

CONSULTANT'S AGREEMENT

Medium Voltage Systems Operator – Utility Connection and Monitoring Facility: PacWave South
#2025-019018

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 Medium Voltage Systems Operator Services for the Project identified as PacWave South for Oregon State University at Seal Rock, 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.

"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.

All pages of all specifications and all drawings prepared by the Consultant or its Sub-Consultants shall contain the following statement:

i. **“Notice of Extended Payment Provision**

The Contract will allow Owner to make:

1. Progress payments no later than 30 days after the date of receipt of an approved Application for Payment
2. Final payment of all remaining amounts no later than 30 days after the date the Owner approved all Work“

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. **Key Personnel.** The Consultant shall provide to the Owner a list of the proposed key personnel of the Consultant and its sub-contractors to be assigned to complete the Services under this Agreement. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner. In the event that key personnel or sub-contractors become unavailable to Consultant at anytime, Consultant shall replace the key personnel and sub-contractors with personnel or sub-contractors having substantially equivalent or better qualifications than the key personnel or sub-contractor being replaced, as approved by Owner. Likewise, the Consultant shall remove any individual or sub-contractor from the Services under this Agreement 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.
The Consultant represents and warrants that the key personnel and Consultants identified are fully licensed to perform the particular Services assigned to them on the Project.
5. **Media.** Consultant shall make no news release, press release or statement to a member of the news media regarding the Services under this Agreement without prior written authorization from Owner. For any media articles (e.g. newspapers, magazines, online media) produced by the Consultant after receiving written authorization from Owner to produce such media, the Consultant shall provide to Owner upon request or prior to Completion of Work under this Agreement, the following: author, title, publication or website, page number (if applicable), and date of publication.
6. **Publications.** Consultant shall include the following acknowledgement in publications arising out of, or relating to, work performed under this Agreement:
 - Acknowledgement: "This material is based upon work supported by the U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy ("EERE") under the Water Power Program Award Number DE-EE0007899."
 - Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."
7. **Equipment.** Title to equipment (property) acquired under this Agreement will conditionally vest upon acquisition with Owner.
8. **Technologies and Techniques.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Consultant shall briefly describe the new technologies or techniques (specific capabilities and performance improvements enabled), the pre-commercialization history of the technologies and their potential application to current and future projects.
9. **Invention Disclosures.** As applicable, upon request by Owner or prior to Completion of Work

under this Agreement, Consultant shall provide the following invention disclosures: List title, date submitted, and name of inventor. Invention disclosures are to be provided to Owner in a manner consistent with 37 CFR 401.14 'Standard Patent Rights Clauses.'

10. **Patent Applications.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Consultant shall provide the following patent application information: list patent number, name of inventors, assignee, patent application number, date of filing, and title of patent application.
11. **Licensed Technologies.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Consultant shall provide the following information for subject inventions licensed to third parties as applicable: list name of licensee, domestic or foreign patent or patent application number, title, and expiration date of agreement.
12. **Network and Collaborations.** As applicable, upon request by Owner or prior to Completion of Work under this Agreement, Consultant shall provide information to Owner about partnerships and other arrangements concluded with respect to the project or technology area or Work performed under this Agreement. Contractor shall list name of network or collaboration (if any), name of entities involved, date of agreement (if any), brief description of network or collaboration, and technology area. Contractor shall clearly denote the partner organizations unique and distinguished contribution to the Project as a result of work performed under this Agreement.
13. **Website Featuring Work or Work Results.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Consultant shall provide Owner the following information: website or other Internet sites that reflect the Work or results of Work under this Agreement. List name of website, specific webpage(s) on which Work or results featured, and brief description of Work or results featured.
14. **Other Products.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Consultant shall provide Owner the following information: additional Work output, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment. Contractor shall provide a brief description of additional project output, date of release, and entity to which output was provided.
15. **Awards, Prizes and Recognition.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Consultant shall provide the following related to any awards, prizes, or other recognition for project work or results, subjection inventions, patents or patent applications, etc. as a result of work performed under this contract. List name of award/recognition/prize, name of sponsoring organization, date of receipt, and subject of award/price/recognition.
16. **Contractor Reporting.** As applicable, Consultant shall report to Owner the following: a.) any notices or claims of patent or copyright infringement arising out of or relating to the performance of the work performed under this Agreement; b.) potential or actual violations of federal, state, and municipal laws arising out of or relating to work performed under this Agreement; c.) any fatality or injuries requiring hospitalization arising out of or relating to the work under the Agreement; d.) potential or actual violations of environmental, health, or safety laws and regulations; e.) Any event which is anticipated to cause significant schedule slippage or cost increase; f.) any damage to Government owned equipment in excess of \$25,000; g.) any incident arising out of or relating to work under the Agreement that has the potential for high visibility in the media.

17. **Protected and Limited Rights Data.** As applicable, the Consultant shall mark protected data and limited rights data for all deliverables provided under this Agreement. Failure to properly mark data may result in its public disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. Section 552) or otherwise. The work under this Agreement is funded by the U.S. Government. Therefore, unlimited rights are may be retained by the government, to any technical data or commercial or financial data produced under this Agreement.
18. **Records Retention and Audit.** Consultant is responsible to provide any information, documents, site access, or other assistance requested by Owner, Federal or State auditing agencies; or their authorized representatives, for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Contractors records relating to this Contract.
 - Accounting; Audit Access.** The Consultant shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner, DOE, Federal or State auditing agencies; or their authorized representatives, shall be afforded reasonable and regular access to the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other electronic and hard copy data relating to the Consultant's right to payment under and the Consultant's compliance with the terms and conditions of this Agreement, and the Consultant shall preserve these for a period of six years after final payment or for such longer period as may be required by law.

If for any reason, any part of this contract, or any resulting contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than six 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.
 - Periodic and Final Audits.** Owner may, at its discretion, perform periodic audits of the cost of the work and any other reimbursable costs associated with the Project. Owner may conduct a final audit of all Project books and records prior to the Project closeout. The Contractor shall cooperate fully with Owner, DOE, Federal or State auditing agencies; or their authorized representatives, in the performance of such audits.
19. **Allowable Costs.** All Project costs must be allowable, allocable, and reasonable. The Consultant must document and maintain records of all Agreement related expenses, including, but no limited to in-kind contributions. The Consultant is responsible for maintaining records adequate to demonstrate that Agreement expenses claimed have been incurred, are reasonable, allowable, and allocable, and comply with cost principles. Upon request, the Consultant is required to provide such records to Owner, DOE, State or Federal auditing agencies; or their authorized representatives. Such records are subject to audit. Failure to provide Owner, DOE, State or Federal auditing agencies adequate supporting documentation may result in a determination by Owner, DOE, State or Federal auditing agencies; or their authorized representatives, that those costs are unallowable.
20. **Covered Relationship.** The Consultant shall notify Owner of the existence of a 'covered relationship' as defined by 5 CFR 2635.502(a) & (b) between the Consultant and Owner which creates at a minimum an apparent conflict of interest. The Consultant shall notify Owner of the covered relationship and provide detailed information and justification (including, for example, mitigation measures) as to why the relationship under this Agreement does not create an actual conflict of interest

II. 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 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 **\$XX,XXX** (the "Maximum Compensation"), for the combination of Basic Services and Direct Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. 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 Contractors, on a Time and Materials basis not-to-exceed amount of **\$XX,XXX**.
- B. **Direct Expenses:** The Owner shall make payment to the Consultant for any allowable Direct Expenses. Direct expenses will be paid to the Consultant within the maximum allowable not to exceed total amount payable under this Agreement as stated above.

Direct expenses mean actual direct expenditures made by the Consultant that are directly related to the production of the products sold or services rendered under the Agreement. Direct expenses include, but are not limited to, the following: long-distance communications, reproductions; postage and handling of plans, drawings, specifications and other documents; mileage and travel expenses including airfare and lodging; per diem, as applicable; data processing and photographic production techniques and renderings and models, mock-ups; goods purchases by the Contractor to meet the obligations of the Agreement; goods purchased as requested by Owner and as essential to the normal discharge of Owner's responsibilities as it is related to Owner's business under this Agreement. All direct expenses must be reasonable, allowable per this Agreement, and reflect the most efficient and cost-effective option that results in the best value for the Owner.

Direct Expenses will be paid to Consultant, at cost within the allowable maximum amount as

stated above.

Travel

All foreign travel and foreign travel related costs must be estimated in advance and provided to the Owner for written pre-approval. Consultant must receive written approval by the Owner prior to foreign travel and foreign travel related costs, in order to be eligible for payment. Consultant shall make and pay for their travel arrangements in performance of the Agreement. Any air transportation to, from, between, or within a country other than the United States must be in accordance with the Fly America Act (49 USC 40118).

All travel shall be conducted in the most efficient and cost-effective manner that results in the best value for the Owner.

- C. **Additional Services:** The Owner will compensate the Consultant for Additional Services performed by the Consultant, whether directly or through its Contractors, beyond the scope of the Basic Services described in **Section I.C**, based on the following schedule of charges for the duration of this Agreement, but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement.

Consultant’s Additional Services:	Unit Price / Hour (2025 loaded hourly rate*)
Project Manager	

SubContractors Personnel	Unit Price / Hour (2025 loaded hourly rate*)

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* Includes profit.

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.

Starting in 2026, all rates may be subject to adjustment on January 1 of each year only via written amendment between Owner and Contractor.

In any event, when Additional Services are performed, by Consultant or its Sub Contractors, profit and overhead percentages must be negotiated and, in any event, pending agreement by Contractor and Owner shall not exceed 15% on Labor, 10% on Materials, and 10% on Equipment or a percentage as Contractor shall demonstrate and Owner would accept as reasonable and standard for the industry.

IV. TIME OF PERFORMANCE

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

V. FEE PAYMENTS

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

Pacwaveinvoices@oregonstate.edu; FacServContracts@oregonstate.edu

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

- a. The Agreement number 2025-019018;
- b. A description of services performed, including the dates services were performed, all deliverables delivered during the period of the invoices, the rate(s) for services performed, and the total cost of services;
- c. Itemization and explanation of all Direct Expenses, including travel and travel related expenses as a sub item for which Commissioning Agent claims payment authorized under this Agreement;
- d. The total amount due and the payment remittance address.
- e. Total percentage of budget utilized to date for:
 - All Basic Services performed, per task as applicable.
 - Direct Expenses, including travel and travel related expenses as a sub item.

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 Direct Expenses may not exceed the Maximum Compensation set forth in Section III above.

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

Consultant 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. Consultant shall submit annual MWESB Reports on June 30 of each year the Agreement is active ("Annual MWESB Report") or with submission of final invoice, as appropriate. The Annual MWESB Reports shall include the total number of subcontracts awarded to MWESB enterprises as Sub-Contractors, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months or over the term of the contract, if less than 12 months.
2. Commissioning Agent shall submit a final MWESB Report as a condition of final payment ("Final MWESB Report"). The Final MWESB Report shall include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Contractors and the dollar value of their respective contracts and subcontracts during the course of the fulfillment of the scope of services under this Agreement.

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.** 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.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend the Owner and its trustees, officers, employees, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees, experts' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities of the Services and the Work, including professional services, of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees, but only to the extent caused the negligence or other wrongful conduct of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees; provided, however, to the extent Consultant provides architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services (as that term is defined under ORS 279C.100), Consultant has no duty to defend Owner against a claim for professional negligence and relating to the professional services provided by the Consultant, except to the extent that Consultant's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees.

- A. 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.
- B. 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 course of work or following the completion of the work, 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 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.

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: **Oregon State University**
Address: **Paul J. Odenthal, Senior Associate Vice President for Administration.**
Oregon State University
3015 SW Western Blvd.
Corvallis OR 97333

With a Copy to: **College of Earth, Ocean and Atmospheric Sciences**
ATTN: Kim Calvery, MBA, PMP
Research Programs Operations Officer
Oregon State University
100 B CEOAS Administration Building
Corvallis, OR 97331

With a Copy to: **Capital Planning & Development**
John Gremmels, Capital Planner
Capital Planning & Development
Oregon State University
644 SW 13th Ave.
Corvallis, OR 97333

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 _____

Hanna W. Emerson

Title _____

Director & Chief Procurement Officer

Date _____

Date _____

Federal Tax ID # _____

Project Name

Consultant's Agreement

Contract Number

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EXHIBIT 1

CONSULTANT'S PROPOSAL

Project Name

Consultant's Agreement

Contract Number

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EXHIBIT B

RESERVED

EXHIBIT C

CONSULTANT'S KEY PERSONNEL AND SUB-CONSULTANTS

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