

**CONTRACT FOR THE PURCHASE OF
PISTON CORING DEPLOYMENT AND RECOVERY SYSTEM (PCDR)
FOR
REGIONAL CLASS RESEARCH VESSELS
CONTRACT NO. 124399875**

This Contract is between Oregon State University for its College of Earth, Ocean, and Atmospheric Sciences ("OSU"), and [Contractor's name] ("Contractor").

WHEREAS, OSU competitively solicited for the goods and services outlined in this Contract under Request for Proposal number P124399875DLN entitled Piston Coring Deployment and Recovery System for the Regional Class Research Vessels and Contractor was selected as the Proposer best able to provide the goods and services; and

WHEREAS, Contractor understands the requirements for the goods and services outlined in this Contract, and is willing and able to provide, in accordance with the terms of this Contract, the goods and services;

NOW, THEREFORE, OSU and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective on the date of last signature and expires on the later of [insert date] or the date all warranties have expired or the date Contractor has completed all services in accordance with the requirements of this Contract, and the services have been accepted by OSU.

B. TERMINATION.

This Contract may be terminated at any time by mutual consent of both parties or by OSU upon thirty (30) days' written notice. In addition, OSU may terminate this Contract at any time by written notice to Contractor if (a) Federal or state statutes, regulations or guidelines are modified or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract; (b) any license or certificate required by law or regulation to be held by the Contractor to provide the goods and services required by this Contract is for any reason denied, revoked, or not renewed; or (c) OSU fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by OSU's budget and OSU determines, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, that it is necessary to terminate the Contract, or (d) if the OSU program for which this Contract was executed is abolished.

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other Section is without prejudice to OSU's other rights and remedies.

C. **REMEDIES FOR CONTRACTOR'S DEFAULT.**

In the event Contractor is in default (which includes without limitation, incomplete services), OSU may, at its option, pursue any or all of the remedies available to it under this Contract and at law or in equity, including, but not limited to: (a) rejection of the services, (b) requiring Contractor to correct any defects without charge, (c) negotiation with Contractor to sell the services to OSU at a reduced price, (d) termination of the Contract, (e) withholding all moneys due for the services Contractor has failed to deliver within any scheduled completion dates or has performed inadequately or defectively, (f) initiation of an action or proceedings for damages, specific performance, or declaratory or injunctive relief, or (g) exercise of its right of set off. These remedies are cumulative to the extent the remedies are not inconsistent, and OSU may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

2. **REQUIRED GOODS, SERVICES, AND DELIVERY SCHEDULE.**

Contractor shall deliver to OSU the following goods and services for the prices specified in this Section.

A. **GOODS.**

Piston Coring Deployment and Recovery System (PCDR) for the Regional Class Research Vessels (RCRVs) as detailed in Attachment A, Specifications, Attachment B Drawings, and Attachment C, Design and Construction Schedule.

B. **SERVICES INCIDENTAL TO GOODS.**

Required services and materials, including design engineering, construction, delivery, labor, materials, machinery, components, fabrications, equipment, training or other incidentals necessary or convenient to the successful completion of the project and the carrying out of all required duties and obligations.

C. **TRAINING:** Contractor shall provide eight (8) hours of shoreside group training and a one day trip for at sea trials for the individuals identified by OSU in the operation, adjustment, repair and maintenance of goods delivered under this Contract.

D. **DELIVERY.**

Contractor shall deliver goods Delivered Duty Paid (DDP) Incoterm rules. Responsibility and liability for loss or damage remain with the Contractor until final inspection and acceptance, when responsibility passes to OSU except as to latent defects, fraud and Contractor's warranty obligations.

a. **LOCATION:** Contractor shall deliver goods to OSU and shall perform services, if any, at the following addresses:

Oregon State University
Ship Operations
2020 SE Marine Science Drive
Newport, OR 97365

b. **DATE:** Contractor shall deliver goods and services in accordance with Attachment C, Design and Construction Schedule.

- c. *TRAINING*: OSU will issue a delivery schedule to Contractor for training that will specify the training date, time and location.
- E. **NECESSARY COMPONENTS.**
Unless specified otherwise, Contractor shall include all components, hardware and parts necessary for complete and proper assembly, installation and operation of goods.
- F. **NEW AND UNUSED GOODS.**
Unless specified otherwise, Contractor shall deliver goods that are new, unused and produced from current production inventory. Contractor shall provide goods manufactured from only those components that the manufacturer offers in the manufacturer's current parts catalog for goods and carry full manufacturer warranties.
- G. **WARRANTIES.**
Contractor warrants all goods delivered to be free from defects in labor, material, and manufacture and to be in compliance with specifications in the Solicitation Document. All implied or expressed warranty provisions of the Uniform Commercial Code, at ORS Chapter 72, are incorporated into this Contract. All warranties run to OSU. Upon expiration of the Contractor provided warranty period, OSU will be assigned and possess all remaining warranties and guarantees Contractor originally obtained from manufacturers, vendors, and subcontractors and rights and privileges thereto. Contractor shall execute such further documents and instruments necessary to fully vest such rights in OSU. OSU reserves the right, in its sole discretion, to further assign warranties to another entity.
- H. **NON-COMPLIANCE.**
If any goods or component parts are recalled by a regulatory body or the manufacturer, or discovered by Contractor not to comply with applicable regulatory standards or the Specifications, Contractor shall immediately notify OSU of the recall or non-compliance, and shall provide copies of the recall notice or notice of non-compliance, as applicable, and all other supporting documentation for the recall or non-compliance determination. OSU may elect to (a) reject goods in whole or in part, or (b) revoke its acceptance of goods in whole or in part. If OSU rejects goods or revokes its acceptance of goods, Contractor shall remove the particular goods from OSU's possession at no cost to OSU and shall reimburse OSU for all payments made for those goods.
- I. **EFFECTIVE COMMUNICATIONS.**
To ensure effective communications, Contractor designates **[NAME]**, as Contractor's primary point of contact in connection with the Services. OSU designates their **[TITLE]**), **[NAME]**, as OSU's primary point of contact in connection with Services.
- J. **ACCEPTANCE OF GOODS AND SERVICES.**
Goods and services furnished under this Contract are subject to acceptance by OSU. If OSU finds goods and services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the goods or services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may pursue any of the remedies for Contractor's default detailed in that

Section above.

3. COMPENSATION:

The total amount available for payment to Contractor and for authorized reimbursement to Contractor is Not to Exceed \$[insert total amount of contract].

A. METHOD OF PAYMENT FOR SERVICES.

OSU shall pay Contractor the Firm Fixed Price (FFP) \$[insert FFP] for providing all goods and completing all services required under this Contract.

B. BASIS OF PAYMENT FOR SERVICES.

OSU shall pay Contractor Milestone progress payments as a percent of the Contract FFP, due for goods and services delivered and accepted by OSU at the following Milestones (reference Attachment C), after OSU's approval of Contractor's invoice to OSU for those goods and services:

- a. Milestone 1 - Description % of Contract FFP \$ _____
 - b. Milestone 2 - Description % of Contract FFP \$ _____
 - c. Milestone 3 - Description % of Contract FFP \$ _____
 - d. Milestone 4 - Description % of Contract FFP \$ _____
- Contract Total Firm Fixed Price \$ _____

C. EXPENSE REIMBURSEMENT.

OSU will not reimburse Contractor for any expenses under this Contract.

D. INVOICES AND PAYMENT TO CONTRACTOR.

Contractor shall send invoices to OSU for goods and services delivered and accepted by OSU. Contractor shall include in each invoice:

- a. The Contract number or Purchase Order number;
- b. The Milestone completed, the goods or services delivered, the dates goods or services were delivered, and the price;
- c. The total amount due and the payment remittance address.

Contractor shall send all invoices to OSU at the College of Earth, Ocean and Atmospheric Sciences at invoices@coas.oregonstate.edu with a copy to the Department Administrator.

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.

4. INSURANCE:

A. Without limiting the Contractor's indemnification, the Parties agree that the Contractor

must purchase at Contractor's own expense and maintain in force at all times during the performance of Services under this Contract the policies of insurance as set forth herein. Where the Contract shows specific limits, the Parties understand that these are the minimum acceptable limits. If the Contractor's policy contains higher limits, OSU is entitled to coverage to the extent of such higher limits. Insurance carried by the Contractor under this Contract shall be primary and non-contributory.

- B. Certificates of Insurance. As evidence of the insurance coverages required by this Contract, the Contractor must furnish Certificate(s) of Insurance to the OSU Contract Officer prior to execution of the Contract. Such evidence, which the Contractor's insurance broker or agent executes and issues to OSU, must consist of a certificate of insurance or the policy declaration page with required endorsements attached thereto. The Certificate(s) will specify all of the parties who are Additional Insureds (or Loss Payees). Insurance coverages required under this Contract must be obtained from acceptable insurance companies or entities with a minimum A.M. Best rating of A-VIII. Contractor must be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.
- C. Notice of Cancellation or Change. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled, or materially changed except after 30 Days prior written notice has been given to OSU, except when cancellation is for non-payment of premium, then 10 Days prior notice may be given. Such notice must be sent directly to OSU. If any insurance company refuses to provide the required notice, the Contractor or its insurance broker must notify OSU of any cancellation, suspension, non-renewal of any insurance within 7 Days of receipt of insurers' notification to that effect.
- D. Each insurance policy required by this Contract must be endorsed as primary and is not additional to or contributing with any other liability or property insurance that OSU carries through self-insurance or otherwise, and must contain a "cross liability" or "severability of interest" clause or endorsement.
- E. NSF, OSU and its officers, board members, employees, and agents must be included as additional insured on a primary and noncontributory basis on all insurance policies required under this Contract except the workers' compensation insurance and professional liability insurance. Contractor hereby grants to OSU and NSF a waiver of any right to subrogation which any insurer of said Contractor may acquire against OSU or NSF by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not OSU or NSF has received a waiver of subrogation endorsement from the insurer.
- F. If Contractor enters into subcontracts for any Services to be provided by Contractor to OSU, Contractor shall require that all subcontractors maintain insurance meeting all the requirements stated in Section 4. Insurance types and minimum limits for individual subcontractors may be subject to modification with Approval of the Transition to Operations Coordinator and the Contract Officer.
- G. OSU's acceptance of deficient evidence does not constitute a waiver of Contract requirements. When an insurance broker or agent for the Contractor issues a

certificate of insurance, it must contain the following broker/agent certification, signed by a principal of the broker/agent:

“This is to certify that the policies described herein comply with all aspects of the insurance requirements of the Contract.”

The Contractor’s failure to furnish satisfactory evidence of insurance is grounds for termination of this Contract for default. The following coverage and evidence thereof is required:

- a. **GENERAL LIABILITY INSURANCE.**
Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. OSU and its trustees, officers, employees, and agents shall be endorsed as additional insured in said insurance policy to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- b. **AUTOMOBILE LIABILITY INSURANCE.**
Automobile Liability Insurance covering all owned, hired, and non-owned vehicles. This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance. Coverage limits shall be a minimum of \$2,000,000 combined single limit per occurrence.
- c. **EXCESS/UMBRELLA LIABILITY.**
A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.
- d. **PROFESSIONAL INSURANCE**
Professional Liability Insurance with a minimum limit of \$2,000,000 per claim and \$4,000,000 aggregate. If the coverage is written on a claims-made basis, the Contractor/Consultant warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed.
- e. **PROPERTY INSURANCE.**
Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is stored at OSU.
- f. **WORKERS’ COMPENSATION.**
The Contractor must provide and maintain, for all employees of the Contractor engaged in providing Services under this Contract, workers’ compensation insurance as required by the laws where an employee engages in Services. The Contractor is responsible to ensure that each subcontractor who directly or indirectly provides Services under this Contract has workers’ compensation insurance for subcontractor’s subject employees. This coverage must include statutory coverage for states in which employees are engaging in Services and employer’s liability protection is not less than \$1,000,000 each accident; \$1,000,000 each employee; and \$1,000,000 each disease. An endorsement

providing a waiver of subrogation in favor of OSU and NSF is required.

5. INDEMNIFICATION:

A. INDEMNITY.

- a. Contractor shall indemnify, hold harmless and, not excluding OSU's right to participate, defend OSU and its officers, board members, employees, agents and other representatives from and against all liabilities, claims, actions, damages, losses, or expenses, including without limitation reasonable attorneys' fees and costs, that: (i) are caused or alleged to be caused, in whole or in part, by the negligence, omissions, wrongful acts or willful misconduct of the Contractor or any of its officers, directors, agents, employees, or subcontractors, or (ii) alleging Contractor's services, information or materials supplied by Contractor to OSU under this Contract, or OSU's use of any of the foregoing infringes on any patent, copyright, trade secret, trademark, or other proprietary right of a third party.

B. DEFENSE.

- a. Contractor shall have control of the defense with counsel reasonably acceptable to OSU, except that: (i) OSU may join the defense with its own counsel and at its own expense if OSU determines there is a conflict of interest or there is an important government principle at issue, and (ii) OSU'S consent is required for any settlement that requires OSU to pay any money, does not release OSU from all liability from the claim, or adversely affects OSU's interest.

6. LAWS AND POLICIES:

A. APPLICABLE LAW; JURISDICTION AND VENUE.

- a. The laws of the State of Oregon (without giving effect to its conflict of laws principles or laws) govern all matters arising out of or relating to the Contract, including, without limitation, its validity, interpretation, construction, performance or enforcement. Any party bringing a legal action or proceeding against the other party arising out of or relating to this Contract shall bring the legal action or proceeding in the Circuit Court of Oregon for Benton County.
- b. Notwithstanding paragraph (a), if a legal action or proceeding must be brought in a federal forum, the party shall bring the legal action or proceeding in the United States District Court for the District of Oregon. This paragraph does not authorize Contractor to bring a legal action or proceeding against OSU in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity. This paragraph is also not a waiver by OSU of any form of immunity, including without limitation sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.
- c. Except as set forth in paragraph (b), the parties consent to in personam jurisdiction in the above courts and waive any objection to venue and any objection that the forum is inconvenient.

B. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.

- 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.

C. RESPONSIBILITY FOR OSU PROPERTY

The Contractor assumes full responsibility for and must indemnify OSU and its officers, board members, employees, agents and other representatives against any and all loss or damage of whatsoever kind and nature to any and all OSU property, including any Owner Furnished Equipment, supplies, accessories, or parts furnished, while in the Contractor's custody and care for storage, repairs, or services to be performed under the terms of this Contract.

D. FEDERALLY REQUIRED PROVISIONS.

a. 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."

b. NON-DISCRIMINATION CERTIFICATION

Instructions for Nondiscrimination Certification

1. In accordance with National Science Foundation (NSF) policy, by signing the Contract, the Contractor is providing the requisite Certification of Compliance

with NSF Nondiscrimination Regulations and Policies. This Certification sets forth the nondiscrimination obligations with which all Contractors must comply. These obligations also apply to subcontractors under the Contract. The Contractor therefore, shall obtain the NSF Nondiscrimination Certification from each organization that applies to be, or serves as a subcontractor under the Contract (for other than the provision of commercially available supplies, materials, equipment, or general support services) prior to entering into the subcontractor arrangement.

2. The Contractor shall provide immediate notice to OSU if at any time the Contractor learns that its certification was erroneous when submitted, or has become erroneous by reason of changed circumstances.
3. Certification of Compliance with National Science Foundation Nondiscrimination Regulations and Policies:

By signing the Contract, the Contractor hereby certifies that the Contractor will comply with Title VI of the Civil Rights Act of 1964 (42 USC § 2000d et seq), Title IX of the Education Amendments of 1972 (20 USC §§ 1681 et seq.), the Rehabilitation Act of 1973 (29 USC § 794), the Age Discrimination Act of 1975 (42 USC §§ 6101 et seq) Equal Employment Opportunity (E.O. 11246) Limited English Proficiency (LEP) [E.O. 13166] and all regulations and policies issued by NSF pursuant to these statutes.

To that end, in accordance with the above-referenced non-discrimination statutes, NSF's implementing regulations and policies and OSU's policies on non-discrimination, no person in the United States shall, on the ground of race, color, national origin, sex, disability, age, gender identity or expression, genetic information, marital status, religion, sexual orientation, or veteran status be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any NSF Federally funded program or activity for which the Contractor receives a contract award or Federal financial assistance from NSF or OSU; and HEREBY CERTIFIES THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Contractor by NSF, this Certification shall obligate the Contractor, or in the case of any transfer of such property, the transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this Certification shall obligate the Contractor for the period during which it retains ownership or possession of the property. In all other cases, this Certification shall obligate the Contractor for the duration of the NSF Federally Funded contract award or the period during which the Federal financial assistance is extended to it by NSF.

THIS CERTIFICATION is given in consideration of and for the purpose of obtaining any and all Federal grants, cooperative agreements, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Contractor by NSF, including installment payments

after such date on account of applications for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees the award of this contract was made in reliance on the representations and agreements made in this Certification, and that the United States shall have the right to seek judicial enforcement of this Certification. This Certification is binding on the Contractor, its successors, transferees, and assignees.

c. **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

1. Pursuant to OSU Standard 03-010, Section 5.8.1 and OSU Policy 316-001, the undersigned hereby certifies that they have not discriminated against and will not discriminate against Minority, Women, Service-Disabled Veterans or Emerging Small businesses in obtaining any required subcontracts.
2. The Contractor agrees, in the letting of subcontracts, to take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

d. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

To the extent applicable, 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. CLEAN AIR AND WATER CERTIFICATION

This provision is applicable only if the Contract exceeds \$150,000, or a facility to be used has been the subject of a conviction under the Clean Air Act [42 U.S.C. § 7413(c)(1)] or the Clean Water Act [33 U.S.C. § 1319(c)] and is listed by the Environmental Protection Agency (EPA), or the award is not otherwise exempt.

The Contractor agrees as follows:

1. To 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).
2. To report violations to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
3. To comply with all the requirements of Section 114 of the Clean Air Act [42 U.S.C. § 7414] and Section 308 of the Clean Water Act [33 U.S.C. § 1318], respectively, relating to inspection, monitoring, entry, reports and information, as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Clean Water Act, respectively, and all regulations and guidelines issued thereunder before the award of a contract.
4. That no portion of the work required by the award will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date that the award was awarded unless and until EPA eliminates the name of such facility or facilities from such listing.
5. To use its best efforts to comply with clean air standards and clean water standards at the facility in which the award is being performed.
6. To insert the substance of the provisions of this Section into any nonexempt subcontract.

f. CERTIFICATION REGARDING LOBBYING

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or propose for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal 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. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection

with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

g. ANTI-KICKBACK PROVISIONS

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.

h. 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).

i. CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

1. 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 in excess of \$25,000 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 in excess of \$25,000. The inclusion of a term or condition similar to this term, D.i., is required for any subsequent lower tier contract awards in excess of \$25,000.

2. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.
3. Contractor agrees they will require the inclusion of a similar term or condition, including the certification below, in any subsequent lower tier contract awards in excess of \$25,000.
4. The Contractor hereby certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from a covered transaction by any Federal department or agency;
 - (b) Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
 - (d) Have not within a three-year period preceding this Contract had one or more public transactions (Federal, State or local) terminated for cause or default.
5. Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall include an explanation with this Contract.

j. **PROMPT NOTIFICATION OF CLAIMS**

Contractor must give the Contract Officer immediate notice in writing of any legal action or suit filed, and prompt notice of any claim made against Contractor by any contractual arrangement which in the opinion of Contractor may result in litigation, related in any way to this Contract.

k. ACKNOWLEDGEMENT

1. Acknowledgment of Support

The Contractor must acknowledge NSF support and be in accordance with the guidance given at <https://www.nsf.gov/policies/logos.jsp>:

- (a) in any publication (including presentations and World Wide Web sites) of any material based on or developed under this Contract in the following statement:

"This material is based upon work supported by NSF's project, Construction of Up to Three Regional Class Research Vessels (RCRVs) - Phases III & IV, which is fully funded by the National Science Foundation." [Use NSF Logo if graphical and NSF award number OCE-1333564 if a publication or other written material]

- (b) is orally acknowledged during all media interviews including, but not limited to, social media, radio, television and film.

- (c) is included on any signs identifying the RCRV project at its location. The National Science Foundation emblem and name shall be prominently displayed on RCRV project facilities and equipment. The emblem and name shall be one inch or larger in size than those of any non-NSF support source.

2. Public Relations Activities and News Releases:

- (a) The Contractor must consult with OSU prior to any significant public relations activities or events concerning the NSF-supported activities under the Contract; including providing an advance copy of any news or press releases concerning NSF-supported activities prior to issuance.

- (b) The Contractor must provide timely notification to OSU of any substantive inquiries made by the media or Congress.

3. Disclaimer

The Contractor must include the following disclaimer in every publication or printed material (Including World Wide Web pages) based on or developed under this Contract, except scientific articles or papers appearing in scientific, technical or professional journals:

"The Construction of Up to Three Regional Class Research Vessels (RCRVs) - Phases III & IV project is supported by the National Science Foundation. Any opinions, findings and conclusions or recommendations expressed in this material do not necessarily reflect the views of the National Science Foundation."

4. Copies

The Contractor must provide OSU access to, either electronically or in paper form, a copy of every publication of material based on or developed under

this Contract, clearly labeled with the Contract number and other appropriate identifying information, promptly after publication.

5. Signage and Markings

Facility signage and markings must be in accordance with NSF Logo and Visual Identity Guidelines at <https://www.nsf.gov/policies/logos.jsp>. The Contractor must consult with Institution on the cost, timeline, design and placement of any signage using the NSF logo or name on any building or site, particularly in instances where interagency or international partnerships exist.

6. Naming and Renaming NSF Facilities

Facility naming and renaming must be in accordance with NSF Logo and Visual Identity Guidelines at <https://www.nsf.gov/policies/logos.jsp>. Contractors with new facilities and facilities that are being considered for renaming should contact Institution for more information before proceeding.

I. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

1. If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of the Contract, the Contractor must immediately give notice, including all relevant information, to the Transition to Operations Coordinator or the Contract Officer.

2. The Contractor agrees to insert the substance of this provision 6.D.I in any subcontract to which a labor dispute may delay the timely performance of the Contract. Each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Contractor, as the case may be, providing all relevant information concerning the dispute.

m. COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

Pursuant to 2 CFR 200.216 and 2 CFR 200.471, which implement Section 889 of the NDAA (Public Law 115-232), OSU is prohibited from obligating or expending grant funds to procure equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or critical technology as part of any system.

Contractor represents and warrants that in performing under this contract it will not provide or use covered telecommunications equipment or services as defined by Public Law 115-232, Section 889(f)

<https://www.congress.gov/115/plaws/publ232/PLAW-115publ232.pdf>.

n. DOMESTIC PREFERENCES

1. As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Contract award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this Section must be

included in all subcontracts including all contracts and purchase orders for work or products under this award.

2. For purposes of this Section:

(a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

E. PUBLIC RECORDS LAW NOTICE.

OSU advises Contractor that information OSU receives may be subject to public inspection disclosure under Oregon Public Records Law (ORS 192.311-192.431) and the Freedom of Information Act (FOIA).

F. CONFIDENTIALITY AND NON-DISCLOSURE.

a. Confidential Information. The Parties acknowledge that each Party and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to the disclosing Party or the disclosing Party's clients. Any and all information of any form obtained by Party or its employees or agents in the performance of this Contract shall be deemed to be confidential information of the disclosing Party ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by the receiving Party shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by the receiving Party) publicly known; (b) is furnished by the disclosing Party to others without restrictions similar to those imposed by this Contract; (c) is rightfully in the receiving Party's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than disclosing Party without the obligation of confidentiality and through no violation of confidentiality obligation, (e) is disclosed with the written consent of the disclosing Party, or; (f) is independently developed by employees or agents of the receiving Party who can be shown to have had no access to the Confidential Information of the disclosing Party.

b. Non-Disclosure. The receiving Party agrees to hold Confidential Information in strict confidence, using at least the same degree of care that the receiving Party uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of the Services hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. The receiving Party shall use commercially reasonable efforts to assist the disclosing Party in identifying and

preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, the receiving Party shall advise the disclosing Party immediately in the event the receiving Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and the receiving Party will at its expense cooperate with the disclosing Party in seeking injunctive or other equitable relief in the name of the disclosing Party or the receiving Party against any such person. The receiving Party agrees that, except as directed by the disclosing Party, the receiving Party will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at the disclosing Party's request, the receiving Party will turn over to the disclosing Party all documents, papers, and other matter in the receiving Party's possession that embody Confidential Information. Notwithstanding anything in this Contract to the contrary, OSU's obligations are subject to the Oregon Public Records Laws (ORS 192.410 et. seq.), FOIA and NSF requirements. Each Party may disclose and retain copies of Confidential Information as required by law or to comply with federal grant or auditing requirements.

- c. Identity Theft. In the performance of the Contract, Contractor may have possession or access to documents, records or items that contain "Personal Information" as that term is used in ORS 646A.602(11), including Social Security numbers. Personal Information is a type of Confidential Information that is highly sensitive and subject to additional protection. Therefore, prior to the receipt of, and during the period in which Contractor has possession of or access to, any Personal Information, Contractor shall have in place, a formal written information security program that provides safeguards to protect Personal Information from loss, theft, and disclosure to unauthorized persons, as required by the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628.
- d. Contractor shall, at a minimum, implement such physical and other security measures as are necessary to; (i) ensure the security and confidentiality of the OSU Confidential Information; (ii) protect against any threats or hazards to the security and integrity of the OSU Confidential Information; and (iii) protect against any unauthorized access to or use of the OSU Confidential Information.
 1. In addition to and without limiting the generality of Subsections F. a. and F. b., Contractor shall not breach or permit breach of the security of any Personal Information that is contained in any document, record, compilation of information, or other item to which Contractor receives access, possession, custody or control under this Contract. Contractor shall not disclose, or otherwise permit access of any nature, to any unauthorized person, of any such Personal Information. Contractor shall not use, distribute, or dispose of any Personal Information other than expressly permitted by OSU, required by applicable law, or required by an order of a tribunal having competent jurisdiction.
 2. Contractor shall report to OSU, as promptly as possible, any breach of security, use, disclosure, theft, loss, or other unauthorized access of any document, record, compilation of information or other item that contains Personal

Information to which the Contractor receives access, possession, custody or control in the performance of this Contract.

3. Contractor shall ensure the compliance of its employees and agents with this Section.

G. SECURITY POLICIES/ NON-DISCLOSURE AGREEMENT.

Upon OSU request Contractor shall comply with OSU's security policies. Contractor shall upon OSU's request provide a written non-disclosure agreement and obtain such from Contractor's employees or subcontractors performing Services under this Contract.

H. INJUNCTIVE RELIEF.

Contractor acknowledges that breach of Sections F and G, including disclosure of any Confidential Information, will give rise to irreparable injury to OSU that is inadequately compensable in damages. Accordingly, OSU may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of OSU and are reasonable in scope and content.

I. PUBLICITY.

Contractor agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of OSU.

J. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements. However, if the state in which the Contract is executed is under a state-approved OSHA plan, then for Services supplied under this Contract, Contractor shall comply with that state plan and with all safety and health requirements, detailed in industry and generally accepted standards, including those of the states' Workers' Compensation Divisions in the states in which the Contractor does business Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR ch. 437, for the products subject to this provision.

K. EXPORT CONTROL.

Upon termination of Contract, Contractor shall return or destroy all data or information received from OSU upon, and in accordance with, direction from OSU. Contractor shall not retain copies of any data or information received from OSU once OSU has directed Contractor as to how such information shall be returned to OSU or destroyed. Furthermore, Contractor shall ensure that Contractor disposes of any and all data or information received from OSU in an OSU-approved manner that maintains the confidentiality of the contents of such records (e.g. shredding paper records, erasing and reformatting hard drives, erasing or physically destroying any portable electronic devices).

Contractor acknowledges that OSU has students and faculty who are foreign nationals

who may work with the Services, product or technology received from Contractor pursuant to this Contract. Contractor represents that it has informed OSU in writing, prior to executing this Contract if it is providing OSU any product or technology subject to the U.S. Export Administration Act of 1979, the Export Administration Regulations and the International Traffic in Arms Regulations, and if so, under what Commerce Control List number(s) or U.S. Munitions List number(s) it is controlled.

L. FIREARMS POLICY.

OSU has adopted a policy that prohibits Contractor and Contractor's employees, agents, and subcontractors from possessing firearms on OSU property or in OSU controlled facilities.

M. PARKING.

Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU's Office of Transit & Parking Services. Parking will be provided at RCRV Project Field Office in Houma, LA in accordance with the Shipyard Contract.

N. SEXUAL HARASSMENT POLICY.

OSU has policies that prohibit sexual harassment of members of the OSU community and in keeping with those policies Contractor and Contractor's employees, agents, and subcontractors are prohibited from engaging in sexual harassment of members of the OSU community.

O. DRUG-FREE WORKPLACE.

The Contractor certifies that it will or will continue to provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- b. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Contractor's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs, and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (a);
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Contract, the employee will:

1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace, no later than 5 Days after such conviction;
- e. Notifying OSU in writing within 10 Days after receiving notice under subparagraph 6, O, d, 2 from an employee or otherwise receiving actual notice of such conviction;
- f. Taking one of the following actions, within 30 Days of receiving notice under subparagraph 6, O, d, 2 with respect to any employee who is so convicted;
1. Taking appropriate personnel action against such an employee, up to and including termination; consistent with the requirements of the Rehabilitation ACT of 1973, as amended; or,
 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

P. TOBACCO FREE ENVIRONMENT.

OSU prohibits Contractor and Contractor's employees, agents, subcontractors from use of tobacco on the OSU campus or other OSU owned or controlled property. The tobacco prohibition includes all indoor and outdoor spaces.

Q. WEBSITE ACCESSIBILITY.

If Contractor is designing or developing web page(s) for OSU under this Contract, Contractor shall design and develop (as applicable) the web page(s) in conformance with OSU's Policy on Information Technology Accessibility available at: <http://oregonstate.edu/accessibility/ITpolicy>.

R. RESTRICTIONS ON CONTRACTORS SALES TO THE GOVERNMENT.

- a. Neither this Contract nor any action or inaction of the OSU will be construed as restricting the Contractor's sales of any product or service directly to the federal government. This prohibition on restrictions does not preclude OSU, the NSF, or the Contractor from asserting rights that are otherwise authorized by law or regulation.
- b. The Contractor agrees to incorporate the substance of this provision, including this paragraph (b), in all subcontracts under this Contract.

7. GENERAL TERMS AND CONDITIONS:

A. ORDER OF PRECEDENCE.

- a. To the extent applicable, this Contract is subject to the clauses, terms, and conditions (including those incorporated by reference) of Cooperative Agreement

OCE-1333564, including all Cooperative Support Agreements issued thereunder, "Cooperative Agreement". Cooperative Agreement OCE-1333564 is available upon request to OSU. If Contractor has a question regarding a potential conflict of provisions, it should be submitted to the Contract Officer for resolution.

- b. The Contract documents are listed in descending order of precedence as follows:
 - 1. To the extent applicable, Cooperative Agreement OCE-1333564 including all Cooperative Support Agreements issued thereunder.
 - 2. Contract, minus Attachments
 - 3. Attachment A - Specifications
 - 4. Attachment B - Drawings
 - 5. Attachment C - Design and Construction Schedule
- c. In the event of a conflict, all the terms and conditions of this Contract, its attachments, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

B. NO THIRD PARTY BENEFICIARY.

OSU and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third parties.

C. ASSIGNMENT/SUBCONTRACT/DELEGATION.

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties, whether by merger, consolidation, dissolution, operation of law or any other manner, without the prior written approval of OSU is prohibited. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU's consent for Contractor to subcontract or delegate obligations does not relieve Contractor of any of its performance obligations. Notwithstanding anything to the contrary in this Section, OSU may assign this Contract to a third party if required by NSF. The following provisions apply to the Contractor's award and administration of subcontracts:

- a. Contractor must make all subcontracts, or other commitments, regardless of value, in its own name and must not bind or purport to bind the Federal Government, NSF or, OSU. Nothing contained in this Contract will create any contractual relationship between any subcontractor and OSU.
- b. Contractor must administer and monitor all such subcontracts, or other commitments it enters into under this Contract in accordance with the applicable federal requirements including but not limited to cost principles and the applicable federal administrative requirements.
- c. Contractor remains responsible for maintaining the necessary documentation

on all such subcontracts.

- d. Any proposed use of a subcontractor which is located outside the United States or use of subcontract labor or facilities located outside the United States must be called to the specific attention of OSU prior to OSU's written approval of subcontractor.
- e. Contractor is responsible for coordinating the services between subcontractors and between subcontractors and Contractor.
- f. Contractor and Contractor's approved Subcontractors are not required to obtain an OSU Approval for transportation service Subcontractors delivering Materials and Equipment.
- g. Contractor is as fully responsible to OSU for the acts and omissions of its subcontractors, and of the people the subcontractors either directly or indirectly employ or control, as the Contractor is for the acts and omissions of people the Contractor directly employs or controls.
- h. In all subcontracts the Contractor enters into relative to the Contract Services, the Contractor must insert appropriate provisions that will bind the subcontractors to the terms of this Contract, insofar as applicable to the services of subcontractors, and that will give to the Contractor the same powers that OSU may exercise over the Contractor under any provisions of the Contract. Contractor must also include in subcontracts such other clauses as OSU may require, via a written amendment to this Contract.
- i. In addition to inserting appropriate provisions from this Contract into all subcontracts, as specified under Subsection 7.C.h above, Contractor must include a clause in all subcontracts requiring subcontractors to include these same provisions in any lower-tier subcontracts or agreements with a clause requiring this insertion in any further subcontracts or agreements that may in turn be made.
- j. Subcontracting under this Subsection 7.C. does not include the purchase of commercially available supplies, Equipment, Materials, or general support services, including the delivery of such supplies, Equipment and Materials to the Contractor's facility.

D. WAIVER.

No waiver of an obligation under this Contract is effective unless it is in writing and signed by the party granting the waiver. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition under this Contract operates as a waiver or estoppel of any right, remedy or condition.

E. ACCESS TO RECORDS AND AUDIT.

- a. Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU and the federal government and their respective duly authorized

representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

- b. OSU and OSU's primary funding source (NSF) may, at reasonable times and places, audit the books and records of the Contractor and Contractor's subcontractors and may review the Contractor's accounting system, Overhead rates, and internal control systems to the extent they relate to costs or cost principles applicable to this Contract. The Parties will schedule audits at a mutually agreeable time. The Contractor must include the substance of this Subsection 7. E.b. in all subcontracts.
- c. In the conduct of audits or in meeting the audit requirements of the primary funding source, OSU may require and evaluate Contractor compliance with Office of Management and Budget (OMB) 2CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The Contractor must comply with all applicable audit requirements of the OMB Circulars listed in this provision.
- d. OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor bears the full cost of Contractor's personnel, materials, and any additional Contractor costs to support the independent third-party audits. OSU will bear the full cost of such independent third-party auditor unless the audit finds that the Contractor overcharged OSU by more than 5%, in which case the Contractor bears the full cost of such independent third-party auditor.

F. 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.

G. INDEPENDENT CONTRACTOR STATUS.

The services to be rendered under this Contract are those of an independent contractor. OSU reserves the right (a) to determine and modify the delivery schedule for the services and (b) to evaluate the quality of the services; however, OSU may not 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. Contractor is not an officer, employee or agent of OSU as those terms are used in ORS 30.265. Contractor has no authority to act on behalf of OSU and shall not purport to make any representation, contract, or commitment on behalf of OSU.

H. NOTICE.

- a. A party giving or making any notice, request, demand or other communication (each a "Notice") pursuant to this Contract shall give the Notice in writing and use one of the following methods of delivery: personal delivery, United States Postal Service Registered or Certified Mail (return receipt requested and postage prepaid), overnight courier (with all fees prepaid), facsimile or e-mail to the other party's address as listed on the signature page of this Contract. Notice to OSU is to be delivered to the Contract Administrator and Departmental Administrator except where this Contract expressly directs or permits delivery of Notice to a different Department.
- b. Notice is effective: (i) if given by facsimile, upon receipt by the sending party of an appropriate facsimile confirmation; (ii) if given by e-mail, by confirmation of receipt by return e-mail, which is not satisfied by an automatically-generated message that the recipient is out of the office or otherwise unavailable; or (iii) if given by any other means, when delivered at the address specified in this Section.

OSU Contract Officer and:
OSU PCMM
ATTN: [Contract No.] Contract Officer
644 SW 13th Street
Corvallis, OR 97333
Telephone: (541) 737-4261
Fax: (541) 737-2170
E-mail: pacs@oregonstate.edu

OSU Departmental Administrator
Daryl Swensen
Transition to Operations Coordinator
104 CEOAS Administration Building
Corvallis, OR 97331
Telephone: (541)-737-0745
Fax:
E-mail: daryl.swensen@oregonstate.edu

CONTRACTOR Contract Administrator
[Name]
[Title]
[Address]
[City, State, Zip]
Telephone: [Phone Number]
Fax: [Fax Number]
E-mail: [E-Mail Address]

I. OSU NAME AND TRADEMARK.

Contractor shall not identify this Contract, nor use OSU's names, trademarks, service marks, or other proprietary marks in any of Contractor's marketing material, advertising, press releases, publicity matters or other promotional materials without the prior written consent of OSU, which consent may be withheld in OSU's sole discretion.

J. RECYCLED PRODUCTS.

Contractors will use recycled products, as defined in ORS 279A.010(1)(ii), to the maximum extent economically feasible in the performance of the Contract.

K. SALES AND USE TAXES.

OSU shall pay all applicable sales, excise, or use taxes in connection with this Contract. Invoices shall separately identify all such taxes and shall include either Contractor's sales tax or use tax permit number. Contractor shall be responsible for all other taxes, including taxes based upon Contractor's income. Contractor shall indemnify, defend, and hold harmless OSU from and against any interest, penalties, or other charges resulting from the non-payment or late payment of taxes or other charges for which Contractor failed to invoice OSU or which Contractor otherwise failed to pay in a timely manner.

L. 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, subject to Oregon applicable law and relative to the Services performed under this Contract. Subject to Oregon applicable law, if Contractor's Services performed under this Contract qualify as doing business in the State of Oregon, Contractor shall demonstrate its legal capacity to perform these Services in the State of Oregon prior to entering into this Contract.

M. FORCE MAJEURE.

Neither party is responsible for delay caused by an act or event that prevents the party from performing its obligations under this Contract where such cause is beyond the party's reasonable control and the nonperforming party has been unable to avoid or overcome the act or event by the exercise of due diligence. Such acts or events include without limitation fire, riot, acts of nature, pandemic, epidemic or other health emergency as declared by the health authority, terrorist acts, or other acts of political sabotage or war. Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Contract. However, if delay due to a force majeure event continues for an unreasonable time, as determined by OSU, then OSU is entitled to terminate the Contract.

N. OWNERSHIP OF WORK PRODUCT

a. Definitions. The following terms used in this Section have the meanings set forth below:

1. "Contractor Intellectual Property" means any intellectual property owned by the Contractor that is not Original Work Product.
2. "Original Work Product" means all Work Product created, conceived, or reduced to practice by the Contractor in connection with the Goods and Services.
3. "Third Party Intellectual Property" means any intellectual property owned by parties other than OSU or Contractor.
4. "Work Product" means every invention, discovery, work of authorship, documents (including without limitation project drawings), trade secret, or other tangible or intangible item, in any state of completion, and all intellectual

property rights therein, that the Contractor is required to deliver to OSU under the Contract.

- b. **Ownership.** Original Work Product is the exclusive property of OSU. Original Work Product that constitute original works of authorship is “work made for hire” and OSU is the author within the meaning of the United States Copyright Act to the extent it qualifies as such. The Contractor hereby irrevocably assigns to OSU any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon OSU’s reasonable request, the Contractor shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in OSU. The Contractor waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC §106A.
- c. **Contractor Intellectual Property.** To the extent that any portion of the Work Product is Contractor Intellectual Property or to the extent any Contractor Intellectual Property is necessary for OSU to reasonably enjoy and use Work Product, the Contractor hereby grants to OSU an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use Contractor Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of OSU to authorize contractors, consultants, and others to do the same on OSU’s behalf.
- d. **Third Party Intellectual Property.** To the extent that any portion of the Work Product is Third Party Intellectual Property or to the extent any Third Party Intellectual Property is necessary for OSU to reasonably enjoy and use Work Product, the Contractor shall secure on OSU’s behalf, and in the name of OSU, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property to the extent necessary to obtain the full benefit of the Work Product, including the right of OSU to authorize contractors, consultants, and others to do the same on OSU’s behalf.
- e. **OSU Data and Background Information.** OSU owns all OSU data and background information provided to Contractor pursuant to this Contract. OSU grants Contractor a non-exclusive, royalty-free, worldwide license to use, copy, display, distribute, transmit and prepare derivative works of OSU data and background information only to fulfill the purposes of this Contract, and subject to the confidentiality requirements of the Contract. OSU’s license to Contractor is limited by the term of the Contract.
- f. All rights granted by either Party under this Intellectual Property provision are subject to the confidentiality obligations of the Contract.
- g. **No Rights.** Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon Contractor any right, title, or interest in any intellectual property that is now owned or subsequently owned by OSU. Except as expressly set forth in this Contract, nothing in this Contract shall be construed as granting to or conferring upon OSU any right, title, or interest in any Contractor Intellectual Property that is now owned or subsequently owned by Contractor.
- h. **Competing Services.** Subject to the provisions of this Section, and Contractor’s

obligations with respect to Confidential Information, nothing in this Contract shall preclude or limit in any way the right of Contractor to: (i) in compliance with the law, provide the services similar to those contemplated in this Contract, or consulting, or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate, or (ii) develop for Contractor 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 Contract 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 Contract free of any use restriction or payment obligation to the other.

- i. Federal Intellectual Property Rights Notice. The U.S. Government has certain rights as set forth in the federal requirements pertinent to the funding of this Contract. For purposes of this Subsection, the terms "grant" and "award" refer to funding issued by NSF to OSU. Notwithstanding anything in this Contract to the contrary, the following apply:
 1. As applicable, the U.S. Government reserves, and Contractor hereby grants, to the U.S. government an irrevocable, non-exclusive, perpetual, royalty-free license to exercise or have exercised for or on behalf of the U.S. Government throughout the world all the exclusive rights provided by copyright to Work Product. Such license, however, will not include the right to sell copies or phonorecords of the copyrighted works to the public.
 2. If this Contract is for the performance of experimental, developmental, or research work, the U.S. 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.
 3. The Parties are subject to applicable requirements and regulations of NSF regarding rights in data first produced under a grant, subgrant or agreement under a grant or subgrant.
 4. If state or federal law requires that OSU or Contractor grant to the United States a license to any Work Product, or if state or federal law requires that OSU or United States own the Work Product, then Contractor shall execute such further documents and instruments as OSU or the U.S. Government may reasonably request in order to make any such grant or to assign ownership in the Work Product to the United States.

O. GRATUITY AND CONFLICT OF INTEREST.

- a. The Contractor agrees that Contractor will not extend any loan, gratuity, or gift of money of any form whatsoever to any employee of OSU, nor will Contractor rent or purchase any Equipment or Materials from any employee of OSU or to the best of Contractor's knowledge from any agent of an employee of OSU. Before payment of the final estimate, the Contractor must execute and furnish OSU an affidavit certifying that Contractor has complied with the above provisions of the Contract.

- b. If OSU finds after a notice and hearing that the Contractor or any of the Contractor's agents or representatives offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of OSU, the State of Oregon, or any federal agency in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, OSU may, by written notice to the Contractor, terminate this Contract. OSU may also pursue other rights and remedies that the law or the Contract provides.
- c. In the event OSU terminates this Contract as provided above, OSU may pursue the same remedies against the Contractor as it could pursue in the event of the Contractor's breach of the Contract, and any other damages to which it may be entitled by law.

P. EXECUTION AND COUNTERPARTS.

This Contract may be executed by facsimile or PDF and in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

Q. SURVIVAL.

The terms and conditions of this Contract that by their sense and context are intended to survive termination or expiration hereof shall so survive.

R. SEVERABILITY.

If any provision of this Contract is determined to be invalid, illegal or unenforceable, the remaining provisions of this Contract remain in full force and effect if the essential terms and conditions of this Contract for both parties remain valid, legal and enforceable.

S. MERGER.

This Contract, including all documents referred to herein and attached hereto, constitutes the entire agreement between the parties and supersedes all prior representations, understanding and agreements between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Contract. No amendment, consent, or waiver of terms of this Contract shall bind either party unless it is in writing and signed by authorized representatives of each of the parties. Any such amendment, consent, or waiver is effective only in the specific instance and for the specific purpose given.

T. TIME IS OF THE ESSENCE.

Contractor agrees that time is of the essence under this Contract.

8. CERTIFICATIONS AND SIGNATURES:

This Contract must be signed by an authorized representative of Contractor. The undersigned certifies under penalty of perjury both individually and on behalf of Contractor that:

- A. The undersigned is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation

of Contractor enforceable in accordance with its terms;

- B. Contractor is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment under this Contract. Contractor will not, by virtue of this Contract, be eligible for federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual.

Each of the parties has caused its duly authorized representative to execute this Contract on the date set forth in its respective signature block below.

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

Signature: _____

Date: _____

By: _____

Title: _____

Attachment A - Specification

Specification to be attached prior to Contract Execution.

Attachment B - Drawings

Drawings to be attached prior to Contract Execution.

Attachment C - Design and Construction Schedule

Design and Construction Schedule to be attached prior to Contract Execution.