



Oregon State University

REQUEST FOR QUALIFICATIONS

Construction Related Services Retainer Contract

ISSUE DATE: December 17, 2018

CLOSING DATE: August 31, 2020
CLOSING TIME: 5:00 PM Pacific Time

CONTRACT ADMINISTRATOR:

Brooke Davison, Construction Contract Officer
Construction Contract Administration
Oregon State University
644 SW 13th Ave
Corvallis, OR 97333
Phone: (541) 737-7342
Email: RetainerProgram@oregonstate.edu

SOLICITATION / SELECTION PROTESTS:

Hanna Emerson, Construction Contracts Manager
Construction Contract Administration
Oregon State University
644 SW 13th Ave
Corvallis, OR 97333
Phone: (541) 737-7694
Email: RetainerProgram@oregonstate.edu

TABLE OF CONTENTS

	Page
Section I – Retainer Contract Introduction	3
Introduction	3
Services Sought	3
Section II – Retainer Contract Information	4
Contract Term	4
Selection to Provide Work	4
Certificates of Insurance Requirements	4
Bonding Requirements	5
Licensing and Legal Requirements	5
Project Design	5
MWESB	5
Section III – Response Submission	
Instructions	6
Response Due Date	6
Questions and Inquiries	6
Section IV – Evaluation Criteria	7
Section V – Retainer Contract Award and Response Rejection	9
Section VI – General RFQ Provisions	10
Section VII – Additional RFQ Documents and Contract Terms ...	12
Attachment I – Required Information Form and Respondent Signature Page ..	12
Attachment II – General Conditions for Retainer Contracts	12
Exhibit A – Sample Retainer Contract	13
Exhibit B – Sample Retainer Contract Supplement	18
Exhibit C – Sample Retainer Contract Supplement Amendment	22
Appendix A – Service Categories Sought	24

Oregon State University Retainer Contract RFQ

Section I – RETAINER CONTRACT INTRODUCTION

INTRODUCTION

Oregon State University (“OSU”) is seeking responses (“Responses”) from qualified contractors (“Respondents”) to enter into Retainer Contracts, granting the opportunity to provide construction related services to OSU.

Successful Respondents (each a “Contractor”) must be able to furnish the labor, materials, equipment, components, supplies, and supervision necessary to provide construction related services for future, and currently undetermined, renovation, improvement, repair, and maintenance projects (“Work”).

Contractors will be eligible to bid on Work contracted through the OSU Retainer Program for Construction Related Services (“Retainer Program”). Retainer Contracts will be maintained electronically (in the Retainer Program database) for the duration of the Contract Term and will remain available for use by OSU in accordance with the terms of this RFQ. Certain contracting opportunities for construction related services may only be available to Contractors in the Retainer Program.

For any Work valued at \$1,000,000 or less, OSU may contact Contractors from the Retainer Contract database to more efficiently solicit and execute a supplementary agreement to the Retainer Contract stating the scope of Work, including schedule, and price term (“Supplement”). Prior to the execution of any Supplement, Contractors will be required to demonstrate that they have complied with the insurance and bonding sections of the General Conditions for Retainer Contracts (Attachment II) and this RFQ. Each Supplement may contain additional terms specific to the Work, be modified through the use of Supplemental Retainer Contract General Conditions, or be altered through use of an amendment (“Amendment”). Contractors may be awarded multiple Supplements during the Contract Term.

However, Contractors are not guaranteed Work and may not be issued a Supplement as participants in the Retainer Program.

Capitalized terms used, but not defined, in this RFQ or the General Conditions for Retainer Contracts, have the meanings set forth in OSU Standards.

SERVICES SOUGHT

Service categories sought are listed in Appendix A. Responses will be accepted online as set forth in Section III. Respondents must check only those service categories in the online Required Information Form that the Respondent is able to perform directly. At the discretion of OSU, Contractors may be removed from inclusion in the Retainer Program for service categories that they do not directly perform.

Section II –RETAINER CONTRACT INFORMATION

CONTRACT TERM

Contractors must electronically sign the Respondent Signature Page in the final step of the Required Information Form, explained in further detail in Section III below. By providing an electronic signature on the Respondent Signature Page, the Contractor agrees to be bound by the terms and conditions contained in the Retainer Contract. Retainer Contracts will become effective on the date OSU accepts (via email) the Required Information Form (the “Effective Date”), and shall remain effective through November 30, 2020, unless terminated earlier according to the terms of the Retainer Contract. The period of time between the Effective Date and the Termination Date constitutes the term of the Retainer Contract (the “Term”).

SELECTION TO PROVIDE WORK

Contractors will be selected to perform Work in accordance with applicable rules. Factors for selection include: price, experience, past performance, insurance capacity, bonding capacity, personnel assigned to the project, availability, and ability to meet OSU’s schedule for completion of the Work. The following procedures will be utilized to select Contractors for Work based on the total anticipated project price, which includes all contemplated Supplements and Amendments:

- a) **Projects \$50,000 or less** – OSU may contact and negotiate directly with Contractors who have executed Retainer Contracts.
- b) **Projects \$50,000.01 to \$500,000** – OSU shall invite a minimum of three Contractors (one of which must be a Minority owned, Women Owned or an Emerging Small Business as defined below, as long as a firm meets the services sought for the specific work unit contemplated) who have executed Retainer Contracts to submit a bid. OSU may also post a solicitation document on the OSU Business and Bid Opportunities website (<http://bid.oregonstate.edu>) as a retainer contract bidding opportunity. This solicitation document shall contain the list of selected Contractors, with contact information, that are bidding on the Work. Contractor selection will be based on the invited Contractors’ responses to criteria included in the solicitation document.
- c) **Projects \$500,000.01 - \$1,000,000** – OSU will post a solicitation document on the OSU Business and Bid Opportunities website (<http://bid.oregonstate.edu>). All Contractors with valid Retainer Contracts are welcome to bid. Selection shall be based on the criteria described in the solicitation document.

At its discretion, OSU may solicit bids from more Contractors than indicated above or at a lower threshold than stated above.

CERTIFICATES OF INSURANCE REQUIRED PRIOR TO SUPPLEMENT EXECUTION

Contractors will not be required to furnish certificates of insurance upon execution of Retainer Contracts. However, it shall be a condition precedent to the effectiveness of each Supplement awarded that Contractor provide certificates of insurance in accordance with the General Conditions for Retainer Contracts (as may be modified by Retainer Supplemental General Conditions). Insurance requirements pertaining to any specific Supplement may be adjusted at OSU’s sole discretion, but any such adjustments pertain only to that Supplement and do not modify the requirements of the Retainer Contract with regard to any other Supplement.

PROOF OF PERFORMANCE AND PAYMENT BOND PRIOR TO SUPPLEMENT EXECUTION

Performance and payment bonds shall be required for Supplements valued at \$100,000 or greater. OSU, at its sole discretion, may require performance and payment bonds for Supplements where the value of the Work is \$100,000 or less. The bonds must be purchased for the specific project and proof of purchase must be provided on the form furnished by OSU as a condition precedent to the effectiveness of each Supplement awarded.

LICENSING REQUIREMENTS

Contractors must be licensed with the Construction Contractor's Board ("CCB") at the time of Response submission and for the Contract Term. Landscape Contractors may provide a Landscape Contractor's Board ("LCB") license number in lieu of a CCB license number at the time of Response submission. LCB licenses must also remain effective for the Contract Term. If Contractor's CCB or LCB license becomes inactive during the Contract Term, OSU may suspend Work according to the terms of the General Conditions for Retainer Contracts. Further, Contractors with inactive CCB or LCB licenses cannot be awarded a Supplement until the CCB or LCB restores the active status of the license. All Work shall be performed by appropriately licensed and certified workers and technicians.

LEGAL REQUIREMENTS

Contractors must be registered to transact business in the State of Oregon and hold valid State of Oregon Business Registry Number at the time of Response submission and for the Contract Term (http://egov.sos.state.or.us/br/pkg_web_name_srch_inq.login). Contractors must perform Work in conformance with all applicable laws and regulatory requirements, OSU standards and policies, state and local building codes, and National Fire Protection Association Rules and Regulations. Contractors must comply with the prevailing wage rates set by the Bureau of Labor and Industries, when applicable. Work may require appropriate plan reviews and permits from local permitting authorities having jurisdiction over the Work.

PROJECT DESIGN

Projects may be designed by OSU or by design consultants retained by OSU. Drawings and specifications for each project will be available prior to any project solicitation request. In some situations, it will be the Contractor's responsibility to complete the design. In such cases, the Contractor will provide drawings and specifications for review and approval, and obtain proper authorization from OSU prior to commencing any Work.

MWESB

OSU encourages Responses from Minority, Women and Emerging Small Business enterprises; as such, terms are defined in ORS 200.005 and certified pursuant to ORS 200.055 ("MWESB"). Any Contractor certified by the State of Oregon as MWESB that includes their valid certification number in the RIF will be noted as such within the Retainer Program database.

Section III – RESPONSE SUBMISSION

INSTRUCTIONS

Respondents must read this RFQ, including the accompanying documents attached in Section VI, carefully. By submitting a Response, in the form of the RIF, in response to this RFQ, Respondent acknowledges that they have read, understand and agree to comply with all the provisions of this RFQ.

After reading the RFQ, Respondents must complete the online RIF here:

<https://apps.campusops.oregonstate.edu/retainer/ContractorRIF>. At the conclusion of the RIF, Respondents will be required to electronically sign the Respondent Signature Page. Responses are not complete until the Respondent Signature Page has been signed electronically and the Respondent has received an email from OSU confirming receipt. No hard-copy Responses or promotional materials will be accepted. Incomplete Responses will be rejected.

RESPONSE DUE DATE

OSU will accept Responses online until the Closing Date and Time. Any Response received by the Closing Date and Time will be evaluated, and if accepted, will have a Retainer Contract with an Effective Date as described in Section II above. Contractors are not able to bid or propose on Work until the Effective Date of their Retainer Contract.

QUESTIONS AND INQUIRIES

Procurement, Contracts and Materials Management, office of Construction Contract Administration will be your sole point of contact during this RFQ process. Responses to inquiries are for clarification purposes only and in no way alter or amend this RFQ. All correspondence pertaining to this RFQ should be appropriately addressed to OSU per the contact information below:

Brooke Davison, Construction Contract Officer, OSU Construction Contract Administration

Hanna Emerson, Construction Contract Manager, OSU Construction Contract Administration

Email: RetainerProgram@oregonstate.edu *Email preferred

[Remainder of page intentionally left blank.]

Section IV – EVALUATION CRITERIA

Responses will be evaluated for completeness, clarity, and compliance with this RFQ. Complete Responses will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFQ. If the Response is unclear, Respondents may be asked to provide written clarification. **Respondents will be awarded Retainer Contracts if their Responses meet the following requirements of this RFQ:**

- a) Complete Response. Respondents must comply fully with the instructions provided in this RFQ. Respondents must provide complete and accurate information on the RIF and electronically sign the Respondent Signature Page.
- b) Insurance Coverage. Respondents must answer all insurance questions on the RIF and agree that, upon issuance of a Supplement, they shall obtain, if necessary, and maintain the insurance required by the General Conditions for Retainer Contracts (unless modified by Retainer Supplemental General Conditions). Certificates of insurance evidencing coverage are not required until a Supplement is awarded.
- c) Bonding. Respondents must verify on the RIF that they can obtain both a payment bond and performance bond, and upon issuance of a Supplement for a project valued over \$100,000, or upon OSU request for projects valued at less than \$100,000, they shall obtain both a performance bond and a payment bond.
- d) Licensing and Legal Compliance.
Each successful Respondent must furnish the following in the Response:
 - (1) A valid CCB license number at the time of Response submission (those Respondents seeking to provide landscape services may provide a LCB license number in lieu of a CCB license number); and
 - (2) A valid Oregon Business Registry Number demonstrating Respondent is registered to transact business in the State of Oregon; and
 - (3) A valid Federal Tax Identification Number; andAdditionally, each successful Respondent must agree to:
 - (4) Comply with the prevailing wage rates set by the Bureau of Labor and Industries, when applicable; and
 - (5) Adhere to all applicable laws and regulatory requirements, OSU standards and policies, state and local building codes, and National Fire Protection Association Rules and regulations.
- e) Contractor Experience. Respondent's completed RIF must indicate that Respondent has been in business for a minimum of five years prior to Response submission, or demonstrate that the principals/owners of Respondent's company have a minimum of five consecutive years of experience providing services in the service categories indicated in Respondent's completed RIF. Responses with fewer than five years of experience will be considered at the sole and absolute discretion of OSU.
- f) References. Respondent's completed RIF must include no fewer than four commercial projects completed within the past two years. RIF's with fewer than four commercial projects completed within the past two years will be considered at the sole and absolute discretion of OSU.

- g) Ability to respond. Respondents must verify their willingness to respond to a request for services within a reasonable time, generally one to two weeks.

Section V – RETAINER CONTRACT AWARD AND RESPONSE REJECTION

RESPONSE EVALUATION

An OSU representative will evaluate each Response to determine whether it satisfies the criteria set forth in Section IV of this RFQ.

CONTRACT AWARD

Respondents will be required to agree to the terms and conditions of the Retainer Contract at the time Responses are submitted. OSU will notify each successful Respondent by email upon acceptance of into the Retainer Program.

ACCEPTANCE OF CONTRACTUAL REQUIREMENTS

The terms of the Retainer Contract are not negotiable. Respondents are required to electronically sign the Respondent Signature Page on the RIF, and by such action agree to the terms and conditions of the Retainer Contract with no alterations.

REJECTION OF RESPONSES

OSU reserves the right to reject any Response that does not comply with the administrative, contractual, or technical requirements of this RFQ. If a Response is unclear, Respondents may be asked to revise and resubmit the Response or the Response may be rejected. Responses that do not include all required Response content may be rejected at the sole and absolute discretion of OSU. OSU reserves the right to reject any or all Responses, if such rejection would be in the public interest as determined by OSU.

REJECTION; APPEAL

Rejected Respondents shall be notified in a “Rejection of Response” letter emailed to Respondent and shall be given three calendar days from the date on the “Rejection of Response” letter to file a written protest of award, pursuant to OSU Standard. Any protest must be emailed to the Construction Contract Manager at: RetainerProgram@oregonstate.edu. A decision will be issued by OSU within a reasonable time from the date of receipt. The decision of Oregon State University Construction Contract Manager shall be the final administrative decision of OSU.

[Remainder of page intentionally left blank.]

Section VI – GENERAL RFQ PROVISIONS

OSU Standards govern the OSU Capital Construction procurement processes.

1. Modification or Withdrawal of Response: Any Response may be modified or withdrawn at any time prior to the Closing Date and Time, provided that a written request is received by Oregon State University Procurement, Contracts and Materials Management, office of Construction Contract Administration prior to the Closing Date. The withdrawal of a Response will not prejudice the right of a Respondent to submit a new response.

2. Protests of Specifications: Protests or requests for changes to RFQ terms must be received in writing via email to RetainerProgram@oregonstate.edu. Protests or requests for changes may not be faxed. Protests or requests for changes to RFQ terms shall include the reason for the protest or request for change and any proposed changes to the terms. The purpose of this requirement is to permit OSU to correct, prior to Respondents' submission of Responses, RFQ terms or technical requirements that may be unlawful or improvident or which might unjustifiably restrict competition. OSU will consider all requested changes and, if appropriate, amend this RFQ.

3. Addenda: If any part of this RFQ is amended, addenda will be provided on OSU Business and Bid Opportunities website (<http://bid.oregonstate.edu>). Respondents are exclusively responsible for checking the OSU Business and Bid Opportunities website to determine whether any addenda have been issued. **By submitting a Response, each Respondent thereby agrees that it accepts all risks and waives all claims associated with or related to its failure to obtain any addendum or addendum information.** Responses to inquiries are for clarification purposes only and in no way alter or amend this RFQ. Only addenda issued by OSU shall modify this RFQ.

4. Public Records: Respondent must mark any information it believes constitutes a trade secret under ORS 192.345(2) with the following (bold) legend: **"This information constitutes a trade secret under ORS 192.345(2), and shall 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 exemptions from disclosure do not apply if the public interest requires disclosure in the particular instance. Non-disclosure of documents or any portion of a document submitted as part of a Response may depend upon official or judicial determination made pursuant to Oregon Public Records Law.

5. Investigation of References: OSU reserves the right to investigate all references in addition to supplied references and investigate past performance of any Respondent with respect to its performance of similar services, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, and lawful payment of subcontractors and employees.

Despite its right to investigate all Respondent references, OSU is not obligated to utilize references as part of its evaluation criteria and may decline to investigate or consider references. Any decision made by OSU in regards to the use of references, will not be considered grounds for protest.

6. RFQ Preparation Costs: OSU will not be liable for costs incurred by Respondents in preparation of their Responses.

7. Clarification and Clarity: OSU reserves the right to seek clarification of any Response or to make an award without further discussion of Responses received. Therefore, it is important that each Response

initially be submitted in the most complete, clear, and favorable manner possible.

8. Cancellation: OSU reserves the right to cancel or postpone this RFQ at any time or to award no Retainer Contract.

9. Communication Blackout Period. Except as called for in this RFQ, no Respondent may communicate with any OSU employee or representative outside of Oregon State University Procurement, Contracts and Materials Management, office of Construction Contract Administration regarding this RFQ until evaluation of its Response is complete. Respondents records will not be available for public examination and no information or opinions concerning the ultimate outcome of this RFQ will be released to anyone outside OSU during Response evaluation. Additional information may be requested by the OSU during Response evaluation.

10. Clerical Errors in Awards. OSU reserves the right to correct inaccurate awards resulting from its clerical errors.

11. Rejection of Qualified Responses. Responses may be rejected in whole or in part if they limit or modify any of the terms and conditions or specifications of the RFQ. Any terms contained in Responses that conflict with or modify the terms of this RFQ and sample contract are expressly rejected.

[Remainder of page intentionally left blank.]

Section VII – ADDITIONAL CONTRACT DOCUMENTS AND TERMS

ATTACHMENT I

The Construction Related Services online RIF including the Respondent Signature Page (Attachment I) is available online here: <https://apps.campusops.oregonstate.edu/retainer/ContractorRIF>

ATTACHMENT II

The General Conditions for Retainer Contracts and Supplemental Retainer General Conditions (Attachment II) are posted online here: <http://bid.oregonstate.edu/opportunity/view/23489>

[Remainder of page intentionally left blank.]

Exhibit A Sample Retainer Contract

OSU RETAINER CONTRACT FOR CONSTRUCTION RELATED SERVICES

This OSU Retainer Contract ("Retainer Contract"), is between:

"Contractor":

and "Owner": Oregon State University (541) 737-7342
Construction Contract Administration
644 SW 13th Ave.
Corvallis, OR 97333

(each, a "Party" and collectively, the "Parties").

This Retainer Contract is effective as of the date that Owner has indicated via email to Contractor that Contractor has been accepted into the Retainer Program ("Effective Date").

RECITALS

WHEREAS, Owner issued certain Solicitation Documents inviting construction firms to provide construction related services to Owner;

WHEREAS, Owner having received and evaluated Contractor's response to the Solicitation Documents, now desires to award a Retainer Contract to Contractor;

WHEREAS, Contractor desires to provide construction related services to Owner;

WHEREAS, Contractor is willing and able to directly perform the types of construction related services stated in Contractor's response to the Solicitation Documents;

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

AGREEMENT

1. INCORPORATION OF TERMS AND DOCUMENTS

Contractor agrees to provide construction related services ("Work") to Owner in accordance with Contractor's completed Construction Related Services Required Information Form (RIF) and signed Respondent's Signature Page referenced herein as Attachment I; and with OSU General Conditions for Retainer Contracts (the "Retainer General Conditions"), dated as of

November 1, 2018 and included as Attachment II, attached hereto and all incorporated herein by these references. Capitalized terms not otherwise defined in this Retainer Contract shall have the meanings ascribed to them in the Retainer General Conditions.

2. WORK

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

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

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

3. OWNER DOES NOT GUARANTEE THAT WORK WILL BE REQUESTED

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

4. COMPENSATION

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

Maximum compensation for all Work, including professional fees, subcontractor fees and reimbursable expenses, under any Retainer Contract Supplement to this Retainer Contract shall not exceed the greater of \$1,000,000 or the maximum allowable under OSU standards and policies.

Pursuant to ORS 305.385 and OAR 150-305-100, Contractor shall provide Owner with its Social Security or federal employer identification number, as applicable.

5. TERM AND TERMINATION

The term of this Retainer Contract (the “Term”) shall commence on the Effective Date shall expire on November 30, 2020, unless terminated earlier in accordance with the terms of this Retainer Contract. In addition to Owner’s rights provided in the Retainer General Conditions, Owner may terminate this Retainer Contract immediately upon discovery that information set forth in Attachment I is no longer true or is false or misleading.

6. PERFORMANCE AND PAYMENT BONDS

Contractor shall provide to Owner a performance bond and a separate payment bond in accordance with the Retainer General Conditions for each separate scope of Work, pursuant to a Supplement in the amount of the Contract Price. Receipt of such bonds by Owner shall be a condition precedent to the effectiveness of any Supplement and to any payment due Contractor under such Supplement.

7. PAYMENTS

Contractor shall submit applications for payment and Owner shall make payments for Work completed by Contractor in accordance with the Retainer General Conditions.

8. INSURANCE

For each Retainer Contract Supplement executed under this Retainer Contract, Contractor shall maintain in full force, at its own expense, and for the duration of the Project, any and all insurance required by the Contract Documents. Receipt of such insurance documentation by Owner shall be a condition precedent to the effectiveness of any Supplement and to any payment due Contractor under such Supplement.

9. OWNERSHIP OF WORK PRODUCT

- A. **Definitions.** The following terms used in this Section 9 have the meanings set forth below:
- i. “Contractor Intellectual Property” means any intellectual property owned by the Contractor that is not Original Work Product.
 - ii. “Original Work Product” means all Work Product created, conceived, or reduced to practice by the Contractor in connection with the Work.
 - iii. “Third Party Intellectual Property” means any intellectual property owned by parties other than Owner or Contractor.
 - iv. “Work Product” means every invention, discovery, work of authorship, documents (including without limitation Project Drawings), trade secret, or other

tangible or intangible item, in any state of completion, and all intellectual property rights therein, that the Contractor is required to deliver to Owner under the Retainer Contract.

- B. **Ownership.** Original Work Product is the exclusive property of Owner. Original Work Product that constitute original works of authorship is “work made for hire” and Owner is the author within the meaning of the United States Copyright Act to the extent it qualifies as such. The Contractor hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner’s reasonable request, the Contractor shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in Owner. The Contractor waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC §106A.
- C. **Contractor Intellectual Property.** To the extent that any portion of the Work Product is Contractor Intellectual Property or to the extent any Contractor Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Contractor hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Contractor Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf.
- D. **Third Party Intellectual Property.** To the extent that any portion of the Work Product is Third Party Intellectual Property or to the extent any Third Party Intellectual Property is necessary for Owner to reasonably enjoy and use Work Product, the Contractor shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf.

10. AMENDMENTS

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

11. NOTICES

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

number set forth in the first page of this Retainer Contract. Any communication or notice so addressed and mailed will be deemed to be given five (5) days after mailing. Any communication or notice by personal delivery will be deemed to be given when actually delivered.

12. LICENSING; LEGAL CAPACITY TO CONDUCT BUSINESS

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

13. APPLICABLE LAW; JURISDICTION AND VENUE

This Retainer Contract, as it may from time to time be amended, shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between Owner and Contractor that arises out of or relates to performance of this Retainer Contract shall be brought and conducted solely and exclusively within the Circuit Court for Benton County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought only a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no way shall this Section 34 be construed as a waiver by Owner of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR, BY EXECUTION OF THIS RETAINER CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

14. SUCCESSORS IN INTEREST

The provisions of this Retainer Contract, including all Supplements and Supplement Amendments, shall be binding upon and inure to the benefit of the Parties hereto, and their respective authorized successors and assigns.

15. EXECUTION AND COUNTERPARTS

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

16. SEVERABILITY

If any term or provision of the Contract Documents 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 Contract Documents did not contain the particular term or provision held to be invalid.

17. MERGER CLAUSE

THIS RETAINER CONTRACT, TOGETHER WITH THE OTHER CONTRACT DOCUMENTS, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS RETAINER CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS RETAINER CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING, CLEARLY IDENTIFIED AS AN AMENDMENT, CONSENT, OR WAIVER, AND SIGNED BY THE PARTY AGAINST WHOM IT IS TO BE ENFORCED. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS RETAINER CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the Parties have duly executed this Retainer Contract as of the date of the actions listed below of each Party.

Contractor
Signature as provided electronically
Attachment I

Oregon State University, Owner
As provided by acceptance of RIF and
communicated via email

Exhibit B
Sample Retainer Contract Supplement

**OSU RETAINER CONTRACT SUPPLEMENT
OSU RETAINER CONTRACT FOR CONSTRUCTION
RELATED SERVICES
SUPPLEMENT NO.: OSU-xxx-C-16-xx
PROJECT NAME**

This OSU Retainer Contract Supplement dated XXXX (the "Supplement") is entered into between:

"Contractor":

and "Owner": Oregon State University
Construction Contract Administration
644 SW 13th Ave
Corvallis, OR 97333

(collectively the "Parties") pursuant to the OSU Retainer Contract for Construction Related Services between the Parties (the "Retainer Contract"). Capitalized terms have the meaning defined in the Retainer General Conditions unless otherwise defined in the Retainer Contract or herein.

1. DESCRIPTION OF THE PROJECT. The project to which this Supplement pertains is described as follows: (the "Project").

2. WORK TO BE PERFORMED. Contractor shall perform the following work on the Project: (the "Work"). Contractor will perform the Work according to the terms and conditions of this Supplement and the Contract Documents, which are incorporated herein by this reference.

3. SCHEDULE. Contractor shall perform the Work according to the following schedule: (the "Schedule").

4. COMPENSATION. Owner shall compensate Contractor for Work in the firm, fixed-price amount of \$XXX.XX in accordance with the requirements of the OSU Retainer General Conditions.

The cost of the Work under this Supplement, even if this Supplement is later amended to include additional work, must not exceed the greater of \$1,000,000 or the maximum allowable under OSU standards and policies.

Contractor hereby agrees that the Work set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Contractor's Work, including completion of all warranty work. The Parties expressly agree that they may

execute a Supplement Amendment and extend the date which Contractor's Work may be completed, which may include a date beyond the Term of the Retainer Contract.

Termination or suspension does not extinguish or prejudice Owner's right to enforce the Supplement with respect to any breach by the Contractor that has not been cured.

5. TERM. This Supplement is effective on the date it has been signed by every Party hereto (the "Supplement Effective Date"). No Work shall be performed or payment made prior to the Supplement Effective Date. Contractor shall perform its obligations in accordance with the Contract Documents, unless this Supplement is earlier terminated or suspended.

6. PERFORMANCE AND PAYMENT BONDS. The performance and payment bond requirements for this Project are as follows (check one of the following):

As a condition precedent to the effectiveness of this Supplement and to Owner's obligation to make payment for the Work, Contractor shall provide the Owner with a performance bond and a separate payment bond in a sum equal to the Contract Price stated in Section 4 of this Supplement.

This Project has a Contract price of \$100,000 or less, and Owner has determined that performance and payment bonds will not be required for this Project.

7. PREVAILING WAGE RATES.

Prevailing Wage Rates requirements apply to this Project. Contractor and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates and the required public works bond, as outlined in Sections C.1, C.2 and G.2.3 of the Retainer General Conditions. The Bureau of Labor and Industries (BOLI) wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference, apply to the Work authorized under this Supplement:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, XXXX, as amended XXXX, which can be downloaded at the following web address:

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

The Work will take place in XXX County, Oregon.

8. INSURANCE REQUIREMENTS.

Contractor shall comply with and obtain the insurance coverage amounts stated in the Retainer General Conditions.

The Owner has determined that the Contractor shall obtain insurance in the amount described in the Retainer Supplemental General Conditions, attached hereto.

9. OTHER TERMS. Except as specifically modified by this Supplement, all terms of the Retainer Contract remain unchanged.

10. EXECUTION AND COUNTERPARTS. This Supplement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

Contractor hereby confirms and certifies that the representations, warranties, and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Supplement.

IN WITNESS HEREOF, the Parties have duly executed this Supplement as of the dates indicated below.

, Contractor

Oregon State University, Owner

Print Name: _____

Print Name: Anita Nina Azarenko

Signature: _____

Signature: _____

Title: _____

Title: Associate Vice President for
University Facilities, Infrastructure and
Operations

Date: _____

Date: _____

Exhibit C
Sample Retainer Contract Supplement Amendment

OSU RETAINER CONTRACT SUPPLEMENT AMENDMENT
OSU RETAINER CONTRACT FOR CONSTRUCTION
RELATED SERVICES
SUPPLEMENT NO.: OSU-xxx-C-16-xx
AMENDMENT NO.: OSU-xxx-C-16-xx-x
PROJECT NAME

This Amendment dated xxxxx to the Retainer Contract Supplement is entered into between:

“Contractor”:

and “Owner”:

Oregon State University
Construction Contract Administration
644 SW 13th Ave
Corvallis, OR 97333

(collectively the “Parties”) pursuant to the OSU Retainer Contract for Construction Related Services between the Parties (the “Retainer Contract”). Capitalized terms have the meaning defined in the Retainer General Conditions unless otherwise defined in the Contract Documents.

1. SERVICES: The Work described in the Retainer Contract Supplement is being amended as follows: XXXXX.

2. SCHEDULE. The schedule contained in Section 3 of the Retainer Contract Supplement is hereby replaced in its entirety with the following schedule: XXXX.

3. COMPENSATION. The maximum compensation amount for the Contractor's performance of the Work under this Amendment is \$XXXX.00. This Amendment increases the maximum not-to-exceed price under the Supplement from \$XXXXX.00 to \$XXXX.00. Section 4 of the Retainer Contract Supplement, is hereby replaced in its entirety with the following:

“Owner shall compensate Contractor for Work in the firm, fixed-price amount of \$XXXX.00 in accordance with the requirements of the OSU Retainer General Conditions.

The total cost of Work including the original amount contemplated in the Supplement and the additional amount contemplated in this Amendment, must not exceed the greater of \$1,000,000 or the maximum allowable under OSU standards and policies.”

4. TERM. This Amendment is effective on the date it has been executed by both Parties (the “Amendment Effective Date”). No Work may be performed or payment made prior to the

Effective Date.

5. EXECUTION AND COUNTERPARTS. This Amendment may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

Contractor hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract and the Retainer Contract Supplement remain true and correct as of the date of the signature below.

IN WITNESS HEREOF, the Parties have duly executed this Amendment as of the dates indicated below.

, Contractor

Oregon State University, Owner

Print Name: _____

Print Name: Anita Nina Azarenko

Signature: _____

Signature: _____

Title: _____

Title: Associate Vice President for
University Facilities, Infrastructure and
Operations

Date: _____

Date: _____

Appendix A

Service Categories Sought

<p>General Contracting</p> <input type="checkbox"/> General Contracting	<p>Site Work</p> <input type="checkbox"/> Demolition <input type="checkbox"/> Site Preparation & Excavation <input type="checkbox"/> Paving & Surfacing <input type="checkbox"/> Underground Utilities <input type="checkbox"/> Landscaping <input type="checkbox"/> Traffic Coatings <input type="checkbox"/> Site Furnishings	<p>Electrical</p> <input type="checkbox"/> Lighting <input type="checkbox"/> Electric <input type="checkbox"/> Electrical Equipment/Gear <input type="checkbox"/> Fire Alarm Systems <input type="checkbox"/> Access Controls <input type="checkbox"/> Security/Intrusion Systems <input type="checkbox"/> Data/Telephone Communications Systems <input type="checkbox"/> Building Controls
<p>Concrete</p> <input type="checkbox"/> Concrete Formwork <input type="checkbox"/> Concrete Reinforcement <input type="checkbox"/> Cast-In-Place Concrete <input type="checkbox"/> Pre-cast Concrete <input type="checkbox"/> Flatwork/sidewalks/slabs <input type="checkbox"/> Concrete Finishing (Grinding, Polishing, Sealing, etc.)	<p>Metals</p> <input type="checkbox"/> Metal Fabrications <input type="checkbox"/> Flashing & Sheet Metal <input type="checkbox"/> Miscellaneous Metals <input type="checkbox"/> Metal Framing (Heavy Gauge Framing)	<p>Special Construction</p> <input type="checkbox"/> Pre-Eng. Structures, Tanks, Tank Covers, Filtration Equipment <input type="checkbox"/> Utility Control Systems <input type="checkbox"/> Security Access & Surveillance <input type="checkbox"/> Renewable Energy Systems
<p>Wood & Plastics</p> <input type="checkbox"/> Rough Carpentry <input type="checkbox"/> Finish Carpentry <input type="checkbox"/> Casework	<p>Doors & Windows</p> <input type="checkbox"/> Metal Doors & Frames <input type="checkbox"/> Wood & Plastic Doors <input type="checkbox"/> Entrances & Storefronts <input type="checkbox"/> Metal Windows <input type="checkbox"/> Wood & Plastic Windows <input type="checkbox"/> Hardware <input type="checkbox"/> Glazing <input type="checkbox"/> Louvers <input type="checkbox"/> Skylights <input type="checkbox"/> Curtain Wall Systems	<p>Specialties</p> <input type="checkbox"/> Visual Display Boards, Compartments & Cubicles <input type="checkbox"/> Louvers & Access Flooring <input type="checkbox"/> Lockers, Partitions & Storage Shelving <input type="checkbox"/> Seismic Upgrade Applications
<p>Finishes</p> <input type="checkbox"/> Lath, Plaster & Gypsum Board <input type="checkbox"/> Tile <input type="checkbox"/> Terrazzo <input type="checkbox"/> Acoustical Treatment <input type="checkbox"/> Wood Flooring <input type="checkbox"/> Resilient Flooring/Carpet <input type="checkbox"/> Painting & Wall Coverings <input type="checkbox"/> Ceilings <input type="checkbox"/> High Performance Coatings	<p>Equipment</p> <input type="checkbox"/> Food Services <input type="checkbox"/> Industrial & Process Equipment <input type="checkbox"/> Laboratory Equipment <input type="checkbox"/> Medical Equipment <input type="checkbox"/> Audio/Visual Equipment	<p>Thermal & Moisture Protection</p> <input type="checkbox"/> Waterproofing & Damp-proofing <input type="checkbox"/> Insulation & Fireproofing <input type="checkbox"/> Shingles & Roofing Tiles <input type="checkbox"/> Membrane Roofing <input type="checkbox"/> Metal Roofing & Siding
<p>Furnishings</p> <input type="checkbox"/> Manufactured Casework <input type="checkbox"/> Window Treatments <input type="checkbox"/> Furniture & Accessories <input type="checkbox"/> Multiple Seating	<p>Conveying Systems</p> <input type="checkbox"/> Dumbwaiters <input type="checkbox"/> Elevators <input type="checkbox"/> Lifts <input type="checkbox"/> Material Handling Systems <input type="checkbox"/> Hoists & Cranes	<p>Masonry</p> <input type="checkbox"/> Unit Masonry <input type="checkbox"/> Stone <input type="checkbox"/> Masonry Restoration
<p>Mechanical</p> <input type="checkbox"/> Pipe & Plumbing <input type="checkbox"/> Fire Protection <input type="checkbox"/> Heating <input type="checkbox"/> HVAC	<p>Incidental Services</p> <input type="checkbox"/> Scaffolding <input type="checkbox"/> Signage	<p>Other</p> <input type="checkbox"/> _____ <input type="checkbox"/> Remediation