



**CONTRACT FOR THE PURCHASE OF
CONSULTING SERVICES FOR
PROGRAM DEVELOPMENT AND MARKETING SUPPORT SERVICES:
PacWave and PMEC
CONTRACT NO. 2026-019835**

This Contract is between Oregon State University ("OSU") for its College of Earth, Ocean, and Atmospheric Sciences ("Department"), and _____ ("Contractor").

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

WHEREAS, OSU'S PacWave project is supported by DOE's Office of Energy Efficiency and Renewable Energy (under the Water Power Program Award Number DE-EE0007899) and OSU, Department, and Contractor, where applicable, must comply with the terms of this Program Award ("Assistance Agreement"). Copies of the *Water Power Program Award Number DE-EE0007899* are available by request to the Administrative Contact;

WHEREAS, the Contractor shall provide services outlined in this Contract for the Pacific Marine Energy Center ("PMEC"), a program of OSU and for the development of the nation's first, pre-permitted, grid connected facility for testing utility-scale wave energy converters located in Seal Rock, OR, south of Newport, OR and currently name 'PacWave South,' a Project of OSU ("PacWave" or "Project")

NOW, THEREFORE, OSU and Contractor agree as follows:

1. CONTRACT TERM AND TERMINATION:

A. CONTRACT TERM.

This Contract is effective on _____ ("Effective Date") and expires one (1) calendar year from the Effective Date. OSU has the option to extend the term of this Contract for three (3) additional (1) one-year terms based on the current terms and conditions. OSU may exercise this option to extend by providing written notice to Contractor at least 30 days prior to the expiration of the Contract.

B. TERMINATION.

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

OSU may also terminate this Contract at any time by written notice for default (including breach of contract) if (a) Contractor fails to timely provide services or

materials called for by this Contract; or (b) Contractor fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms and conditions, and after receipt of written notice from OSU, fails to correct such failures within ten (10) days. Termination of this Contract under this Section or any other section is without prejudice to OSU's other rights and remedies.

If this Contract is terminated, before the specified completion date, OSU will pay only deliverables received and accepted by OSU. If OSU, at its sole discretion, accepts partially completed deliverables, OSU may make payment based upon the deliverables percent complete, as determined by OSU. For "Remedies for Contractor's Default" see provision below.

C. REMEDIES FOR CONTRACTOR'S DEFAULT.

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

2. STATEMENT OF WORK:

A. REQUIRED SERVICES, DELIVERABLES AND DELIVERY SCHEDULE.

Contractor shall provide OSU with the services as described in Exhibit A 'Statement of Work' during the Term of this Contract.

B. KEY PERSONS.

Contractor and OSU agree that each individual specified below is an individual whose special qualifications and involvement in Contractor's performance of services form part of the basis of agreement between the parties for this Contract and is an individual through whom Contractor shall provide to OSU the expertise, experience, judgment, and personal attention required to perform services ("Key Person"). Each of the following is a Key Person under this Contract:

Each of the following is a Key Person under this Contract:

List of Responsibilities: _____

Neither Contractor nor any Key Person of Contractor shall delegate performance of services any Key Person is required to perform under this Contract to others without first obtaining OSU's written consent.

Further, Contractor shall not, without first obtaining OSU's prior written consent, re-assign or transfer any Key Person to other duties or positions so that the Key Person is no longer available to provide OSU with that Key Person's expertise, experience, judgment, and personal attention. If Contractor requests OSU to approve a re-assignment or transfer of a Key Person, OSU shall have the right to interview, review the qualifications of, and approve or disapprove the proposed replacement(s) for the Key Person. Any individual OSU approves as a replacement for a Key Person is deemed a Key Person under this Contract.

C. ACCEPTANCE OF SERVICES.

Services furnished under this Contract are subject to acceptance by OSU. If OSU finds services furnished to be incomplete or not in compliance with the Contract, OSU, at its sole discretion, may either reject the services, require Contractor to correct any defects without charge, or negotiate with Contractor to reduce the price, whichever OSU deems appropriate under the circumstances. If Contractor is unable or refuses to cure any defects within a time deemed reasonable by OSU, OSU may pursue any of the remedies for Contractor's default detailed in that Section above.

3. COMPENSATION:

The total amount available for payment to Contractor and for authorized payment to Contractor is in consideration of the sum not to exceed \$_____ to be paid, at the rates shown in Exhibit A 'Professional Fees' to Contractor by OSU. Payment for domestic and foreign travel and Direct Expenses shall be considered part of, and shall not exceed \$_____ of the current sum not to exceed total listed above.

If at any time Contractor has reason to believe that the costs it expects to incur in performing work within the current scope of this Contract, when added to all costs previously incurred under that scope, will exceed seventy-five percent (75%) of the current not to exceed amount, Contractor shall immediately notify the Department in writing.

A. DIRECT EXPENSES.

DIRECT EXPENSE: The Owner shall make payment to the Contractor for any allowable Direct Expenses.

Direct expenses mean actual direct expenditures made by the Contractor that are directly related to the production of the products sold or services rendered under the Contract. 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 Contract; 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 Contract. All direct expenses must be reasonable, allowable per this Contract, and reflect the most efficient and cost-effective option that results in the best value for OSU. Direct Expenses will be paid to Contractor, at cost.

B. INVOICES AND PAYMENT TO CONTRACTOR.

Contractor shall send invoices to the email address below. Contractor shall submit invoices within 30 days following the last day of the invoice period. Invoice period shall mean each month of the calendar year. Unless otherwise specified herein, OSU shall pay only for work performed. Invoices are paid according to OSU's standard payment terms which are Net 30 days from receipt of correct invoice. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance pursuant to ORS 293.462.

If OSU, in good faith, disputes any portion of the Contractors invoice, OSU shall notify Contractor in writing, with ten (10) days of receipt, the amount of the invoice that is contested and the reasons therefore and may withhold payment of the disputed portion until the dispute is resolved. OSU agrees to pay Contractor for the undisputed amount of invoice. As a preferred method of payment, Contractor shall provide OSU with the information required for the electronic payment of Contractor invoices to.

{ _____ }
{Enter email addresses here}

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

- a. The Contract number: 2026-019835;
- 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. Any required reporting as detailed in Exhibit A 'Statement of Work.'
- d. Itemization and explanation of all Direct Expenses, including travel and travel related expenses as a sub item for which Contractor claims payment authorized under this Contract;
- e. The total amount due and the payment remittance address.
- f. If foreign company, percentage of work performed outside the U.S.
- g. Identify any work activities performed that would be unallowable per Term 12 of the Funding Agreement, and to be paid by alternative funding sources.
- h. Total percentage of budget utilized to date for:
 - All Basic Services performed, per task as applicable.
 - Direct Expenses as detailed in Section C 'Expenses,' including travel and travel related expenses as a sub item and as detailed in Section E 'Travel Expenses.'

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

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

Contractor shall deliver to Department each minority-owned, women-owned, or emerging small businesses ("MWESB") as described in Section DD 'MWESB Reporting.' Report for those MWESB vendors as described in Section DD 'MWESB Reporting' and under the following schedule. Timely receipt of MWESB Reports shall be a condition precedent to Department's obligation to pay any progress payments or final payments otherwise due.

1. Contractor shall submit annual MWESB Reports on June 30 of each year the Contract 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, including the dollar value for non-contracted vendor payments, and the expenditure toward each contract and subcontract during the previous twelve (12) months or over the term of the contract, if less than 12 months.

2. Contractor shall submit a final MWESB Report as a condition of final payment ("Final MWESB Report"). The Final MWESB Report shall include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Contractors and the dollar value of their respective contracts, including the dollar value for non-contracted vendor payments, and subcontracts during the course of the fulfillment of the scope of work under this Contract.

- C. TRAVEL EXPENSES. For all foreign travel itineraries under this Contract, Contractor shall obtain written pre-approval by Department prior to execution of travel to be eligible for payment of travel expenses.

Unless otherwise stated in the scope of work, Contractor shall make and pay for their travel arrangements in performance of the Contract. Contractor's travel expenses must be reasonable and economical in order to maximize the contract value. Any air transportation to, from, between, or within a country other than the United States must be in accordance with the Fly America Act (49 USC 40118). Travel expenses are included in the sum not-to-exceed amount indicated in this Contract.

Unauthorized travel expenses or those not included in the sum not-to-exceed amount will not be eligible for payment. Travel expense receipts are not required with invoices. Travel expenses must be included collectively as a separate line item on invoices. Receipts must be retained by Contractor and available for audit at any time during the term of the Contract and for six years from the date of Contract expiration. Contractor's request for payment of travel expenses must be submitted on an invoice within 90 days after the date the travel has been completed. Expenses submitted after the 90 days will not be processed for payment.

- D. DUAL PAYMENT. Contractor shall not be compensated for work performed under this Contract from any other entity of the State of Oregon.

- E. UNALLOWABLE EXPENDITURES.

Term 12 'Lobbying' of the Assistance Agreement states the following:

None of the funds obligated on the Assistance Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

In each invoice submission, Contractor shall identify any activities that would be an unallowable expense under Term 12. OSU will ensure DOE funds are not expended on those activities.

4. INSURANCE:

A. GENERAL LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance, including Products and Completed Operations coverage, with minimum limits of \$2,000,000 per occurrence and \$4,000,000 aggregate. Such insurance policy is to be issued by an insurance company authorized to do business in the State of Oregon with an A.M. Best rating of at least A-VII, or such other insurance carrier approved in writing, in advance, by OSU. OSU and its officers, board members, employees, and agents shall be included as additional insured in said insurance policy to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

B. PROFESSIONAL LIABILITY INSURANCE.

Professional Liability insurance with minimum limits of \$2,000,000 per claim and \$2,000,000 aggregate. If the Professional Liability insurance is arranged on a "claims made" basis, tail coverage will be required at the completion of this Contract for a duration of 36 months. Continuous "claims made" coverage will be acceptable in lieu of tail coverage, provide its retroactive date is on or before the effective date of this Contract.

C. AUTOMOBILE LIABILITY INSURANCE.

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance. This coverage can be provided by combining the Automobile Liability Insurance with the General Liability Insurance. Coverage limits shall not be less than \$2,000,000 combined single limit per occurrence.

D. PROPERTY INSURANCE.

The Contractor must maintain Property Insurance during the term of the Contract that covers all property used for Contract work and all Contractor-owned property that is stored at OSU.

E. PRIMARY COVERAGE.

Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory.

F. SUBCONTRACTORS

If Contractor enters into subcontracts for any services to be provided by Contract to

OSU, Contractor shall require that all subcontractors maintain insurance meeting all the requirements stated in section 4.

G. WORKERS' COMPENSATION.

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, unless such employees are exempt under ORS 656.126.

H. CERTIFICATES OF INSURANCE.

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

I. NOTICE OF CANCELLATION OR CHANGE.

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

5. INDEMNIFICATION:

A. INDEMNITY.

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

B. DEFENSE.

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

6. LAWS AND POLICIES:

A. APPLICABLE LAW; JURISDICTION AND VENUE.

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

B. COMPLIANCE WITH APPLICABLE LAWS AND POLICIES.

- a. The parties shall at all times comply with all applicable federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. The parties shall at all times comply with all applicable standards and policies of OSU, including without limitation any such laws or regulations regarding employment discrimination. If this Contract is being funded with federal funds, Contractor agrees to comply with all applicable federal contracting statutes, regulations and policies.
- b. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g; (x) the Health Insurance Portability and Accountability Act requirements noted in OAR 125-055-0115; (xi) the Oregon Consumer Identity Theft Protection Act, ORS 646A.600-646A.628; (xii) all regulations and administrative rules established pursuant to the foregoing laws; and (xiii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

C. FEDERALLY REQUIRED PROVISIONS.

- a. ANTI-KICKBACK ACT (40 U.S.C. 3145). Contractor certifies compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to OSU.
- b. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352). Contractors that apply or bid for a contract of \$100,000 or more, must file the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must require any subcontractor who applies or bids for subcontract of \$100,000 or more to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.
- c. CLEAN AIR ACT (42 U.S.C. 7401-7671q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED. If this Contract provides for payments in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- d. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708). For all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES. Pursuant to 2 CFR 200.216 and 2 CFR 200.471, which implement Section 889 of the NDAA (Public Law 115-232), OSU is prohibited from obligating or expending

grant funds to procure equipment, services or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or critical technology as part of any system. Contractor represents and warrants that in performing under this contract it will not provide or use covered telecommunications equipment or services as defined by Public Law 115-232, Section 889(f).
<https://www.congress.gov/115/plaws/publ232/PLAW-115publ232.pdf>

- f. DEBARMENT AND SUSPENSION EXECUTIVE ORDERS 12549 AND 12689. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Before a contract award of \$25,000 or more is made, verification is required that the intended awarded party is not on the government-wide exclusions in the SAM. Required verification must be made by checking the SAM Exclusions. Compliance with Subpart C of 2 CFR Part 180 by checking that the intended awarded party is not listed on the SAM Exclusions, before making a contract award, will flow down from tier to tier for contract awards of \$25,000 or more. Contractor must include a term or condition similar to this term, in any subsequent lower tier contract awards of \$25,000 or more. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.
- g. ENERGY POLICY AND CONSERVATION ACT. Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- h. EQUAL EMPLOYMENT OPPORTUNITY. Contractor must comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- i. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.
- j. To the extent applicable, this Contract is subject to the clauses, terms, and conditions (including those incorporated by reference) of Assistance Agreement DE-EE0007899, including all amendments and revisions issued there under.

Assistance Agreement DE-EE0007899, is available upon request to OSU. If Contractor has a question regarding a potential conflict of provisions, it should be submitted to the OSU for resolution.

k. PUBLIC RECORDS LAW NOTICE.

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

l. SAFETY AND HEALTH REQUIREMENTS/HAZARD COMMUNICATION.

Services supplied under this Contract shall comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State of Oregon Workers' Compensation Division. Contractor shall notify OSU prior to using products containing hazardous chemicals to which OSU employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon OSU's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR Chapter 437, for the products subject to this provision.

I. WEBSITE ACCESSIBILITY.

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

D. OSU REQUIRED POLICIES AND PROVISIONS.

a. FIREARMS POLICY.

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

b. PARKING.

Contractors doing business on the OSU campus may be required to have a permit to park if utilizing restricted street parking or parking lots. Contractor parking permits may be obtained through OSU's Office of Transit & Parking Services.

c. SEXUAL HARASSMENT POLICY.

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

d. SMOKING POLICY.

OSU has a policy that prohibits Contractor and Contractor's employees, agents, subcontractors from smoking on the OSU campus or other OSU owned property. The smoking prohibition includes all indoor and outdoor spaces.

7. GENERAL TERMS AND CONDITIONS:

A. ORDER OF PRECEDENCE.

In the event of a conflict, all the terms and conditions of this Contract, its exhibits, and any amendments thereto supersede all terms and conditions on any forms used by the Contractor.

B. NO THIRD PARTY BENEFICIARY.

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

C. ASSIGNMENT/SUBCONTRACT/DELEGATION.

Contractor shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Contract, without the prior written approval of OSU. Any assignment of rights or delegation of duties is prohibited under this Section, whether by merger, consolidation, dissolution, operation of law or any other manner. Any purported assignment of rights or delegation of duties in violation of this Section is void. OSU's consent to delegation does not relieve Contractor of any of its performance obligations.

D. WAIVER.

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

E. ACCESS TO RECORDS, RECORDS RETENTION AND AUDIT.

Contractor shall maintain accurate books, records, documents, and other evidence (collectively, "Records") following accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. Contractor shall permit OSU and the federal government and their respective duly authorized representatives to have access to the Records that are directly pertinent to this Contract for the purpose of conducting an audit, or other examination, or for creating excerpts or transcripts. Contractor shall maintain Records for OSU's review for at least six years beyond the term of the Contract. Contractor shall promptly remedy any discrepancies involving deviation from the terms of this Contract and shall promptly reimburse OSU for any commitments or expenditures found by OSU to have been in excess of amounts authorized by OSU under this Contract.

OSU shall have the right to an independent third-party audit of the Contractor's records associated with or related to the goods or services provided for under this Contract. OSU may request an independent third-party audit no more than one time per calendar year. OSU will determine the time-period that will be the subject of the audit. However, the entire term of the Contract, including the original term and any subsequent renewals or extensions, may be the subject of the independent third-party audit at any time. Contractor shall bear the full cost of such independent third-party audit.

F. ALLOWABLE COSTS.

All project costs must be allowable, allocable, and reasonable. The Contractor must document and maintain records of all Contract related expenses, including, but not limited to in-kind contributions. The Contractor is responsible for maintaining records

adequate to demonstrate that Contract expenses claimed have been incurred, are reasonable, allowable, and allocable, and comply with cost principles. Upon request, the Contractor is required to provide such records to OSU, DOE, or federal or state auditing agencies; or their authorized representatives. Such records are subject to audit. Failure to provide OSU, DOE or federal or state auditing agencies; or their authorized representatives, adequate supporting documentation may result in a determination by OSU, DOE or Federal Auditing Agencies that those costs are unallowable.

G. AVAILABILITY OF FUNDS.

OSU certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of the Contract, or any extension, after the end of the fiscal year or current expenditure limitation in which it is written, is contingent upon a new appropriation or limitation for each succeeding period for the purpose of this Contract. Funding for this project is contingent upon (1) availability of Federal funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority. Failure to receive funding for any of the stated reasons in this section will result in termination of the Contract in accordance with the section 'CONTRACT TERM AND TERMINATION.'

H. AWARDS, PRIZES, AND RECOGNITION.

As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall provide the following related to any awards, prizes, or other recognition for project work or results, subject 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/prize/recognition.

I. CONFERENCE SPENDING.

The Contractor shall seek and obtain written approval from OSU prior to incurring conference expenses under this Contract. OSU will not pay to Contractor any payments for conference expenses without evidence of prior written approval from OSU to incur such expenses under the Contract.

J. CONTRACTOR PERFORMANCE WARRANTY.

Contractor represents and warrants to OSU that Contractor has the skill and knowledge possessed by well-informed members of its trade or profession, and Contractor shall apply that skill and knowledge with care and diligence so Contractor and Contractor's employees, agents, and any authorized subcontractors perform the services described in this Contract in accordance with standards prevalent in the industry or business most closely involved in providing the services.

K. CONFLICT OF INTEREST .

Contractor covenants that is presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

Covered Relationship. The Contractor shall notify OSU of the existence of a 'covered relationship' as defined by 5 CFR 2635.502(a) & (b) between the Contractor and OSU

which creates at a minimum an apparent conflict of interest. The Contractor shall notify OSU of the covered relationship and provide detailed information and justification (including, for example, mitigation measures) as to why the relationship under this Contract does not create an actual conflict of interest.

L. CONTRACTOR REPORTING.

As applicable, Contractor shall report to OSU on 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 Contract; b.) Potential or actual violations of federal, state, and municipal laws arising out of or relating to work performed under this contract; c.) Potential or actual violations of U.S. export control laws and regulations arising out of or relating to the work under the Contract; d.) Any fatality or injuries requiring hospitalization arising out of or relating to the work under the Contract; e.) Potential or actual violations of environmental, health, or safety laws and regulations; f.) Any event which is anticipated to cause significant schedule slippage or cost increase; g.) any damage to Government owned equipment in excess of \$25,000.

M. EQUIPMENT.

Title to equipment: Title to equipment ("property") acquired under this Contract will conditionally vest upon acquisition with OSU.

N. FOREIGN CONTRACTOR.

If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies, subject to Oregon applicable law and relative to the services performed under this Contract. Subject to Oregon applicable law, if Contractor's services performed under this Contract qualify as doing business in the State of Oregon, Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.

O. MEDIA REPORTS.

For any media articles (e.g. newspapers, magazines, online media) produced by the Contractor after being granted permission by OSU to produce such media, the Contractor shall provide to OSU upon request or prior to the Completion of Work under this Contract, the following: list author, title publication or website, page number (if applicable), and date of publication.

P. NETWORKS/COLLABORATIONS.

Networks/Collaborations Fostered: As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall provide information to OSU about partnerships and other arrangements concluded with respect to the project or technology area or work performed under this Contract. Contractor shall list name of network/collaboration (if any), name of entities involved, date of agreement (if any), brief description of network/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 Contract.

Q. OTHER PRODUCTS.

As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall provide OSU the following information: additional projects

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.

R. PUBLICATIONS.

Contractor shall include the following acknowledgement in publications arising out of, or relating to, work performed under this Contract:

- 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."

S. TECHNOLOGIES/TECHNIQUES.

As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall briefly describe the new technologies or techniques [specific capabilities and performance improvements enabled], the pre-commercialization history of the technologies and their potential application to current and future projects.

T. PATENT APPLICATIONS.

As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall provide the following patent application information: list patent number, name of inventors, assignee, patent application number, date of filing, and title of patent application.

U. LICENSED TECHNOLOGIES

As applicable, upon request by OSU or prior to Completion of Work under this Contract, Contractor shall provide the following information for subject inventions licensed to third parties as applicable; list name of licensee, domestic or foreign patent or patent application number, title, and expiration date of agreement.

V. PROTECTED DATA AND LIMITED RIGHTS DATA.

As applicable, the Contractor shall mark protected data and limited rights data for all deliverables provided under this Contract. 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 contract is funded by the U.S. Government. Therefore, unlimited rights are retained by the government, to any technical data or commercial or financial data produced under this Contract.

W. GOVERNMENT EMPLOYMENT STATUS.

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

X. INDEPENDENT CONTRACTOR STATUS.

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

Y. NOTICE.

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

OSU Contract Administrator and: OSU Departmental Administrator

CONTRACTOR Contract Administrator

Z. OSU / PACWAVE NAME AND TRADEMARK.

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

AA. RECYCLED PRODUCTS.

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

BB.SALES AND USE TAXES.

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

CC.FORCE MAJEURE.

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

DD. MWESB REPORTING.

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

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

Disadvantaged Business Enterprise (DBE) is a small business with average annual gross receipts less than \$17,420,000. The business must be owned and controlled by one or more socially and economically disadvantaged individual(s). The one or more socially and economically disadvantaged individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest. Socially and economically disadvantaged individual(s) are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities. The business must be independent. The business must be licensed and registered in the state of Oregon.

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

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

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

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

EE.EXECUTION AND COUNTERPARTS.

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

FF. SURVIVAL.

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

GG. SEVERABILITY.

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

HH. MERGER.

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

8. CERTIFICATIONS AND SIGNATURES:

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

A. The undersigned is a duly authorized representative of Contractor, has been

authorized by Contractor to make all representations, attestations, and certifications contained in this Contract and to execute this Contract on behalf of Contractor and that this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;

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

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

CONTRACTOR:

Signature: _____

Date: _____

By: _____

Title: _____

OSU:

Signature: _____

Date: _____

By: _____

Title: _____

EXHIBIT A - STATEMENT OF WORK

EXHIBIT B
PROFESSIONAL FEES