

**CONTRACTOR’S AGREEMENT FOR TECHNICAL SERVICES FOR THE  
MANUFACTURE AND DELIVERY OF AN ENERGY STORAGE SYSTEM**

This CONTRACTOR’S AGREEMENT (“the Agreement”) is made between:

the Contractor:

Phone:

FAX:

and the Owner:

Phone:

FAX:

(The Contractor 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 Contractor to provide technical services for the manufacture and delivery of an Energy Storage System for Oregon State University at Corvallis, Oregon; and

**WHEREAS**, OSU competitively solicited for the services outlined in this Contract under [Request for Proposal] number [RFP] entitled [RFP Name] and Contractor was selected as the [Proposer] best able to provide this service; and

**WHEREAS**, the Contractor, with the aid of certain contractors (the “Contractors”), is willing and able to perform such services in connection with the Work;

**NOW, THEREFORE**, the Owner and the Contractor, 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 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**” including technical services and engineering services, are those Services generally described in sub-section C. of Section I of this Agreement, as well as such additional Basic Services as may be established by amendment.

“**Contract**” is this Agreement and exhibits to this Agreement, any solicitation documents, and any response by a successful proposer to any such solicitation documents.

“**Completion of Work**” means the final completion of all Services described in Section I.C of this Agreement.

“**Direct Expenses**” are those expenses described in Section III.B of this Agreement.

“**Project**” is defined as the development of the energy storage system.

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

“**Work**” is defined as the furnishing of all materials, labor, equipment, transportation, delivery, services, and incidentals for the technical and engineering services, construction and delivery to be performed by the Contractor.

**C. Services to Be Performed.** The Contractor agrees to provide, with the assistance of the Contractors, the technical services outlined below.

The Contractor shall perform the following Services:

Services for the manufacture and delivery of an Energy Storage System (“ESS”) as further detailed in Exhibit 1 ‘Description of Services’ as to be performed under this Agreement.

**D. Critical Date Schedule** The Contractor shall perform the Services according to the following critical date schedule:

**Time is of the essence** for the following listed critical dates.

Description	Due by


Changes to the Critical Date Schedule may only occur in accordance with Section XXXII ‘Merger Clause.’

**E. Directives for Performance of the Services.**

1. The Contractor shall provide all Services under this Agreement in accordance with the terms and conditions of this Agreement. The Contractor's performance of Services shall be as a professional Contractor to the Owner to carry out the Work under this Agreement and to provide the technical documents and supervision to achieve the Owner's objectives.
2. The Contractor shall provide a schedule for the performance of the Services upon execution of this Agreement. **Time is of the essence in the performance of this Agreement.**
3. In administering this Agreement, the Owner may employ the services of an independent project manager, and potentially, other contractors as needed to fulfill the Owner's objectives.
4. **Sub-Contractors.** The Contractor shall provide a list of all sub-contractors which the Contractor intends to utilize to complete the Work under this Agreement. The list shall include such information on the qualifications of the sub-contractors as may be requested by the Owner. The Owner reserves the right to review the sub-contractors proposed, and the Contractor shall not retain a sub-contractor to which the Owner has a reasonable objection.
5. **Key Personnel.** The Contractor shall provide to the Owner a list of the proposed key personnel of the Contractor and its sub-contractors to be assigned to complete the Work under this Agreement. 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-contractors become unavailable to Contractor at anytime, Contractor shall replace the key personnel and sub-contractors with personnel or sub-contractors having substantially equivalent or better qualifications than the key personnel or sub-contractor being replaced, as approved by Owner. Likewise, the Contractor shall remove any individual or sub-contractor from the Work under this Agreement if so directed by Owner in writing following discussion with the Contractor, provided that Contractor shall have a reasonable time period within which to find a suitable replacement.
6. **Media.** Contractor shall make no news release, press release or statement to a member of the news media regarding this Work under this Agreement without prior written authorization from Owner. For any media articles (e.g. newspapers,

magazines, online media) produced by the Contractor after receiving written authorization from Owner to produce such media, the Contractor shall provide to Owner upon request or prior to Completion of Work under this Agreement, the following: author, title, publication or website, page number (if applicable), and date of publication.

7. **Publications.** Contractor shall include the following acknowledgement in publications arising out of, or relating to, work performed under this Agreement:

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

8. **Equipment.** Title to equipment: Title to equipment (property) acquired under this Agreement will conditionally vest upon acquisition with Owner.
9. **Technologies and Techniques.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Contractor shall briefly describe the new technologies or techniques (specific capabilities and performance improvements enabled), the pre-commercialization history of the technologies and their potential application to current and future projects.
10. **Invention Disclosures.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Contractor shall provide the following invention disclosures: List title, date submitted, and name of inventor. Invention disclosures are to be provided to Owner in a manner consistent with 37 CFR 401.14 'Standard Patent Rights Clauses.'
11. **Patent Applications.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Contractor shall provide the following patent application information: list patent number, name of inventors, assignee, patent application number, date of filing, and title of patent application.
12. **Licensed Technologies.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Contractor shall provide the following information for subject inventions licensed to third parties as applicable: list name of licensee, domestic or foreign patent or patent application number, title, and expiration date of agreement.
13. **Network and Collaborations.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Contractor shall provide information to Owner about partnerships and other arrangements concluded with respect to the

project or technology area or Work performed under this Agreement. Contractor shall list name of network or collaboration (if any), name of entities involved, date of agreement (if any), brief description of network or collaboration, and technology area. Contractor shall clearly denote the partner organizations unique and distinguished contribution to the Project as a result of work performed under this Agreement.

14. **Website Featuring Work or Work Results.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide Owner the following information: website or other Internet sites that reflect the Work or results of Work under this Agreement. List name of website, specific webpage(s) on which Work or results featured, and brief description of Work or results featured.
15. **Other Products.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide Owner the following information: additional Work output, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment. Contractor shall provide a brief description of additional project output, date of release, and entity to which output was provided.
16. **Awards, Prizes and Recognition.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide the following related to any awards, prizes, or other recognition for project work or results, subjection inventions, patents or patent applications, etc. as a result of work performed under this contract. List name of award/recognition/prize, name of sponsoring organization, date of receipt, and subject of award/price/recognition.
17. **Contractor Reporting.** As applicable, Contractor shall report to Owner the following: a.) any notices or claims of patent or copyright infringement arising out of or relating to the performance of the Work performed under this Agreement; b.) potential or actual violations of federal, state, and municipal laws arising out of or relating to work performed under this Agreement; c.) any fatality or injuries requiring hospitalization arising out of or relating to the work under the Agreement; d.) potential or actual violations of environmental, health, or safety laws and regulations; e.) Any event which is anticipated to cause significant schedule slippage or cost increase; f.) any damage to Government owned equipment in excess of \$25,000; g.) any incident arising out of or relating to work under the Agreement that has the potential for high visibility in the media.
18. **Protected and Limited Rights Data.** As applicable, the Contractor shall mark protected data and limited rights data for all deliverables provided under this Agreement. Failure to properly mark data may result in its public disclosure under

the Freedom of Information Act (FOIA, 5 U.S.C. Section 552) or otherwise. The work under this Agreement is funded by the U.S. Government. Therefore, unlimited rights are may be retained by the government, to any technical data or commercial or financial data produced under this Agreement.

19. **Records Retention and Audit.** Contractor is responsible to provide any information, documents, site access, or other assistance requested by Owner, Federal or State auditing agencies; or their authorized representatives, for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Contractors records relating to this Contract.

**Accounting; Audit Access.** The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner, Federal or State auditing agencies; or their authorized representatives, shall be afforded reasonable and regular access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other electronic and hard copy data relating to the Contractor's right to payment under and the Contractor's compliance with the terms and conditions of this Contract, and the Contractor shall preserve these for a period of six years after final payment or for such longer period as may be required by law.

If for any reason, any part of this contract, or any resulting contract(s) is involved in litigation, Contractor shall retain all pertinent records for not less than six years or until all litigation is resolved, whichever is longer. The Contractor will provide full access to such documents in preparation for and during any such litigation.

**Periodic and Final Audits.** Owner may, at its discretion, perform periodic audits of the cost of the work and any other reimbursable costs associated with the Project. Owner may conduct a final audit of all Project books and records prior to the Project closeout. The Contractor shall cooperate fully with Owner, Federal or State auditing agencies; or their authorized representatives, in the performance of such audits.

20. **Allowable Costs.** All Project costs must be allowable, allocable, and reasonable. The Contractor must document and maintain records of all Agreement related expenses, including, but not limited to in-kind contributions. The Contractor is responsible for maintaining records adequate to demonstrate that Agreement expenses claimed have been incurred, are reasonable, allowable, and allocable, and comply with cost principles. Upon request, the Contractor is required to provide such records to Owner, State or Federal auditing agencies; or their authorized representatives. Such records are subject to audit. Failure to provide Owner, State or Federal auditing agencies adequate supporting documentation may result in a determination by Owner, State or Federal auditing agencies; or their authorized representatives, that those costs are unallowable.

21. **Covered Relationship.** The Contractor shall notify Owner of the existence of a

‘covered relationship’ as defined by 5 CFR 2635.502(a) & (b) between the Contractor and Owner which creates at a minimum an apparent conflict of interest. The Contractor shall notify Owner of the covered relationship and provide detailed information and justification (including, for example, mitigation measures) as to why the relationship under this Agreement does not create an actual conflict of interest.

## **II. CONTRACTOR'S STANDARD OF CARE**

- A. By execution of this Agreement, the Contractor agrees that:
1. The Contractor 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 Contractor has the capabilities and resources necessary to perform the obligations of this Agreement.
  3. The Contractor 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 Contractor 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 Contractor 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 Contractor);
- B. Contractor represents and warrants to Owner that (1) Contractor 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 Contractor enforceable in accordance with its terms, (3) Contractor 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 Contractor pursuant to this Agreement shall accurately reflect, incorporate and comply with current laws, Federal provisions, 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 Contractor);
- D. All documents prepared by the Contractor pursuant to this Agreement shall accurately reflect existing conditions for the scope of the services to be performed;

- E. The Contractor shall be responsible for any negligent inconsistencies or omissions in the documents prepared by the Contractor pursuant to this Agreement. While Contractor 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 Contractor throughout the period of performance under this Agreement to use due care and perform with professional competence. Contractor will, at no additional cost to Owner, correct any and all errors and omissions in the documents prepared by Contractor;
- 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 documents prepared by the Contractor pursuant to this Agreement. Any review or acceptance by the Owner will not relieve the Contractor of any responsibility for complying with the standard of care set forth herein. The Contractor 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 or warranties provided.

### III. COMPENSATION

The maximum, not-to-exceed, total amount payable under this Agreement is \$\_\_\_\_\_ (the "Maximum Compensation"), for the combination of Basic Services and Direct Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. Contractor 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 Contractor shall perform the Basic Services, directly or through the \_\_\_\_\_ Contractors, for a Not to Exceed amount of \$\_\_\_\_\_.
- B. **Direct Expenses:** The Owner shall make payment to the Contractor for any allowable Direct Expenses, up to a maximum Not to Exceed amount of \$\_\_\_\_\_.

Direct expenses mean actual direct expenditures made by the Contractor that are directly related to the production of the products sold or services rendered under the Agreement. Direct expenses include, but are not limited to, the following: long-distance communications, reproductions; postage and handling of plans, drawings, specifications and other documents; mileage and travel expenses including airfare and lodging; per diem, as applicable; data processing and photographic production techniques and renderings and models, mock-ups; goods purchases by the Contractor to meet the obligations of the Agreement; goods



purchased as requested by Owner and as essential to the normal discharge of Owner’s responsibilities as it is related to Owner’s business under this Agreement. All direct expenses must be reasonable, allowable per this Agreement, and reflect the most efficient and cost-effective option that results in the best value for the Owner.

Direct Expenses will be paid to Contractor, at cost within the allowable maximum amount as stated above.

**Travel Expenses**

Unless otherwise stated in the scope of work, Contractor shall make and pay for their travel arrangements in performance of the Contract. For all contract travel itineraries, Contractor shall obtain pre-approval by OSU prior to execution of travel. Contractor’s travel expenses must be reasonable and economical in order to maximize the contract value. Any air transportation to, from, between, or within a country other than the United States must be in accordance with the Fly America Act (49 USC 40118). Travel expenses are included in the sum not-to-exceed amount indicated in this Contract. Unauthorized travel expenses or those not included in the sum not-to-exceed amount will not be reimbursed. Travel expense receipts are not required with invoices. Travel expenses must be included collectively as a separate line item on invoices. Receipts must be retained by Contractor and available for audit at any time during the term of the contract and for three years from the date of Contract expiration. Contractor’s request for reimbursement of expenses must be submitted on an invoice within 90 days after the date the travel has been completed. Expenses submitted after the 90 days will not be reimbursed.

- C. **Additional Services:** The Owner will compensate the Contractor for Additional Services performed by the Contractor, whether directly or through its Contractors, beyond the scope of the Basic Services described in **Section I.C**, based on 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.

Additional Services	Unit Price


These charges shall also be used to determine amounts owed the Contractor 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 Contractor shall perform its obligations according to this Agreement, unless terminated or suspended, through final Completion of Work.

**V. FEE PAYMENTS**

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

[Pacwaveinvoices@oregonstate.edu](mailto:Pacwaveinvoices@oregonstate.edu)

Owner may accept Contractor format, however Contractor shall include the following in invoices:

- a. The Agreement number;
- b. A description of services performed, including the dates services were performed, all deliverables delivered during the period of the invoices, the rate(s) for services performed, and the total cost of services;
- c. Itemization and explanation of all Direct Expenses, including travel and travel related expenses as a sub item for which Contractor claims payment authorized under this Agreement;
- d. The total amount due and the payment remittance address.
- e. Total percentage of budget utilized to date for:
  - All Basic Services performed, per task as applicable.
  - Direct Expenses, including travel and travel related expenses as a sub item.

Upon Completion of Work under this Agreement and precedent to Owner's obligation to

make final payment, Contractor shall certify, in writing, that the Contractor has completed Contractor's obligations under the Agreement by indicating "Final Billing" on final invoice to Owner.

Contractor 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. Contractor shall submit annual MWESB Reports on June 30 of each year the Agreement is active ("Annual MWESB Report") or with submission of final invoice, as appropriate. The Annual MWESB Reports shall include the total number of subcontracts awarded to MWESB enterprises as Sub-Contractors, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months or over the term of the contract, if less than 12 months.

2. Contractor 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-Contractors and the dollar value of their respective contracts and subcontracts during the course of the fulfillment of the scope of services under this Agreement.

OSU shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance pursuant to ORS 293.462.

**VI. RESERVED**

**VII. RESERVED**

## **VIII. INSURANCE PROVISIONS**

During the term of this Agreement, Contractor 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. GENERAL LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, General Liability Insurance, covering liability for personal injury, bodily injury, death, or damage to property. Such coverage shall have minimum limits of \$2,000,000 per occurrence and \$2,000,000 aggregate. The policy shall include a waiver of subrogation clause and a separation of insured clause (cross liability).

### **B. AUTOMOBILE LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Automobile Liability Insurance insuring against liability for bodily injury, death, or damage to property, arising from the use, loading and unloading of Contractor's owned, hired, and non-owned automobiles. Coverage limits shall be a minimum of \$1,000,000 combined single limit per occurrence. When applicable, Contractor's subcontractor shall add an Explosives endorsement to cover bodily injury or property damage arising out of the explosive or incendiary properties of such materials while in transport.

### **C. PROFESSIONAL LIABILITY INSURANCE.**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance. Coverage limits shall not be less than \$2,000,000 per occurrence.

### **D. EXCESS/UMBRELLA INSURANCE.**

A combination of primary and excess/umbrella liability insurance may be used to meet the required limits of insurance above, as long as the coverage "follows form."

### **E. WORKERS' COMPENSATION.**

Workers' Compensation coverage shall be maintained at all times in accordance with statutory limits and Employer's Liability insurance shall have minimum limits of \$1,000,000 each accident; \$1,000,000 disease-each employee; \$1,000,000 disease-policy limit.

### **F. ADDITIONAL INSURED.**

All liability insurance coverages maintained under this Agreement, with the exception of

Workers' Compensation, shall be endorsed to name OSU, its officers, trustees, agents and employees as additional insureds.

**G. PRIMARY COVERAGE.**

Insurance carried by Contractor under this Agreement shall be the primary coverage and non-contributory to any insurance or self-insurance carried by OSU.

**H. ACCEPTABILITY OF INSURERS.**

Such insurance policy is to be issued by an insurance company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by the Owner.

**I. CERTIFICATES OF INSURANCE.**

As evidence of the insurance coverages required by this Agreement, Certificate(s) of Insurance and any applicable endorsements will be provided, upon request. Endorsements shall accompany the certificate(s) and will specify all of the parties who are Additional Insureds. Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.

**J. NOTICE OF CANCELLATION OR CHANGE.**

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided or canceled except after thirty (30) days prior written notice has been given to the Owner, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to the Owner. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker shall notify the Owner of any cancellation, suspension, non-renewal of any insurance within seven (7) days of receipt of insurers' notification to that effect.

**K. SUB-CONTRACTORS**

If Contractor enters into subcontracts for any services to be provided by Contractor to Owner, Contractor shall require that all sub-contractors maintain insurance meeting all the requirements noted above, except as approved in writing by the Owner.

**IX. INDEMNITY**

**A. Indemnification.** Contractor 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 Contractor or the Contractor's sub-contractors, partners, joint venturers, subcontractors, officers, agents

or employees, and caused by any willful or negligent error, omission, or act of the Contractor, or any person employed by it, or anyone for whose acts the Contractor is legally liable while acting under or pursuant to this Agreement or any supplement or amendment hereto. The Contractor 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 Contractor for the Owner.

**B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Contractor, neither the Contractor nor any attorney engaged by the Contractor 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 Contractor is prohibited from defending the Owner, that Contractor 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 Contractor if the Owner elects to assume its own defense.

## **X. LIMITATION OF LIABILITIES**

Except for any liability of the Contractor arising under or related to the Contractor's failure to perform according to the standard of care or any other liability arising under or related to the Contractor'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. OWNERSHIP AND USE OF WORK PRODUCT OF CONTRACTOR**

**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 Contractor intend that such Work Product be deemed "Work made for Hire", of which the Owner shall be deemed the author. Contractor 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 Contractor shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Contractor 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. Contractor's Use of Work Product.** The Contractor, 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 Contractor 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 Contractor'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 Contractor 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 Contractor for any such liability arising out of the wrongful acts of the Contractor or the Contractor's officers, employees, sub-contractors, subcontractors, or agents.

## **XII. RESERVED**

## **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, Contractor shall not enter into any new Contractor 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, Contractor shall include in any permitted Contractor agreement under this Agreement a requirement that the Contractor be bound by **Sections VIII-INSURANCE, IX-INDEMNITY, X -LIMITATION OF LIABILITIES, XI-OWNERSHIP AND USE OF WORK PRODUCT OF CONTRACTOR, XV-BREACH OF AGREEMENT; REMEDIES, 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 CONTRACTOR, and XXVI-NO WAIVER** of this Agreement.

## **XIV. NO THIRD PARTY BENEFICIARIES**

Owner and Contractor 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. BREACH OF AGREEMENT; REMEDIES**

The Owner, in its sole discretion, may seek remedies under this agreement and as allowed by law, in the event the Contractor 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 Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure.

Should the Owner seek remedy, a notice to cure ("Notice") will be issued to the Contractor. Contractor shall cure such breach, default or failure as described in the notice and within the time period granted in the notice. If Contractor objects to any conditions contained in the Notice, Contractor shall provide a response to the Owner in writing within 3 business days of the delivery of the Notice.

Failure to adhere to the remedy in the notice and cure any conditions as described in the Notice may result in the following, in the Owner's sole discretion: additional Notice to Cure period(s); remedies pursuant to section XV 'Breach of Agreement; Remedies;' termination pursuant to Section XVI. 'Termination of Agreement' or other remedies as described in this Agreement. .

### **Dispute Escalation**

Subject to the terms and conditions set forth in this Agreement, the Parties shall escalate any dispute arising out of or related to a breach of this Agreement, to a senior business leader of each Party, who shall negotiate in good faith to resolve such dispute during the cure period as set forth in the Notice to Cure.

### **Mediation**

Contractor and Owner, in an effort to resolve any conflicts that may arise during the activities to fulfill the Scope under this Agreement or following the Completion of Work under this Agreement, 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. Contractor further agrees to include a similar provision in all agreements with sub-contractors retained for the activities in fulfillment of the Scope under this Agreement, 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.

### **Retainage**

As a result of a breach of Agreement, Owner may reserve as retainage from any outstanding payments, an amount not to exceed 10% of the sum total of the remaining value of the agreement or any invoiced payments following the issuance of the Notice. Owner may reduce amount of retainage on or may eliminate retainage on any remaining payments if under the Owner's discretion, the work is progressing satisfactorily or Contractor has successfully cured any such breach or failures as described in a Notice to Cure. Elimination or reduction in retainage shall be allowed at the Owner's sole discretion and only upon



written application by the Contractor, which application shall include

## **XVI. TERMINATION OF AGREEMENT**

- A. Mutual Agreement.** The Owner and the Contractor, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Contractor, 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 Contractor, 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 Contractor'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. Contractor no longer holds any license or certificate that is required to perform the Services;
  4. Contractor commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, or fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or fails to perform the Services as to endanger Contractor's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured following the full execution of any and all remedies as provided to the Contractor and initiated by the Owner, in the Owner's sole discretion.
- 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 Contractor 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 activities within the Scope under this Agreement and make payments hereunder, Owner may terminate this Agreement, by notice to Contractor, 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 Contractor 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 Contractor for all Services performed prior to the termination date, together with Direct 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 Contractor 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 Contractor shall be responsible to the Owner for the quality of its Services and Work Product through the date of termination.

**XVII. MWESB REPORTING.**

Upon request by OSU, Contractor is required to provide a report on the dollar volume of products provided under the Contract which are purchased by the Contractor from firms which are defined as follows:

Disabled Veteran Enterprise means a business that is at least 51% owned by one or more disabled veterans. A disabled veteran is a veteran of the military, naval, or air service of the United States with a service connected disability who is a resident of the State of Oregon. To qualify as a veteran with a service connected disability, the person must be currently declared by the United States Veterans Administration to be 10% or more disabled as a result of service in the armed forces. The business must be licensed and registered in the state of Oregon.

Disadvantaged Business Enterprise (DBE) is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more

socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

Emerging Small Business, (defined in ORS 200.005), is a licensed and registered business located in Oregon for which the average annual gross receipts for the three previous tax years do not exceed \$3,266,219 for construction and \$1,088,740 for non-construction businesses. The business must have fewer than 29 employees.

Minority Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more minority individuals or, in the case of any publicly owned business, at least 51% of the stock of which is owned by minority individuals. Minority individuals are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. The business must be licensed and registered in the state of Oregon.

Women Business Enterprise, (defined in ORS 200.005), is a business which is at least 51% owned by one or more women. The woman or women must have managerial and operational control over all aspects of the business. The one or more women owner(s) must have made a real and substantial contribution of capital or expertise to the business, which is commensurate with their ownership interest. The business must be licensed and registered in the state of Oregon.

This report shall be in consolidated form showing all such purchases under the Contract. This report will be provided on an annual basis, or as requested in Agreement, to OSU. This report will provide a cumulative figure that shows year to date amounts for each supplier ownership category.

## **XVIII. DISCLOSURE OF SOCIAL SECURITY NUMBER**

Contractor must provide Contractor's Social Security number unless Contractor 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 Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor 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. Contractor shall demonstrate its legal capacity to perform the Services under

this Agreement in the State of Oregon prior to entering into this Agreement.

## **XX. COMPLIANCE WITH APPLICABLE LAW**

A. Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor 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 Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of this Agreement. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor 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 Contractor 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 Contractor or Contractor'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.

a. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable standards and policies of OSU, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.

b. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-

0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

**B. FEDERALLY REQUIRED PROVISIONS.**

Work under this Agreement is federally funded. Contractor shall comply with, and administer and monitor all such Subcontracts, or other commitments it enters into under this Agreement in accordance with the applicable federal requirements including but not limited to cost principles and the following applicable federal administrative requirements:

- a. **ANTI-KICKBACK ACT (40 U.S.C. 3145).** Contractor certifies compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to OSU.
- b. **BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352).** Contractors that apply or bid for a contract of \$100,000 or more, must file the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must require any subcontractor who applies or bids for subcontract of \$100,000 or more to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
- c. **CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED.** If this Contract provides for payments in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- d. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708).** For all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. **DEBARMENT AND SUSPENSION EXECUTIVE ORDERS 12549 AND 12689.** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Before a contract award of \$25,000 or more is made, verification is required that the intended awarded party is not on the government-wide exclusions in the SAM. Required verification must be made by checking the SAM Exclusions. Compliance with Subpart C of 2 CFR Part 180 by checking that the intended awarded party is not listed on the SAM Exclusions, before making a contract award, will flow down from tier to tier for contract awards of \$25,000 or more. Contractor must include a term or condition similar to this term, in any subsequent lower tier contract awards of \$25,000 or more. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.
- f. **ENERGY POLICY AND CONSERVATION ACT.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- g. **EQUAL EMPLOYMENT OPPORTUNITY.** Contractor must comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375,

“Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

- h. **RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT.** If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- i. Buy American and Balance of Payments Program CFR § 252.225-7001.

### **C. PUBLIC RECORDS LAW NOTICE.**

**OSU advises Contractor that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.311-192.355).**

### **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 Contractor 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. **CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

### **XXII. INDEPENDENT CONTRACTOR STATUS OF CONTRACTOR**

**A. Contractor as Independent Contractor.** Contractor 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 Contractor’s performance. Contractor is responsible for determining the appropriate means and manner of performing the Services.

- B. Agency Status.** Contractor 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.** Contractor 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 Contractor under this Agreement. Contractor 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 Contractor certifies that it is not currently employed by the federal government.

### **XXIII. GOVERNMENT EMPLOYMENT STATUS.**

Contractor certifies that either (a) it is not currently employed by OSU or the federal government; or (b) if Contractor is so employed, Contractor has fully disclosed to OSU in writing such employment status, is in full compliance with any statutes, regulation, and OSU or the federal government policies regarding employee contracting, and agrees to indemnify and hold harmless OSU for any failure by Contractor to comply with such statutes, regulations, or policies.

### **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 Contractor 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 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 Contractor and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

**Contractor:**

**Address:**

**Owner:**

**Address:**

**With a Copy to:**

**With a Copy to:**

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

**XXVIII. CONFIDENTIALITY.**

Contractor 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 Contractor from establishing a claim or defense in an adjudicatory proceeding. Contractor shall require the sub-contractors to execute similar agreements to maintain the confidentiality of information of Owner.

**XXIX. CONFLICT OF INTEREST.**

Except with Owner's prior written consent, Contractor shall not engage in any activity, or accept any employment, interest or contribution that would or would reasonably appear to compromise Contractor'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** Contractor's Standard of Care, **IX** Indemnity, **X** Limitation of Liabilities, **XI** Ownership and Use of Work Product of Contractor, **XVI** Termination of Agreement, **XXI** Governing Law; Venue; Consent to Jurisdiction, **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 ON THE SUBJECT MATTER HEROF CONSISTS IN ITS ENTIRETY OF THE FOLLOWING IN DESCENDING ORDER: AGREEMENT AND ANY ATTACHED EXHIBITS AND ADDENDA, ANY SOLICITATION DOCUMENTS, AND ANY RESPONSE BY A SUCCESSFUL PROPOSER TO ANY SUCH SOLICITATION DOCUMENTS. 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. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONTRACTOR 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.

**Contractor**

By:

Title:

Date:

**Oregon State University, Owner**

By:

Title: Michael J. Green, Vice President for  
Finance and Administration

Date:

Federal Tax ID: \_\_\_\_\_

**EXHIBIT 1 – DESCRIPTION OF SERVICES**