



Oregon State University

REQUEST FOR PROPOSAL (RFP) #2022-007253

COLLABORATIVE INNOVATION COMPLEX (CIC) DESIGN SERVICES

ISSUE DATE: November 5, 2021

MANDATORY PRE-PROPOSAL CONFERENCE:
November 9, 2021 at 3:00 PM Pacific Time (PT) via
Zoom

RFP DUE DATE/TIME:
November 24, 2021 at 2:00 PM Pacific Time (PT) via
electronic submission to bids@oregonstate.edu

QUESTION DEADLINE: November 17, 2021 at 12:00 PM Pacific Time (PT)

PROJECT NUMBER: 2373-22

CONTRACT ADMINISTRATOR:

Matt Hausman, Construction Contracts Officer
Construction Contracts Administration
Oregon State University
644 SW 13th Street
Corvallis, OR 97333

APPEALS:

Hanna Emerson, Construction Contracts Manager
Construction Contracts Administration
Oregon State University
644 SW 13th Street
Corvallis, OR 97333

Email: constructioncontracts@oregonstate.edu

Email: hanna.emerson@oregonstate.edu

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

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

1.0 INTRODUCTION

1.1 Oregon State University (“OSU” and/or “Owner”) is conducting a competitive **ONE OR TWO-STEP** Request for Proposals (RFP) process to retain ONE (1) consultant team to provide professional design services for the Collaborative Innovation Complex (*the “Project”*).

OSU WILL ONLY BE ACCEPTING SEALED PROPOSALS ELECTRONICALLY - Proposals are to be submitted to bids@oregonstate.edu by the Due Date/Time of November 24, 2021 at 2:00 PM Pacific Time (PT).

VIRTUAL MANDATORY PRE-PROPOSAL CONFERENCE- A Virtual Mandatory Pre-Proposal Conference will be held on November 9, 2021 at 3:00 PM PT via Zoom. Firms wishing to attend shall e-mail constructioncontracts@oregonstate.edu no later than 30 minutes in advance to receive the Zoom link. The email subject line should contain the Solicitation Number/Name and Firm Name. Attendance will be documented by OSU

NON-MANDATORY SITE-VISIT – A Non-Mandatory Site-Visit for Prime Proposers shall take place on November 15, 2021 at 2:00 PM PT. Attendees are to meet on the North Side of Weniger Hall (103 SW Memorial Place) along Monroe Street. Parking and building location information can be found at www.oregonstate.edu.

Campus Safety Policies for Face Covering and Physical Distancing requirements related to Covid-19 are located at <https://covid.oregonstate.edu/safety-policies>.

All questions shall be submitted via e-mail to constructioncontracts@oregonstate.edu by the Question Deadline in order to be addressed. The email subject line should contain the Solicitation Number/Name and Firm Name.

1.2 Background. Oregon State University in Corvallis, OR is located within the traditional homelands of the Mary's River or Ampinefu Band of Kalapuya. Following the Willamette Valley Treaty of 1855 (Kalapuya etc. Treaty), Kalapuya people were forcibly removed to reservations in Western Oregon. Today, living descendants of these people are a part of the [Confederated Tribes of Grand Ronde Community of Oregon](#) and the [Confederated Tribes of the Siletz Indians](#). Indigenous people are valued, contributing members of the Oregon State community and represent multiple sovereign tribes among students, faculty, staff and alumni.

Oregon State University recognizes the impact that its land grant history had on Indigenous communities in Oregon. Through the Morrill Act of 1862, which established land grant universities in the United States, the federal government seized nearly 11 million acres of land from 250 sovereign tribal nations, with little or no compensation.

In 1868, the state legislature designated Corvallis College as Oregon's land grant institution. Soon after, Oregon received 90,000 acres of federal lands – taken from the Klamath, Coos, Lower Umpqua, Siuslaw and Coquille people, to be sold to create an endowment supporting the growth of the new college, which would become Oregon State University. Additional information about OSU's Land Acknowledgement can be found [here](#).

OSU serves the state, the nation and the world as a premier 21st-century research university. OSU is committed to exceptional research, discovery, innovation and engagement — and to integrating its research and engagement mission with the delivery of a high-quality, globally relevant and affordable education for the people of Oregon and beyond. OSU is one of only two land, sea, space and sun grant universities in the U.S. and is the only university in Oregon to have earned both Carnegie Classifications for Very High Research Activity and Community Engagement.

1.3 Location. The Collaborative Innovation Complex (CIC) will be located in the heart of the OSU Campus. This overall project will include the demolition of Weniger Hall, a 211,000 GSF multi-disciplinary science research and teaching building built in 1960 with systems and structure that can no longer be economically renovated or improved. The CIC is envisioned as a two-building complex on the Weniger site and surrounding areas.

1.4 Summary of Work. The 140,000 to 150,000 SF Collaborative Innovation Complex (CIC) will host OSU's most advanced and effective research infrastructure in the heart of our campus, enhancing and creating synergy for all of OSU's STEM colleges and organizations. It is OSU's intent to award an initial contract for Programming Services only with additional phases being added via amendment if/when it is necessary in the best interests of the University.

Key components of the project include the following:

- Highly flexible space within the building integrated with adjacent workspace to enhance spontaneous interchange of ideas and scientific exploration allowing for co-working laboratories.
- Laboratory facilities created to accommodate specialized research that cannot be accommodated in other buildings on campus, along with flexible laboratory space that will accommodate evolving research modalities.
- A high power computing center with special power, cooling and space requirements.
- OSU's goal is that any new facility added to the OSU Corvallis campus will be neutral with regard to net new square footage. This recognizes that OSU's principal challenge is not the absence of space, but the quality and configuration of space.

Key goals of the Project include:

- Propel OSU's science and engineering research and teaching enterprise into the next generation of innovation, collaboration and interdisciplinary impact;
- Spotlight a thoughtful crossover between distinctive research and education domains to fuel new ideas;
- Break down the paradigms of traditional research environments by bringing multidisciplinary groups together, supported by spaces that encourage interaction and collaboration;
- The development and organization of truly shared and flexible university space, without permanent "ownership" of any specific college or discipline. The program should maximize the building's utility for interdisciplinary research and interaction;
- The CIC will incorporate the guiding principles of the Corvallis Campus Vision (<https://ufio.oregonstate.edu/campus-vision>);
- The CIC will advance OSU's carbon reduction goals;

- Provide innovative and transformative learning and research experiences enabling all students and employees to advance inclusive excellence;
- The goals for the CIC will fully align with OSU’s Strategic Plan 4.0.

1.5 Scope of Services. Scope of programming services will include site visits, in-person and/or virtual meetings to interview key stakeholders, test fits, land use/code exploration, phasing scenarios and final documentation, which will outline space utilization, assigned square footage, building support requirements, and gross square footage. Project goals and refinement of guiding principles will be a key element to the next phase.

Scope of design services will include Schematic Design, Design Development, Construction Documents, Bidding/Permitting, and Construction Administration including Record Documentation and Project Closeout. Additionally, some support, in the form of graphic exhibits and text, will be required for any associated public outreach programs. The proposing firm is free to sub-contract as necessary to ensure a complete design team, including but not limited to structural, mechanical, electrical, and civil engineering, landscape architecture, laboratory planning, and cost estimating.

1.6 Project Schedule. Program efforts are to begin immediately following contract execution with design to begin summer of 2022, and construction to commence by December 2023. A CM/GC contractor will be brought onboard at the beginning of Schematic Design for preconstruction services.

1.7 Design Standards. The design of the Project must follow [OSU’s Design Standards](#), including OSU’s requirements for sustainable development.

1.8 Total Project Budget. The total project cost (which includes Owner cost) is anticipated at \$166M with intended funding of \$75M from gifts, \$75M from the State via the 2024-2025 Higher Education Coordinating Commission (HECC) Capital Request (to be submitted in early spring of 2022) and \$16M from OSU Education & General (E&G) Capital Improvement & Renewal (CIR) funding for the demolition of Weniger Hall.

2.0 SCHEDULE

| | |
|--|--|
| Issue Date | November 5, 2021 |
| Non-Mandatory Pre-Proposal Conference | November 9, 2021 at 3:00 PM PT via Zoom |
| Mandatory Site Visit | November 15, 2021 at 2:00 PM PT |
| Question Deadline | November 17, 2021 at 12:00 PM PT |
| Final Addendum Issuance (if necessary) | By November 19, 2021 |
| Proposal Due Date/Time | November 24, 2021 at 2:00 PM PT |

The following dates are tentative and subject to change without notice:

| | |
|---|--------------------------|
| Estimated notification of finalists (If Applicable) | Week of December 6, 2021 |
| Presentations/Interviews (If applicable) | December 15, 2021 |
| Notice of Intent to Award | By December 20, 2021 |
| Estimated Contract execution | By January 1, 2022 |
| Estimated Notice to Proceed | By January 1, 2022 |

OSU will make every effort to adhere to the above schedule. It is however, subject to change.

3.0 QUESTIONS, SOLICITATION REVISION REQUESTS, CHANGE OR MODIFICATION, APPEALS

3.1 Questions.

3.1.1 All questions and contacts with OSU regarding any information in this RFP must be addressed in writing via email to constructioncontracts@oregonstate.edu no later than the **Question Deadline** as stated in Section 2.0. If a Proposer is unclear about *any* information contained in this document or its exhibits (Project, scope, etc.), they are urged to submit those questions for formal clarification.

3.2 Solicitation Process Revision Requests.

3.2.1 Proposers may submit a written request for change of particular solicitation process provisions to the **Construction Contracts Manager** at the address or email listed in this document. Such requests for change shall be received no later than the **Question Deadline** listed above.

3.2.2 Such requests for change shall include the reasons for the request and any proposed changes to the solicitation process provisions.

3.3 Change or Modification.

3.3.1 Any change or modification provided by the Owner for this RFP or the documents included as exhibits to this RFP shall be made by a duly issued Addendum made available to all firms on the [OSU Business and Bid Opportunities](#) website. It is the responsibility of each Proposer to visit the website and download any addenda. No information received in any manner different than as described herein shall serve to change the RFP in any way, regardless of the source of the information.

3.3.2 OSU will not be responsible for any other explanation or interpretation of this RFP or the documents included as exhibits to this RFP.

3.4 Appeals.

3.4.1 Appeals related to the OSU solicitation process and award decisions and actions shall be pursuant to OSU Standards ([Procurement Thresholds and Methods, Procurement Solicitations and Contracts](#)). All written appeals must be delivered to the **Construction Contracts Manager**, at the address given in this RFP.

4.0 PUBLIC RECORD

4.1 OSU will retain an electronic copy of this RFP and one electronic copy of each Proposal received, together with electronic copies of all documents pertaining to the award of a contract. These documents will be made a part of a file or record, which shall be open to public inspection after OSU has announced its intent to award a contract. If a Proposal contains any information that is considered a trade secret under ORS 192.345(2), you must mark each trade secret with the

following legend: **“This data constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

4.2 The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance.”

4.2.1 Therefore, non-disclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

4.3 In order to facilitate public inspection of the non-confidential portion of the Proposal, material designated as confidential shall accompany the Proposal, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designation to the contrary. Any Proposal marked as a trade secret in its entirety may be considered non-responsive and be rejected.

5.0 FORM OF AGREEMENT

A Sample A/E Agreement is included as an exhibit and contains contract terms and conditions applicable to the work. The sample contract may contain certain notes or alternative provisions. Those alternative provisions will be included at the sole discretion of OSU.

6.0 RESERVED

7.0 INSTRUCTIONS TO OFFERORS

7.1 Summary of Work. The Work contemplated in this document shall be for OSU in connection with the Project described in Section **1.0** of this document.

7.2 Pre-Proposal Conference and Site Visit.

7.2.1 The Pre-Proposal Conference will be administered virtually via Zoom. Proposers **must** contact the **Contract Administrator** to request virtual Conference access. This request must occur no later than thirty (30) minutes prior to the meeting time, as stated in this RFP. Attendance will be documented by OSU.

The Proposer must attend the Mandatory Pre-Proposal Conference, which will be administered virtually. Proposals will not be accepted from those firms who have not had a representative attend the Mandatory Pre-Proposal Conference. Attendance will be documented by OSU. Proposers who arrive more than five (5) minutes after start time of the meeting (as stated in the RFP and by OSU’s clock) or after the discussion portion of the meeting, (whichever comes first) will not have their attendance documented and will have their Proposal rejected **if submitted**.

7.2.2 No statement made by any officer, agent, or employee of OSU in relation to the physical conditions pertaining to the Work site will be binding on OSU, unless included in writing in the documents included as exhibits to this RFP or an Addendum.

7.2.3 Date and Time of a Pre-Proposal Conference is located on the cover sheet of this RFP.

7.2.4 RESERVED

7.2.5 Should on campus site visits occur, the COVID Safety & Success Policy is located here: <https://covid.oregonstate.edu/safety-policies>

7.3 Proposal Submission.

7.3.1 Submit **one (1) electronic version via email** to be received by the Due Date/Time listed in this document to bids@oregonstate.edu as stated in this RFP. **Electronic versions must be sized appropriately for transfer (under 10 mb).**

7.3.2 All Proposals must be received by OSU before the Due Date/Time. OSU's official clock shall prevail in any time conflict. Any Proposal received after the Due Date/Time will be rejected and will be retained and made part of OSU's archive records in accordance with OSU Standards.

7.4 Proposal Submission Requirements.

7.4.1 Your Proposal must be contained in a document not to exceed Twenty-Five (25) single sided pages including pictures, charts, graphs, tables and text you deem appropriate to be part of OSU's review of your Proposal. Resumes of key individuals proposed to be involved in this Project are exempted from the page limit and must be appended to the end of your Proposal. No supplemental information to the page limit will be allowed. Appended resumes of the proposed key individuals, along with a Transmittal letter, table of contents, front and back covers, references, exceptions and blank section dividers will not be counted in the page limit.

7.4.2 Your Proposal must follow the format outlined below and include a Transmittal/Cover Letter signed by an officer of your firm(s) with the authority to commit the firm(s) and must also acknowledge receipt of all addenda. ***Include an email address for communication purposes.***

7.4.3 Any/all exceptions to the Terms and Conditions included in the Sample Contract shall be clearly identified and appended to the Proposal in order to be considered by OSU during the negotiation period.

7.4.4 The electronic Proposal should be **should be sized appropriately for transfer (under 10 MB)** and formatted with page size of **8 ½ x 11 inches** with no fold-outs (except for any large format documents required by evaluation criteria). The basic text information of the Proposal should be presented in standard business font size, and reasonable margins.

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

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

7.4.7 Telephone and facsimile transmitted **Proposals will not be accepted**. Proposals received *after* the Due Date/Time **will not be considered**.

7.4.8 Each Proposal shall be emailed to bids@oregonstate.edu. Proposals must be received by the date/time and in the format specified herein. The email line should contain the Solicitation Number/Name and Firm Name. Only those Proposals received at this email address by the Proposal Due Date/Time shall be considered responsive. Proposals submitted directly to the **Contract Administrator** will NOT be considered responsive. It is highly recommended that the Proposer confirms receipt of the email with the **Contract Administrator or designee**. **The Contract Administrator** or designee may open the email to confirm receipt but will NOT verify the integrity of the attachment(s), answer questions related to the content of the Proposal, or address the overall responsiveness of the Proposal.

7.5 Acceptance or Rejection of Solicitation Responses by OSU.

7.5.1 The procedures for Contract awards shall be in compliance with the provisions of OSU standards and policies adopted by OSU.

7.5.2 OSU reserves the right to reject any or all Proposals and to waive minor informalities in compliance with the provisions of OSU standards and policies adopted by OSU.

7.6 Withdrawal of Solicitation Response.

7.6.1 At any time prior to the Due Date/Time, a Proposer may withdraw its Proposal in accordance with OSU Standards. This will not preclude the submission of another Proposal by such Proposer prior to the Due Date/Time.

7.6.2 After the Due Date/Time, Proposers are prohibited from withdrawing their Proposal, except as provided by OSU Standards.

7.7 Evaluation Process. The written response to this RFP is the first in a **potential** two-step process in the selection of a firm for this Project. The Proposals received in response to this RFP will be evaluated by a selection committee with the top scoring firms being invited to advance to further evaluation steps including virtual Proprietary Discussions and Presentations/Interviews should the committee determine they are necessary.

Presentations/Interviews will include a **Forty-Five (45) minute** presentation period, immediately followed by a separate **Thirty (30) minute** Q&A session.

After all of the Presentations/Interviews are completed, the members of the selection committee will discuss the strengths and weaknesses of the finalists. The members of the selection committee will then score the finalists based on all information received, presented and heard during the Presentations/Interviews. Optional Reference Checks may also be undertaken to aid in final scoring. Upon completion of final scoring, negotiations may commence with all Proposers submitting responsive proposals or all Proposers in the competitive threshold.

Final scoring of the Interviews will be **separate and not cumulative** from the short-listing.

7.8 Evaluation Criteria. The following items constitute the evaluation criteria for the selection committee to score Proposals. For ease in reviewing, provide tabs keyed to each of the following criteria:

7.8.1 Experience and Qualifications of the Firm (25 points)

- Provide a *brief* description of your firm and include information on the focus of the practice. List the relative projects your firm is currently contracted for and include what stage the projects are in terms of completion.
- Describe your firm's experience with design and construction of higher education learning environments, meeting innovative and forward thinking research needs, collaborative science laboratories, and general and flexible laboratories. Explain relevant experience working on projects of similar scope for public entities.
- Describe your firm's experience with managing phased projects of varying scopes and delivery methods, and how this experience will benefit the Project.
- Describe your firm's experience understanding, addressing, and prioritizing needs and requirements of diverse students, staff and visitors with disabilities.

7.8.2 Experience and Qualifications of the Team (20 points)

Identify key personnel, including project designer and project manager along with those of any subconsultants proposed. Include proposed key personnel's project experience, with specific project examples and identify their roles in the projects. Indicate current availability, proposed percentage of project involvement per project phase and indicate whether the proposed team has worked together on previous projects. Identify the strengths and skills or special capabilities of each key team member and how these skills will benefit this project. Explain how each project example relates to the key design components for the Collaborative Innovation Complex project.

Please delineate staff that will focus on programming, those that will focus on the design process and the individual(s) that will be the common denominator throughout the entire project.

7.8.3 Design Management & Schedule (15 Points)

Provide a milestone schedule from Programming through end of Construction. This is an exciting project for OSU, so please explain how your team can assist with the project goal of bringing various groups together to provide collaborative adjacencies in one cohesive and efficient complex. Describe how your team can work with a divergent customer base to meet the varying programmatic needs from different groups. This project may have schedule challenges. Give examples of how your team can work to meet aggressive timelines to keep the project on track. Give examples how your team can help individuals think creatively and collaboratively as we design forward facing research facilities.

7.8.4 Design for Inclusive Excellence (15 Points)

Describe your firm's experience and approach toward design that promotes inclusive excellence. Describe your firm's experience understanding, accommodating and prioritizing needs and requirements of students, staff and visitors with disabilities.

7.8.5 Workforce Diversity Plan (15 Points)

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

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

The Consultant must perform the Work according to the means and methods described in the workforce plan described in its Proposal, unless changes are requested and approved in writing in advance by OSU or are required by applicable laws, ordinances, codes, regulations, rules or standards.

7.8.6 FEE PROPOSAL (10 Points)

Provide a **FEE PROPOSAL** on a time and materials cost reimbursement basis up to a maximum not-to-exceed amount for the **Programming Phase** only. Please clearly identify the amount for Basic Services and a Reimbursable Expenses allowance. The remaining scopes (Schematic Design, Design Development, Construction Documents, Bidding/Negotiation, Construction Administration and Record Documents) will be negotiated at the completion of Programming.

Please include a breakdown of the costs including a listing of the types of personnel participating in the work, an estimate of their hours and rates charged for their services based on the proposed scope listed in Section 1.0. Pricing shall include all elements in Programming.

Scoring will be based solely on the total maximum not-to-exceed amount for Programming.

NOTE: Formula for scoring Fee Points will be as follows: Lowest Fee for each of the price related items will receive full points with higher cost price related items receiving proportionally lower points according to this formula: **(Low Fee or Fee% / Fee or Fee%) x Points Available**

7.9 Point Summary Table.

| Criteria | Point Value |
|---|-------------|
| Experience and Qualifications of the Firm | 25 Points |
| Experience and Qualifications of the Team | 20 Points |
| Design Management & Schedule | 15 Points |
| Design for Inclusive Excellence | 15 Points |
| Workforce Diversity Plan | 15 Points |
| Fee Proposal | 10 Points |

7.10 Presentations/Interviews (50 Points) & Optional Reference Checks (10 Points)**7.10.1 Presentations/Interviews (50 Points)**

Presentations/Interviews **may** be conducted to aid in determining the Apparent Successful Proposer. Proprietary Discussions may also be conducted with all finalists prior to Presentations/Interviews. Information regarding the Proprietary Discussions and Presentations/Interviews will be provided to the short-listed firms following the initial review and scoring. Final scoring of the Presentations/Interviews will be **separate and not cumulative** from the short-listing.

7.10.2 Optional Reference Checks (10 Points).

In addition to responding to the evaluation criteria above, provide the names, addresses, phone numbers and e-mail addresses of three (3) references. Do not include references from any firms or individuals included in your consulting team for this Proposal or any OSU personnel. OSU may check with these references and with other references associated with past work of your firm.

OSU **may** check with these references or other references associated with past work of your firm.

7.11 Equity Contracting. OSU will require the successful Proposer to comply with OSU Standards, policies, rules and procedures requiring good faith efforts in subcontracting with minority, women, emerging small business or service-disabled veteran owned business enterprises.

7.12 Negotiations.

7.12.1 OSU may commence General and/or Best and Final Offer (BAFO) Negotiations in accordance with OSU Standards ([Procurement Thresholds and Methods, Procurement Solicitations and Contracts](#)) following final scoring under either a one or two-step process.

7.12.2 Any/all exceptions to the Term and Conditions included in the Sample Contract/Agreement shall be clearly identified and appended to the Proposal in order to be considered by OSU during the negotiation period.

7.12.3 OSU reserves the right to deny contract term negotiations with the Apparent Successful Proposer if such contract terms were not received by OSU in the Solicitation response pursuant to Section **7.12.2** above.

7.12.4 OSU reserves the right to defer decision(s) on requests for contract terms and conditions revisions until after a notice of intent to award is published.

7.12.5 If OSU and the Apparent Successful Proposer are unable to reach agreement on contract terms and conditions, OSU may cease negotiations with the Apparent Successful Proposer and enter negotiations with the next highest scoring Proposer, etc.

8.0 MISCELLANEOUS

8.1 Financial Responsibility.

8.1.1 OSU reserves the right to investigate, at any time prior to execution of the contract, the Proposers financial responsibility to perform the anticipated services. Submission of a Proposal will constitute approval for OSU to obtain any credit report information OSU deems necessary to conduct the evaluation. OSU will notify Proposers, in writing, of any other documentation required, which may include, but need not be limited to: recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity and credit information. Failure to promptly provide this information may result in rejection of the Proposal.

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

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

8.3 Insurance Provisions. During the term of the resulting contract, the awardee will be required to maintain in full force, at its own expense, from insurance companies authorized to transact the business of insurance in the state of Oregon, each insurance coverage/policy as set forth in the contract.

8.4 Nondiscrimination. By submission of a Proposal, the Proposer certifies under penalty of perjury that the Proposer will not discriminate against minority, women, emerging small business or service-disabled veteran owned business enterprises in obtaining any required subcontracts.

8.5 AA/EEO Employer. OSU is an AA/EEO employer.

8.6 Compliance with Applicable Law. Proposer agrees to comply with all federal, state, county, and local laws, ordinances, and regulations as well as all applicable OSU Standards and Policies while on campus.

8.6.1 Smoke and Tobacco Free Campus. Owner's grounds and premises are smoke and

tobacco free. Contractor and Contractor’s employees, agents, Subcontractors, if any, agree not to smoke or use tobacco products while on Owner property.

8.6.2 Sexual Harassment Policy. The Owner has policies that prohibit sexual harassment of members of the university 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 university community.

8.6.3 Firearms Policy. The Owner has adopted a policy that prohibits Contractor and Contractor’s employees, agents and Subcontractors from possessing firearms on Owner’s property.

8.7 RESERVED

8.8 Execution of Agreement.

8.8.1 The Proposer shall be required to execute the Contract as provided, within any time period provided in an award notification. The Contract Documents shall be delivered to OSU in the manner stated in an award notification.

8.8.2 Work/Services Commencement. Work/Services shall not commence until execution of a Contract and subsequent issuance of a notice to proceed letter with the selected Proposer.

9.0 EXHIBITS

Exhibit 1 – Sample A/E Agreement

END OF RFP

EXHIBIT 1

ARCHITECT'S AGREEMENT PROJECT OREGON STATE UNIVERSITY

This ARCHITECT'S AGREEMENT (the "Agreement") is made between

the "Architect":

Phone: (____) ____ - ____

FAX: (____) ____ - ____

and the "Owner":

Oregon State University
Construction Contracts Administration
644 SW 13th Ave.
Corvallis OR 97333

regarding the "Project":

(The Architect 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 Architect to provide certain professional services for the Project; and

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

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

I. RELATIONSHIP BETWEEN THE PARTIES

A. Scope of the Project. The scope of the Project includes the following:

_____.

B. Scope of Services. The scope of Services to be performed under this Agreement includes the following:

_____.

C. Critical Date Schedule. The Architect shall perform the Services according to the following critical

date schedule:

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

- D. **Effective Date.** This Agreement is effective on the date it has been signed by every Party hereto (the "Effective Date"). No Services shall be performed or payment made prior to the Effective Date.
- E. **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" means additional Services performed by the Architect that are beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with an agreed-upon schedule of charges, and performed by the Architect after the Owner has given prior written authorization to proceed with performance of the Services and the Parties have executed an amendment or supplement to this Agreement, as more particularly described in **Section VIII** of this Agreement.

"Basic Services" are those Services more particularly described in **Subsections A., B., C., D. and E. of Section VII.** of this Agreement.

"Construction Contract" is defined as the contract entered into between the Owner and the Contractor to provide all Work necessary to construct the Project, including the original base contract for construction of the Project, the Oregon State University General Conditions For Public Improvement Contracts, any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor's performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder or proposer to any such solicitation documents.

"Construction Documents" means drawings, specifications and other documents setting forth in detail the requirements for construction of the Project, as well as the documents pertaining to bidding and contracting for the construction of the Project

"Contractor" is defined as the general contractor/construction manager (CM/GC) that is

awarded the contract to construct the Project.

"Design Criteria" means the OSU Construction Standards in effect at the time of the Effective Date of this Agreement. Current OSU Construction Standard can be found here: <http://fa.oregonstate.edu/cpd-standards>

"Direct Construction Cost" means the cost to the Owner of all divisions of construction, including portable equipment only if designed or specified by the Architect for inclusion in the construction specifications.

"MWESB Report" means an accurate report by the Consultant to the Owner identifying all Minority, Women and Emerging Small Business ("MWESB") enterprises, as those terms are defined in ORS 200.005, receiving sub-contracts throughout the course of Consultant's Services. Each MWESB Report shall only include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable.

"Reimbursable Expenses" are those expenses described in **Sub-section B. of Section III** of this Agreement.

"Services" are all those services to be performed by the Architect under the terms of this Agreement.

"Work" is defined as the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the Project by the Contractor that is eventually awarded the Construction Contract for the Project.

F. Directives for Performance of the Services.

1. The Architect shall provide, with the assistance of the Consultants, the professional Services more particularly described in **Section VII** below for this Project.
2. The Architect 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. The estimated Direct Construction Cost of the Project is \$_____ to \$_____.
[OR] The construction budget for the Project is currently estimated at \$_____.
4. The Architect shall fully cooperate with Owner to meet all Project budgets. Owner understands that Architect, in providing opinions of probable construction cost, has no control over the cost or availability of labor, equipment, or materials, or over market conditions or Contractor's method of pricing, and that Architect's opinions of probable construction costs are made on the basis of Architect's professional judgment and experience. Architect makes no

warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from Architect's opinion of probable construction cost. In the event the Architect's opinion of probable construction cost exceeds the budget for the Project listed in **Sub-section 3** above by any amount during the design or construction phases, or in the event the bids or negotiated cost of the Work exceed the budget for the Project listed earlier in this Section by more than 10 percent, Architect, upon notice from Owner and prior to the award of the construction contract, agrees to modify, at Architect's sole expense, Architect's Schematic Design documents, Design Development documents or Construction Documents (or with owners approval those portions of those documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage). This redesign effort shall constitute Architect's sole responsibility with respect to its opinions of probable construction cost, and Architect agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the opinion of probable Construction Cost, or the bids or negotiated price, so that they do not exceed the Project budget.

5. The Architect shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Architect's performance of Services shall be as a professional Architect to the Owner to perform the professional services necessary for the Project, and to provide the technical documents and supervision required to achieve the Owner's Project objectives.
6. In administering this Agreement, the Owner may employ the services of an independent project manager and other consultants as needed to fulfill the Owner's objectives.
7. The Architect shall utilize the key personnel and Consultants identified on the attached **Exhibit 1** in the performance of the Services for the Project. In addition to the full names, titles/positions and a summary of the duties and Services to be performed by the key personnel and Consultants that are included in the attached **Exhibit 1**, the Architect agrees to promptly provide such additional information on the professional background of each of the assigned personnel and Consultants as may be requested by the Owner. The Architect acknowledges that the Owner's award of this Agreement to the Architect was made on the basis of the unique background and abilities of the Architect's key personnel and Consultants originally identified in the Architect's RFQ Response. Therefore, the Architect specifically understands and agrees that any attempted substitution or replacement of a key person or Consultant by the Architect, without the written consent of the Owner, shall constitute a material breach of this Agreement. In the event that key personnel or Consultants become unavailable to the Architect at anytime, Architect shall replace the key personnel and Consultants with personnel or Consultants having substantially equivalent or better qualifications than the key personnel or Consultants being replaced, as confirmed and approved by Owner. Likewise, the Architect shall remove any individual or Consultant from the Project if so directed by Owner in writing following discussion with the Architect, provided that Architect shall have a reasonable time period within which to find a suitable replacement. **The Architect represents and warrants that the key personnel and Consultants identified on the attached Exhibit 1 are fully licensed to perform the particular Services assigned to them on the Project.**

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

G. Suspension of Agreement by Owner. The Owner may suspend the Parties' performance of this Agreement in the event any of the following circumstances arise:

1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, as contemplated by OSU's budget and OSU determination, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the Architect'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. Architect, or one of Architect's Consultants currently performing Services, no longer holds any license or certificate that is required to perform the Services; or
4. The public interest otherwise requires suspension of performance of the Agreement, as reasonably determined by the Owner.

Any suspension of performance under this provision constitutes a temporary stoppage of performance of the Agreement, and does **not** constitute a termination of the Agreement pursuant to **Section XIX** of this Agreement. In the event that the condition(s) causing the suspension have been rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Agreement. In the event that the Owner determines that the conditions causing suspension of the Agreement are not likely to be rectified in a reasonable amount of time, the Owner retains the right to terminate this Agreement, pursuant to **Section XIX**. In the event of a suspension of performance pursuant to this Section of the Agreement, the Architect agrees to remain contractually obligated to perform the Services under this Agreement for the same hourly rates set forth in **Section III.C** of this Agreement for a period of three years after the Effective Date of the Agreement. If the Agreement is reactivated and the Architect is required to perform Services beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for the Architect and any Consultants and amend this Agreement accordingly.

II. ARCHITECT'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. **Standard of Care.** The Architect shall perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- B. **Performance Requirements.** In addition to performing the Services in accordance with the professional skill, care and standards of other professionals performing similar services under

similar conditions, the Architect shall perform the Services in accordance with the following requirements:

1. All plans, drawings, specifications, and other documents prepared by the Architect shall accurately reflect, incorporate and comply with all OSU Standards and policies, applicable statutes, rules, regulations, ordinances and other laws 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 Architect);
2. All plans, drawings, specifications, and other documents prepared by the Architect pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Services to be performed;
3. The Project, if constructed in accordance with the intent established by such plans, drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended;
4. The Architect shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents. While Architect 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 Architect throughout the period of performance under this Agreement to use due care and perform with professional competence. Architect will, at no additional cost to Owner, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by Architect. Except as provided in **Section VIII** of this Agreement and at no additional cost, Architect further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project;
5. The Owner's review or acceptance of documents, or authorization to continue to the next phase of design, bidding process participation, or construction administration, shall not be deemed as approval of the adequacy of the plans, drawings, specifications, or other documents. Any review or acceptance by the Owner will not relieve the Architect of any responsibility for complying with the standard of care set forth herein. The Architect is responsible for all Services to be performed under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services.
6. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided.

C. Architect's Representations and Warranties. Architect represents and warrants to Owner that:

1. Architect 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

Architect enforceable in accordance with its terms;

3. Architect 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 Architect is an experienced architecture firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement and to design or administer a project having this scope and complexity;
5. The Architect has the capabilities and resources necessary to perform the obligations of this Agreement;
6. The Architect either is, or in a manner consistent with the standard of care set forth in this Agreement will become, familiar with all current OSU Standards and policies, laws, rules, and regulations which are applicable to the design and construction of the Project.

III. COMPENSATION

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

- A. **Basic Services:** The Architect shall perform the Basic Services, directly or through the Consultants, on a time and materials basis not to exceed \$_____.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Architect for any allowable Reimbursable Expenses, up to a maximum amount of \$_____.

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

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

| | |
|---|-----------------------------|
| Air fare (coach class only) and car rental | At cost for economy |
| Personal car mileage | \$0.58 per mile |
| Lodging | \$135.00 per night plus tax |
| Meals: (documentation not required) (reimbursable only when associated with overnight travel) | |

| | |
|-----------|------|
| Breakfast | \$15 |
| Lunch | \$15 |
| Dinner | \$30 |

Printing, photography, long distance telephone charges and other direct expenses At cost

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

C. Additional Services: The Owner will compensate the Architect for Additional Services performed by the Architect, whether directly or through its Consultants, beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Architect personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement (except in the case of a suspension and reactivation of performance beyond the date agreed to by the Parties, as more particularly described in **Section I.G**), but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

ARCHITECT:

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

CONSULTANTS:

_____\$_/hr
_____\$_/hr
_____\$_/hr
_____\$_/hr

These charges shall also be used to determine amounts owed the Architect in the event this Agreement is terminated as provided in **Section XIX, D.1**, or suspended pursuant to **Section I. G**. Any amounts so derived may not exceed the limitations for each phase as specified by **Section IV** hereof.

IV. PAYMENTS

The Owner shall make monthly progress payments to the Architect based upon invoices submitted by the Architect for Services rendered and Reimbursable Expenses incurred during the preceding month. Payment requests, invoices and required documentation shall be submitted in the form and format stipulated by the Owner. One copy of each invoice, with required documentation, must be delivered to the following address:

Administrative Services Accounting
OREGON STATE UNIVERSITY
3015 SW Western Blvd.
Corvallis, OR 97333

Payments to the Architect will be made following the Owner's review and approval of the invoices and required documentation and acceptance of the Services performed and approval of the Reimbursable Expenses incurred.

Payments to the Architect for such Services performed and invoiced will be made for each phase as follows, with final payment for each phase subject to written acceptance of the phase by the Owner. The total of all payments for Basic Services shall not exceed the maximum amount set forth in **Section III.A.** for Basic Services, and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in **Section III.B.** for Reimbursable Expenses. The total of all such payments, for Services and Reimbursable Expenses, shall not exceed the Maximum Compensation. Owner reserves the right to retain up to five percent (5%) of the compensation limit set forth below for each phase, subject to Owner's acceptance of the Services and any deliverables for each phase. Notwithstanding "not to exceed" limits established below for each phase of Services, should an individual phase of design, beginning with Programming/Pre-Design, be completed without reaching the not-to-exceed limit for that phase, the balance remaining will be transferred to the next phase of work in succession through Project completion. At the completion of the Project, any remaining balance will revert to the Owner.

- A. **Pre-Design/Schematic Design Phase:** not to exceed \$_____.
- B. **Design Development Phase:** not to exceed \$_____.
- C. **Construction Documents Phase:** not to exceed \$_____.
- D. **Bidding Phase:** not to exceed \$_____.
- E. **Construction Administration Phase:** not to exceed \$_____.

No deduction shall be made from the Architect's fee on account of penalty, liquidated damages, or other sums withheld from payment to the Contractor.

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

F. **MWESB Report Requirement**

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

V. **SERVICES OF ARCHITECT'S CONSULTANTS**

The Consultants shall be paid by the Architect out of the Maximum Compensation, and the Parties understand and agree that the Owner has no direct or indirect contractual obligation or other legal duty to pay the Consultants or ensure that the Architect makes full and timely payment to the Consultants for Consultant services rendered on the Project. Services performed by the Architect through the Consultants shall be included on Architect invoices at the Architect's cost, without markup, at the request of the Owner. The Architect shall provide to the Owner copies of the Consultant's invoices submitted to the Architect, along with the Architect's requests for payment that are submitted to the Owner under this Agreement.

VI. TIME OF PERFORMANCE

This Agreement shall take effect on the Effective Date and Architect shall perform its obligations according to this Agreement, unless terminated or suspended, through final completion of construction and completion of all warranty work.

VII. ARCHITECT'S SERVICES

A. Pre-Design/Schematic Design Phase

In consultation with the Owner, and in compliance with the Design Criteria for Oregon State University Projects provided by the Owner, the Architect shall:

1. identify applicable building codes, administrative, and permit processing requirements as relevant;
2. verify, by on-site inspection unless specifically stated otherwise by the Owner, existing conditions and systems, including but not necessarily limited to architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the Work to be executed on the Project;
3. in consultation with Consultant Team, Owner Representatives, and other designated persons, use all available information to evaluate the program requirements, and with appropriate data and graphics propose a series of improvements deemed necessary and desirable to satisfy the Program Requirements, including; space needs, budget, availability of utilities, effect of codes and ordinances, safety and energy requirements, handicapped access to all spaces, historical character of the building, etc.;
4. based on the revised program requirements, develop Schematic Design studies consisting of drawings, and other documents for the Owner's approval;
5. provide documents suitable for submission to the City of Corvallis for the Oregon State University Physical Development Plan Review;
6. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project; Owner shall pay for all required appeals and plan review fees;
7. submit to the Owner an estimate, consistent with the requirements of **Section I.F.4** above and prepared by an independent cost estimator, of the probable Direct Construction Cost of the Project based upon current area, volume or other appropriate unit costs, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
8. if the Contractor for the Project is a Construction Manager/General Contractor ("CM/GC"), the

Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:

a. In lieu of performing the Direct Construction Cost estimating Services described in Section VII.A.7 above, provide cost verification Services related to the probable Direct Construction Cost estimates that will be prepared by the CM/GC, including but not limited to the following:

1) Review and verify the Direct Construction Cost estimates provided by the CM/GC during, or at the end of, the design phase of the Project; and

2) Coordinate these cost verification Services with the Direct Construction Cost estimating services to be provided by the CM/GC, in order to provide timely and accurate cost information to the Owner, in the most efficient manner reasonable under the circumstances.

b. Otherwise fully cooperate with the CM/GC during the value engineering process, constructability reviews, and otherwise during the design phase(s) and the construction phase(s) of the Project; and

c. In the event the Direct Construction Cost estimates prepared by the CM/GC exceed the Owner's Direct Construction Cost budget, revise the Project design to allow construction of the Project within Owner's budget.

OR

a. In performing the Direct Construction Cost estimating Services described in Section VII.A.7 above, coordinate the Architect's performance of those Services with the CM/GC, that will be performing Direct Construction Cost verification services under the CM/GC's contract with the Owner; and

b. Otherwise fully cooperate with the CM/GC during the design phase and the construction phase(s) of the Project.

9. submit to the Owner the following documents, information and other data:

a. written report of the results of a Fire and Life Safety review with the City of Corvallis

b. interior colors, materials and finishes recommendations;

c. a project schedule delineating the estimated time required for the Architect to complete the Design Development and Construction Documents Phases of the Project;

d. recommendations by the Consultants (structural, mechanical, electrical) of the technical requirements necessary to implement the Program Requirements;

- e. equivalent LEED scorecard; and
 - f. preliminary plans, elevations, and other drawings necessary to describe the entire scope of the Project. These drawings may be used for local municipal review and campus review.
10. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and completion of the artwork and integration with the overall design of the Project.

B. Design Development Phase

Upon notification of the Owner's approval of the Services performed by the Architect under the Schematic Design Phase, and upon written authorization from the Owner to proceed, the Architect, in consultation with the Owner and in compliance with the Design Criteria for Oregon State University Projects provided by the Owner, shall:

1. prepare drawings and other documents to fix and describe the size and character of the entire Project as to architectural, site development, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be appropriate and in accordance with governing codes and ordinances;
2. verify, by on-site inspection unless specifically stated otherwise by the Owner, prior to completion of the Construction Documents Phase, existing conditions as required to address significant constructability issues;
3. ensure that the Project complies with the State of Oregon Structural Specialty Code and with the 2010 ADA Standards for Accessible Design, applicable OSU Standards and policies, plus OSU best practices, and allows for access to programs, activities, and services in the most integrated setting possible (the Owner will be responsible for review of accessibility and interpretation of ADA for compliance with Federal requirements);
4. submit to the Owner, for approval, one independent cost estimate of probable Direct Construction Cost of the Project consistent with the requirements of **Section I.F.4** above and based upon the current unit costs referred to above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
5. if the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the Architect's

findings to the Owner.

OR

- a. Fully cooperate and coordinate with the CM/GC in the Architect's preparation of the Direct Construction Cost estimates provided for in Sub-section 4 above.
6. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project and at the Architect's expense revise such documents if required for approval of the Plan by the City of Corvallis (Owner shall pay for all required appeals and plan review fees);
 7. submit to the Owner the following documents, information and other data:
 - a. preliminary recommendations for interior colors, finishes, and materials;
 - b. one-line diagrams for mechanical systems design(s);
 - c. one-line diagrams for electrical systems design(s);
 - d. complete outline specification and Project manual;
 - e. recommendations for additive alternates equivalent to 10% of the base bid estimate;
 - f. recommendations for construction phasing to ensure continued operation of Owner's activities;
 - g. four copies of the energy analysis conforming to ORS 276.905 to 276.915 (State Agency Facility Energy Design) and ORS 469.010, more particularly described above;
 - h. equipment layouts showing location, size, and configuration of all equipment in the Project;
 - i. an up-date of the Fire and Life Safety requirements resulting from previous reviews with the City of Corvallis; and
 - j. a list of additive alternates, following consultations with the Owner; and
 8. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.

C. Construction Documents Phase

Upon notification of the Owner's approval of the Services performed by the Architect under the Design Development Phase and upon written authorization from the Owner to proceed, the Architect, in consultation with the Owner and in compliance with the Design Criteria for Oregon State University Projects provided by the Owner, shall:

1. prepare working drawings and specifications, setting forth all necessary plans, elevations, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship;
2. ensure that the Project complies with the State of Oregon Structural Specialty Code and with the 2010 ADA Standards for Accessible Design, plus OSU best practices, and allows for access to programs, activities, and services in the most integrated setting possible (the Owner will be responsible for review of accessibility and interpretation of ADA for compliance with Federal requirements);
3. prepare Construction Documents as may be required to expedite the Work in phases so as to take maximum advantage of weather and availability of facilities for demolition and reconstruction;
4. prepare specifications setting forth descriptions of materials and equipment, methods of installation, and standards of workmanship, including (in the appropriate section of Division 1 of the specifications) a complete listing of all warranties required under the technical portions of the specifications;
5. develop all required bidding information;
6. provide the Owner 5 sets of the 100% complete Project manual, including specifications and drawings, for review and approval prior to advertising the Project for bid;
7. submit to the Owner, for approval, a second independent cost estimate of probable Direct Construction Cost of the Project, consistent with the requirements of **Section I.F.4** above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
8. if the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the Architect's findings to the Owner.

OR

- a. Fully cooperate and coordinate with the CM/GC in the preparation of the Direct Construction Cost estimates provided for in Sub-section 7 above.
9. assist Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project (Owner shall pay for all required plan review fees);
10. prepare bidding documents with 10% additive alternates.
11. submit to the Owner the following documents, information and other data:
 - a. final recommendations for interior colors, materials, and finishes;
 - b. structural calculations;
 - c. heat gain/loss and HVAC system design calculations; and
 - d. electrical system design load calculations; and
12. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.

D. Bidding Phase

Upon notification of the Owner's approval of the Services performed by the Architect under the Construction Documents Phase, and upon written authorization from the Owner to proceed, the Architect shall:

1. furnish the Owner and CM/GC with one fully reproducible set of the Construction Documents, including working drawings and specifications for each bid package (assume four separate bid packages), complete as required for bid and construction purposes, along with one complete set of the construction documents in digital form (PDF format at a minimum resolution of 400dpi) (for additional copies, see **Section VIII**, Additional Services);
2. assist the Owner/CM/CG in soliciting bids;
3. if requested, review the bids and assist in recommending the award of Construction Contract(s) for the Work;
4. coordinate with the City of Corvallis to ensure that all plan review/building permit criteria are reflected in the final bid documents;

5. attend the pre-bid conference at the Project site; and
6. if the lowest acceptable bid exceeds the Direct Construction Cost allowance authorized by the Owner by 10%, then at the Owner's request, and at no additional cost to the Owner, the Architect shall modify the drawings and specifications in order that new bids may be solicited and a Construction Contract award made within said allowance, consistent with the requirements of **Section I.F.4** above.
7. If the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with this Bidding Phase and preparation of the probable Direct Construction Cost of the Project:
 - a. Assist the Owner and the CM/GC in soliciting subcontractor bids; and
 - b. In the event the direct construction cost estimates exceed the Owner's direct construction cost budget, revise the Project design to allow construction of the Project within Owner's budget.

E. Construction Administration Phase

Commencing with the Owner's issuance of a notice-to-proceed for construction of the Project, the Architect shall:

1. attend the pre-construction conference at the Project site;
2. provide general administration of the Work as contemplated by the provisions of the Construction Contract including assisting the Owner with evaluation of the feasibility of the Contractor-provided project time schedule;
3. make periodic visits to the Project site with such frequency as to ascertain the progress and quality of the Work, attend progress meetings with the Contractor, determine in general if the Work is proceeding in accordance with the Construction Documents, and submit a written report to the Owner within five (5) business days after each visit, with copies of each report to the Contractor;
4. arrange for periodic visits of Consultants to make similar determinations with respect to mechanical and other Work, as applicable;
5. review and approve or take appropriate action, with reasonable promptness to cause no delay in the Work, regarding shop drawings and samples submitted by the Contractor;
6. prepare any supplemental drawings or large-scale details needed to clarify the Construction Documents;
7. respond promptly to requests from the Contractor for assistance with unforeseen problems so as to minimize the Owner's exposure to claims for delay;

8. advise and consult with the Owner, issuing appropriate instructions to the Contractor;
9. check proposed costs of any modifications to the Construction Contract and recommend acceptance or rejection to the Owner (Owner will prepare written change orders);
10. endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor;
11. notify the Owner of any Work which does not conform to the Construction Documents and recommend to the Owner that the Contractor stop the Work whenever, in the Architect's opinion, it may be necessary for the proper performance of the Construction Contract.
12. issue certification to the Owner and the Contractor when all terms of the Construction Contract have been fulfilled to the Architect's satisfaction;
13. conduct on-site observations to determine the date of final completion, receive written guarantees and related documents assembled by the Contractor and issue recommendation for final acceptance and payment;
14. assist the Owner in the implementation of the State of Oregon's "1% For Art Program", as applicable;
15. upon completion of the Work, the Architect shall, at no additional cost to the Owner, update CAD drawings and submit the appropriate compact discs (including "bookplans" of the construction area made to Oregon State University standards) - compatible with Autocad Release latest version -, drawings reflecting significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect (the "Record Documents"), as further detailed in the OSU Construction Standards; and
16. review the completed Project near the end of any applicable warranty period(s) in order to identify defects of materials or workmanship and issue a written report to the Owner.

VIII. ADDITIONAL SERVICES

- A. Copies of Construction Documents.** The Architect shall furnish copies of all Construction Documents upon the written request of the Owner. The Owner shall reimburse the Architect at the cost of reproduction if in excess of the number specified in **Section VII** hereof.
- B. Conditions Required to Support Additional Compensation.** The Architect shall be paid, subject to executed amendments or supplements, for extra expenses and services involved if:
 1. substantial changes are ordered by the Owner after the Owner has acknowledged the acceptance of one or more of the planning phases described above (except changes which are ordered for the purpose of maintaining the Direct Construction Cost of the Project within the allowance

specified in **Section I**);

2. damage occurs as a result of fire or other casualty to the structure;
3. the Contractor becomes delinquent or insolvent and the delinquency or insolvency creates additional work for the Architect;
4. the Architect's attendance is required at City of Corvallis public and planning board presentations;
5. the Owner requests detailed demolition drawings of existing structure(s) or if documentation must be made for salvage of existing materials, except as may be required to ensure that new construction may be fit to existing construction;
6. the Owner requests the selection and specification of furnishing(s) outside the scope of the Projects' direct construction allowance; or
7. the Owner requests Additional Services not identified under the Basic Services provision of this Agreement, such as study models, renderings, etc.;
8. the Owner requests that the Architect perform Services related to:
 - a. selection and installation of new furniture purchased by the Owner for the Project;
 - b. preparation of any specifications required as part of the installation of the Owner's new furniture at the Project; or
 - c. preparation of furniture plans for the Owner's use, related to coordinating, moving refinishing and relocating existing furniture at the Project site.

C. Payments at the time of Abandonment or Suspension. If any Services performed by the Architect are abandoned or suspended, the Architect shall be paid for the Services rendered, under the provisions and limitations of **Section I.G** and **Section IV**, in proportion to the amount of Services performed at the time of suspension or abandonment, provided the initiative for such abandonment or suspension is by the Owner and does not result from a design error of the Architect, a bid overrun, or other breach or default by the Architect.

IX. SURVEY, BORINGS AND TESTS

The Owner shall, so far as the Services under this Agreement may require, furnish the Architect the following information:

- A. Survey.** A complete and accurate survey of the Project site, giving the grades and lines of streets, pavements, and adjoining properties and/or scale drawings reasonably representing existing conditions;
- B. Project Site Conditions; Utilities.** The rights, restrictions, easements, boundaries, and contours of the Project site and full information as to sewer, water, gas and electrical service, existing utility tunnels, lines, etc. on site;
- C. Geotechnical Reports.** Geotechnical investigation reports with recommendations for soil bearing capacities.

The Owner will pay for chemical, mechanical or other tests when required. The Owner does not warrant the accuracy of any of the information so provided. The Architect will not be held responsible for errors due to inaccuracy of any of the information so provided.

X. ARCHITECT'S RESPONSIBILITIES IN REGARD TO ASBESTOS AND OTHER HAZARDOUS SUBSTANCES

The Owner anticipates that this Project will not involve the removal of and destruction of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "Hazardous Substances"). The Owner shall contract separately for the identification and removal of any Hazardous Substances, either prior to the commencement of this Project or at such time as such Hazardous Substances are detected. The Architect shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner, professional consultant, the contractor, or subcontractor which the Owner selects relating to the abatement of such Hazardous Substances.

XI. INSURANCE PROVISIONS

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

- A. Workers' Compensation** - All employers, including Architect, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Architect shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Architect shall secure Commercial General Liability insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation

of insureds clause (cross liability). Architect shall ensure that each of its Consultants and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.

- C. Automobile Liability** - Architect shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Architect shall ensure that each of its Consultants and subcontractors complies with the same minimum requirements identified above.
- D. Professional Liability/Errors & Omissions** - Architect shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications or project manual, and all related work product of the Architect. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have limits of not less than \$3,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. Architect shall ensure that each of its Major Consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other Consultants and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$1,000,000 annual aggregate.
- E. "Tail" Coverage.** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Agreement for a duration of thirty-six (36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. Architect will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following Owner's acceptance of and final payment for the Architect's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the final acceptance of Work or Services and related warranty, if any.
- F. Certificate of Insurance.** Prior to the signature by the Owner to this Agreement, Architect shall furnish to the appropriate university official Certificates of Insurance and required endorsements as evidence of the insurance coverages required under this Agreement. The insurance policies will be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if the applicable policy is suspended, voided, canceled or materially changed, or if the aggregate limits have been reduced, except when cancellation is for non-payment, then a ten (10) days' notice may be given, to the Owner's Representative set forth in **Section XXX** below. The certificate(s) should state specifically that the insurance is provided for this Agreement. Policies will be endorsed to show required cancellation provisions, and copies of the endorsement will be attached to the certificate of insurance. Insuring companies are subject to acceptance by the Owner.

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

XII. INDEMNITY

- A. Indemnification.** Architect 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 Architect or the Architect's Consultants, partners, joint venturers, subcontractors, officers, agents or employees, and caused by any willful or negligent error, omission, or act of the Architect, or any person employed by it, or anyone for whose acts the Architect is legally liable while acting under or pursuant to this Agreement or any supplement or amendment hereto. The Architect 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 Architect for the Owner.
- B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Architect, neither the Architect nor any attorney engaged by the Architect 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 Architect is prohibited from defending the Owner, that Architect 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 Architect if the Owner elects to assume its own defense.

XIII. LIMITATION OF LIABILITIES

Except for any liability of the Architect arising under or related to the Architect's failure to perform according to the standard of care or any other liability arising under or related to the Architect'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.

XIV. RESERVED

XV. OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT

- 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 Architect intend that such Work Product is "Work made for Hire", of which the Owner shall be deemed the author. The Architect 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 Architect shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Architect 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. Architect's Use of Work Product.** The Architect, 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 Architect 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 Architect's involvement or prior written consent, the Owner shall indemnify, in an amount up to two times the Maximum Compensation to be paid under this Agreement, the Architect 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 Architect for any such liability arising out of the wrongful acts of the Architect or the Architect's officers, employees, Consultants, subcontractors, or agents.

XVI. 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, Architect shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Architect shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by **Sections XI-INSURANCE, XII-INDEMNITY, XIII -LIMITATION OF LIABILITIES, XV-OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT, XVIII-MEDIATION, XIX-TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XX-TAX COMPLIANCE, XXII-FOREIGN CONTRACTOR, XXIII-COMPLIANCE WITH APPLICABLE LAWS, XXIV-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXV-INDEPENDENT CONTRACTOR STATUS OF ARCHITECT, XXVI-ACCESS TO RECORDS and XXIX-NO WAIVER** of this Agreement.

XVII. NO THIRD PARTY BENEFICIARIES

Owner and Architect 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.

XVIII. MEDIATION

Architect and Owner, in an effort to resolve any conflicts that may arise during the design or construction of the Project or following the completion of the Project, agree that all disputes between them arising out of or relating to this Agreement or any supplements hereto, shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Architect further agrees to include a similar provision in all agreements with Consultants retained for the Project, thereby providing for mediation as the primary method for dispute resolution between the Parties to those agreements. All Parties agree to exercise their best effort in good faith to resolve all disputes in mediation.

Each Party will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be shared equally by all Parties to the dispute.

XIX. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS

- A. Mutual Agreement.** The Owner and the Architect, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Architect, 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 Architect, 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, as contemplated by OSU's budget and OSU's determination, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the Architect's Services [Reserved];
 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. Architect no longer holds any license or certificate that is required to perform the Services;
 4. Architect 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 Architect's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such

longer period of cure as Owner may specify in such notice.

C. Owner Funding. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available therefor and in that regard Owner represents and warrants to Architect that this agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to Architect, 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 Architect 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**, and within the limitations specified in **Section V** shall compensate the Architect for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
2. Pursuant to **Sub-sections B.3 or B.4** above, the Owner shall have any remedy available to it under this Agreement or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.
3. For any reason, the Architect shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all plans, specifications, CAD drawings on compact discs, mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.
4. For any reason, the Architect shall be responsible to the Owner for the quality of its Services and work product through the date of termination.

XX. RESERVED

XXI. DISCLOSURE OF SOCIAL SECURITY NUMBER

Architect must provide Architect's Social Security number unless Architect provides a federal tax ID

number. This number is requested pursuant to ORS 305.385 and OAR 150-305.0010. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

XXII. FOREIGN CONTRACTOR

If Architect is not domiciled in or registered to do business in the State of Oregon, Architect 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. Architect shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

XXIII. COMPLIANCE WITH APPLICABLE LAW

Architect shall comply with all OSU Standards and policies, federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Architect specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Architect also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659a.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Architect to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Architect of these obligations nor of the requirements of this Agreement. Architect further agrees to make payments promptly when due, to all persons supplying to such Architect 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 Owner 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 Architect fails or refuses to make any such payments required herein, the Owner may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Architect or Architect'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.

XXIV. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This Agreement is to 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 Architect 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 Owner 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. **ARCHITECT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

XXV. INDEPENDENT CONTRACTOR STATUS OF ARCHITECT

- A. Architect as Independent Contractor.** Architect 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 Architect's performance. Architect is responsible for determining the appropriate means and manner of performing the Services.
- B. Agency Status.** Architect 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.** Architect 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 Architect under this Agreement. Architect 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 Architect certifies that it is not currently employed by the federal government.

XXVI. ACCESS TO RECORDS

For not less than three (3) years after the termination or full performance of this Agreement, the Owner, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Architect and the Consultants which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, Architect shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Architect will provide full access to such documents in preparation for and during any such litigation.

XXVII. SEVERABILITY

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.

XXVIII. 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.

XXIX. 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.

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

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

Architect: _____

Address: _____

Owner: Bruce Daley, Associate Vice President for Capital Planning & Facilities Services

Address: Oregon State University
850 SW 35th Street
Corvallis OR 97333

With a Copy to: OSU Project Manager
Capital Planning & Development
Oregon State University
850 SW 35th Street
Corvallis, OR 97333

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

XXXI. CONFIDENTIALITY.

Architect 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 Architect from establishing a claim or defense in an adjudicatory proceeding. Architect shall require the Consultants to execute similar agreements to maintain the confidentiality of information of Owner.

XXXII. CONFLICT OF INTEREST.

Except with Owner's prior written consent, Architect shall not engage in any activity or accept any employment, interest or contribution that would or would reasonably appear to compromise Architect'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.

XXXIII. 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** Architect's Standard of Care; Representations and Warranties, **XII** Indemnity, **XIII** Limitation of Liabilities, **XV** Ownership and Use of Work Product of Architect, **XIX** Termination of Agreement; Non-Availability of Funds, **XXIV** Governing Law; Venue; Consent to Jurisdiction, **XXVI** Access to Records, **XXXI** Confidentiality, and **XXXIII** Survival.

XXXIV. 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.

XXXV. MERGER CLAUSE

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

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the Effective Date.

Architect

By _____

Title: _____

Date _____

Federal Tax ID # _____

Oregon State University, Owner

By: _____

Bruce Daley

Title: Associate Vice President
University Facilities, Infrastructure and
Operations

Date _____

SAMPLE

EXHIBIT 1

ARCHITECT'S KEY PERSONNEL AND CONSULTANTS

Key Personnel

Principal: _____

Senior Architectural Designer: _____

Architectural Designer: _____

Urban Designer: _____

Sr. Project Manager: _____

Project Manager: _____

Production Personnel/Project Architect: _____

Senior Interior Designer: _____

Interior Designer: _____

Clerical: _____

Consultants

1. _____

2. _____

3. _____

4. _____