



Oregon State University

REQUEST FOR QUALIFICATIONS #2020-000305

CORDLEY HALL RENOVATION COMMISSIONING SERVICES

ISSUE DATE: July 18, 2019

RFQ DUE DATE/TIME: August 8, 2019, at 2:00
PM Pacific Time

***OFFICE IS CLOSED DAILY FROM NOON TO 1:00
PM**

VOLUNTARY PRE-SUBMITTAL CONFERENCE:
July 25, 2019 at 2:00 PM Pacific Time at the
Loading Dock at 2701 SW Campus Way,
Corvallis, OR 97331.

QUESTION DEADLINE: August 1, 2019 at 5:00 PM Pacific Time

PROJECT NUMBER: 1944-17

CONTRACT ADMINISTRATOR:

Matt Hausman, Construction Contracts Officer
Construction Contract Administration
Oregon State University
644 SW 13th St.
Corvallis, OR 97333
Phone: (541) 737-3401
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AWARD DECISION APPEALS:

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It is the Bidder's responsibility to continue to monitor the [OSU Business and Bid Opportunities](#) website for Addenda. Failure to acknowledge any Addenda in the Transmittal Letter may cause your submittal to be considered non-responsive.

OSU standards and policies govern this solicitation ([Procurement Thresholds and Methods](#), [Procurement Solicitations and Contracts](#)) unless otherwise referenced or stated.

1.0 INTRODUCTION

Oregon State University (“OSU” and “Owner”) is conducting a competitive **ONE-STEP** process to retain ONE (1) consultant team to provide commissioning services for the Cordley Hall Renovation project.

Owner will be accepting sealed submittals at Construction Contracts Administration, Oregon State University, 644 SW 13th Street, Corvallis, Oregon, until 2:00 PM local time, August 8, 2019 for the project located at 2701 SW Campus Way in Corvallis, Oregon 97331.

Oregon State University intends to renovate Cordley Hall, OSU biological / Agricultural laboratory building. The goal of the Project will be to bring the 50-year old science building up to modern standards while staying within the project budget restrictions. The building is 5 stories and 200,000 square feet in size. There will be 47 wet labs in the finished building, a large lecture hall, lab classrooms, offices, meeting spaces and two departmental office suites. The building houses the departments of Integrative Biology and Botany & Plant Pathology.

The Project includes the following:

- A complete interior renovation of Cordley Hall, including mechanical, electrical, plumbing, laboratory, offices, hallways, restrooms, and support areas.
- The west half of the building will undergo the renovation first, starting in July of 2020 and take approximately 18-22 months. The east half of the building renovation will start after a month lag from the west building completion.
- A new District Utility plant will be built adjacent to the building, which includes chilled water and emergency generator. The chilled water will be tied to the NW campus chilled water loop. The emergency power will only serve Cordley Hall.

A VOLUNTARY PRE-SUBMITTAL CONFERENCE will be held on July 25, 2019 at 2:00 PM Pacific Time at the Cordley Hall loading dock at 2701 SW Campus Way, Corvallis, OR 97331. Attendance will be documented through a sign-in sheet prepared by OSU.

2.0 SCOPE OF SERVICES

Two phases of commissioning services are required. The first phase is expected to begin during the design phase of Construction Documents (CD) and will include design review and development of documents related to design intent (Owner Project Requirements); development of a commissioning plan; specifications; an Owner training plan; and development of performance test procedures. The project basis of design will have already been established. The Commissioning Agent shall review the design documents and work with the Engineer of Record to ensure that Owner Project Requirements are incorporated into the design. Reviews shall be performed at approximately 100% Design Development and 50% Construction Documentation.

The second phase of commissioning will begin at the start of construction and will continue through acceptance of the project by Owner. The scope of services to be provided during the second phase may include, but not be limited to, implementation of the commissioning plan and specifications; inspection of equipment and systems; preparation of complete documentation (including checklists, logs, reports, etc.) of all equipment and systems testing and inspections; provision of training sessions for OSU personnel, observation of systems and equipment testing; review of operations and maintenance (O&M) manuals; and review of relevant shop drawings and submittals. Commissioning services will also include testing, adjusting, and balancing (“TAB”) services as well as an irrigation audit.

In the performance of commissioning services, the Commissioning Agent will be responsible for coordinating its performance with that of the Architect, its staff and consultants, and with the CM/GC and their staff and subcontractors.

Equipment to be commissioned include, but not be limited to, the following:

- 1) HVAC system
- 2) Building Automation System and HVAC control systems
- 3) Domestic hot water system
- 4) Lighting Controls
- 5) PV system (if included in project)
- 6) Emergency power
- 7) Fire suppression and alarm
- 8) Lab – gas, compressed air, vacuum & fume hoods
- 9) Security CCTV & access controls
- 10) Communications
- 11) Chilled water, cooling towers and chillers
- 12) Heat exchangers
- 13) Distributed Antenna System

3.0 DESIGN STANDARDS

The services must follow and incorporate OSU's Design and Construction Standards, including OSU's requirements for sustainable development. OSU's Draft Commissioning Agreement Standards are included herein as Exhibit 1.

4.0 PROJECT SCHEDULE AND BUDGET

Services are to begin immediately following contract implementation. Construction of Phase 1 is scheduled to begin in July 2020.

5.0 COMPENSATION

Compensation will be based on a total "not-to-exceed" amount for services and reimbursable expenses, with "not-to-exceed" maximums for the services required. The amount of compensation will be negotiated with the top-ranked firm(s). **No cost or price information is to be submitted with qualification responses.**

6.0 SCHEDULE

The submittals for this RFQ will be evaluated/scored by a qualified committee which may include other non-scoring members who serve as advisors but do not score qualifications statements or interviews.

If applicable, interviews of short-listed finalists will occur following the receipt, review and scoring of the responses. In addition, further investigation of references may occur following the committee scoring in a one-step selection process or interviews of the short listed finalists in two-step selection process.

Schedule is as follows:

July 18, 2019	Issue RFQ
July 25, 2019 at 2:00 PM Pacific Time	Voluntary Pre-Submittal Conference
August 1, 2019 at 5:00 PM Pacific Time	Question Deadline
August 5, 2019	Issuance of Final Addenda (if necessary)
August 8, 2019 at 2:00 PM Pacific Time	Submittal Due Date/Time
Week of August 19, 2019	Estimated Notice of Intent to Award
September 9, 2019	Estimated Contract execution

7.0 INSTRUCTIONS TO OFFERORS

Your response must be contained in a document not to exceed **twenty (20) pages (double-sided preferred on hard copy)** including pictures, charts, graphs, tables and text you deem appropriate to be part of OSU's review of your response. Resumes of key individuals proposed to be involved in this Project are exempted from the twenty (20) page limit and must be appended to the end of your response. No supplemental information to the twenty (20) page response will be allowed. Appended resumes of the proposed key individuals, along with a Transmittal letter, table of contents, front and back covers, references required by Section 10.0 and blank section dividers will not be counted in the twenty (20) page limit.

Present information in the same order as the following evaluation criteria in Section 9.0 and include references required by Section 10.0. Your response must follow the format outlined below and **include a Transmittal/Cover Letter signed by an officer of your firm with the authority to commit the firm. Make sure to include contact information including email for communication purposes.** The response must be submitted in a soft-bound (no three-ring binders) format with page size of 8 ½ x 11 inches. No fold-outs other than one fold out Project schedule and one site logistics plan (not to exceed 11 x 17 inches each) may be included. The basic text information of the response should be presented in standard business font size, and reasonable (no less than one-inch) margins.

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

Note that throughout this procurement, OSU will not accept responses or queries that require OSU to pay the cost of production or delivery.

OSU is an AA/EEO employer.

Telephone, facsimile, or electronically transmitted submittals will not be accepted. Responses received after the closing date and time will not be considered.

8.0 EVALUATION PROCESS

This RFQ will use a one-step process in the selection of a design team. Evaluations of written qualifications submitted in response to this RFQ will be used to determine an Apparent Successful Respondent and enter into negotiations for a contract.

9.0 EVALUATION CRITERIA

The following questions constitute the evaluation criteria for the selection committee to score responses. Respond to each criterion in numerical order. For ease in scoring the responses, 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.

1. Key Personnel (25 Points)

Identify key personnel who would be assigned to this project. Include proposed key personnel's certifications, responsibilities on previous commissioning projects, and specific responsibilities for this project.

2. Firm Background and Experience (20 Points)

Provide a brief description of your firm. Include your firm's organizational chart (not the "project's organizational chart). List the projects your firm is currently contracted for, the key personnel for those projects, and the stage the projects are in terms of completion.

3. Firm Experience With LEED And Sustainable Construction Processes (15 Points)

Identify key personnel who would be assigned to this project. Include proposed key personnel's certifications, responsibilities on previous commissioning projects, and specific responsibilities for this project.

4. Sub-Consultants (15 points)

Identify any sub-consultants and the key personnel of the sub-consultants you propose to use on this project. Describe their recent (past five years) experience and the key personnel's specific role in commissioning of similar projects. Provide contact information (including email) for each identified key-person. Identify your firm's role in each of these projects

5. Team Approach (15 Points)

Provide a narrative on your project approach for this type of project. Provide information about your firm/team interest in this project and why you are a great fit for the project.

6. Workforce Diversity Plan (10 Points)

Provide a description and identification of Minority Business Enterprise (MBE), Women Business Enterprise (WBE) or Emerging Small Business (ESB) certifications, if applicable for your firm and a description of your firm's nondiscrimination practices. Provide any historical information on MBE, WBE or ESB Joint Ventures, subcontracting or mentoring plan, and utilization history for projects completed within the past three (3) years.

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

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

10.0 OPTIONAL REFERENCE CHECKS

OPTIONAL REFERENCE CHECKS (10 POINTS)

If the selection committee determines the written responses are too close to score, the university has no recent experience working with a finalist or if the scoring indicates a tie, the committee will check the references provided by the respondent as required by this RFQ. Information obtained from references will be used in the committee's final scoring and will be based on the committee's understanding of how well each firm can meet the needs of the Project and University.

- a. In addition to responding to the evaluation criteria above, provide current contact information for references for each of the KEY PERSONNEL you propose for this Project. The references must represent at least one of each of the following: owners, sub-consultants and contractors. These references must relate to projects of a size, scope and/or complexity comparable to this Project. The references identified must have had direct contact with your team member.
- b. Also, provide current contact information for three owners, three sub-consultants, and three contractors to be used as references for your firm for this Project. Verify that the individuals identified have had direct contact with the referenced project. Do not include references from any firms or individuals included in your team for this Project or any references of OSU personnel. OSU may check with these references or other references associated with past work of your firm.

11.0 FINANCIAL RESPONSIBILITY

OSU reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the submitting firms financial responsibility to perform the anticipated contract. Submission of a response will constitute approval for OSU to obtain any credit report information OSU deems necessary to conduct the evaluation. OSU will notify the firms, in writing, of any other documentation required, which may include, but need not be limited to: 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. Failure to promptly provide this information may result in rejection of the submission.

OSU may postpone the award or execution of a contract or selection of finalists in order to complete its investigation and evaluation. Failure of a firm to demonstrate financial responsibility may render it non-responsible and constitute grounds for response rejection.

12.0 SUBMISSION

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

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

Telephone, facsimile, or electronically transmitted submittals will not be accepted. Responses received after the closing date and time will not be considered.

The electronic response must be sized appropriately for transfer (under 8 mb).

13.0 REQUEST FOR CLARIFICATION OR CHANGE

All requests for clarification and/or change regarding any information in this RFQ must be addressed either in writing or email to ConstructionContracts@oregonstate.edu no later than 5:00 PM Pacific Time on August 1, 2019. If you are unclear about any information contained in this document or its exhibits (Project, scope, response format, agreement terms, etc.), you are urged to submit those requests for formal clarification.

14.0 UNIVERSITY SOLICITATION PROCESS OR ACTION APPEALS

Prospective respondents may submit a written appeal of a University solicitation process or action in accordance with OSU Standards & Policies ([Procurement Thresholds and Methods, Procurement Solicitations and Contracts](#)).

15.0 CHANGE OR MODIFICATION

Any change or modification to the specifications or the procurement process will be in the form of an addendum to the RFQ and will be made available to all firms by publication at [OSU Business and Bid Opportunities](#). It is the responsibility of each firm to visit the website and download any addenda to this RFQ. No information received in any manner different than as described herein shall serve to change the RFQ in any way, regardless of the source of the information.

16.0 PROPRIETARY INFORMATION

OSU will retain this RFQ and one copy of each original response received, together with copies of all documents pertaining to the award of a contract. 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 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 response may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the response, material designated as confidential shall accompany the 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 response marked as a trade secret in its entirety shall be considered non-responsive and shall be rejected.

17.0 PROJECT TERMINATION

OSU reserves the right to terminate the Project or contract during any phase in the Project.

18.0 CERTIFICATION OF NONDISCRIMINATION

By submission of a response, the respondent certifies under penalty of perjury that the respondent has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

19.0 ENCLOSURES

Exhibit 1 - OSU Draft Commissioning Agreement Standards

Exhibit 2 - Sample OSU Consultants' Agreement

End of RFQ

EXHIBIT 1

COMMISSIONING AGREEMENT STANDARDS

- I. Defined Terms.** In addition to any terms defined elsewhere in the body of this Exhibit, certain terms that are capitalized and/or set forth in bold letters throughout the Exhibit are defined as follows:

“Commissioning Plan” means an overall plan that provides the structure, schedule and coordination of tasks in the commissioning process. The Commissioning Agent writes and updates the plan as construction progresses.

“Construction Checklist” means a list generally provided by the Commissioning Agent to the contractor that lists items to include in the installation, start-up and initial checkout of a piece of equipment or assembly. Construction checklists are primarily static observations and procedures to prepare the equipment or system for initial operation (e.g., belt tension, oil levels OK, labels affixed, gages in place, sensors calibrated, etc.). Some construction checklist items entail simple testing of the function of a component, a piece of equipment or system (such as measuring the voltage imbalance on a three phase pump motor of a chiller system). Construction checklists augment and are combined with the manufacturer’s start-up checklist.

“Contract Documents” include the Construction Contract, any general conditions and supplementary general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor’s performance bond, 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 Record” means the compilation of the Owner’s Project requirements, Owner objectives, design narrative, design basis and performance metrics.

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

“Dynamic Systems” means systems, equipment, assemblies, or features that are composed of or contain components that are mechanical, moving, or electrical, and whose correct function or performance cannot be verified through a simple visual observation without using test instruments.

“Functional Tests” means tests that verify that specific components, assemblies, systems, and interfaces among systems function and perform in accordance with the owner’s objectives and the relevant Contract Documents. Functional testing may include manual or monitoring methods. Functional testing is the dynamic testing of specific and interacting equipment and systems in full operation. Functional tests are performed after construction checklists and start-up are complete. Written functional test procedures for a given piece of equipment contain a list of integral equipment and components being tested, associated construction checklists, functions and modes to be tested, required conditions of the test for each mode, specific step-by-step repeatable procedures, the expected or required response and acceptance criteria, a place to record the results and notes, required monitoring and any sampling strategies used.

“Initial Basic Services” are those Services authorized to be performed under the first phase of commissioning, generally described in Section I.C., and more particularly described in Section V. of this Agreement.

“Issues Log” means an ongoing record of the issues identified during the commissioning process that require resolution. For each entry the log includes a unique identification number, identification date, identification party, a short description of the issue, the equipment or assembly it is associated with, a long description of the issue, including cause, implications of the issue, recommendations for correction, assignment of responsibility for correction, an issue closed date and the name of the party verifying the correction. The Commissioning Agent is responsible for maintaining the log.

“Manual Test” means using hand-held instruments, immediate control-system readouts or direct observation to verify performance (contrasted to analyzing monitored data taken over time to make the “observation”).

“Monitoring” means the recording of parameters (flow, current, status, pressure, etc.) of equipment operation using dataloggers or the trending capabilities of control systems.

“Seasonal Tests” means functional tests that are deferred until the system(s) will experience conditions closer to their design conditions.

“Reimbursable Expenses” are those expenses described in sub-section C. of Section III of this Agreement.

“Services” are all those services to be performed by the Commissioning Agent under the terms of this Agreement.

“Systems Manual” means a manual providing to the current and future operating staff the information needed to understand and optimally operate each system. The manual is in addition to the O&M Manuals submitted by the contractor. The systems manual focuses on operating, rather than maintaining the equipment, particularly interactions between equipment. LEED, Version 2.0, refers to this as the Recommissioning Management Manual.

“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”).

II. Systems to be Commissioned and Services To Be Performed.

1. Systems. The Commissioning Agent agrees to provide, with the assistance of the Consultants, commissioning Services for equipment and systems to be designed for and installed in the ____, which systems may include, but may not be limited to integrated heating, ventilation and air conditioning (HVAC) system controlled by a building energy management system (EMS), electrical/secured power, communications (including closed circuit television system and audio distribution system), security, electronic (including voice and data wiring system and data communications system), and potentially additional or specialized equipment and/or systems associated with the building.

2. Methodology. Commissioning services will conform to (a) “Model Commissioning Plan and Guide Specifications” for large buildings, prepared by Portland Energy Conservation, Inc. (PECI), <http://www.peci.org/model-commissioning-plans-guide-specifications> (b) additional guidelines published in the Commissioning Toolkit dated February 1998, prepared by Peci and sponsored by the Oregon Office of Energy, (c) the LEED building certification criteria, refer to LEED Reference Guide Version 2.1 (www.leedbuilding.org) and (d) The HVAC Commissioning Process, ASHRAE Guideline 1.1-2007 -- HVAC&R Technical Requirements for The Commissioning Process, http://www.techstreet.com/ashrae/cgi-bin/family?product_id=1573306 all of which are incorporated herein by reference.

3. Services. OSU does not intend to have the facility certified through the LEED process; however, the design is incorporating those LEED criteria OSU has determined to be desirable, and OSU is using the LEED format to track its progress. Commissioning Services may include, but not be limited to, all those listed in Parts I through IV of the Model Commissioning Plan and Guide Specifications. Commissioning Service deliverables may include, but not be limited to, those listed in Section 3.11 of Section 17100 of the Model Commissioning Plan and Guide Specifications, incorporated by reference as if fully set forth herein.

Wherever in the Model Commissioning Plan and Guide Specifications optional methodologies or approaches may be taken, Commissioning Agent shall notify and confer with Owner. Owner, in its sole discretion, shall determine which optional methodology or approach Commissioning Agent shall conform to. Owner shall notify Commissioning Agent of such in writing, which document shall constitute a contract amendment.

4. Applicable law. Where State or federal mandatory laws or regulations have established standards governing the functioning, performance level, or testing methodology of any item of equipment or system, Commissioning Agent will, in performance of its Services, conform to such mandatory standards. Provided, however, that where such laws or regulations establish only a minimum quality, accuracy, strength, capacity, or safety or health standard, which may be below or less stringent than those required under either the Design Record (E(2)I(C)(2) and (3)) or under V(A)(1)(a) and (b), Commissioning Agent’s Services will conform to the higher or more stringent standard.

5. Phase One/Initial Basic Services. The first phase of commissioning is expected to begin during the development of construction documentation. The scope of Services to be provided during the first phase will include equipment and systems design review and development of documents (including a Design Record) related to design intent and basis of design; development of a Commissioning Plan; specifications; a Construction Checklist; an owner training plan; and development of performance test procedures.

6. Phase Two/Additional Basic Services. The second phase of commissioning will begin at award of the construction contract, and will continue through acceptance of the Project.

The scope of Services to be provided during the second phase may include, but not

be limited to, implementation of the Commissioning Plan and specifications; inspection of equipment and systems (Dynamic and static Systems); performance of Functional and Manual Tests; Monitoring; preparation of complete documentation (including checklists, logs, reports, etc.) of all equipment and systems testing and inspections performed; preparation of an Issues Log; development of performance test procedures; observation of systems and equipment testing; review of operations and maintenance (O&M) manuals; review of relevant shop drawings and submittals; and performance of all commissioning Services required for “silver” LEED certification; and testing, adjusting, and balancing (“TAB”) Services.

7. Schedule. The Commissioning Agent shall provide a schedule for the performance of the Initial Basic Services upon execution of this Agreement. The Commissioning Agent shall provide a schedule for the performance of the Additional Basic Services within five (5) days of request for schedule by Owner. The Commissioning Agent agrees that time is of the essence in the performance of this Agreement.

III. Directives for Performance of the Services.

- A. The Commissioning Agent shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Commissioning Agent's performance of Services shall be as a professional Commissioning Agent for the Owner to carry out the activities of equipment and system commissioning, and to provide the technical documents and testing to achieve the Owner's Project objectives, including but not limited to, fulfilling all the requirements for “silver” LEED certification.
- B. 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. Commissioning Agent shall cooperate with, and coordinate its Services with, such other consultants as the Owner and/or its Project architect may retain, as well as the Project construction contractor and its subcontractors, in order to complete the commissioning Services and Project in a timely, cost-effective, and efficient manner.
- C. Upon execution of the Agreement, Commissioning Agent shall provide Owner with a list of all Consultants Commissioning Agent intends to utilize on the Project. The list shall include such information on the qualifications of the Consultants as may be requested by the Owner. The Owner reserves the right to review the Consultants proposed, and the Commissioning Agent shall not retain a Consultant to which the Owner has a reasonable objection.
- D. The Commissioning Agent shall provide to the Owner a list of its proposed key personnel and its Consultants to be engaged in performance of Services. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner. The Commissioning Agent acknowledges that award of this Agreement was made on the basis of the unique background and abilities of the proposed key personnel and Consultants identified in Commissioning Agent's proposal for Services. Therefore, Commissioning Agent shall make available key personnel and Consultants as identified in its proposal. Any attempted substitution without written consent of Owner shall constitute a material breach of this Agreement. In the event that key personnel or

Consultants become unavailable to Commissioning Agent at anytime through no fault of Commissioning Agent, Commissioning Agent shall replace the key personnel and Consultants with personnel or Consultants having substantially equivalent or better qualifications than the key personnel or Consultant being replaced, as approved by Owner. Likewise, the Commissioning Agent shall remove any personnel or Consultants from the Project if so directed by Owner in writing following discussion with the Commissioning Agent, provided that Commissioning Agent shall have a reasonable time period within which to find a suitable replacement.

- E. Commissioning Agent shall make no news release, press release or statement to a member of the news media regarding this Project or its Services being provided pursuant to this Agreement without prior written authorization from Owner.

IV. Commissioning Agent's Standard of Care

- A. By execution of the Agreement, the Commissioning Agent agrees that:
 - 1. The Commissioning Agent is an experienced Commissioning firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement for a project having this scope and complexity; and will perform such Services pursuant to the standard of care set forth in subsections B. through I. of this Section II.
 - 2. The Commissioning Agent has the capabilities and resources necessary to perform the obligations of this Agreement.
 - 3. The Commissioning Agent 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, installation, operational criteria and tolerances, and performance of the equipment and systems involved in the Project, and shall prepare all specifications, and other documents required under this Agreement in accordance with such standard of care , to accurately reflect and incorporate all such laws, rules, and regulations.
- B. Commissioning Agent represents and warrants to Owner that (1) Commissioning Agent 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 Commissioning Agent enforceable in accordance with its terms, (3) Commissioning Agent shall at all times during the term of this Agreement be duly licensed and competent to perform the Services, (4) all Services under this Agreement shall be performed in accordance with the professional skill, care and standards of other professionals in the community performing similar services under similar conditions.
- C. All specifications, and other documents prepared by Commissioning Agent 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 Commissioning Agent;
- D. The equipment and systems to be commissioned, if designed, fabricated, and installed in accordance with commissioning plans, drawings, and specifications

prepared by the Commissioning Agent, if any, shall function properly and be suitable for the purposes intended;

- E. The Commissioning Agent shall be responsible for inconsistencies and omissions in the specifications, and other documents Commissioning Agent is required to prepare under this Agreement. While Commissioning Agent 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 Commissioning Agent throughout the period of performance under this Agreement to use due care and perform with professional competence. Commissioning Agent will, at no additional cost to Owner, correct any and all errors and omissions in the specifications, and other documents prepared by Commissioning Agent. Except as provided in Article VI and at no additional cost, Commissioning Agent further agrees to render assistance to Owner in resolving other problems relating to the design of equipment and systems intended to be incorporated into the Project, or specified materials used in the Project;
- F. The Owner's acceptance of documents or issuance of authorization to continue to the next phase of commissioning shall not be deemed as approval of the adequacy of such plans, drawings, documents, plans or specifications. Any review or acceptance by the Owner will not relieve the Commissioning Agent of responsibility for complying with its contractual obligations or the standard of care set forth herein.
- 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.

V. Commissioning Agent's Services

- A. Overview
 - 1. The objectives of the Owner in commissioning specified equipment and systems, and selected LEED certification features, are to:
 - a. Ensure and document that applicable equipment, systems and assemblies are installed according to the relevant Contract Documents, the manufacturer's recommendations, and industry-accepted minimum standards, and that they receive adequate operational checkout by installing contractors.
 - b. Ensure and document that equipment, systems and assemblies function and perform according to the relevant Contract Documents, State and federal mandatory standards, and the Owner's objectives and requirements that the building function cost-effectively, efficiently, with minimal environmental impact.
 - c. Ensure that specified equipment and assembly operations and maintenance documentation is provided.
 - d. Ensure that operations and maintenance staff receive appropriate training.
- B. The Commissioning Agent will conduct pre-construction phase reviews to ensure that any given feature qualifies for a LEED credit. Gathering LEED-required

documentation is also part of the scope of commissioning required under this Agreement.

- C. LEED requires that all features in the Water Efficiency and in the Energy and Atmosphere, and most of the Indoor Environmental Quality areas, are appropriately commissioned; Commissioning Agent will be responsible for performing and coordinating performance of all such commissioning.
- D. In addition to pre-construction Services, the following dynamic systems and features will be commissioned utilizing the traditional construction-phase commissioning process that includes submittal review, observation and functional testing. Other systems identified as either Phase One or Phase Two Services, will also be commissioned utilizing this process. All general references to equipment in this Section refer only to equipment that is to be commissioned. A "[c]" indicates that a construction checklist will be developed and filled out for this piece of equipment or assembly. An "[*]" indicates the system will have all startup and initial checkout procedures documented by the contractor.
1. HVAC System and all integral equipment controls. All HVAC systems shall be commissioned, including, but not limited to:
 - a. Chiller system (chillers, cooling towers, controls, piping, pumps and variable speed drives) [c *]
 - b. Pumps (other pumps serving mechanical and plumbing systems other than HVAC) [c *]
 - c. Variable speed drives [c *]
 - d. Pipe cleaning and flushing [c *]
 - e. Water treatment [*]
 - f. Ductwork [c *]
 - g. Air handling units, including night purge features [c *]
 - h. Exhaust fans (restroom and misc.) [c *]
 - i. Fan coil units [c *]
 - j. Terminal units (air and water) [c *]
 - k. Testing, Adjusting and Balancing work [c *]
 - l. Building automation system (controlled devices, control loops and system integration) [*]
 - m. Under-floor supply air distribution system [c *]
 - p. Passive atria conditioning system
 2. Electrical Systems
 - a. Scheduled lighting controls [*]
 - b. Daylighting / dimming controls, including lobby/atria photocell controls [*]
 - c. Lighting occupancy sensors
 - d. Grounding equipment
 - e. Switch boards
 - f. Raceways

- g. Disconnects
 - h. Transformers
 - i. Panel boards
 - j. Breakers
 - k. Motor control centers
 - l. Emergency generators and controls, including automatic transfer switch [*]
 - m. Uninterruptible power supply system [*]
3. Life Safety Systems
- a. Fire alarm system
 - b. Fire protection system
 - c. Egress pressurization
 - d. Smoke evacuation system
4. Plumbing
- a. Domestic hot water pumping and temperature control [c*]
 - b. Irrigation
 - c. Automatic fixture controls
5. Elevators

6. LEED features to meet the:
 - a. Energy and Atmosphere credits
 - b. Environmental Quality credits
 - c. Water Efficiency credits
- E. The following static elements and features will be commissioned utilizing documented submittal review and observation, without functional testing:
 1. Static LEED water and wastewater efficiency features:
 - a. Low flow faucet and shower aerators
 2. Static LEED energy features:
 - a. exterior windows and doors
 - b. envelope and pipe insulation
 3. Static LEED indoor environmental quality (EQ) features:
 - a. Ventilation effectiveness
 - b. IAQ management during construction and turnover
 - c. Low VOC emitting materials
 - d. Daylighting and views
 - e. Envelope air and moisture control design and integrity

G. Phase One

The first phase of commissioning Services will include design review and development of documents related to design intent and basis of design; development of a commissioning plan, specifications, and an owner training plan; and development of performance test requirements.

H. Phase Two

The second phase of commissioning Services may include, but not be limited to, implementation of the commissioning plan and specifications; inspection of equipment and systems; preparation of complete documentation (including checklists, logs, reports, etc.) of all equipment and systems testing and inspections performed; development of performance test procedures; observation of systems and equipment testing; review of operations and maintenance (O&M) manuals; review of relevant shop drawings and submittals; and performance of all commissioning Services required for “silver” LEED certification; and testing, adjusting, and balancing (“TAB”) Services.

I. Phase One/Initial Basic Services include but are not limited to:

1. Develop a detailed Commissioning Plan for the Project. The plan will include, but not be limited to:
 - a. A proposed outline of the respective responsibilities of the commissioning agent, Owner, design team, and in the accomplishment of Project equipment

and system commissioning and attainment of “silver” LEED Certification. (Owner shall, in its sole discretion, make all final determinations of the respective responsibilities of the commissioning agent, Owner, design team, and Contractor.)

- b. Identification of all equipment and systems to be commissioned.
 - c. Scheduling requirements for commissioning activities from plan development through Project completion and attainment of silver LEED Certification.
2. Equipment and Systems design intent documentation (Design Record), including but not limited to:
- a. Design intent documentation describing the concepts and criteria of systems and assemblies to achieve the LEED points in the Energy and Atmosphere and Indoor Environmental Quality credits for silver LEED Certification, as well as those considered important to the Owner, including general system description; system function; quality of construction; occupancy requirements; indoor air quality; performance criteria; critical systems and environments; and budget considerations. The Commissioning Agent shall review and comment on the design intent document prepared by the Owner and design team.
 - b. The Commissioning Agent shall provide direction to the designers of record in developing the basis of design and shall review their submission for clarity and completeness at Design Development submission. Basis of design documentation describes the Designer’s concept and approach for achieving the design intent, including system description, design criteria, operating sequence, equipment maintainability, fire and life safety, emergency operations, energy performance, ventilation strategies and application code issues.
3. Construction document review
- a. Review of preliminary construction documents at 100% complete Design Development Phase, and at 50% complete, and at 90% complete, Construction Document Phase including provision of written review comments and suggested additions or modifications.

4. Commissioning Specifications:
 - a. Development of a set of commissioning specifications for all equipment and systems being commissioned. These commissioning specifications will become Contract Documents. Coordinate with the design team, review Project specifications, and provide the Owner with recommended additions or modifications to the proposed Contract Documents that will clarify the commissioning process and scope of commissioning activities required for the Project.
5. Project meetings: Attend design review meetings at completion of design development, and at 50% complete and 90% complete Construction Document phases.
6. Owner's Training Plan: Commissioning Agent shall prepare a comprehensive training program covering maintenance and troubleshooting of commissioned equipment and systems.
7. Performance Test Requirements: Commissioning Agent shall prepare a Functional Test plan for each system and item of equipment being commissioned. These requirements shall provide a detailed description of the test requirements to be used to verify proper system/equipment operation.

J. Phase Two/Additional Basic Services:

1. **Construction Phase**

- a. Review all mechanical and electrical contractor submittals.
- b. Monitor progress of systems and equipment construction and installation: Provide on-site visits to observe and monitor construction. A total of eight site visits are required by Owner.
- c. Develop Prefunctional Check/Start-up Plans: Develop comprehensive prefunctional check/start-up plans for systems being commissioned. Prefunctional checks shall provide a detailed checkout of completeness of installation prior to initial start-up. Start-up plans shall describe minimum requirements for start-up. (Prefunctional check and equipment start-up shall be performed by the Contractor and witnessed by an Owner's representative.) Prefunctional checks and start-up will only be performed for new systems and equipment.

2. **Verification Phase**

- a. Functional Testing: Commissioning Agent shall develop written detailed test procedures. Commissioning Agent shall conduct functional testing in accordance with the functional test plans, and shall document and submit to Owner a record of all test results. Prepare completion reports summarizing results of testing, description of deficiencies identified, and corrective action required to correct deficiencies.

- b. Troubleshooting: Perform troubleshooting inspections and tests on all systems and equipment being commissioned. Meet with Owner and design team to develop recommendations for correcting performance deficiencies identified through troubleshooting inspections and tests. A total of six site visits are included by Owner for troubleshooting.
 - c. Retesting: Retest all systems with performance or design deficiencies to verify that corrections are complete, and that the system and its equipment components are functioning as intended.
- C. Review of O&M Manuals: Subsequent to the design team review, review the Contractor's O&M manuals. Verify completeness from an operational perspective. Provide written comments and suggested additions or modifications, if any.
- D. Coordinate training of the operation staff: Coordinate training of Owner's maintenance personnel in the operation and maintenance of commissioned equipment and systems. The Commissioning Agent will meet with the Owner's representatives, review training requirements, and prepare training plans for the Contractor. Verify that minimum training requirements are met.
- E. Final Commissioning Report: Provide a final commissioning report to include:
- (1) Summary of the commissioning process implemented on the Project
 - (2) Detailed prefunctional check/start-up plans
 - (3) Detailed functional test plans and comprehensive documentation of results of functional testing.
 - (4) Final review of how well systems met the design intent, noted discrepancies, and any recommendations for equipment or system modifications required by performance issues.

EXHIBIT 2

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 13th Ave.
Corvallis OR 97333

Phone: (541) 737-7342
FAX: (541) 737-5546

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

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

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

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

I. RELATIONSHIP BETWEEN THE PARTIES

- A. **Effective Date.** This Agreement is effective on the date it has been signed by every party hereto. This is known as the Agreement effective date. No services shall be performed or payment made prior to the Agreement effective date.
- B. **Defined Terms.** In addition to any terms defined elsewhere in the body of this Agreement, certain terms that are capitalized and/or set forth in bold letters throughout the Agreement are defined as follows:

"Additional Services" are those Services described in Section III.C of this Agreement.

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

"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 Standards 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

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

[DRAFTER'S NOTE: This template uses a standardized compensation method that will be appropriate for many transactions. The compensation method should be revised as needed to meet the unique requirements of the particular transaction.]

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	\$135.00 per night plus tax

Meals: (documentation not required) (reimbursable only when associated with overnight travel)

Breakfast	\$15
Lunch	\$15
Dinner	\$30
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.

[DRAFTER'S NOTE: Check current permissible rates for Reimbursable Expenses listed above, and complete blanks above.]

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

CONSULTANT:

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

CONSULTANTS:

_____ **[DRAFTER'S NOTE: CONSULTANT #1]**
\$ ___/hr

.....\$ /hr

.....**[DRAFTER'S NOTE: CONSULTANT #2, #3, ETC.]**

.....\$ /hr

.....\$ /hr

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

IV. TIME OF PERFORMANCE

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

V. FEE PAYMENTS

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

University Financial Services
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 \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). 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 \$3,000,000 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

With a Copy to: OSU Project Manager
Capital Planning & Development
Oregon State University
3015 SW Western Blvd.
Corvallis, OR 97333

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

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 Capital Planning and Facilities Services

Date _____