



Oregon State University

REQUEST FOR PROPOSAL (RFP) #2022-008978 **UTILITY LOCATING SERVICES ANNUAL CONTRACT**

ISSUE DATE: JUNE 7, 2022

NON-MANDATORY PRE-PROPOSAL CONFERENCE:
JUNE 16, 2022 at 1:00 PM Pacific Time (PT) via Zoom

RFP DUE DATE/TIME:
JUNE 29, 2022 at 2:00 PM Pacific Time (PT) via
electronic submission to bids@oregonstate.edu

QUESTION DEADLINE: JUNE 22, 2022 at 12:00 PM Pacific Time (PT)

PROJECT NUMBER: VARIOUS

CONTRACT ADMINISTRATOR:

Matt Hausman
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-STEP** Request for Proposals (RFP) process to retain ONE (1) firm to provide Utility Locating Services (*the “Project”*).

OSU WILL ONLY BE ACCEPTING SEALED PROPOSALS ELECTRONICALLY - Proposals are to be submitted to bids@oregonstate.edu by the Due Date/Time.

NON-MANDATORY PRE-PROPOSAL CONFERENCE- A virtual Non-Mandatory Pre-Proposal Conference will be held on June 16, 2022 at 1:00 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.

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.

NOTE: This is an annual contract with an initial term which will run from contract award through December 31, 2023 with the potential for up to FOUR (4) one-year renewal options which will run from January 1 until December 31st annually if exercised.

1.2 Background. Oregon State University in Corvallis, Oregon 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 (<https://www.grandronde.org>) and the Confederated Tribes of the Siletz Indians (<https://ctsi.nsn.us>).

Founded in 1868 as Oregon’s land grant institution, 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.

The university’s 570-acre main campus is located in the city of Corvallis, a vibrant college town of nearly 58,000 in the heart of Western Oregon’s Willamette Valley. Corvallis consistently ranks among the safest, most highly educated and greenest small cities in the nation.

1.3 RESERVED

1.4 Summary of Work. Oregon State University is seeking underground utility locating services in accordance with State of Oregon revised statutes and OSU administrative rules. OSU is a member of Oregon 811, which requires that the University receive and pay for any and all locate requests that Oregon 811 receives for the University. The infrastructure maps that Oregon 811 uses, have been and will continue to be updated by the University’s Capital Planning and Development Department.

The University uses a Geographical Information system (GIS) and AutoCAD software to map its utilities.

1.5 Scope of Services.

Public locates (in response to 811 tickets): This service includes marking everything that is conductive and can be located with the standard pipe and cable locator. Last year the University received approximately 250 individual 811 tickets.

Private Locates: OSU may request services to locate our private utilities behind meters or if there are discrepancies with our utility maps and field work; it is anticipated that a 2-hour minimum charge will be assessed for this kind of request. These services can include locating non-conductive utilities that cannot be located with the standard pipe & cable locator (like plastic water lines, storm lines, concrete sewer lines, etc.).

Following release of the Notice Proceed, the selected Consultant must convene a project kick-off meeting. The agenda for the meeting must include a review of the contract administration requirements, the confirmation of the project scope of work and a review of the project deliverables and delivery process.

Locating and marking underground utilities will consist of the following:

1. Provide sufficient qualified staff, vehicles, paint, flagging, and all other locating equipment to fulfill its duties under this contract.
2. Store and safeguard the University's location maps and records. This information is sensitive in nature and records shall not be disclosed to or made available to persons not approved by the University.
3. Invoicing Requirements: Monthly invoice with the following information for EACH locate:
 - a. Pictures of locates.
 - b. Oregon 811 Ticket Number
 - c. Date and Time Completed
 - d. Number of Units and Utility located
 - e. Hourly and after-hours breakdown
4. Maintain records appropriately to support the invoicing and recording requirements set forth in this contract. The Contractor agrees to a records retention period of six (6) years.
5. For each locate request received, the Contractor shall screen, prioritize and visit the excavation site as necessary and locate the University's facilities as required by the Oregon Utility Notification Center.
6. Oregon State University will be responsible for paying the Oregon Utility Notification Center membership monthly ticket transaction fees.
7. For each locate request received, the Contractor shall be responsible for adequacy of excavator notification in compliance with the Oregon Utility Notification Center excavation rules.
8. All locate requests shall be completed within the timeframe required on the locate ticket and all "emergency" request shall be treated as an emergency and completed as soon as possible and as soon as it can be done safely according to Oregon Utility Notification Center excavation rules.
9. The Contractor will investigate all incidents of damage for accuracy of the locate(s) and will submit to the University a written report of said investigation within five (5) business days.

- The Contractor will maintain a copy of the written report for a period of six (6) years. The Contractor will give testimonial support in cases where deemed necessary by the University.
10. The Contractor shall locate and mark all of the University's locatable facilities at an excavation site in accordance with the Oregon Utility Notification Center excavation rules. The Contractor shall be liable for all damages when a valid request to locate locatable facilities has been made, unless the locate was made within the required accuracy. In such cases, the Contractor shall assist in recovery of any damages.
 11. The Contractor shall notify the excavator of the presence of any identifiable, but unlocatable, facilities of the University and caution the excavator that any location information supplied may not be within the definition of reasonable accuracy.
 12. The Contractor shall utilize all information transmitted by the University solely for the purpose of performing locates on behalf of the University.
 13. The Contractor agrees that in carrying out this contract they will comply with all applicable federal, state, and local laws.
 14. The Contractor shall notify the excavator of the presence of any identifiable, but unlocatable, facilities of the University and caution the excavator that any location information supplied may not be within the definition of reasonable accuracy.
 15. The Contractor shall utilize all information transmitted by the University solely for the purpose of performing locates on behalf of the University.

2.0 SCHEDULE

Issue Date	June 7, 2022
Non-Mandatory Pre-Proposal Conference	June 16, 2022 at 1:00 PM PT via Zoom
Question Deadline	June 22, 2022 at 12:00 PM PT
Final Addendum Issuance (if necessary)	By June 24, 2022
Proposal Due Date/Time	June 29, 2022 at 2:00 PM PT

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

Notice of Intent to Award	By July 8, 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 Consultant's 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.

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 TEN (10) 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 only step in the selection of a firm for this Project. The Proposals received in response to this RFP will be evaluated by a selection committee.

The members of the selection committee will discuss the strengths and weaknesses of all Proposers. The members of the selection committee will then score the Proposers based on all information received and presented in the Proposals. Optional Reference Checks may be undertaken to aid in final scoring. Upon completion of final scoring, an Intent to Award will be issued identifying the Apparent Successful Proposer and negotiations may commence with the Apparent Successful Proposer in order to finalize a contract in accordance with Section 7.12 below.

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 Firm Background and Experience (25 points)

Describe your firm and your experience with similar or comparable projects during the past five years. Describe recent (within the last five years), directly related experience. Include the name of the client, description of the work done, address and telephone number, dates of the project and the name of the project director. At least five references should be included. For each reference indicate the reference's name, organization, title, complete mailing address and telephone number. OSU reserves the right to contact any organizations or individuals listed

7.8.2 Key Personnel (20 Points)

Identify the key personnel in your firm who would be assigned to the project, their specific roles in this project, their previous experience in those roles and availability. The respondent is required to provide evidence of experience in prior municipal utility experience, including prior utility experience with OSU; ability to communicate effectively orally and in writing; ability to research and investigate records, including utility as-built drawings and construction drawings to establish accurate (within 24 inches from pipe edge) horizontal location of existing utilities; competence in reading OSU maps and locating facilities; competency in using ESRI and CAD products; and experience using a variety of utility locating tools, including: electromagnetic induction, sonic, magnetic, and radar devices.

The experience listed must be that which was performed by the respondent's staff and/or team's staff that will be assigned to this project. OSU will be focusing on the experience of the Lead Consultant/Project Manager who will be assigned to this project. Specify the percentage of that the Lead Consultant/Project Manager would be allocated to this project.

7.8.3 PROJECT APPROACH (20 Points)

Provide your approach to providing public and private locating services as provided for below:

- a. Methodology(ies): This section should clearly describe the methodology or methodologies planned to be used to carry out the specific tasks described in the Work Plan.
- b. Work Plan: Describe the sequential tasks to be used to accomplish this project. Indicate all key deliverables and their contents.
- c. Project Organization and Staffing: Describe the approach and methods for managing the project. Provide an organization chart showing all proposed team members. Describe the responsibilities of each person on the project team. Identify the Project Director and/or Manager and the key contact person for Oregon State University.
- d. Include resumes of each member of the project team and underground training certifications of field staff performing locating and marking services. List any portion of the work to be subcontracted and information describing the qualification and relative experience of any proposed subcontractors.
- e. Project Schedule: Provide a schedule for completing each task in the Scope of Work, including deadlines for preparing project deliverables. Demonstrate your team's ability to perform the work requested within an established budget and schedule.

7.8.4 FEE PROPOSAL (20 Points)

Provide a **FEE PROPOSAL** for public and private locates as provided for below:

- a. Public Locate - 811 Per Ticket Cost (**Maximum 10 of the 20 Available**)
- b. Private Locate – Hourly Rate (**Maximum 10 of the 20 Available**)

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**

7.8.4 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.

7.9 Point Summary Table.

Criteria	Point Value
Firm Background and Experience	25 Points
Key Personnel	20 Points
Project Approach	20 Points
Fee Proposal	20 Points
Workforce Diversity Plan	15 Points

7.10 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 Misconduct Policy. OSU has policies that prohibit sexual misconduct against 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 misconduct against 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 Consultant Agreement

END OF RFP

EXHIBIT 1

CONSULTANT'S AGREEMENT
PROJECT NAME
CONTRACT NUMBER
OREGON STATE UNIVERSITY

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

the Consultant: **Consultant Name**
 Consultant Address
 Consultant Address

and the Owner: Oregon State University
 Construction Contracts Administration
 644 SW 13th St.
 Corvallis OR 97333

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

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

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

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

I. RELATIONSHIP BETWEEN THE PARTIES

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

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

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

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

"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 Section III.B of this Agreement.

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

- C. Services To Be Performed.** The Consultant agrees to provide, with the assistance of the Sub-Consultants, the professional services outlined below for this Project.

Such Services include **enter description of services**. Additional details are provided in the Consultant's **Proposal** dated **Month, Day, Year**, signed by **xxxx**, attached hereto and incorporated herein by this reference as "**Exhibit A**".

The Consultant shall perform the Services according to the following schedule: **enter schedule to perform services**.

When applicable, the Consultant, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

The Consultant agrees that time is of the essence in the performance of this Agreement.

- D. Directives for Performance of the Services.**

1. The Consultant shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Consultant's performance of Services shall be as a professional Consultant to the Owner to carry out the activities of Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.
2. In administering this Agreement, the Owner may employ the services of an independent project manager, and potentially, other consultants as needed to fulfill the Owner's objectives.
3. The Consultant shall provide a list of all Sub-Consultants which the Consultant intends to utilize on the Project, upon request by the Owner. The list shall include such information on the qualifications of the Sub-Consultants. The Owner reserves the right to review the Sub-Consultants proposed, and the Consultant shall not retain a Sub-Consultant to which the Owner has a reasonable objection.
4. The Consultant shall provide to the Owner a list of the proposed key Project personnel of the Consultant and its Sub-Consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be

requested by the Owner. In the event that key personnel or Sub-Consultants become unavailable to Consultant at any time, Consultant shall replace the key personnel and Sub-Consultants with personnel or Sub-Consultants having substantially equivalent or better qualifications than the key personnel or Sub-Consultant being replaced, as approved by Owner. Likewise, the Consultant shall remove any individual or Sub-Consultant from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

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

II. CONSULTANT'S STANDARD OF CARE By execution of this Agreement, the Consultant agrees that:

- A. The Consultant is an experienced professional firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement to design or administer a project having this scope and complexity; and will perform such Services pursuant to the standard of care set forth in subsections B. through G. of this **Section II**.
- B. When applicable law requires that Services be performed by licensed professionals, the Consultant shall, or shall require its Sub-Consultant's to provide those services through qualified professionals licensed in Oregon. Wherever a deliverable is identified as "Engineered" or "Stamped", or any item is described as "Engineered", the deliverable shall have been at a minimum reviewed, agreed to, signed and stamped by a professional engineer ("PE") licensed in the state of Oregon. The PE signing a document shall be licensed and experienced in the appropriate branch of engineering for the deliverable. Where the PE experience is not directly relatable, a subject matter expert may review and sign the deliverable in addition to the PE sign off. Upon request from the Owner, the Consultant shall provide full Curriculum Vitae's (showing their experience/expertise in the area) for all PEs and subject matter experts who sign off on deliverables. The Owner understands and agrees that the services of the Consultant, and Sub-Consultants are performed for the benefit of the Owner.
- C. The Consultant has the capabilities and resources necessary to perform the obligations of this Agreement.
- D. The Consultant either is, or will become, in a manner consistent with the standard of care set forth in this Agreement, familiar with all current laws, rules, and regulations which are applicable to the Project.
- E. All documents prepared by the Consultant shall be prepared in accordance with its standard of care in an effort to accurately reflect and incorporate all such laws, rules, and regulations.
- F. Consultant represents and warrants to Owner that (1) Consultant has the power and authority to enter into and perform this Agreement, (2) when executed and delivered, this Agreement shall be a valid and binding obligation of the Consultant enforceable in accordance with its terms, (3) Consultant shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or services, be duly qualified and competent, (4) the Services under this Agreement shall be performed in accordance with the

- professional skill, care and standards of other professionals performing similar services under similar conditions;
- G. All documents prepared by Consultant pursuant to this Agreement shall accurately reflect, incorporate and comply with current laws, rules, regulations and ordinances which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of Consultant);
 - H. All documents prepared by the Consultant pursuant to this Agreement shall accurately reflect existing conditions for the scope of the services to be performed;
 - I. The Consultant shall be responsible for any negligent inconsistencies or omissions in the documents prepared by the Consultant. While Consultant cannot guarantee that the various documents required under this Agreement are completely free of all minor human errors and omissions, it shall be the responsibility of Consultant throughout the period of performance under this Agreement to use due care and perform with professional competence. Consultant will, at no additional cost to Owner, correct any and all errors and omissions in the documents prepared by Consultant;
 - J. Any review or acceptance by the Owner of Services or documents prepared by Consultant will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein. The Consultant is responsible for all Services under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services;
 - K. The representations and warranties set forth in this section are in addition to, and not in lieu of, any other representations and/or warranties provided.

III. COMPENSATION

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 to this Agreement. Consultant progress payments shall be made according to the provisions and schedule set forth in **Section V** of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Consultant shall perform the Basic Services, directly or through the Sub-Consultants, on a time and materials basis for a Maximum Not-to-Exceed fee of \$_____.
- 1. **Fees for Sub-Consultant's Services:** Owner shall only reimburse Consultant for the actual, direct costs of Services performed by its Sub-Consultants, and shall not reimburse Consultant for any overhead or mark-up of costs added to the direct cost of a Sub-Consultant's Services.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Consultant for any allowable

Reimbursable Expenses, up to a maximum amount of \$_____.

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

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

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$ 0.58 per mile
Lodging	\$140.00 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 Consultant for Additional Services performed by the Consultant, whether directly or through its Sub-Consultants, beyond the scope of the Basic Services described in **Section I.C**, based on hourly rates for Consultant personnel or Sub-Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement, but only when the Owner has given prior written authorization and the Parties have executed an amendment to this Agreement.

CONSULTANT:

Principals	\$	___/hr
Senior Designer	\$	___/hr
Designer	\$	__ - __/hr

Urban Designer \$__ - __/hr
Sr. Project Manager..... \$__ - __/hr
Project Manager..... \$__ - __/hr

Production Personnel/Project Consultant \$__ - __/hr
Senior Interior Designer \$ __/hr
Interior Designer \$__ - __/hr
Clerical \$ __/hr

SUB-CONSULTANTS:

_____. \$ __/hr
_____. \$ __/hr

_____. \$ __/hr
_____. \$ __/hr

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

IV. TIME OF PERFORMANCE

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

V. FEE PAYMENTS

Monthly progress payments shall be made following Owner's review and approval of the invoices and required documentation, acceptance of the Services performed, and approval of the Reimbursable Expenses incurred during the preceding month, to the following address:

University Financial Services
Oregon State University
850 SW 35th St.
Corvallis, OR 97331
FacServContracts@oregonstate.edu

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

Per OSU Standards, overdue claims are those that have not been paid within forty-five (45) days on the later of the following: receipt of an accurate invoice and required supporting documentation or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible. The maximum overdue charge will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

The total of all payments for Services and Reimbursable Expenses may not exceed the Maximum Compensation set forth in **Section III** above.

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

Consultant shall deliver to Owner the MWESB Report described in this Section. Timely receipt of MWESB Report shall be a condition precedent to Owner's obligation to pay any final payments otherwise due.

- A.** Consultant shall submit a final MWESB Report as a condition of final payment ("Final MWESB Report"). The Final MWESB Report shall include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Project.

VI. CONSULTANT'S RESPONSIBILITIES IN REGARD TO HAZARDOUS MATERIALS

It is envisioned that this project will not involve the removal of and destruction of asbestos, asbestos-related or other hazardous materials. It is understood and agreed that the Owner will contract separately for the identification and removal of hazardous materials, either prior to the commencement of this project or at such time as such hazardous substances are detected. It is understood and agreed that the Consultant shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner and/or professional consultant and/or the contractor and/or subcontractor which the Owner selects relating to the abatement of asbestos, asbestos-related or other hazardous materials.

VII. ACCESSIBILITY REQUIREMENTS

The Consultant shall ensure that the project complies with the American with Disabilities Act Accessibility Guidelines (ADAAG), latest version, and allows for access to programs, activities, and services in the most integrated setting possible. The Owner will be responsible for review of accessibility and interpretation of ADAAG for compliance with Federal requirements.

VIII. INSURANCE PROVISIONS

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

- A. Workers' Compensation** - All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Consultant shall ensure that each of its Sub-Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability** - Consultant shall secure Commercial General Liability insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this Agreement. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). Consultant shall ensure that each of its Sub-Consultants and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- C. Automobile Liability** - Consultant shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall ensure that each of its Sub-Consultants and subcontractors complies with the same minimum requirements identified above.
- D. Professional Liability/Errors & Omissions** - Consultant shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications or project manual, and all related work product of the Consultant. The policy may be either a practice based policy or a policy pertaining to the specific Project. Professional Liability insurance to be provided shall have limits of not less than \$3,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. Consultant shall ensure that each of its major Sub-Consultants and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other Sub-Consultants and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$1,000,000 annual aggregate.
- E. "Tail" Coverage.** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Agreement for a duration of thirty-six

(36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following Owner's acceptance of and final payment for the Consultant's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the Effective Date of this agreement. This will be a condition of the final acceptance of Services and related warranty, if any.

F. Certificate of Insurance. Upon request by the Owner, OR [Prior to the signature by the Owner to this Agreement], Consultant shall furnish to the appropriate university official Certificates of Insurance and required endorsements as evidence of the insurance coverages required under this Agreement. The insurance policies will be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if the applicable policy is suspended, voided, canceled or materially changed, or if the aggregate limits have been reduced, except when cancellation is for non-payment, then a ten (10) days' notice may be given, to the Owner's Representative set forth in **Section XXVII** below. The certificate(s) should state specifically that the insurance is provided for this Agreement. Policies will be endorsed to show required cancellation provisions, and copies of the endorsement will be attached to the certificate of insurance. Insuring companies are subject to acceptance by the Owner.

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

IX. INDEMNITY

- A. Indemnification.** Consultant shall indemnify, hold harmless and defend the Owner and its officers, board members, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities, including professional services, of the Consultant or its Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees, and caused by any willful or negligent error, omission, or act of the Consultant, or any person employed by it, or anyone for whose acts the Consultant is legally liable while acting under or pursuant to this Agreement or any supplement or amendment hereto. The Consultant agrees to waive all rights of subrogation against the Owner and its officers, board members, agents, and employees for losses arising from the work performed by the Consultant for the Owner.
- B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, nor purport to act as legal representative of the Owner, without the prior written consent of the Owner's General Counsel. The Owner may, at any time at its election assume its own defense and settlement in the event that it determines that the Consultant is prohibited from defending the Owner, that Consultant is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of

the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Consultant if the Owner elects to assume its own defense.

C. Sub-Consultant Agreements. Each agreement with Sub-Consultants at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Sub-Consultants for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the work or the Project. The Owner and Consultant acknowledge and agree that the purpose of this Section is to enable the Owner, at its discretion, in addition to the Consultant, to assert claims for damages and indemnification directly against Sub-Consultants that are or may be responsible for breach of the contract, defects in the work, and other damages incurred by the Owner arising out of or related to the related to the work or the Project. The Owner and Consultant acknowledge and agree that the purpose of this Section is to enable the Owner at its discretion, in addition to the Consultant, to assert claims for damages and indemnification directly against Sub-Consultants that are or may be responsible for breach of the contract, defects in the work, and other damages incurred by the Owner arising out of or related to the work or the Project.

X. LIMITATION OF LIABILITIES

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

XI. [RESERVED]

XII. OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT

A. Work Product. Copies of plans, specifications, reports, or other materials required to be delivered under this Agreement ("Work Product") shall be the exclusive property of Owner. The Owner and the Consultant intend that such Work Product be deemed "Work made for Hire", of which the Owner shall be deemed the author. If for any reason such Work Products are not deemed "Work made for Hire", the Consultant hereby irrevocably assigns to the Owner all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Consultant shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Consultant forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.

B. Consultant's Use of Work Product. The Consultant, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize

for its sales and in addition, unless specifically otherwise exempted, the Consultant may use standard line drawings, specifications and calculations on other unrelated projects.

C. Owner Reuse or Modification of Work Product. If the Owner reuses or modifies the Work Product without the Consultant's involvement or prior written consent, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the Owner shall indemnify, within the limits of the Tort Claims Act, the Consultant against liability for damage to life or property arising from the Owner's reuse or modification of the Work Product, provided the Owner shall not be required to indemnify the Consultant for any such liability arising out of the wrongful acts of the Consultant or the Consultant's officers, employees, Sub-Consultants, subcontractors, or agents.

XIII. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Consultant shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Consultant shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by **Sections VIII-INSURANCE, IX-INDEMNITY, X -LIMITATION OF LIABILITIES, XII-OWNERSHIP AND USE OF WORK PRODUCT OF CONSULTANT, XV-MEDIATION, XVI-TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XIX-FOREIGN CONTRACTOR, XX-COMPLIANCE WITH APPLICABLE LAWS, XXI-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXII-INDEPENDENT CONTRACTOR STATUS OF CONSULTANT, XXIII-ACCESS TO RECORDS and XXVI-NO WAIVER** of this Agreement.

XIV. NO THIRD PARTY BENEFICIARIES

Owner and Consultant are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

XV. MEDIATION

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

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

XVI. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS

- A. Mutual Agreement.** The Owner and the Consultant, by mutual written agreement, may terminate this Agreement at any time.
- B. Termination by Owner for Convenience.** Owner may terminate this Agreement in whole or in part whenever Owner determines that termination of the Agreement is in the best interested of the Owner or the public. The Owner shall provide the Consultant with seven (7) Days prior written notice of a termination for Owner's or for public convenience.
- C. Termination by Owner for Cause.** Owner may terminate this Agreement, in whole or in part, immediately upon notice to Consultant, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Consultant's Services;
 2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
 3. Consultant no longer holds any license or certificate that is required to perform the Services;
 4. Consultant commits any breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or so fails to perform the Services as to endanger Consultant's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.
- D. Effect of Termination.** In the event of termination of this Agreement:
1. Pursuant to **Sub-sections A, B, C.1 or C.2** above, the Owner, using the Schedule of hourly rates set forth in **Section III** if applicable, and within the limitations specified in **Section V** shall compensate the Consultant for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
 2. Pursuant to **Sub-sections C.3 or C.4** above, the Owner shall have any remedy available to it under this Agreement or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.
 3. For any reason, the Consultant shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all documents prepared by the Consultant pursuant to this Agreement, information, works-in-progress or other property that are or would be deliverables had this

Agreement been completed.

4. For any reason, the Consultant shall be responsible to the Owner for the quality of its Services and work product through the date of termination.

XVII. SMOKE, TOBACCO, FIREARMS AND SEXUAL HARRASSMENT POLICY

- A. Consultant acknowledges and agrees Owner's grounds and premises are smoke and tobacco free. Consultant, its employees, agents, Sub-Consultant, if any, agree not to smoke or use tobacco products while on Owner property.
- B. The Owner has policies that prohibit sexual harassment of members of the university community and in keeping with those policies. Consultant and its employees, agents and Sub-Consultants are prohibited from engaging in sexual harassment of members of the university community.
- C. The Owner has adopted a policy that prohibits Consultant, its employees, agents and Sub-Consultants from possessing firearms on Owner's property.

XVIII. DISCLOSURE OF SOCIAL SECURITY NUMBER

Consultant must provide Consultant's Social Security number unless Consultant provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

XIX. FOREIGN CONTRACTOR

If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Consultant shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

XX. COMPLIANCE WITH APPLICABLE LAW

Consultant agrees to comply with all federal, state, county, and local laws, ordinances, regulations, and all applicable OSU Standards and Policies applicable to the Services to be provided under this Agreement. Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Consultant also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Consultant to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Consultant of these obligations nor of the requirements of this Agreement. Consultant further agrees to make payments promptly when due, to all persons supplying to such Consultant labor or materials for the performance of the Services to be provided under this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this Agreement; not

permit any lien or claim to be filed or prosecuted against the State on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Consultant fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

XXI. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Benton County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. **CONSULTANT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

XXII. INDEPENDENT CONTRACTOR STATUS OF CONSULTANT

- A. Consultant as Independent Contractor.** Consultant shall perform all required Services as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Owner cannot and will not control the means or manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services.
- B. Agency Status.** Consultant is not an officer, employee, or agent of the State or Owner as those terms are used in ORS 30.265.
- C. Benefits; Payment of Taxes.** Consultant is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal or state taxes applicable to any compensation or payments paid to Consultant under this Agreement. Consultant will not be eligible for any benefits from these Agreement payments of federal Social Security, unemployment insurance or worker's compensation, except as a self-employed individual. If this payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

XXIII. ACCESS TO RECORDS

For not less than three (3) years after the termination or full performance of this Agreement, the Owner,

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

XXIV. SEVERABILITY

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

XXV. FORCE MAJEURE

Neither party shall be held responsible for delay or default caused by fire, riot, acts of God, and war which is beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

XXVI. NO WAIVER

The failure of the Owner to enforce any provision of this Agreement shall not constitute a waiver by the Owner of that or any other provision.

XXVII. NOTICE; PARTIES' REPRESENTATIVES

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by email followed by personal delivery, or mailing the same, postage prepaid, to Consultant or Owner at the address set forth below, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Section. A notice so addressed and mailed shall be deemed to be given seven (7) calendar days after the date of mailing. A notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

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

Consultant: **Principle's Name, Title**
 Consultant Name
 Consultant Address
 Consultant Address

Owner: **Bruce Daley, Associate Vice President for Capital Planning and Facilities Services**
Oregon State University
850 SW 35th St.
Corvallis OR 97331

With a Copy to: **OSU Project Manager, Project Manager**
Capital Planning & Development
Oregon State University
850 SW 35th St.
Corvallis, OR 97331

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

XXVIII. CONFIDENTIALITY

Consultant shall maintain the confidentiality of information of Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent Consultant from establishing a claim or defense in an adjudicatory proceeding. Consultant shall require the Sub-Consultants to execute similar agreements to maintain the confidentiality of information of Owner.

XXIX. CONFLICT OF INTEREST

Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would or would reasonably appear to compromise Consultant's professional judgment with respect to this Project, including without limitation, concurrent employment on any project in direct competition with the Project, and will provide copies of any such agreements within ten (10) days of the full execution of such agreements.

XXX. SURVIVAL

All rights and obligations shall cease upon termination or full performance of this Agreement, except for the rights and obligations set forth in **Sections II** Consultant's Standard of Care, **IX** Indemnity, **X** Limitation of Liabilities, **XII** Ownership and Use of Work Product of Consultant, **XVI** Termination of Agreement; **Non-Availability of Funds**, **XXI** Governing Law; Venue; Consent to Jurisdiction, **XXIII** Access to Records, **XXVIII** Confidentiality, and **XXX** Survival.

XXXI. COUNTERPARTS

This Agreement may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of the Agreement so executed shall constitute an original.

XXXII. MERGER CLAUSE

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

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

Consultant Name, Consultant

Oregon State University, Owner

By _____

By _____

Printed Name _____

Bruce Daley

Title _____

Associate Vice President for Capital Planning and Facilities Services

Date _____

Date _____

Federal Tax ID # _____

