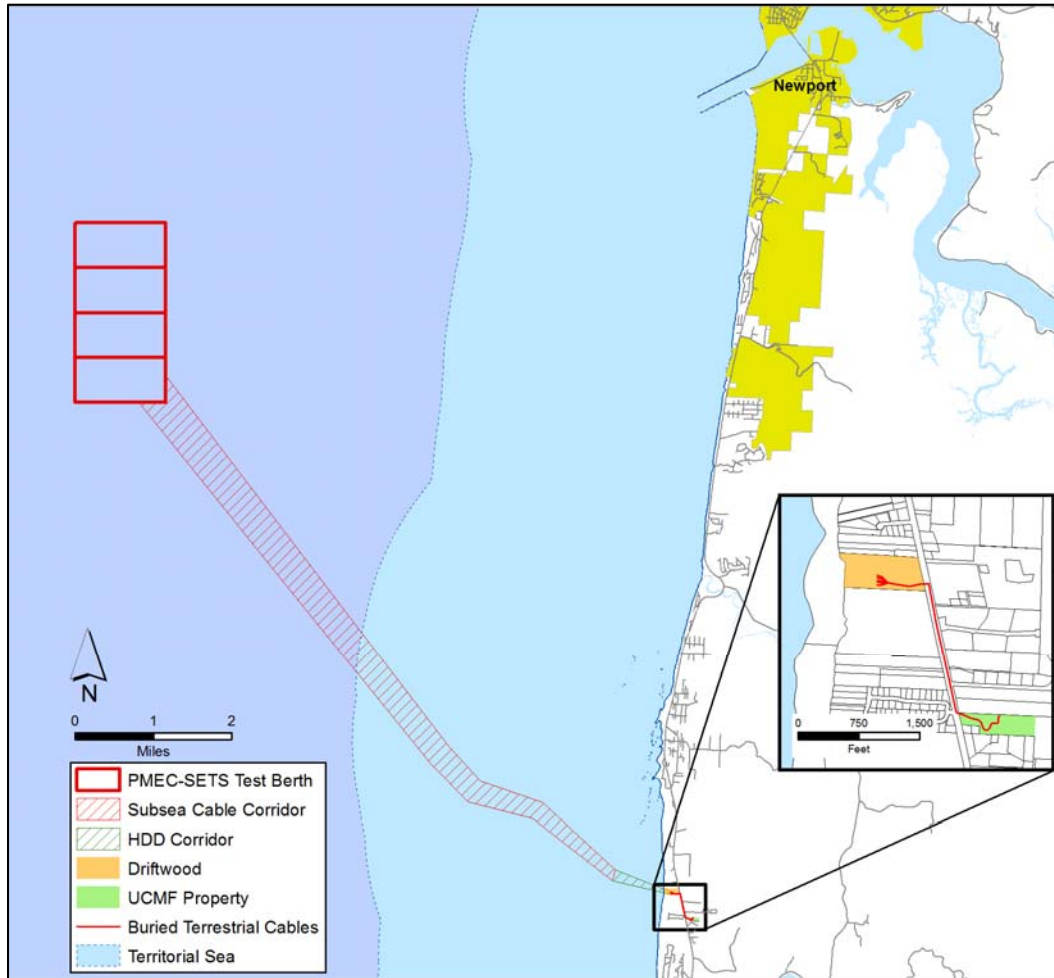


Figure 1 Locations of PMEC-SETS test berths, subsea cable corridor, HDD corridor, cable landing site, UCMF location and buried terrestrial cable route.

2.2 Utility Connection and Monitoring Facility (UCMF)

See Figure 2 for a conceptual one-line diagram of the UCMF medium voltage test berth interconnection equipment. Only the major components are shown, and details are likely to change in the preliminary and final UCMF designs. Either individual WECs or small arrays of WECs can be connected to the subsea cables at each of the four test berths. The maximum power exported to the grid by each test berth will be 5 MW continuous and 10 MW peak at 30 kV. WECs often have highly fluctuating output power associated with ocean wave periods. In most cases, test berths connections with medium voltage (6-30 kV), 60 Hz three phase voltages are expected. Alternate connections such as dc or wild frequency ac may be used, however, and will be accommodated in the UCMF design. A fifth cable will be used to connect the UCMF to offshore instrumentation using 3 kV or 4 kV dc. The UCMF will be designed for a combined 20 MW output power to the CLPUD grid (continuous and peak), although connection will initially be made to a 12.5 kV CLPUD distribution feeder and limited to 10 MW. A future upgrade will connect the UCMF directly to a new CLPUD substation and increase capability to 20 MW. That connection may be made at a higher voltage than 12.5 kV.

Main components of the UCMF medium voltage WEC interconnection design shown in Figure 2 are described below:

1. WEC power measuring equipment. This will be used to assess power performance of the devices being tested per the IEC 62600-100 technical specification for WEC power performance assessment. The preferred measurement point is either offshore on board the WEC being tested or at each berth's cable connection to the UCMF. For simplicity, the measurement may be made on the shoreward side of the client transformer as shown in Figure 2.
2. Custom equipment space. This will be the location where WEC testing clients can install custom power conditioning equipment for WECS that do not use typical 60 Hz ac cable connections. Depending on the WEC under test, WEC output power may require additional power conditioning equipment in this space, or WEC output may tie directly to the export CB and Client transformer. Examples of cases where this space will be used are 1) dc transmission from the WEC to the UCMF, 2) wild frequency ac transmission from the WEC to the UCMF, 3) shoreside installed load banks to consume WEC generated power rather than a grid connection, or 4) grid emulator testing of WECs.
3. Client transformers. These transformers allow step-up or step-down of the subsea cable voltage relative to the CLPUD grid voltage. Transformers will likely be provided by testing clients per PMEC requirements and may be changed out for each WEC deployment. A transformer might not be used when the cable voltage and grid voltage are the same, or when clients install custom power conditioning equipment. The maximum subsea cable voltage is approximately 30 kV, and this voltage will likely be used for higher power test berth outputs to minimize cable voltage drop. When smaller WECs are tested, however, lower cable voltages may be used. In cases where clients install custom power conditioning equipment in the custom equipment space, these transformers will be used to adjust the grid voltage connection of that equipment.
4. Circuit breakers. The seaward side circuit breaker protects and isolates the subsea cable, while the shoreward side circuit breaker protects the transformer. The seaward side circuit breaker will need remote trip capability from offshore WECs via fiber optics in the subsea cables. Note that in some cases where the WEC developer installs power conditioning equipment in the custom equipment space, they will be responsible for providing additional seaward circuit breaker or equivalent protection. This will be required, for instance, when a developer uses dc or wild frequency ac connection voltages. The incoming circuit breaker from the CLPUD grid may be owned and operated by CLPUD.
5. BPA metering equipment. BPA will install metering equipment at the UCMF per an OSU-BPA agreement. OSU will be responsible for selecting and installing potential transformers (PTs) and current transformers (CTs) and providing telephone lines for communication. CLPUD will also need metering information and may be able to use outputs from the same PTs and CTs.

6. Energy storage. Space is being incorporated into the UCMF layout for energy storage equipment that may be needed to smooth WEC output power. WEC designs that do not include onboard energy storage often produce highly fluctuating power that could adversely affect local residential loads on CLPUD’s distribution system. System modeling and simulations are being performed as part of an ongoing PEMEC-SETS Grid Interconnection Study; the need for energy storage will be assessed as part of that work.
7. VAR control. Some form of VAR control may be necessary at the UCMF. The need for VAR control, especially fast acting static VAR control will be assessed as part of the simulations that will be done for the Grid Interconnection Study.

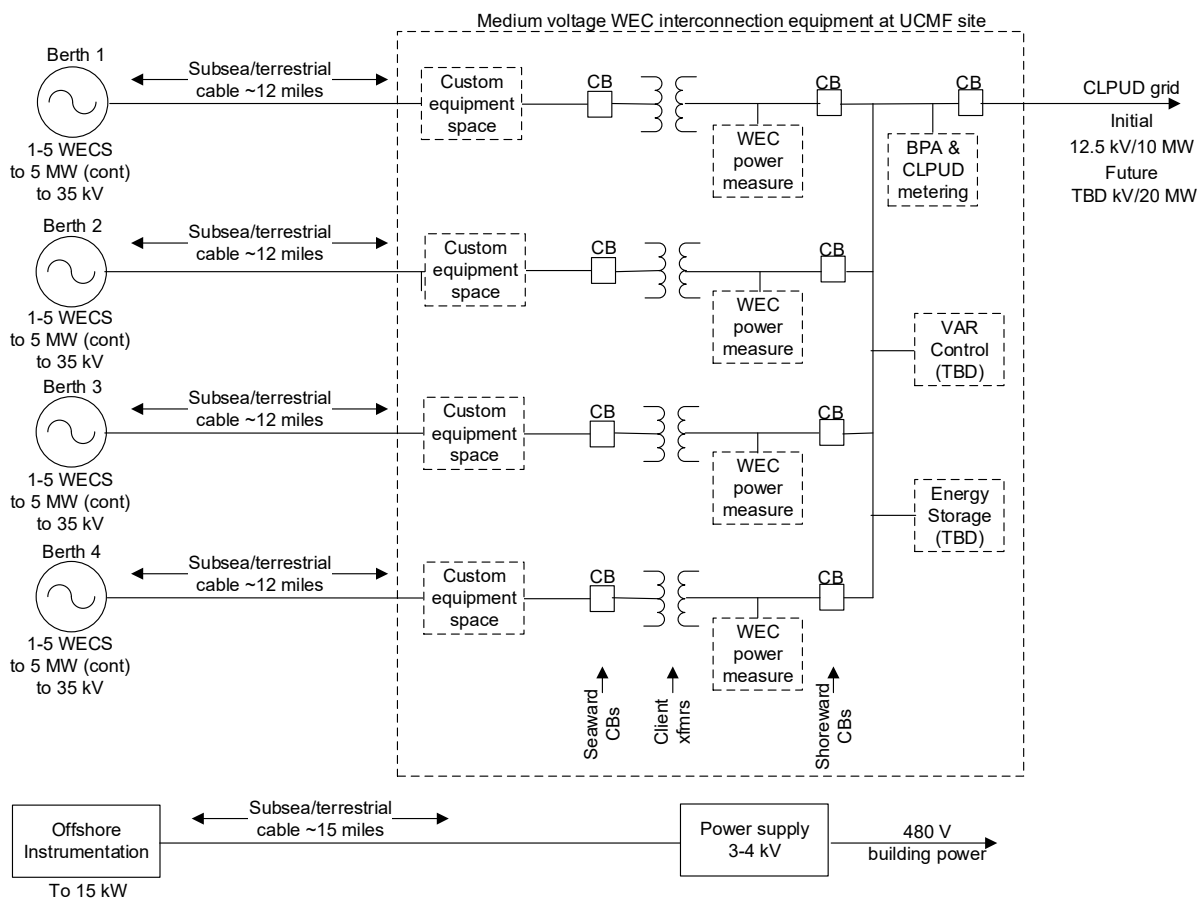


Figure 2 Conceptual one-line diagram of UCMF medium voltage equipment

See Figure 3 for a notional layout of the currently planned UCMF compound. This diagram shows the maximum expected building footprints for land use planning purposes. The medium voltage equipment will be located in the Power Conditioning and Switch Gear Buildings. The Power Conditioning Building is expected to have four large bays with two roll up doors each, providing custom equipment space for each test berth with room for client transformers in the rear of the building. The Power Conditioning Building is presently sized to accommodate two 40-foot ISO containers per test berth. The rest of the medium voltage equipment is expected to be installed in the Switch Gear Building, which will have two roll-

up doors in the front. A backup generator will be located between these two buildings. A third building will provide office and operational support space.

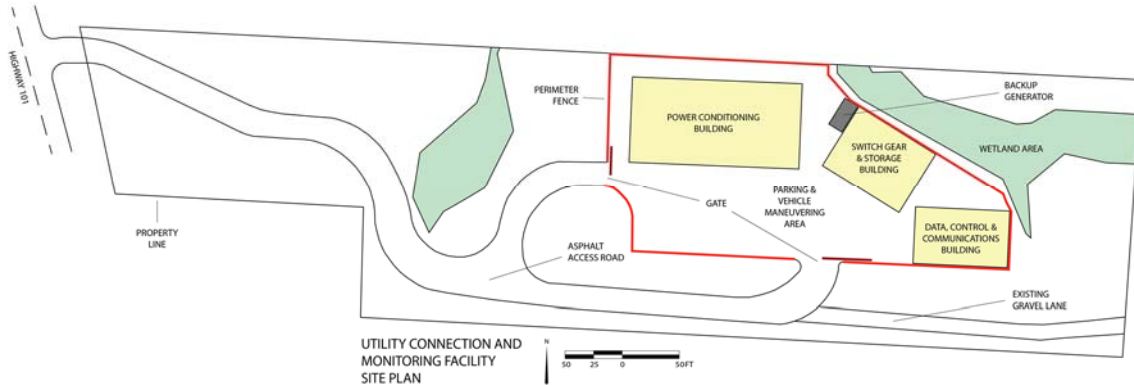


Figure 3 Notional layout of UCMF compound. Power Conditioning Building: 11,250 sq. ft. (150 x 75 ft.); Switch Gear Building: 4,800 sq. ft. (80 x 60 ft.); Data, Control & Communications Building: 4,250 sq. ft. (85 x 50 ft.).

4.0 Scope of Work

The scope of services will include the following:

1. Produce a preliminary design of the medium voltage WEC interconnection equipment to be installed at the UCMF. The design should be at the single-line diagram level with major components and protection specified. This design will include the equivalent components and functionality shown within the dashed box in Figure 2. The design should take into account 1) method of upgrade from the 10 MW 12.5 kV CLPUD connection to a higher voltage future 20 MW connection, 2) the accommodation of client transformers with different turns ratios and sizes, or, in some cases no client transformer, 3) subsea & terrestrial cable protection, 4) grounding of different parts of the system during maintenance, 5) subsea & terrestrial cable testing, and 6) measurement of WEC output power when 60 Hz ac cable voltages are not used. Note that this design will not include: 1) building electrical equipment powered by a separate 480 V or 240 V building power service entrance, or 2) data equipment other than that associated with WEC power measurement, UCMF power metering, and circuit breaker relaying.
2. Estimate costs to procure and install equipment based on the preliminary design.
3. Participate in a Preliminary Design Review (PDR) of the proposed design and update the preliminary design per comments.
4. Produce a detailed design of the medium voltage WEC interconnection equipment based on the preliminary design and PDR input. The detailed design shall include sufficient drawings and bills of materials for electricians to install the equipment to NEC standards.
5. Update procurement and installation cost estimates based on the detailed design.

- 6.
7. Participate in a Critical Design Review (CDR) where the detailed design will be reviewed by PMEC-SETS team members and other parties.
8. Modify detailed design as necessary per results of the CDR and produce a final drawing package (including vendor data) and cost estimates.
9. The UCMF site work, infrastructure and buildings will be designed by a Lead Design firm that will be selected by OSU. The final drawings and specifications from this contract will be integrated in to the overall UCMF plans for Permitting, bidding (or other means to select a general contractor), and construction. Cooperation with the selected lead design firm for integration of documents is part of the scope of work for this solicitation.
10. Provide construction administration for the medium voltage electrical equipment during UCMF construction. Provide on-site support as necessary.

The selected medium voltage electrical design consulting team will work cooperatively with other members of the PMEC-SETS team to complete this design, with input and review also provided by CLPUD and BPA.

4.0 Timeline

Work will commence upon selection of the consulting team.

	Start Date	End Date
Preliminary Design	8/2018	10/2018
PDR	10/2018	10/2018
Detailed Design	11/2018	11/2018
CDR	12/2018	12/2018
Integration with building design	1/2019	10/2019
Permitting/Bid	1/2020	3/2020
Construction	4/2020	11/2020

5.0 Selection Process:

This Request for Qualifications selection process will be conducted pursuant to the terms of this RFQ and OSU Standard 580-063-0020, relating to the selection and retention of professional consultants. Once the qualification responses have been reviewed and scored, the top three (3) to five (5) firms will be invited participate in telephone interviews.

6.0 Compensation:

Compensation will be based on a total “not-to-exceed” amount for services and reimbursable expenses, with “not-to-exceed” maximums for the following individual phases of the project: preliminary design, preliminary design review, detailed design, critical design review, and construction administration. The amount of compensation will be negotiated with the respondent who has submitted the best qualifications (the Apparent Successful Respondent). **No cost proposal or price information is to be submitted with qualification responses.**

7.0 Evaluation Criteria:

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

- 7.1 Provide a brief description of your firm and the focus of the practice. List the projects your firm is currently contracted for and at what stage the projects are in terms of completion. Also include your firm’s total dollar volume for each of the last five years. (10)
- 7.2 Identify key personnel, including project designer and project manager along with those of sub-consultants proposed to be assigned to this project. Note which personnel are currently registered professional engineers in the state of Oregon. Include proposed key personnel’s project experience, with specific examples and identify their roles in the projects. Indicate current availability, proposed percentage of project involvement per project phase and indicate whether the proposed team has worked together on previous projects. Highlight the individuals who participated in the project examples. (30)
- 7.3 Describe your firm’s experience designing medium voltage electrical equipment installations. Provide specific examples. Include information about the approval processes you went through with various agencies to have the facilities constructed. (20)
- 7.4 Describe your firm’s experience connecting renewable generation (for example solar and wind) and other highly fluctuating and intermittent resources to utility distribution systems. Provide specific examples. Include information about the approval processes you went through with various agencies to have the facilities constructed. (30)
- 7.5 Describe your firm’s experience with Bonneville Power Administration (BPA) metering equipment. (5)
- 7.6 Describe your firm’s experience specifying power measurement equipment per the IEC 62600-100 WEC power performance assessment specification. (5)
- 7.7 Describe your firm’s experience designing electrical equipment installations that mediate seismic conditions. Provide specific examples. Include information about the approval processes you went through with various agencies to have the facilities constructed. (5)

- 7.8 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 nondiscrimination practices. Provide historical information on MBE, WBE or ESB Joint Ventures, subcontracting or mentoring plan, and utilization history for projects completed by your firm within the past three (3) years. Provide a narrative description of your current workforce diversity program/plan, and the plan for obtaining subcontracting, consulting, and supplier 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 selected firm will provide the services with respect to diversity according to the means and methods described in the 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. (10)

8.0 References:

In addition to responding to the evaluation criteria above, provide the names, addresses, phone numbers and email addresses of three owners, three sub-consultants, and three contractors to be used as references for this project. Verify that the individuals identified have had direct contact with the referenced project, and the phone number and email address are current. Do not include references from any firms or individuals included in your consulting team for this Project or any OSU personnel. OSU may check with these references and with other references associated with past work of your firm.

9.0 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.

April 18, 2018	Issue RFQ
May 17, 2018	RFQ response due 10:00 am Time, Pacific Time
June 5, 2018	Notification of finalists
June 13, 2018	Telephone Interviews with Selection Committee
July 9, 2018	Fee Proposal Deadline (for Apparent Successful Respondent)/Estimated Notice of Intent to Award
July 26, 2018	Estimated Contract Execution

Site Visit: No mandatory site visits are required as part of the selection process.

10.0 Evaluation Process:

This RFQ is the first step in a two-step process in the selection of the consulting team. The responses to this RFQ will be evaluated by the selection committee, which will be comprised of university personnel who score qualification statements and rank finalists and another group of personnel who serve as advisors but do not score qualifications or rank finalists. On the basis of this evaluation, the selection committee will make its best efforts to limit the field of finalists to a maximum of five (5), finalists to be selected for final consideration through telephone interviews of each finalist and further investigation of references. OSU will utilize this RFQ process to obtain information to enable selection of the most qualified respondent through evaluation of:

- a. The respondents' responses to evaluation criteria in section 8 of this document;
- b. Information obtained during an interview of the respondents by the selection committee; and
- c. The results of discussions with the respondents' references and others.

Each criterion in the first step of the evaluation process has been assigned a weight between five (5) and thirty (30). Each member of the evaluation committee will rate each firm in each criterion between one (1) and five (5) (five being the highest), and multiply that number by the weight assigned to the criterion. The evaluation committee members will then total the weighted score from all of the criteria to obtain the total score. The result of this total score will be used to rank all respondents. The top ranked firms (up to a maximum of five) will be invited to participate in telephone interviews.

The evaluation committee will meet and compare the individual evaluation committee member rankings. The committee will discuss firm strengths and weaknesses and the individual evaluation committee member scorings. The evaluation committee discussion will result in the consolidated ranking from which the finalists for telephone interviews may be selected for step two of the process.

The RFQ responses will be used in preparation for interviews of the finalists.

After all of the interviews are completed, the evaluation committee will discuss the strengths and weaknesses of the interviewed finalists. The committee will then rank the interviewed finalists in order of preference based on all information received, presented and heard during the interviews. The finalist that has the highest overall ranking will be deemed the Apparent Successful Respondent. Final ranking will be based on finalist's response to questions during the interview stage, and through that response, how well each finalist can meet the Project and University needs.

Interviews will include a presentation period (maximum of 30 minutes), immediately followed by a separate Q&A session. Finalists should be prepared to address the following:

- Your firm's philosophy and practiced approach to design that will result in a safe and reliable electrical design that will also be the most useful for clients who will test their devices at PMEC-SETS.
- The methods your firm expects to use to communicate and work with other members of the PMEC-SETS team and other organizations such as CLPUD and BPA.
- Specific challenges you anticipate for this project based on past project experiences and "lessons learned" from previous projects that you will incorporate to keep the project moving forward.
- OSU anticipates the need to conduct a tsunami hazard analysis and site specific evaluation of the liquefaction potential and associated subsidence for the UCMF site. How might that affect the medium voltage electrical design?

If, during the discussion, the selection committee determines the interviewed finalists are too close to rank, the university has no recent experience working with a finalist, or if the consolidated ranking indicates a tie, the committee will check the references provided by the respondent as required by this RFQ. Information obtained from references may alter the committee's final ranking of finalists. Any alteration of final ranking will be based on committee's understanding of how well each firm can meet the needs of the Project and University.

OSU will then negotiate with the Apparent Successful Respondent the price and specific statement of work of a contract, consistent with OSU's Standard Consultant's Agreement attached to this RFQ. If OSU and the Apparent Successful Respondent are unable to reach agreement, OSU will negotiate with the second-ranked respondent, etc.

11.0 Responsibility Evaluation:

OSU reserves the right to investigate each respondent's responsibility in accordance with the requirements of Division 61 of OSU Standard Chapter 580, and will consider information obtained from any source as part of its evaluation, at any time prior to execution of a contract. Submission of a signed qualification 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 will 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 qualification response nonresponsive. Failure of a respondent to demonstrate responsibility will render it non-responsible and constitute grounds for qualification response rejection.

12.0 Submission:

Submit one (1) hard copy version of your written qualification response, along **with one (1) electronic version on a thumb drive** to be received by the closing date and time listed in this document to:

Attention: Shoshana Shabazz
Construction Contracts Administration
Oregon State University
644 SW 13th Street
Corvallis, OR 97333-4238

Your qualification response must be contained in a document **not to exceed ten (10) single sided pages/or five (5) double sided pages**, 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) single sided page limit/five (5) double sided page limit and should be **appended to the end of your response**. No supplemental information to the ten (10) single sided/five (5) double sided page qualification 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) single sided page/five (5) double sided page limit.

Information should **be presented in the same order as the above evaluation criteria**. **The electronic qualification response should be sized appropriately for transfer (under 8 MB)**. The written response should be submitted in a **soft-bound** (comb or spiral, spiral preferred – no three-ring binders) format 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 margins.

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

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

Note that OSU will not accept qualification 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 submittals will not be accepted.

Qualification responses received after the closing date and time will not be considered.

13.0 Questions:

All questions and contacts with the OSU 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 April 30, 2018 at 9:00 am, Pacific Time.

14.0 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 the Chief Procurement Officer in care of Hanna Emerson at the address, email or fax listed in this document. Requests and protests must be received no later than April 25, 2018 at 9:00 am, Pacific Time. 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.

15.0 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 in the form of an addendum posted to the OSU Business and Bid Opportunities (<http://bid.oregonstate.edu/>) 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.

16.0 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 the Chief Procurement Officer in care of Hanna Emerson at the address given in the RFQ within three days after notification of that selection. Any such protests must be received by Ms. Emerson no later than three days after the notification of selection has been made in order to be considered. The selection decision notification will be made by OSU via posting to the OSU Bid and Business Opportunities website (bid.oregonstate.edu).

17.0 Proprietary Information:

OSU will retain this RFQ, one copy of each qualification response received and an electronic copy of each qualification response received, together with copies of all documents pertaining to the award of a contract. 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 or all qualification responses have been rejected. If a qualification 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 qualification 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 qualification response, material designated as confidential must accompany the qualification 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 qualification response marked as a trade secret in its entirety will be considered non-responsive and will be rejected.

18.0 Project Termination:

OSU is seeking to award a consultant's agreement to a consulting firm for medium voltage electrical design; however, OSU reserves the right to terminate the project and the agreement, at any phase in the project.

19.0 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 Agreement.

20.0 Additional Requirements:

Pursuant to OSU Standard 580-061-0030, by submitting a qualification 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 OSU 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.

21.0 Federal Provisions

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. *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.
3. *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 $1\frac{1}{2}$ 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.

4. *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.
5. *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).
6. *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.
7. *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.
8. 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.).
9. 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)
 10. 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).
 11. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
 12. Compliance with Protection of Wetlands and Floodplains, 10 C.F.R. Part 1022;
 13. Compliance with Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq.
 14. Compliance with Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.; 15 C.F.R. Part 930.
 15. Compliance with Coastal Barriers Resource Act, 16 U.S.C. § 3501 et seq.
 16. 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.
 17. 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.
 18. 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.
19. 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.
 20. 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)).
 21. 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”)
 22. 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.
 23. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).
 24. 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.*).
 25. 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).
 26. Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).
 27. Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.
 28. Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*).
 29. 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.”
 30. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).
 31. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR

- part 930).
32. 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.*).
 33. 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.
 34. Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*). Protection of Human Subjects, 10 CFR part 745.
 35. 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)).
 36. 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).
 37. 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.
 38. 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).
 39. Administrative and Fiscal Policy Requirements The Hatch Act (5 U.S.C. 1501-1508).
 40. Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 *et seq.*).
 41. OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.
 42. 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.
 43. Single Audit Act of 1984, Pub. L. 98-502.
 44. 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]

Enclosures:

OSU Sample Consultant’s Agreement

End of RFQ

CONSULTANT'S AGREEMENT
PACIFIC MARINE ENERGY CENTER SOUTH ENERGY TEST SITE (PMEC-SETS) UTILITY CONNECTION
AND MONITORING FACILITY (UCMF) MEDIUM VOLTAGE ELECTRICAL DESIGN
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 13th Street
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:

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 for economy
Personal car mileage	\$0.545 per mile
Lodging	\$134.00 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 hourly rates listed on the CH2M proposal dated April 28, 2017 (attached hereto and incorporated by this reference as "Exhibit 2") 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.

Consultant

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.

CONSULTANT

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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. 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 no less than A-VII 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. Workers' Compensation coverage shall be maintained at all times in accordance with statutory limits and Employer's Liability insurance shall have minimum limits of \$1,000,000 each accident; \$1,000,000 disease-each employee; \$1,000,000 disease-policy limit. When applicable, the insurance must include coverage for all federal acts, including but not limited to the Longshore and Harbor Workers' Compensation Act and the Jones Act.
- B. Commercial General Liability** - Consultant shall secure Commercial General Liability insurance with a minimum limit of \$2,000,000 each occurrence and \$4,000,000 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 minimum combined single limit of \$2,000,000 per occurrence or 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.
- 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 minimum limit of \$2,000,000 per claim and \$2,000,000 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 36 months or the maximum time period available in the marketplace if less than 36 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 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. Primary Coverage.** Insurance carried by Consultant under this Agreement shall be primary and non-contributory.
- G. 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. In the description of operations, the certificate(s) should state specifically that the insurance is provided for this Agreement.
- H. Notice of Cancellation.** Contractor shall give thirty (30) days prior written notice to the Owner's representative set forth in Section XXVII below if any policy required by this section is suspended, voided or canceled.
- I. Additional Insureds.** All policies in this Insurance section, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall be 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 and to the full limits of liability purchased by Consultant. The certificate of insurance shall evidence additional insured status for each policy, except as otherwise indicated.

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.
- C.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 this contract is federally funded. OSU has received federal funds from Department of Energy (DOE). Compliance with the following Federal Provisions, shall be required:

- ~~0.1.~~ 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.”
- ~~1.2.~~ 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.

- 2.3. *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.
- 2.4. *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.
- 2.5. *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).
- 2.6. *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.
- 3.7. *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.

- 4.8. 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.).
- 4.9. 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)
- 4.10. 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).
- 4.11. Compliance with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
- 5.12. Compliance with Protection of Wetlands and Floodplains, 10 C.F.R. Part 1022;
- 6.13. Compliance with Flood Disaster Protection Act of 1973, 42 U.S.C. § 4001 et seq.
- 6.14. Compliance with Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.; 15 C.F.R. Part 930.
- 6.15. Compliance with Coastal Barriers Resource Act, 16 U.S.C. § 3501 et seq.
- 6.16. 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.
- 6.17. 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 Prevent, 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.
- 7.18. 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.

- 8-19. 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.
- 8-20. 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)).
- 8-21. 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”)
- 8-22. 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.
- 8-23. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended (42 U.S.C. 4581).
- 8-24. 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.*).
- 8-25. 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).
- 8-26. Sec. 306, Clean Air Act, as amended (42 U.S.C. 7606c).
- 8-27. Sec. 508, Federal Water Pollution Control Act of 1972 (33 U.S.C. 1251 *et seq.*); Executive Order 11738, September 12, 1973.
- 8-28. Title XIV, Public Health Service Act, as amended (42 U.S.C. 300f—*et seq.*).
- 8-29. 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.”
- 8-30. Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*).
- 8-31. Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 *et seq.*) (15 CFR part 930).
- 9-32. 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.*).

- [10.33.](#) 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.
- [10.34.](#) Wild and Scenic Rivers Act of 1968, as amended (16 U.S.C. 1271 *et seq.*). Protection of Human Subjects, 10 CFR part 745.
- [10.35.](#) 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)).
- [10.36.](#) 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).
- [10.37.](#) 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.
- [10.38.](#) 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).
- [10.39.](#) Administrative and Fiscal Policy Requirements The Hatch Act (5 U.S.C. 1501-1508).
- [10.40.](#) Federal Reports Act, as amended by the Paperwork Reduction Act of 1980, Pub. L. 96-511 (44 U.S.C. 3501 *et seq.*).
- [10.41.](#) OMB Circular A-111, Jointly Funded Assistance to State and Local Governments and Nonprofit Organizations—Policies and Procedures.
- [10.42.](#) 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.
- [10.43.](#) Single Audit Act of 1984, Pub. L. 98-502.
- [10.44.](#) 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]

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 University Facilities, Infrastructure and Operations

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 13th 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 University
Facilities, Infrastructure and Operations

Date: _____

Date: _____

Federal Tax ID# _____