



**Oregon State  
University**

## Attention Consulting Firms

**If you are downloading the RFP 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 PROPOSALS

**#197461**

### Transportation Demand Management Plan

ISSUE DATE: January 11, 2019

RFP CLOSING (DUE) DATE: January 25, 2019, 2:00PM Pacific Time

NO LATE SOLICITATION RESPONSES WILL BE ACCEPTED

**CONTRACT ADMINISTRATOR:**

Kelly Oar, Purchasing Analyst  
Construction Contract Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333  
Phone: (541) 737-4672  
Email: [kelly.oar@oregonstate.edu](mailto:kelly.oar@oregonstate.edu)

**APPEALS:**

Hanna Emerson, Construction Contracts Manager  
Construction Contract Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333  
Phone: (541) 737-7694  
Email: [hanna.emerson@oregonstate.edu](mailto:hanna.emerson@oregonstate.edu)

**Introduction:**

Oregon State University seeks proposals (“Proposals”) from firms to provide transportation demand management planning (“Offerors”) for the Oregon State University (“OSU”) Corvallis campus. Offerors are free to sub-contract as necessary to ensure a complete team, including but not limited to professionals with expertise in university planning, transportation planning, active transportation planning, marketing, and/or behavior change theory and practice.

OSU Transportation Services seeks to develop a Transportation Demand Management (“TDM”) Plan to establish Transportation Options (“TO”) program goals and metrics for measuring success, outline projects to meet those program goals, and develop criteria for prioritizing work and maximizing the impact of the department’s TDM investments.

**Background:**

**Corvallis campus population growth:** Several trends have led to the need for a TDM plan at OSU. Student enrollment at the Corvallis campus has grown by 70% over the past 20 years, from 14,618 in 1998 to 24,780 in 2018. For the last 5 years, OSU has been the largest university in the state of Oregon. Enrollment growth has also fueled job creation, and the Corvallis Campus plays an increasingly important role as a regional employment hub, with over 6,000 staff and faculty commuting from around the Willamette Valley region.

This campus growth has led to transportation challenges. Several new academic and residential buildings have been constructed on surface parking lot sites, reducing the available parking supply on campus. The growing student body placed increased pressure on the Corvallis housing market within a walking and biking radius of campus, leading more students and staff to live in surrounding communities with limited or no transit connection to Corvallis. The OSU Transportation Services department works to mitigate these transportation challenges through active campus parking management and a growing TO program.

**OSU Transportation Options Program:** The TO program was created in 2015 within the OSU Transportation Services department. The program encourages OSU students and employees to make commute trips to the OSU Corvallis campus by walking, biking, transit, carpooling, and vanpooling. The program’s staff and operating budget are funded through campus parking revenue.

Below is a high-level summary of existing TO initiatives at the OSU Corvallis campus:

**Outreach and education:** TO staff conduct extensive tabling and outreach on campus, attending new student and staff orientations and welcome week events. A transportation guide with information on all modes of transportation is given to every new student, employee, and annual parking pass customer. TO staff also teach a transportation class to international students every term.

**Biking:** OSU currently sponsors and hosts 4 of the 10 bikeshare stations in the citywide Pedal Corvallis bikeshare system. Transportation Services operates Beaver Bikes, a fleet of 38 bicycles that students can rent by the term. In May 2018 the department launched ZAP, a bike commute rewards program using RFID technology for passive trip tracking. Students and employees who ride 10 times in a month are entered into a monthly drawing for gift certificates and bike gear. Bike parking is available at outdoor racks throughout campus, at private reserved bike lockers in three locations, or at bike rooms in select academic and residence halls. Transportation Services also maintains four bike fix-it stands around campus that offer free tools and air pumps for bicycle self-repair.

**Transit:** OSU contributes financially to the annual operations of Corvallis Transit System (CTS), the Linn Benton Loop, the Philomath Connection, and Albany Transit. All of these transit systems are free with an OSU ID. Additionally, the Associated Students of OSU pay to support a night transit service called Night Owl, from Thursdays through Saturdays while school is in session, as well as operating SafeRide, a student late night curb-to-curb transportation service, seven days a week. The TO program currently manages campus contracts with the transit agencies and promotes their services online and at tabling events.

**Carpooling/Vanpooling:** Transportation Services offers carpool parking permits on campus for parties of 2 or more who share the cost of the permit. Currently, the benefits of these permits are limited to accessing 10 priority carpool spaces and access to parking zones that otherwise quickly sell-out for single occupancy vehicle commuters. Vanpooling is currently managed by Enterprise, and lightly subsidized by Oregon Cascades West Council of Governments (OCWCOG). There are 5 vans serving Corvallis from the Eugene/Springfield area only.

**Carshare:** OSU contracts with Zipcar to host 6 cars on campus at three locations near residence halls. Transportation Services promotes the use of these vehicles to on-campus residents to encourage them to leave their personal vehicle at home.

**Emergency Ride Home:** Emergency Ride Home support for all employees in Benton County is currently provided by OCWCOG, using the statewide ridematching and trip-tracking tool *Drive Less. Connect*. The Oregon Department of Transportation is now in the process of redesigning this platform, and the future of this feature is uncertain. To date, not a single ride has been requested through this program.

**Parking:** Transportation Services currently manages one parking garage and 86 surface lots on campus. Parking demand is distributed using a zonal system. A limited number of annual parking permits are available to students and employees for purchase in seven commuter zones. Permit prices are set based on demand and proximity to popular campus destinations. An unlimited number of monthly, daily, and hourly permits are also available in every zone. On-campus residents can purchase parking permits for the year in separate residential zones. Transportation Services operates a free campus shuttle system called the Beaver Bus to circulate riders from more remote lots into the campus core.

**Travel Survey:** Transportation Services conducts an annual travel survey of all students and staff who work or study at the Corvallis campus. The department uses the data from a travel diary in the survey to measure the campus commute mode split. According to the most current available survey results, collected in November 2017, OSU's mode split for all commuters is 36% drive alone, 25% walk/skateboard, 19% bike, 8% transit, 6% carpool/vanpool, 3% telecommute/Ecampus, 2% dropped off, 1% motorcycle, and 1% other.

**Other campus plans:**

**2018 Transportation Plan:** OSU recently completed a new Campus Transportation Plan. The plan includes recommendations for five large capital projects, campus core vehicle restrictions, defined and redesigned preferred networks for bicyclists and pedestrians. This plan identified TDM as a strategy to reduce drive-alone behavior, but does not identify what TDM measures should be taken.

**2009 Climate Action Plan:** The University has committed to the goal of becoming climate neutral by the year 2025, through a mix of energy conservation initiatives, installation of renewable energy production on campus, and the purchase of carbon offsets. The focus of the plan was on the campus built environment, and did not consider transportation-related emissions or make any recommendations for TDM.

Description of Services Sought:

OSU seeks a TDM Plan for the OSU Corvallis Campus that articulates achievable goals to reduce single occupancy vehicle trips and parking demand, and identifies strategies to achieve those goals. The TDM Plan will provide prioritized strategies to guide the work of the TO Program for the Corvallis Campus over the next 5 years.

The Transportation Services Department hopes to answer the following questions through the planning process:

- What are OSU's goals for reductions in Single Occupancy Vehicle trips and parking demand over the next 5 years?
- What are the best metrics to track these goals? What tools are needed for Transportation Services staff to measure these metrics?
- What TDM strategies will yield the highest return on investment towards achieving the above goals, and how much should be budgeted for them?
- What TDM measures are working at other similar institutions or workplaces?

A TDM Plan for the OSU Corvallis campus shall include the following elements:

- **Stakeholder Outreach:** Outreach to relevant stakeholders, including targeted interviews or meetings with the OSU Transportation Committee, OSU transportation professionals and select groups of OSU students and OSU employees.

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- **Peer Analysis:** Examples of successful TDM initiatives at peer institutions in similarly-sized and situated communities.
- **Existing Conditions:** Summary of existing data on current transportation behavior among students and employees at OSU. Evaluate current transportation trends at the OSU Corvallis campus, existing TDM programs, and unmet needs or latent demand for mobility services.
- **Goal Development:** Achievable and measurable 5-year goals for reductions in drive-alone behavior and increased walking, biking, carpooling, vanpooling, and bus commute trips, based on the campus's strengths, challenges, and opportunities.
- **Strategies:** Specific strategies to meet identified goals, and including estimated high level operational and staff costs, potential impact, and overall return on investment for each strategy.

OSU prefers work to be accomplished before September 2019, and at a maximum by twelve (12) months after the signed Contract date.

#### Minimum Qualifications:

In order to qualify as a Responsive Proposer, the Proposer needs to meet the minimum qualifications below.

- Firms must have completed TDM work for a large employer (1,000+ employees).
- Proposer must have conducted transportation work on university campuses.
- Project team collectively has at least 10 years' experience in TDM Work.

#### Preferred Qualifications:

OSU will award additional points for Proposers able to meet the preferred qualifications below.

- Project team has conducted planning work for clients in the western United States.
- Project team has conducted transportation planning work in a mid-sized city (30,000 to 80,000 residents).

#### Selection Process:

This Request For Proposals ("RFP") selection process will be conducted pursuant to the terms of this RFP and OSU Standard 03-015, relating to the selection and retention of professional consultants.

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Compensation:

Compensation will be time and materials, not to exceed amount for services and reimbursable expenses.

Evaluation Criteria:

The following questions constitute the evaluation criteria for the selection committee to score Solicitation Responses. Respond to each criterion in numerical order. For ease in scoring the Solicitation Responses, please provide tabs keyed to each of the following criteria numbers. Indicate in writing the following information about your firm's ability and desire to perform this work. Solicitation Responses will be rated based upon the weight assigned to each item as noted in the parenthesis at the end of each statement below.

- 8.1.1. Provide detailed information about how your firm meets the minimum qualifications listed above. (Weight: 10)
- 8.1.2. Describe your firm's demonstrated ability to evaluate commute patterns and transportation behavior choices, and identify best practices and measurable strategies to reduce single occupancy vehicle trips and parking demand. Include examples of tools used to measure effectiveness and return on investment for specific transportation strategies. (Weight: 20)
- 8.1.3. Provide three (3) specific examples of relevant past or current plans or projects. Each example shall not exceed 1 page. Include the following information: Customer name, project description, project goals, and high level summary of the deliverables. If known, include resulting implementation successes. (Weight: 15)
- 8.1.4. Provide a Proposal. Describe how your team will complete the work described in the Description of Services Sought for the OSU Corvallis campus. Include a tentative timeline for the work based on your current workload. Provide a cost break down for each of the services sought and include a separate line for the reimbursable expenses. Include an hourly rate table; offer shall be a time and materials, not to exceed amount. (Weight: 25)
- 8.1.5. Identify the personnel on the proposed project team, including project manager and any sub-consultants. Include personnel's relevant project experience, and identify their roles in the projects. Indicate whether the proposed team has worked together on previous projects. Highlight the individuals who participated in the project examples. (Weight: 15)
- 8.1.6. 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.

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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 Solicitation Response, unless changes are requested and approved in writing in advance by OSU or are required by applicable laws, ordinances, codes, regulations, rules or standards. (Weight: 15)

- 8.1.7. Provide detailed information about how your firm meets the preferred qualifications listed above. (Weight: 10)

References:

In addition to responding to the evaluation criteria above, provide the names, addresses and phone numbers of three owners 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 is 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.

Selection Procedure and Timetable:

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

January 11, 2019	Issue RFP
January 25, 2019	Solicitation Response due
January 30, 2019	Estimated Notice of Intent to Award (if Interviews are NOT required)
January 30, 2019	Notification of finalists (If Interviews are required)
February 1, 2019	Telephonic Interviews with finalists (if required)
February 8, 2019	Estimated Notice of Intent to Award (if Interviews are required)

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



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Evaluation Process:

This RFP will use a two-step process to select a Offeror to provide TDM planning for OSU. The first step includes evaluation of written qualifications submitted in Solicitation Response to this RFP. If additional information is needed in order to select a successful applicant, OSU reserves the right, but not the obligation, to invite Offerors to participate in the second step, a telephonic interview that is anticipated to be scheduled on **February 1, 2019, between 11:30AM and 2:30PM Pacific Time**. Please hold this date for tentative interview.

Each criterion in the first step of the evaluation process has been assigned a weight between ten (10) and twenty-five (25). Each member of the selection committee will rate each firm in criterion (1) through six (6) above between one (1) and five (5) (five being the highest), and multiply that number by the weight assigned to the criterion. Each member of the selection committee will rate criterion seven (7) above between zero (0) and five (5) (five being the highest), and multiply that number by the weight assigned to that criterion. The individual evaluation committee members will then total the weighted score from all of the criteria to obtain a total score for each Solicitation Response.

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 interviews will be selected for step two of the process.

If interviews are required, they will include a 30-minute telephonic interview to allow the Offerors to highlight their Solicitation Response as well as respond to additional questions or information requested in advance by the evaluation committee. OSU will use the information presented during the interview to further evaluate the respondent's qualifications and abilities and develop a tentative ranking. The evaluation committee may then check references and adjust the scores based on the results of reference checks to determine the final ranking of responses.

The evaluation committee will select the Apparent Successful Offeror by ranking the responses based on all information received, presented, found and heard. OSU will then send out a Notice of Intent to Award. OSU anticipates it will then enter into a Contract with a Offeror to provide transportation demand management planning services.

Responsibility Evaluation:

OSU reserves the right to investigate each Offeror's responsibility in accordance with the requirements of

OSU Standards, 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 Solicitation Response constitutes the Offeror's approval for OSU to obtain any information OSU deems necessary to conduct the evaluation including, but not limited to, credit reports and

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information discovered during reference checks.

Financial Information: OSU will notify Offerors, 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 Solicitation Response nonresponsive. Failure of a respondent Offeror to demonstrate responsibility will render it non-responsible and constitute grounds for Solicitation Response rejection.

Submission:

Submit **one (1)** hard copy versions of your written Solicitation 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: Kelly Oar  
Construction Contract Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333

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

Information should **be presented in the same order as the above evaluation criteria**. The **electronic Solicitation Response should be sized appropriately for transfer (under 8 MB)**. The written Solicitation 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 Solicitation Response should be presented in standard business font size, and reasonable margins.

**Your Solicitation Response must be Signed by and officer of your firm with authority to commit the firm and contain contact information including email for communication purposes.**

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

Note that OSU will not accept Solicitation 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 Solicitation Responses will not be accepted.**

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

Questions:

All questions and contacts with OSU regarding any information in this RFP must be addressed in writing, fax, or email to Kelly Oar at the address or email listed in this document no later than **January 21, 2019 at 4:00PM**, Pacific Time.

Solicitation Appeals:

Offerors may submit a written request for change or change of particular solicitation provisions and specifications and Contract terms and conditions (including comments on any specifications that your entity believes limits competition) to Hanna Emerson, Construction Contract Manager, 644 SW 13<sup>th</sup> Ave, Corvallis, OR 97333, [hanna.emerson@oregonstate.edu](mailto:hanna.emerson@oregonstate.edu) Such requests for change shall be received no later than **January 18, 2019 at 5:00PM** Pacific Time. Such requests for change shall state the reasons for the request and any proposed changes to the solicitation provisions, Specifications, and/or Contract terms and conditions.

Change or Modification:

Any change or modification to the Specifications or the procurement process will be in the form of an addendum to the RFP and will be made available to all Offerors by publication on the OSU Bid and Business Opportunity web site (<https://bid.oregonstate.edu>). It is the responsibility of each firm to visit the website and download any addenda to this RFP. No information received in any manner different than as described herein shall serve to change the RFP in any way, regardless of the source of the information. Any request for clarification or change of anything contained in an addendum not received by the date and time stated in the addendum will not be considered.

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Appeals:

Appeals shall be pursuant to OSU Standards. Any Offeror to this RFP who claims to have been adversely affected or aggrieved by the Contract Award of a competing Offeror will have seven Days after issuance of the notice of intent to Award to deliver a written appeal of the Contract Award to the Chief Procurement Officer at the address given in the RFP. Any such appeal must be received by the Construction Contract Manager no later than seven Days after the Contract Award has been made. Pursuant to OSU Standard, any appeal must be clearly marked as an appeal and identify the Solicitation, Contract and Award at issue.

Proprietary Information:

OSU will retain this RFP and one copy of each original Solicitation 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 shall be open to public inspection after OSU has announced its intent to award a Contract. If a Solicitation Response contains any information that is considered a trade secret under ORS 192.345(2), you must mark each trade secret with the following legend: **"This data 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 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 Solicitation Response, material designated as confidential shall accompany the Solicitation Response, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary. Any Solicitation Response marked as a trade secret in its entirety shall be considered non-responsive and shall be rejected.

Project Termination:

OSU is seeking to Award a consulting Contract to a firm for TDM Plan services however, OSU reserves the right to terminate the Project and the Contract, at any phase in the project.

Insurance Provisions:

During the term of the resulting contract, the successful Offeror will be required to maintain in full force, at its own expense, from insurance companies authorized to transact the

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business of insurance in the state of Oregon, each insurance coverage/policy as set forth in the Contract.

Additional Requirements:

Pursuant to OSU Standards, by submitting a Solicitation Response, the Offeror certifies that the Offeror has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

Pursuant to OSU Standards, Offerors are hereby notified that policies applicable to consultants and contractors have been adopted by OSU that prohibit sexual harassment and that Offerors and their employees are required to adhere to OSU's policy prohibiting sexual harassment in their interactions with members of OSU's community

Enclosures:

OSU Sample Consulting Contract

End of RFP

CONSULTANT'S AGREEMENT  
PROJECT NAME  
OREGON STATE UNIVERSITY

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

the Consultant:

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

Phone: (541) 737-3401  
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 Professional Services for the Project 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.

"Construction Documents" include Owner-approved plans, drawings, specifications and all other documents necessary to allow complete and accurate construction of the Project.

"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 OSU Construction Standards in effect at the time of the Effective

Date of this Agreement. Current OSU Construction Standard can be found here:  
<http://fa.oregonstate.edu/cpd-standards>

“Direct Construction 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 .....in accordance with Vendor proposal dated \_\_\_\_\_ which is attached hereto and incorporated herein as Exhibit A.

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

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

## II. CONSULTANT'S STANDARD OF CARE

- A. By execution of this Agreement, the Consultant agrees that:
  1. The Consultant is an experienced professional firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement to design or administer a project having this scope and complexity; and will perform such Services pursuant to the standard of care set forth in subsections B. through G. of this Section II.
  2. The Consultant has the capabilities and resources necessary to perform the obligations of this Agreement.
  3. The Consultant either is, or will in a manner consistent with the standard of care set forth in this Agreement, become familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project, and that all drawings, specifications, and other documents prepared by the Consultant shall be prepared in accordance with its standard of care in an effort to accurately reflect and incorporate all such laws, rules, and regulations. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with all current laws, rules, regulations and ordinances which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Consultant);
- B. Consultant represents and warrants to Owner that (1) Consultant has the power and authority to enter into and perform this Agreement, (2) when executed and delivered, this Agreement shall be a valid and binding obligation of the Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the Services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions;
- C. All drawings, specifications, and other documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with current laws, rules, regulations and ordinances which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Consultant);
- D. All drawings, specifications, and other documents prepared by the Consultant pursuant to this Agreement shall accurately reflect existing conditions for the scope of the services to be performed;
- E. The Consultant shall be responsible for any negligent inconsistencies or omissions in the drawings, specifications, and other documents. While Consultant cannot guarantee that the various documents



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

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

### III. COMPENSATION

The maximum, not-to-exceed, total amount payable under this Agreement is \$ \_\_\_\_\_ (the "Maximum Compensation"), for the combination of Basic Services and Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. Consultant progress payments shall be made according to the provisions and schedule set forth in **Section V** of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Consultant shall perform the Basic Services, directly or through the Consultants, on a time and materials basis for a Maximum Not-to-Exceed fee of \_\_\_\_\_.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Consultant for any allowable Reimbursable Expenses, up to a maximum amount of \$\_\_\_\_\_.

Reimbursable expenses for the Project mean actual direct expenditures (without overhead, fee, markup or profit) made by the Consultant and the Consultants in the interest of the Project for the following items: long-distance communications; reproductions, postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of the Consultant and the Consultants); mileage and travel expenses more particularly described below; data processing and photographic production techniques; and renderings, models and mock-ups requested by the Owner. The Reimbursable Expenses will be reimbursed at cost, except travel expenses. Charges for travel expenses will be reimbursed at cost, but not in excess of the rate allowed Oregon State University employees. Travel expenses are only reimbursable when Services are rendered in excess of 25 miles from Consultant's or Consultant's office. As of the date of this Agreement, these rates are as follows. Charges for travel expenses will be reimbursed at the lowest of the following:

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

Air fare (coach class only) and car rental

At cost

Personal car mileage	\$ 0.58 per mile
Lodging	\$132.00 per night plus tax
Meals: (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$14.25
Lunch	\$14.25
Dinner	\$28.50
Printing, photography, long distance telephone charges and other direct expenses	At cost

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

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

**CONSULTANT:**

Principal Engineer V .....	\$/hr
Principal Engineer VI .....	\$/hr
Professional Engineer IX .....	\$/hr
Professional Engineer V .....	\$/hr
Professional Engineer III .....	\$/hr
Engineering Designer I .....	\$/hr
Technician III .....	\$/hr
Administrative II .....	\$/hr
Administrative I .....	\$/hr

**SUB-CONSULTANTS:**

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

**IV. TIME OF PERFORMANCE**

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

**V. FEE PAYMENTS**

Monthly progress payments shall be made upon presentation, to the Owner at the following address, of

one copy of the Consultant's invoice, with required documentation, for professional services rendered and/or direct expenses incurred during the preceding month:

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

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

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

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

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

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

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

## **VII. ACCESSIBILITY REQUIREMENTS**

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

## VIII. INSURANCE PROVISIONS

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

- A. Workers' Compensation** - All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Consultant shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Consultant shall secure Commercial General Liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). Consultant shall ensure that each of its sub-consultants and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- C. Automobile Liability** - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall ensure that each of its sub-consultants and subcontractors complies with the same minimum requirements identified above.
- 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 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 limits of not less than \$1,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. Consultant shall ensure that each of its major sub-consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other sub-consultants and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$1,000,000 annual aggregate.
- E. "Tail" Coverage.** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Agreement for a duration of thirty-six (36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following Owner's acceptance of and final payment for the Consultant's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before

the effective date of this agreement. This will be a condition of the final acceptance of Work or Services and related warranty, if any.

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

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

## **IX. INDEMNITY**

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

**B. 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 the Owner's General Counsel. The Owner may, at any time at its election assume its own defense and settlement in the event that it determines that the 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.

## **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**

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.

## **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**

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

### **XXIV. SEVERABILITY**

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

### **XXV. FORCE MAJEURE**

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

### **XXVI. NO WAIVER**

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

### **XXVII. NOTICE; PARTIES' REPRESENTATIVES**

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, or mailing the same, postage prepaid, to Consultant or Owner at the address set forth below, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

Representatives for the Consultant and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

**Consultant:**

**Address:**

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

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

**And a Copy to: Construction Contracts Administration  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333**

**XXVIII. CONFIDENTIALITY.**

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

**XXIX. CONFLICT OF INTEREST.**

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

**XXX. SURVIVAL**

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

**XXXI. COUNTERPARTS**

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same

counterpart. Each copy of the Agreement so executed shall constitute an original.

**XXXII. MERGER CLAUSE**

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

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

Consultant

By \_\_\_\_\_

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

Date \_\_\_\_\_

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

Oregon State University, Owner

By \_\_\_\_\_

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

Date \_\_\_\_\_