

CONSULTANT'S AGREEMENT
TRANSPORTATION PLANNING CONSULTING
OREGON STATE UNIVERSITY

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

the Consultant:

Phone:

and the Owner:

Oregon State University

Capital Projects Contract Administration, Capital Planning & Development

3015 SW Western Blvd.

Corvallis OR 97333

Phone: (541) 737-9635

FAX: (541) 737-4810

(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 consulting Services for the Project identified as Transportation Planning Consulting for Oregon State University at Corvallis, Oregon (the "Project"); and

WHEREAS, the Consultant 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 and all necessary State approvals have been obtained. This is known as the Agreement's Effective Date. No services shall be performed or payment made prior to the Effective Date.

B. **Defined Terms.** In addition to any terms defined elsewhere in the body of this Agreement, certain terms that are capitalized throughout the Agreement are defined as follows:

"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.

"Extra Services and Special Cases" are those Services described in Section III.C of this Agreement.

"Project Completion" means the final completion of all Services described in Section V 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 completion of the Project by the “Consultant.

- C. **Services To Be Performed.** The Consultant agrees to provide the professional services outlined below for this Project.

Such Services include development of the following: access and transportation for the campus, a 10-year OSU Corvallis Campus Transportation Plan; and transportation element of the OSU Master Infrastructure Plan, described as follows:

Phase I: Access/Transportation Element Development – OSU District Plan

- Provide OSU with a framework for future development as a regulated district within the City of Corvallis, Oregon;
- development of alternatives and assessment of transportation demands to understand impacts on existing system;
- ensure plan includes vehicle and bicycle parking and associated permits and pricing;
- coordination with Corvallis Transit Service and other transit systems with the OSU shuttle schedule, assess impacts of vehicular traffic on existing streets and intersections, revision of functional classification of OSU streets as necessary, and describe an overall system/operation plan for the streets;
- development of Transportation Demand Management (TDM) strategies and performance measures for assessing the effectiveness of the proposed plan;
- development of alternatives to the existing sector-based evaluation and monitoring, and develop alternatives for reporting and assessing systems performance; and
- develop options for mitigating OSU impacts and describe triggers for mitigation.

Phase II: OSU Corvallis Campus Transportation Plan

- Include general transportation facility networks for each mode (pedestrian, bike, transit, and auto) designed to serve the demand over the next ten years, and describe potential discrete improvement projects, a coordinated-implementation-plan-by-year of improvements, and potential rough-order-of-magnitude capital and operational costs;
- develop an aspirational pedestrian network and potential associated design guidelines/criteria for improvement, which address network gaps and deficiencies, establish a connected and comprehensive bicycle network, preferred facility types, and potential bicycle parking locations;
- address space and design guidelines for on-campus routes and transit hubs for connections within OSU shuttles and CTS networks; and
- address optimization of material distribution networks within and around the OSU campus, and as well as the location and timing of deliveries to minimize impacts on pedestrians and bicyclists. The consultant should develop a comprehensive and implementable TDM plan.

Phase III: Transportation Element of the OSU Master Infrastructure Plan

- Include transportation infrastructure, along with power, natural gas, water distribution systems, sanitary and storm sewer, steam, information technology infrastructure as well as open space; and
- identify a 10-year transportation infrastructure improvement program on the OSU Corvallis campus as an infrastructure element embedded in the OSU 10-Year Capital Plan.

The Consultant shall provide a schedule for the performance of the Services upon execution of this Agreement. 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. If the Consultants intends to utilize any subcontractors on the Project, the Consultant shall provide a list of subcontractors to Owner prior to beginning work on the Project. The list shall include such information on the qualifications of the subcontractors as may be requested by the Owner. The Owner reserves the right to review and approve the subcontractors proposed, and the Consultant shall not retain or use a subcontractor on the Project 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 subcontractors 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 become unavailable to Consultant at any time, Consultant shall replace the key personnel with personnel having substantially equivalent or better qualifications than the key personnel being replaced, as approved by Owner. Likewise, the Consultant shall remove any individual 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.

E. Maximum Compensation. The Owner agrees to pay Consultant a sum not to exceed \$_____ (the "Maximum Compensation") for accomplishment of all of the Services required under this Agreement, which shall include all Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed Supplement to this Agreement. Consultant progress payments shall be made according to the schedule set forth in Section V, FEE PAYMENTS, of this Agreement.

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 Project, and 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 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 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 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 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 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 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 documents prepared by Consultant;
- F. The Owner's acceptance of documents shall not be deemed as approval of the adequacy of the documents. 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 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 warranties provided.

III. COMPENSATION

The maximum, not-to-exceed, total amount payable under this Agreement is \$_____, 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 IV** 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 approved subcontractors in the interest of the Project for the following items: long-distance communications; reproductions, postage and handling of 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 State of Oregon employees. Travel expenses are only reimbursable when Services are rendered in excess of 25 miles from Consultant's closest 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 State of Oregon employees; or
- (iii) the following rates:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$ 0.56 per mile
Lodging	\$118.00 per night plus tax

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

Breakfast	13.00
Lunch	13.00
Dinner	26.00
Printing, photography, long distance telephone charges and other direct expenses	At cost

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

- C. **Additional Services:** The Owner will compensate the Consultant for Additional Services performed by the Consultant, whether directly or through its approved subcontractors, beyond the scope of the Basic Services described in **Section I.C**, based on hourly rates for Consultant personnel or approved subcontractors, 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 to this Agreement memorializing the Additional Services Consultant is to provide.

CONSULTANT:

{Title}\$____/hr
{Title}\$____/hr
{Title}\$____/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 direct expenses incurred during the preceding month:

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

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

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, professional consultants, the contractors, and subcontractors 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- 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 combined single limit of not less than \$1,000,000 each occurrence/\$1,000,000 annual aggregate for bodily injury and property damage. It shall include personal injury coverage and contractual liability coverage for the indemnity provided under this Agreement.
- C. Automobile Liability** - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance.
- D. Professional Liability/Errors & Omissions** - Consultant shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications and/or project manual, and all related deliverables of the Consultant. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have a combined single limit of not less than \$1,000,000 per claim, incident or occurrence \$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 24 months or the maximum time period available in the marketplace if less than 24 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 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. 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 as evidence of the insurance coverages required under this Agreement. The certificate(s) shall provide that the insurance policies have been endorsed/amended so that the insurance company or companies shall give a 30 calendar day notice (without reservation) to the Owner's representative set forth in **Section XXVII** below if the applicable policy is canceled or materially changed, or if the aggregate limits have been reduced. The certificate(s) should state specifically that the insurance is provided for this Agreement. Insuring companies are subject to acceptance by the Owner.

G. Additional Insureds. The Certificates of Insurance, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall provide that the policies have been endorsed/amended so that the State of Oregon, the Owner, and its institutions, officers, and employees are Additional Insureds with respect to the Consultant's Services to be provided under this Agreement.

IX. INDEMNITY

- A. Claims for Other Than Professional Liability.** Consultant shall indemnify, hold harmless and defend the Owner and its colleges and universities and any public agencies for which Services are performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities of the Consultant or the Consultant's Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- B. Claims for Professional Liability.** Consultant shall save, defend, indemnify and hold harmless the Owner and its colleges and universities and any public agencies for which Services are to be performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits or actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of or relating to the professional negligent acts, errors or omissions of Consultant or its Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- C. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the Owner, the State of Oregon or any of its agencies, without the prior written consent of the Owner. 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.
- D. Agency's Actions.** Sub-sections A. and B. above do not include indemnification by the Consultant of the Owner for the Owner's activities, whether related to this Agreement or otherwise.

X. LIMITATION OF LIABILITIES

Except for any liability of the Consultant arising under or related to the Consultant's failure to perform according to the standard of care or any other liability arising under or related to the Consultant's representations and warranties under **Section II** of this Agreement, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Agreement or any damages of any sort arising solely from the termination of this Agreement in accordance with its terms.

XI. [RESERVED]

XII. OWNERSHIP AND USE OF DELIVERABLES OF CONSULTANT

A. Consultant Intellectual Property.

1. "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and contained in or necessary for the use of the deliverables provided under this Agreement. Consultant Intellectual Property includes derivative works and compilations of any Consultant Intellectual Property.
2. Consultant retains ownership of all Consultant Intellectual Property that Consultant delivers to Owner pursuant to the Services performed under this Agreement. Consultant grants Owner a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distributed, transmit and prepare derivative works of the Consultant intellectual Property, and to authorize others to do the same on the Owner's behalf.

B. Work Product.

1. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Consultant or Consultant's subcontractors or agents (either alone or with others) pursuant to the Agreement. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Owner Intellectual Property, Consultant Intellectual Property or Third Party Intellectual Property.
2. Owner owns all Work Product. All Work Product authored by Consultant under this Agreement shall be deemed "works made for hire" to the extent permitted by the United States Copyright Act. Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in Work Product. Upon Owner's reasonable request, Consultant shall execute such further documents and instruments reasonably necessary to fully vest such rights in Owner. Consultant forever waives any and all rights relating to such Work Product created under this Agreement, 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 or subsequent modifications.
3. Subject to the confidentiality obligations of this Agreement, Owner grants Consultant a non-exclusive, irrevocable, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Work Product, and to authorize others to do the same on Consultant's behalf.

C. Third Party Intellectual Property.

1. "Third Party Intellectual Property" means any intellectual property owned by parties other than Owner or Consultant and contained in or necessary for the use, or optimal use, of the deliverables. Third Party Intellectual Property includes derivative works and compilations of any Third Party Intellectual Property.

2. Consultant shall secure on Owner's behalf, in the name of Owner and subject to Owner's approval, a license to Third Party Intellectual Property sufficient to fulfill the business objectives identified in this Agreement, and to authorize others to do the same on Owner's behalf.

D. Owner Intellectual Property; Data and Background Information.

1. "Owner Intellectual Property" means any intellectual property that is owned by Owner. Owner Intellectual Property includes any derivative works and compilations of any Owner Intellectual Property.
2. Owner owns all Owner Intellectual Property and Owner data and background information provided to Consultant pursuant to this Agreement. Owner grants Consultant a non-exclusive, royalty-free, world-wide license to use, copy, display, distribute, transmit and prepare derivative works of Owner Intellectual Property and Owner data and background information only to fulfill the purposes of this Agreement. Owner's license to Consultant is limited by the term of the Agreement and the confidentiality obligations of this Agreement.

E. No Rights. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed as granting to or conferring upon a Party any right, title, or interest in any intellectual property that is now owned or subsequently owned by the other Party.

F. Competing Services. Subject to the provisions of this Article, and Consultant's obligations with respect to Confidential Information, nothing in this Agreement precludes or limits in any way the right of Consultant to: (i) provide the services similar to those contemplated in this Agreement, or, consulting or other services of any kind or nature whatsoever to any individual or entity as Consultant in its sole discretion deems appropriate, or (ii) develop for Consultant or for others, deliverables or other materials that are competitive with those produced as a result of the Services provided hereunder, irrespective of their similarity to the Deliverables. Each party shall be free to utilize any concepts, processes, know-how, techniques, improvements or other methods it may develop during the course of performance under this Agreement free of any use restriction or payment obligation to the other.

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 subcontractor 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. Owner's consent to Consultant's subcontractor(s) does not relieve Consultant of its obligations under this Agreement. Any purported assignment or transfer of Consultant's interest in or rights or obligations under this Agreement without Owner's prior written consent is void. Consultant shall require all subcontractors to comply with 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 approved subcontractors 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, mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.
4. For any reason, the Consultant shall be responsible to the Owner for the quality of its Services and deliverables through the date of termination.

XVII. TAX COMPLIANCE CERTIFICATION

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the Consultant and that the Consultant is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

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 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, facsimile, or mailing the same, postage prepaid, to Consultant or Owner at the address or number 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 delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Owner, such facsimile transmission must be confirmed by telephone notice to Owner's Representative named below. 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: **Telephone:** _____

Address: _____

OWNER: Oregon State University

Address: 3015 SW Western Blvd., 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 its subcontractors 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; Representations and Warranties, **IX** Indemnity, **X** Limitation of Liabilities, **XII** Ownership and Use of Deliverables 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 THE PARTY AGAINST WHOM ENFORCEMENT OF THE WAIVER IS SOUGHT. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONSULTANT AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

Consultant

Oregon State University, Owner

By _____

By _____

Title: _____

Kirk Pawlowski
Executive Director, Capital Planning &
Development

Date _____

Date _____

Federal Tax ID # _____