REQUEST FOR PROPOSALS
EXTENDED

Professional Consultant Retainer Contract

EXTENDED ISSUANCE DATE: July 31, 2017

CLOSING DATE: Submit at your earliest convenience
Open until posting indicates a closing date. (IF YOUR FIRM HAS BEEN
PART OF THE UO RETAINER
PROGRAM ON OR AFTER JANUARY
1, 2016, YOU DO NOT NEED TO
RESPOND TO THIS RFQ AS YOU ARE
ALREADY PART OF THE RETAINER
PROGRAM)
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Section I – RETAINER CONTRACT INTRODUCTION

INTRODUCTION

The University of Oregon has selected to exercise its right identified in Section 3 of the Contract, to extend the active Retainer Program for a two-year period (through December 31, 2019) with all firms that are currently on the program. With that, this RFQ will remain open so additional firms can join the Retainer Program. Closure of this RFQ will occur 6 months prior to the termination date indicated above.

The University of Oregon (UO), is seeking proposals from qualified professional consultants (“Proposers”) to enter into Retainer Contracts with the University to provide professional consulting services. Successful Proposers (each a “Consultant”) must be qualified to perform at least one of the professional consulting services set forth in Attachment A (“Services”) of this Request For Qualifications (“RFQ”).

Consultants will be eligible to bid on Services contracted through the University of Oregon Retainer Program for Professional Consulting Services (“Retainer Program”). Retainer Contracts will be maintained electronically for the duration of the Retainer Contract term.

For any Services valued at $1,000,000 or less, the University of Oregon may contact Consultants from the Retainer Contract database to execute a supplementary agreement to the Retainer Contract stating the scope of Services and price term (“Supplement”). UO Policies define the varying methods of contact used to solicit services based upon the value of Services sought. Prior to the execution of any Supplement, Consultants will be asked to demonstrate that they have complied with the insurance requirements of the Retainer Contract, as they may be modified by a Supplement. Each Supplement may contain additional terms specific to the Services to be provided, and each Supplement may be altered, from time to time, through execution of an amendment (“Amendment”). Consultants may be awarded multiple Supplements during the Contract term. However, Consultants are not guaranteed work as participants in the Retainer Program and may not be issued a Supplement during the term of the Retainer Contract.

Capitalized terms used, but not defined, in this RFP or the UO Retainer Contract for Professional Consulting Services, have the meanings set forth in University of Oregon Policy documents located at: https://policies.uoregon.edu/content/z-index-uo-policy-statements.

SERVICES SOUGHT

Service categories sought are listed in Attachment A. Proposals will be accepted via Web Form links as set forth in Section III of this RFP. Proposers must check only those Service categories on the Web Form (all listed in Attachment A) that the Proposer is able to directly perform. Sub-contracting of Services performed pursuant to a Retainer Contract will only be allowed with prior written approval from the Institution. At the sole discretion of the UO, Consultants may be removed from Service categories that they do not directly perform.

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Section II – RETAINER CONTRACT INFORMATION

CONTRACT TERM

1. Proposers will sign a Retainer Contract stating the terms and conditions between UO and Consultant as part of the RFQ response package. The signing of the Signature Page of the Retainer Contract will not only confirm that your Company has read and understands all aspects of this RFQ, but also agrees to the terms of the Contract that you are signing. Due to the fact that this is an extended period to an existing contract that has been executed with all current members of the Retainer Program, no modifications to the contract language will be accepted by the Owner. Successful Proposers will receive a fully executed version of the Contract via E-mail to the E-mail Address identified in the Web Form to be filled out as part of your proposal response. Retainer Contracts will become effective on the date which the Retainer Contract is fully executed by the parties (the “Effective Date”), and shall remain effective through December 31, 2019 (the “Termination Date”). The period of time between the Effective Date and the Termination Date constitutes the term of the Retainer Contract (the “Term”). The Owner retains the right to extend this Retainer Contract for additional 2-year contract extensions through the execution of a Retainer Contract Extension document.

SELECTION TO PROVIDE SERVICES

Consultants in the Retainer Program will be selected to perform Services in accordance with UO policies and rules. Criteria for selection include: price, experience, past performance, insurance capacity, Consultant’s personnel assigned to the project, availability, and ability to meet the UO’s schedule for completion of Services.

The following UO procedures, which are subject to change from time to time, will be utilized to select Consultants for Services based on the total anticipated project price, which includes all contemplated Supplements and Amendments:

a) Projects $100,000 or less – Institutions may contact and negotiate directly with Consultants who have executed Retainer Contracts.

b) Projects $100,000.01 to $250,000 – Institutions shall invite a minimum of three Consultants who have executed Retainer Contracts to submit a proposal for their Services. Institutions may also post a solicitation document on the UO Business Opportunities website (http://pcs.uoregon.edu/content/business-opportunities). Consultant selection will be based on the invited Consultants’ responses to criteria set forth in the solicitation document.

c) Projects $250,000.01 - $1,000,000 – Institutions will post a solicitation document on the UO Business Opportunities website (http://pcs.uoregon.edu/content/business-opportunities) All Consultants with valid Retainer Contracts are welcome to submit a proposal for their Services. Selection shall be based on the criteria set forth in the solicitation document.

At the UO’s discretion, it may solicit proposals from more Consultants than indicated above or at a lower dollar threshold than stated above.

PROOF OF INSURANCE REQUIRED PRIOR TO SUPPLEMENT EXECUTION

Consultants will not be required to furnish proof of insurance upon execution of Retainer Contracts. However, Consultants shall be required to provide proof of insurance in accordance with the terms of the Supplement prior to performing Services under the Supplement. Insurance requirements pertaining to any specific Supplement may be adjusted at the University’s sole discretion, but any such adjustments pertain only to that Supplement and do not modify the requirements of the Retainer Contract.
with regard to any other Supplement.

**LICENSING REQUIREMENTS**

Consultants must be licensed with any and all required licensing bodies at the time of Proposal submission and at all times during the Term of the Retainer Contract. If Consultant’s license becomes inactive during the Term of the Retainer Contract, the UO may suspend Services according to the terms of the Retainer Contract. Further, Consultants with inactive licenses cannot be awarded a Supplement until the active status of the license is restored.

**LEGAL REQUIREMENTS**

Consultants must be registered to transact business in the State of Oregon and hold a valid State of Oregon Business Registry Number at the time of Proposal submission and at all times during the Term of the Retainer Contract. Consultants shall perform Services in conformance with all federal, state, county, and local laws, statutes, rules, regulations, ordinances and any other laws imposed by authorities having jurisdiction over Consultant’s Services and this Retainer Contract. When applicable, all Services will require appropriate plan reviews and permits from local permitting authorities having jurisdiction over the Services.

**PREVAILING WAGE RATES FOR PUBLIC WORKS**

The Oregon Bureau of Labor and Industry ("BOLI") has determined that certain Services performed by Consultants are subject to the prevailing wage rate law ORS 279C.800 to 279C.870 ("PWR Law"). If Consultant Service’s are determined to be subject to PWR Law by BOLI or at the election of an Institution, Consultant shall be responsible for complying with all applicable requirements of PWR Law. Because BOLI adjusts prevailing wage rates a from time to time, Consultant shall be compensated for Services that are subject to PWR Law according to a formula set forth on the Supplement.

**COLLABORATIVE SERVICES**

Consultants may be asked to provide Services in conjunction with other consultants or contractors retained by the UO. In such cases Consultant shall be prepared to adhere to strict timelines on such Projects.

**MWESB**

UO encourages Proposals from Minority, Women and Emerging Small Business ("MWESB") enterprises; as such terms are defined in ORS 200.005 and certified pursuant to ORS 200.055. Any Consultant certified by the State of Oregon as MWESB that includes its valid certification number in the Required Information Form will be designated as such within the Retainer Program database. Under certain circumstances, UO policies require outreach specifically targeted to MWESB firms.

If Consultant is a Certified MWESB registered with the State of Oregon, Consultant will maintain this certification for the duration of this contract. If Consultant plans to suspend certification as an MWESB with the State of Oregon, written notice shall be provided to the Owner 30 days in advance of terminating said certification. At no time shall the Consultant terminate certification if Consultant has an actively executed Contract Supplement under this Contract.

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Section III – PROPOSAL CONTENT AND SUBMISSION

INSTRUCTIONS

Proposers must read this RFQ, including the accompanying documents attached in Section VII, carefully. By submitting a Proposal in response to this RFQ, Proposer acknowledges that they have read, understand and agree to comply with all the provisions of this RFQ.

After reading the RFQ, Proposers must complete the four (4) identified Web Forms which include 1) Basic Company Information and Confirmation of Minimum Qualifications; 2) References; 3) Service categories sought to be performed; 4) Uploaded PDF Documents required by this RFQ. Proposals are not complete until all of the Web Forms are completed and uploaded documents are attached. No hard-copy Proposals or promotional materials will be accepted. It is the responsibility of the Proposer to complete all Web Forms and submit all required uploaded documents. Incomplete proposals will result in the UO not executing a Contract with your Company.

SCHEDULE OF CHARGES

In the attached Schedule of Charges Form (Attachment C), Consultants shall provide hourly rates for their Services that will remain effective for the Retainer Contract Term (hereafter referred to as the “Schedule of Charges”). Consultant’s Schedule of Charges must include an hourly rate for each position/title that may provide Services to the UO (no ranges will be accepted).

PROPOSAL DUE DATE

UO will accept Proposals at any time until the posting site identifies a Closing Date. It is not anticipated that a Closing Date will be established until at least July 1, 2017. Completed proposals will be evaluated upon their completion, and if accepted, will have a Retainer Contract executed. Contractors are not able to bid on Work until the Effective Date of their Retainer Contract.

QUESTIONS AND INQUIRIES

The UO Department of Design & Construction will be the sole point of contact associated with this RFQ process. Responses to inquiries are for clarification purposes only and in no way alter or amend this RFQ. All correspondence pertaining to this RFQ should be appropriately addressed to UO per the contact information below:

Shelly Knight, Contract Specialist
Email: retainer@uoregon.edu

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Section IV – RETAINER CONTRACT AWARD AND PROPOSAL REJECTION

PROPOSAL EVALUATION

A UO representative will evaluate each Proposal to determine whether it is responsive to the criteria set forth in this RFQ.

ACCEPTANCE OF CONTRACTUAL REQUIREMENTS

The terms of the Retainer Contract are not negotiable. Proposers must sign and return the Retainer Contract Signature form as part of their Proposal, with no alterations. Failure of selected Proposers to sign and return a Retainer Contract Signature Page with their Proposal documentation will not be considered for a Retainer Contract.

REJECTION OF PROPOSALS

UO reserves the right to reject any Proposal that does not comply with the administrative, contractual, or technical requirements of this RFQ. If Proposal Information is unclear, Proposers may be asked to provide written clarification or the Proposal may be rejected. Proposals that do not include all required Proposal content may be rejected at the sole and absolute discretion of UO. UO reserves the right to reject any or all Proposals, if such rejection would be in the public interest as determined by UO.

CONTRACT AWARD

If all requirements and conditions of the RFQ are met by the Proposer, the UO will countersign the Retainer Contract Signature Page, which will execute the Retainer Contract. This executed Contract will be e-mailed to the successful Proposer at the contact provided as part of the RFQ submittal on the Web Form.

REJECTION; APPEAL

Rejected Proposers shall be notified in a “Rejection of Proposal” letter emailed to Proposer and shall be given seven calendar days from the date on the “Rejection of Proposal” letter to file a written protest of award, pursuant to University of Oregon Policy. Any protest must be emailed to the Director of Design and Construction at: ddehle@uoregon.edu. A decision will be issued by UO within a reasonable time from the date of receipt. The decision of the UO Director of Campus Design and Construction shall be final.

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Section V – GENERAL RFQ PROVISIONS

1. Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time prior to an established Closing Date, provided that a written request is received by the UO Department of Campus Design and Construction at retainer@uoregon.edu prior to the Execution of a Retainer Contract. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new proposal.

2. Protests of Specifications: Due to the fact that this is an extended RFQ opening that is based upon documentation that was previously released and used to establish what is now an existing Retainer Program that is in place, no further protests to the RFQ or Contract language will be accepted. This program has established a consistent across the board Contract that is based upon original language and any accepted modifications proposed during the original opening of this RFQ (which occurred between October 27 and November 25 of 2015).

3. Addenda: It is not anticipated that any Addenda will be posted in association with this RFQ.

4. Public Records: If a Proposal contains any information that is considered a trade secret under ORS 192.501(2), each sheet of such information must be marked with the following (bold) legend: "This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192." The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemptions from disclosure apply "unless the public interest requires disclosure in the particular instance." However, non-disclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determination made pursuant to Oregon Public Records Law.

5. Investigation of References: The UO reserves the right to investigate all references in addition to supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, and lawful payment of subcontractors and employees.

Despite its right to investigate all Proposer references, the UO is not obligated to utilize references as part of its evaluation criteria and may decline to investigate or consider references. Any decision made by UO regarding the use of references, will not be considered grounds for protest.

6. RFQ Preparation Costs: UO will not be liable for costs incurred by Proposers in preparation of their Proposals.

7. Clarification and Clarity: UO reserves the right to seek clarification of each Proposal or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted in a manner responsive to this RFP.

8. Cancellation: UO reserves the right to cancel or postpone this RFQ at any time or to award no Retainer Contract.

9. Communication Blackout Period. Except as called for in this RFQ, no Proposer may communicate with any UO employee or representative outside of the UO Campus Design and Construction Office regarding this RFQ until evaluation of the Proposals are complete. No records will be available for public examination and no information or opinions concerning the ultimate outcome of this RFQ will be released to anyone outside UO during Proposal evaluation. Additional information may be requested by the UO during Proposal evaluation.

10. Clerical Errors in Awards. The UO reserves the right to correct inaccurate awards resulting from its
clerical errors.

11. **Rejection of Qualified Proposals.** Proposals may be rejected in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFQ. Any terms contained in Proposals that conflict with or modify the terms of this RFQ or the UO Retainer Contract For Professional Consulting Services are expressly rejected.

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Section VI – EVALUATION CRITERIA AND WEB FORM SUBMITTAL INSTRUCTIONS

Proposals will be evaluated for completeness, clarity, and compliance with this RFQ. Complete Proposals will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFQ. If the Proposal is unclear, Proposers may be asked to provide written clarification. Proposers will be considered for award of a Retainer Contract if their Proposals meets the below requirements of this RFQ. This RFQ does not have scoring criteria. There will simply be a determination of whether the submitted information meets the minimum requirements of the RFQ.

A. Evaluation Criteria

**Complete Proposal.** Proposers must comply fully with the instructions provided in this RFQ. Proposers must provide complete and accurate information on the Four (4) Web Forms, including the uploading of the Discipline Packets, a Schedule of Charges Form, a signed Retainer Contract Signature Page, and if required a Minimum Experience Summary.

THE FOLLOWING SECTIONS DESCRIBE THE REQUIRED INFORMATION THAT MUST BE SUBMITTED VIA THE FOUR (4) REQUIRED WEB FORMS.

1) **General Company Information and Confirmation of Minimum Qualifications.** (Web Form 1)
   a) General Company Information. Proposers must provide information associated with their company including:
      i) Company Location and Contact Information
         (1) Company Name, Address, etc.
         (2) Primary Contact Names, E-mail, etc. (Who Contracts and Invoice information should be sent to) *Note Notifications of bidding opportunities are controlled by the information that has been entered into the UO Vendor Portal by your company.
      ii) Company Data
         (1) A valid Oregon Business Registry Number demonstrating Proposer is registered to transact business in the State of Oregon
         (2) A valid Federal Tax ID
         (3) MWESB Certification Information (if applicable)
            (a) MWESB Certification Number
            (b) Certification Status
               (i) Minority Business Enterprise
               (ii) Women Owned Business Enterprise
               (iii) Emerging Small Business
      iii) Locations where your company is willing to perform work
         (1) Eugene
         (2) Portland
         (3) Charleston (OIMB)
   b) Confirmation of Minimum Qualifications
      i) Minimum Qualifications
         (1) Adhere to all Federal and state regulatory requirements, state and local building codes, and National Fire Protection Association Rules and regulations.
(2) Confirmation of reading and understanding the RFQ
(3) Confirmation of acceptance of Contract Terms
(4) Confirmation of compliance with BOLI Prevailing Wage Laws
(5) Minimum of 5-years of Industry Experience
   (a) Proposer’s are required to have been in business for a minimum of 5 years prior to Proposal submission
   (b) If you answer "NO" to this question on the Web Form, then you must submit a Minimum Experience Summary (See Below) that demonstrates that the principals/owners of Proposer’s company have a minimum of five consecutive years of experience providing services in the service categories indicated on the Web Form (See Attachment 2 for listing of categories). Proposals with fewer than five years of experience will be considered at the sole and absolute discretion of UO.

ii) Insurance Coverage. Proposers must confirm their ability to meet all insurance requirements stated in the RFQ, on the applicable Web Form. Insurance coverage will only be required upon issuance of a Supplement. At that time, Contractor shall maintain the insurance required by the Contract (or modified by the Supplement) for the duration required by the General Conditions related to the Work identified in the Supplement. Proof of insurance coverage is not required until a Supplement is awarded, but shall be required before any Services are performed under a Supplement. Insurance requirements are as follows:
(1) Worker’s Compensation
   (a) All employers that employ subject workers who work under a Supplement at the University of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation Coverage, unless such employers are exempt under ORS 656.126
(2) General Liability
   (a) Contractor shall obtain, and keep in effect at Contractor's expense for the term of each Supplement, Commercial General Liability Insurance covering bodily injury and property damage as applicable. Contractor shall provide proof of insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in aggregate in a form satisfactory to Owner (unless indicated otherwise on the Supplement).
(3) Commercial Auto Liability
   (a) Contractor shall obtain, at Contractor's expense, and keep in effect during the term of each Supplement, Commercial Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in aggregate in a form satisfactory to Owner (unless indicated otherwise on the Supplement).
(4) Professional Errors and Omissions Insurance
   (a) Consultant shall obtain, at Consultant's expense, and keep in effect during the term of the Supplement, Professional Liability / Errors & Omissions coverage. Consultant shall provide proof of insurance in an amount not less than $1,000,000 per occurrence and $2,000,000 in aggregate in a form satisfactory to Owner (unless indicated otherwise on the Supplement).
(5) Public Works Bond – Bureau of Labor and Industry
(a) Comply with the prevailing wage rates set by the Bureau of Labor and Industries, when applicable;
(b) Consultant shall obtain, at Contractor's expense, and keep in effect as required by ORS 279C.836, a $30,000 Public Works Bond.

2) **References. (Web Form 2)** Proposer’s completed Web Form must include the following references.

   a) 3 Project Owners
      i) Reference Name, Company Name, E-mail Address, Phone Number
      ii) A Project Owner refers to an individual who represents someone your Company has contracted with to build a project. This is not the Owner of another construction or consulting company.

   b) 3 Contractors
      i) Reference Name, Company Name, E-mail Address, Phone Number
      ii) This refers to a Contractor that you have worked with on the construction of a project.

   c) 3 Sub-consultants
      i) Reference Name, Company Name, E-mail Address, Phone Number
      ii) This refers to a Company that has been under contract with your company to perform services as a Sub-consultant.

3) **Service Category Identification. (Web Form 3)** Proposer shall identify Service Categories on the Web Form that represent expertise that your company self performs.

   a) For your reference, service categories are identified on Attachment A of the RFQ. Selection of the Service Categories will actually occur on the Web Form.

   b) Categories are defined as “Self Performed” categories. For each category identified, you will need to submit a Discipline Packet as described below.

4) **Minimum Experience Summary. (Attach as part of Web Form 4)** (This Document only needs to be provided if your Company does not comply with the Minimum of 5 years in business as required by the Minimum Qualifications section of this RFQ) Summary document shall contain at a minimum:

   a) A list of the Principals/Owners of the company proposing.

   b) The roles each of these Principals/Owners have in the company.

   c) A Resume for each of the Principals/Owners identifying their experience within the industry including:
      i) Number of years of experience in the industry.
      ii) Past companies that they have been employed with.
      iii) Past companies that they have interest in as an Owner/Principal.
      iv) The professional role each person had with those companies and the duration of which those roles were practiced at each listed company.
d) Define the Ownership Structure of the Proposing Company.

5) **Discipline Packet Requirements. (Attach as part of Web Form 4)** As part of the Required Web Form, Consultants shall upload a separate “Discipline Packet” for each Service category they propose to provide. Each Discipline Packet should be in PDF format and have a filename that clearly corresponds with the Service category for which it was associated. **Discipline Packets may not include artwork, drawings, or any other promotional materials, except as requested below.** Discipline Packets including prohibited promotional materials may be rejected at the UO’s sole discretion. Discipline Packets shall be formatted by the Proposer. There is no form within the RFQ to fill out for the Discipline Packet.

Each Discipline Packet shall be prepared so that it addresses each of the following sections in the order set forth below:

a. **Summary of Qualifications (no more than 1 page):** A brief overview of the Consultant’s company history, overall staff size, relevant strengths, qualifications, and experience. The summary of qualification should briefly describe the Services Proposer seeks to provide. Further, it should describe Proposer’s ownership structure and identify principals, partners, individuals and entities having an ownership interest in Proposer.

b. **Recent Projects (no more than 1 page per project):** A brief description of four recent commercial/institutional projects completed for organizations. Information regarding the size, type, and scope of the project must be included. However, drawings or pictures should be limited to two per project. Proposers should include relevant recent projects, regardless of size. UO will not disqualify a Proposer due to the size of projects included in this section.

c. **Current, Valid Licensing and Certifications:** A copy of all licenses and/or certifications (in electronic format) required to perform the Services in the Service category for which the Discipline Packet is being submitted. If no license and/or certification are required to perform the Service, the Discipline Packet must clearly indicate as such.

d. **Additional Requirement if submitting Discipline Packet for “Other” Service Category:** If a Proposer submits a Discipline Packet under the “Other” Service category, the Discipline Packet shall include a summary of no more than 1 page describing the Services sought to be performed. Discipline Packets submitted under the “Other” Service category without such a summary may be rejected.

6) **Signed Contract Page from the Retainer Contract. (Attach as part of Web Form 4)** Proposer shall upload on the Web Form a signed and dated PDF version of the Retainer Contract Signature Page (Attached to this RFQ as Attachment B and supplied as an independent electronic file so only 1 page needs to be printed). The signing of this contract confirms that the Proposing Company has read and agrees to all portions of this RFQ, has read and will conform to all of the requirements of the Retainer Contract and its related documents, as no modifications to these contract requirements will be accepted. Failure to provide this signed and dated document will render the Proposer’s Proposal non-responsive, resulting in rejection of the Proposal.

7) **UO Substitute W-9. (Attach as part of Web Form 4)** Proposer upload completed UO Substitute W-9 Form. This form is required for the UO to execute a Contract with your Company. (Attached to this RFQ as Attachment C. Also supplied as an independent electronic file to ease the process of filling it out and uploading it as part of the Proposal.) **Proposer must**
confirm that the Company Name of the Proposing Company is consistently registered with the IRS, State of Oregon Secretary of State’s Office, the Oregon Construction Contracting Board (CCB) and is submitted to match on the UO W-9 form. The UO will not be able to contract with your company unless this information is consistent.

8) **Schedule of Charges.** *(Attach as part of Web Form 4)* Proposer upload completed Schedule of Charges Form. Consultant’s Schedule of Charges must include an hourly rate for each position/title that may provide Services to the UO (no ranges will be accepted). Charges proposed that are significantly above the average of other firms proposing similar services under this Retainer Contracting Program will be grounds for Owner to request a clarification of Charges. Failure to modify Charge rates may result in a rejection of the Proposal by the Owner. *(Attached to this RFQ as Attachment D. Also supplied as an independent electronic file to ease the process of filling it out and uploading it as part of the Proposal.)*

**B. Web Form Submittal Instructions**

a) **Proposal Submittal Process.** Proposers must submit entire proposal via the web forms linked to this RFQ. No Proposal submittals will be accepted via E-mail or Hardcopy. This process will allow for the Owner to provide a quicker more effective review of documents as well as provide a database of information associated with companies on the Retainer Program, which will allow for a much more effective method of searching for companies within each of the Service Categories.

b) **Browser Use.** Though these web forms are very easy to use and are very diverse in their ability to be accessed by computers, tablets, I-pads, phones, etc. there is one limiting aspect to the Web Forms. They do not function properly when Internet Explorer is used as the Web Browser. Please use other Web Browser options such as Mozilla/Firefox, Chrome, Safari, etc.

c) **Web Form Structure.** The Web Forms have been divided into four (4) forms for the convenience of the Proposer. This division of the Web Form provides for smaller distinct portions of the overall RFQ criteria to be submitted at a time. This greatly reduces the chance that you will partially enter information and fail to be able to enter all of the required information. Each of the Web Form sections contain distinct information as outlined below. **Proposers must submit all four (4) sections of the Web Form for the Proposal to be Complete.**

d) **Web Form Sections and Links.** The following describes the four (4) sections of the Web Form and provides the live links to each Web Form that you will use to submit information. Each of these sections corresponds with evaluation criteria listed above in **SECTION VI, Item 1. Evaluation Criteria.**

  a. **Web Form 1 - General Company Information and Confirmation of Minimum Qualifications (Evaluation Criteria Item 1)**

     i. [Link to Web Form 1]

  b. **Web Form 2 – References (Evaluation Criteria Item 2)**

     i. [Link to Web Form 2]

  c. **Web Form 3 – Service Categories (Evaluation Criteria Item 3)**

     i. [Link to Web Form 3]

  d. **Web Form 4 – Attachments (Evaluation Criteria Items 4 (if required), 5, 6, 7)**

     i. [Link to Web Form 4]
Section VII – ATTACHMENTS AND EXHIBITS

ATTACHMENTS:

ATTACHMENT A – Service Categories List

ATTACHMENT B – Retainer Contract Signature Page (also a separate electronic form)

ATTACHMENT C – UO Substitute W-9 (also a separate electronic form)

ATTACHMENT D – Schedule of Charges (also a separate electronic form)

EXHIBITS:

EXHIBIT 1 - UO Retainer Contract for Construction Services

EXHIBIT 2 – UO Retainer Contract Supplement

EXHIBIT 3 – UO Retainer Supplement Amendment
**Attachment A**

Consultants must be able to provide Services in one of the following categories:

<table>
<thead>
<tr>
<th>Acoustical Engineer</th>
<th>Industrial Engineer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aerial Photographer</td>
<td>Industrial Hygienist</td>
</tr>
<tr>
<td>Arborist</td>
<td>Interior Designer</td>
</tr>
<tr>
<td>Architect</td>
<td>Land Surveyor</td>
</tr>
<tr>
<td>CADD Technician/BIM Modeler</td>
<td>Landscape Architect</td>
</tr>
<tr>
<td>Cartographer</td>
<td>Mechanical Engineer</td>
</tr>
<tr>
<td>Civil Engineer</td>
<td>Planner: Urban/Regional/Land Use</td>
</tr>
<tr>
<td>Commercial Appraiser</td>
<td>Safety/Occupational Health Engineer</td>
</tr>
<tr>
<td>Commissioning Agent</td>
<td>Scheduler</td>
</tr>
<tr>
<td>Construction Inspector</td>
<td>Security Specialist</td>
</tr>
<tr>
<td>Construction Manager</td>
<td>Special Inspections</td>
</tr>
<tr>
<td>Cost Estimator</td>
<td>Structural Engineer</td>
</tr>
<tr>
<td>Data/Telecommunications Engineer</td>
<td>Testing and Balancing “TAB” Services</td>
</tr>
<tr>
<td>Electrical Engineer</td>
<td>Transportation Engineer</td>
</tr>
<tr>
<td>Energy Analyst</td>
<td>Other</td>
</tr>
<tr>
<td>Environmental Engineer</td>
<td></td>
</tr>
<tr>
<td>Facility Analysis / Benchmarking</td>
<td></td>
</tr>
<tr>
<td>Fire Protection Engineer</td>
<td></td>
</tr>
<tr>
<td>Forensic Engineer</td>
<td></td>
</tr>
<tr>
<td>Geotechnical Engineer</td>
<td></td>
</tr>
<tr>
<td>Geographic Information System Specialist</td>
<td></td>
</tr>
</tbody>
</table>
Attachment B

47. ACKNOWLEDGEMENT OF RFQ AND CONTRACT REQUIREMENTS.
   The signing of this Contract by the Consultant acknowledges that the Consultant has fully read, 
   understands and shall be bound by the requirements of the Solicitation Documents (including 
   the RFQ) and the Retainer Contract, Supplement, Supplement Amendment, and any other 
   amendment. No changes to the Retainer Contract requirements, or the requirements of any 
   other document described in the preceding sentence, will be accepted by the Owner. Consultant 
   demands associated with changing the requirements of the Retainer Contract may, at the 
   discretion of the Owner, result in complete termination of this Retainer Contract.

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this 
Retainer Contract as of the dates written below:

Consultant:  _________________________________________  Owner:  The University of Oregon   
__________________________________________________

Print Name:  ____________________________  Print Name:  Darin C. Dehle

Signature:  ________________________________  Signature:  ________________________________

Title:  ____________________________________  Title:  Director of Campus Design and  
Construction

Date:  ____________________________________  Date:  ____________________________________
Substitute W-9

PRINT LEGAL NAME IDENTIFIED WITH TAX ID NUMBER ENTERED BELOW (as recorded with the IRS)

Legal Name __________________________________________________________________________________

Address _____________________________________________________________________________________

Contact Phone Number (_____) ________________   ______________ ___________________________________

Email Address ________________________________________________________________________________

The University of Oregon is updating its vendor records or processing a payment. To conform to IRS regulations for Form 1099 reporting, we must have a U.S. Tax Identification Number or Social Security Number for ALL VENDORS and INDIVIDUALS receiving payments from the University of Oregon. (Although the information may be similar to what is typically provided on an IRS W-9 Form, UO is required by State of Oregon to collect and report additional information. Do not submit an IRS W-9 form in lieu of this UO Substitute W-9 Form). The University is required to protect the privacy of all confidential information. Failure to provide a U.S. Taxpayer Identification Number will result in a 28% 1099-Misc Back-up Withholding. In order to comply, we ask that you provide the following information:

___________________________________FEDERAL I.D. NUMBER (also known as Employer Identification Number)

____________________________________________________OR YOUR SOCIAL SECURITY NUMBER (individuals)

Have You Ever Been An Employee At The University of Oregon?    Yes  No  Dates of Employment ____________

TYPE OF PAYEE: (CHECK THE FOLLOWING THAT APPLY)

☐ U.S. CITIZEN
☐ U.S. RESIDENT ALIEN
☐ FOREIGN ALIEN OR ENTITY

(STOP! See reverse side. You must complete an appropriate form W-8)

☐ INDIVIDUAL
☐ PARTNERSHIP
☐ CORPORATION

☐ State Certified
☐ Self Reported

☐ MINORITY OWNED
☐ State Certified
☐ Self Reported

☐ NON-PROFIT
☐ STATE
☐ FEDERAL

☐ EMERGING
☐ SMALL BUSINESS

☐ OTHER ____________

☐ Individual (Sole Proprietor)

Owner’s name ____________Owner’s SSN

☐ Partnership
☐ Corporation

Exemptions:

Exempt payee code (if any) _____________________________ (See reverse side)

Exemption from FACTA reporting code (if any) ____________ (See reverse side)

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and

2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and

3. I am a US citizen or other US person.

4. The FACTA code(s) entered on this form (if any) indicating that I am exempt from FACTA reporting is correct.

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN.

SIGNATURE OF INDIVIDUAL OR COMPANY OFFICIAL AND TITLE ____________________________

DATE ____________________________

Please return this completed form to the department making the request.

9/03/14
Payees Exempt From Backup Withholding

Even if the payee does not provide a TIN in the manner required, you are generally not required to backup withhold on any payments you make if the payee is:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions, agencies, or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities;
5. A corporation;
6. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;
7. A futures commission merchant registered with the Commodity Futures Trading Commission;
8. A real estate investment trust;
9. An entity registered at all times during the tax year under the Investment Company Act of 1940;
10. A common trust fund operated by a bank under section 584(a);
11. A financial institution;
12. A middleman known in the investment community as a nominee or custodian; or
13. A trust exempt from tax under section 664 or described in section 4947.

FACTA Exempt Payee Code

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
B—The United States or any of its agencies or instrumentalities
C—A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
E—A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
G—A real estate investment trust
H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
I—A common trust fund as defined in section 584(a)
J—A bank as defined in section 581
K—A broker
L—A trust exempt from tax under section 664 or described in section 4947(a)(1)
M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Foreign Individuals or Entities

The University of Oregon now requires a W-8 form for all foreign individuals or entities regardless of the type of payment. There are five different types of W-8 forms. The foreign alien or entity will need to determine which type of form applies to them; they will need to fill out the appropriate form; and they will need to mail the form to the department making the request.

A brief description of each form is listed below along with the links to the various W-8 forms and their instructions. Please refer to the instruction forms for specific details about each W-8 form.

W-8BEN: Used only for individuals to claim foreign status or treaty benefits. It is also used by individuals to claim treaty benefits for royalty/passive income.
- A U.S. tax identification number is required for exemption from tax withholding.
- All fields in line 10 must be completed to claim exemption on Royalty payments.

W-8BEN-E: Used by foreign entities (non individuals) documenting foreign status, documenting chapter 4 status, or claiming treaty benefits.

W-8ECI: Used primarily by the payee or beneficial owner indicating that all the income that is listed on the form is effectively connected with the conduct of a trade or business within the United States.
- The type of income must be identified on Line 9 of the form to qualify for exemption. If it is not listed we are required to obtain from the entity a different type of W8 form.
- A U.S. tax identification number is required for exemption from tax withholding.

W-8EXP: Used by the following entities to claim exemption from tax withholding - foreign governments, foreign tax exempt organization, foreign private foundation, govt. of a U.S. possession, or foreign central bank of issue.
- The entity must be claiming exemption under IRS code 115(2), 501 (c), 892, 895 or 1443(b). Otherwise they need to file a W-8BEN-E or W-8ECI.

W-8IMY: Used by an intermediary, a withholding foreign partnership, a withholding foreign trust, or flow through entity.
- Copies of appropriate withholding certificates, documentary evidence, and withholding statements must be attached to the W-8IMY as well.

Again, the entity type will determine which form will need to be complete.


For all W-8 forms.

Business Affairs Office
Oregon Hall, PO Box 3237, Eugene OR 97403-0237 http://ba.uoregon.edu
The Consultant agrees to the following hourly compensation for the positions within its organization:

$ Per Hour

Position Title
This Retainer Contract for Professional Consulting Services (hereafter, “Retainer Contract” and further defined in Section 1), effective upon the date of the last signature to it, is between:

“Consultant”:

[fill in Consultant information] (“Consultant”)

and “Owner”:

The University of Oregon (UO)
Campus Planning, Design and Construction
1295 Franklin Blvd
1276 University of Oregon
Eugene, OR 97403-1276
Tel: (541) 346-8292 Fax: (541) 346-6927
capcon@uoregon.edu

(each a “Party” and collectively, the “Parties”).

Exhibit 1
RECITALS

WHEREAS, Owner issued certain RFQ Documents soliciting offers from professional consulting firms to provide Services (as hereinafter defined) to Owner;

WHEREAS, Consultant submitted an offer in response to Owner’s Solicitation Documents because it desires to perform Services for the Owner pursuant to the terms of this Retainer Contract;

WHEREAS, Owner, having received and evaluated Consultant’s offer, now desires to award a Retainer Contract to Consultant; and

WHEREAS, Consultant is willing and able to perform Services for Owner as stated in Consultant’s response to the Solicitation Documents;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. DEFINED TERMS. Unless otherwise specifically defined in this Retainer Contract, words which have well-known technical meanings or construction industry meanings are used in the Retainer Contract documents in accordance with such recognized meanings. Capitalized terms used, but not defined herein shall have the definition set forth in Owner’s Policies 580.061.0005-160 and 580.063 or any successor policies and procedures.

The following terms used in this Retainer Contract are defined as follows:

“Additional Services” means those services, set forth in an executed Supplement Amendment, that are to be performed by the Consultant and are in addition to the scope of the Services described in a Supplement.

“Applicable Laws” means all federal, state, county, and local laws, statutes, rules, regulations, ordinances and any other laws imposed by authorities having jurisdiction over Consultant’s Services or applicable to the Services or this Retainer Contract. It also includes Owner’s policies and procedures that are applicable to Consultant’s Services or this Retainer Contract.

“Attachment 1” refers to Consultant’s Proposal submitted in response to Owner’s Solicitation Documents, including the Required Information Form, the Discipline Packet(s) submitted by Consultant, and the signed Proposer Signature Page.

“Authorized Owner’s Representative” means Owner’s employee who may be identified in a particular Supplement to act on behalf of Owner with respect to a Project.

“Construction Contract” means any contract, entered into between Owner and a Contractor, to provide any or all Work necessary to construct a Project identified in a Supplement.

“Contractor” means any contractor awarded a Construction Contract by Owner to construct all or part of any Project identified in a Supplement.

“Design Criteria” means the Owner’s criteria, guidelines, and/or standards applicable to the Project.
“Effective Date” means the later of January 1, 2016, or the date on which all Parties have signed this Retainer Contract and all required approvals have been obtained.

“Fixed Price” means the set price for Consultant’s Services, agreed to by the Parties and set forth in a Supplement, that is not subject to any adjustment unless through an executed Supplement Amendment. If the Parties agree Consultant shall be paid for its Services on a Fixed Price basis the Consultant shall be paid as set forth in Section 11.A.ii. of this Retainer Contract.

“Key Person” means a person identified by the Parties in a Supplement, and employed by the Consultant or one of the Consultant’s Sub-Consultants, whose expertise will be relied upon for the performance of Consultant’s Services.

“MWESB Report” means an accurate report by the Consultant to the Owner, pursuant to Owner’s policy titled “Equity Contracting Purchasing and Data” or any successor policy or procedure, identifying all Minority, Women and Emerging Small Business (“MWESB”) enterprises, as those terms are defined in ORS 200.005, receiving subcontracts throughout the course of Consultant’s Services pursuant to a Supplement. Each report shall be in the form required by the Owner and shall contain the information required by Owner’s policies and procedures as amended from time to time.

“Project” means the specific project for which Consultant provides Services, as set forth in a Supplement.

“Project Documents” means all plans, designs, drawings, specifications, construction specifications, schematics, technical documents, calculations, studies, planning efforts, and any other documents or work product (including those in electronic format) applicable to the Project and prepared by the Consultant for the Owner.

“Reimbursable Expenses” are those approved expenses incurred by the Consultant in the performance of Services set forth in a Supplement and may include the following (unless otherwise defined in a Supplement): long-distance communication charges; reproductions, postage and handling of plans, drawings, Project Documents, and other documents (excluding reproductions for the use by the Consultant and its Sub-Consultants); photographic production techniques; renderings, models, and mock-ups requested by the Owner; and travel expenses more particularly described in the Travel Policy.

“Retainer Contract” refers to this Retainer Contract and any associated Supplement and Supplement Amendment, Owner’s Solicitation Documents, Attachments 1, 2 and 3 hereto, and all associated addendums, attachments, and exhibits to each.

“Services” means all services (as further defined herein) to be performed by Consultant as set forth in a Supplement executed by the Parties to this Retainer Contract.

“Schedule of Charges” means the hourly rate of compensation set forth in Attachment 2 of this Retainer Contract (incorporated herein by this reference). The Schedule of Charges includes the hourly rate to be paid to each position within Consultant’s organization that may perform Services, and shall remain fixed for the Term (as defined in Section 3) of this Retainer Contract unless Owner, in its sole discretion, initiates negotiation of the rates set forth in the Schedule of Charges for a particular Supplement.
“Sub-Consultant” means any consultant hired by Consultant, after receipt of Owner’s written consent, to assist Consultant in the performance of the Services described in the Supplement.

“Supplement” means a written, fully executed, supplementary agreement to this Retainer Contract between the Owner and the Consultant describing the Services to be performed by Consultant, the price for the Services, insurance requirements, and other obligations of the Parties with respect to a specific Project.

“Supplement Amendment” means a written amendment, mutually agreed to and executed by the Parties, to an executed Supplement which modifies the Supplement and may provide for the performance of Additional Services by the Consultant with respect to the Project described in the Supplement.

“Time and Material” refers to a method by which Consultant may be paid for its Services. If the Parties agree Consultant shall be paid for its Services on a Time and Materials basis, the Consultant shall be paid as set forth in Section 11.A.i. of this Retainer Contract.

“Travel Policy” means the Travel Reimbursement Policy attached to this contract as Attachment 3. The Travel Policy rates in effect on the effective date of Supplement shall apply to all pre-approved travel expenses incurred by Consultant for that Supplement.

“Work” means the performance of all construction-related services, including the furnishing of all materials, labor, equipment, transportation, services, and incidentals, for the construction of all or part of any Project identified in a Supplement and performed by a Contractor that is eventually or has been awarded a Construction Contract for the identified Project.

2. INCORPORATION AND INTERPRETATION OF DOCUMENTS. Consultant agrees to provide Services in accordance with this Retainer Contract. The Retainer Contract documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Retainer Contract documents, interpretation will be based on the order of precedence set forth in the Supplement. The terms of any one Supplement or Supplement Amendment awarded to Consultant shall pertain only to the Project described in that Supplement and Supplement Amendment and shall not modify any other Project or Supplement awarded to Consultant.

3. TERM. The term of this Retainer Contract will begin on the Effective Date and shall expire on December 31, 2017 (the “Term”). However, Supplements and Supplement Amendments awarded pursuant to this Retainer Contract shall remain effective until completion of Consultant’s Services on a Project, even if such completion occurs after expiration of the Term. In such a case, Owner and Consultant hereby agree that the terms of this Retainer Contract shall remain in effect until such time as Owner approves the final performance and/or delivery of Consultant’s Services. The Parties may mutually agree to extend the Term of this Retainer Contract for additional terms of two years each through the execution of an amendment to this Retainer Contract prior to the expiration of the Term.

4. SERVICE REQUEST; SUPPLEMENT AWARD. Throughout the Term of the Retainer Contract, Owner may request, by issuing Solicitation Documents or otherwise (each such request, a “Request”), an offer from Consultant or multiple consultants to perform Services for a specific Project. Consultant may respond to a Request for Services in the manner required by the Request. However, Consultant’s response must, in addition to any other terms or information required by the Request, clearly state the maximum not-to-exceed price if completed on a Time and Materials basis or the Fixed Price for the Services, in accordance with the Request, this Retainer Contract, the Schedule of Charges (if applicable), and the conditions of the Project. Consultant’s response to the Request shall be a binding
offer to perform the Services for a specific Project on the terms set forth in the response and in this Retainer Contract. Consultant’s response to the request and offer to perform the Services must include this Retainer Contract, unchanged from its original form, signed by an officer of Consultant who is authorized to make a binding offer on Consultant’s behalf. No offer from Consultant will be received or considered by Owner unless the offer contains a statement by the Consultant as a part of the offer that states: “To the extent that these laws apply, Consultant agrees to be bound by and will comply with the provisions of ORS 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.”

Owner may determine in its sole discretion whether to accept the Consultant’s offer and award the Project to the Consultant. Owner may, in the alternative, accept another consultant’s offer or reject all offers to perform the Project. In the event that Owner accepts Consultant’s offer and elects to award a Project to Consultant, Owner will signify its acceptance by countersigning and returning a fully-executed copy of the Retainer Contract submitted by the Contractor. The scope and cost of the Services, including the fixed price or maximum not-to-exceed price, with regard to each such specific Project will be specified in a written Supplement. Supplements shall be incorporated into this Retainer Contract upon full execution thereof and the terms and conditions specified in this Retainer Contract shall be incorporated in any Supplement issued. From time to time, Owner and Consultant may elect to modify a Supplement by way of a Supplement Amendment. Each Supplement Amendment shall be incorporated into this Retainer Contract upon full execution thereof.

5. SUPPLEMENT AWARD NOT GUARANTEED. Consultant acknowledges and agrees that Owner does not warrant or guarantee that any Services will be Requested or authorized during the Term. Owner and the Consultant agree that no Services shall be performed by Consultant without full execution of a Supplement. Further, full execution of a Supplement is a condition precedent to Owner’s obligation to pay Consultant for Services. Consultant shall not be required to carry insurance associated with this Retainer Agreement until a Supplement is executed.

6. SERVICES. After Owner’s acceptance of any offer by Consultant to perform Services for a Project, Consultant shall provide Owner with professional consulting Services more particularly described in an executed Supplement. Consultant shall perform Services in accordance with the terms of this Retainer Contract, and Consultant hereby agrees to the following:

A. Consultant shall perform Services at all times in compliance with the standard of care set forth in this Retainer Contract.

B. Services may include creation of Project Documents required to achieve Owner’s identified Project objectives. Consultant shall complete all Project Documents in accordance with Section 10 of this Retainer Contract and as may be more particularly defined in a Supplement.

C. Consultant shall perform, at no additional cost to Owner, all Services necessitated in whole or in part by errors and omissions of, or breach of this Retainer Contract by, Consultant or any persons or entities for whom Consultant is responsible. Without limiting the generality of the foregoing, this includes Services necessitated in whole or in part by errors and omissions of, or breaches caused by, Sub-Consultants hired by Consultant.

D. Consultant shall fully cooperate with Owner to meet all Project budgets. Owner understands that Consultant, in providing opinions of probable construction costs, has no control over the cost or availability of labor, equipment, or materials, or other market conditions, and that Consultant’s opinions of probable construction costs are made on the basis of Consultant’s professional judgment and experience. Consultant makes no warranty, express or implied, that the
bids or the negotiated cost of the Work for any Projects will not vary from Consultant's opinion of probable construction costs.

i. Notwithstanding the foregoing, in the event the Consultant’s opinion of probable construction costs exceeds the budget for any Project identified in a Supplement by any amount during the design or construction phases, or in the event the bids or negotiated cost of the Work exceed the budget for any such Project by more than 10 percent, Consultant, upon notice from Owner, agrees to modify, at Consultant’s sole expense, Consultant’s Project Documents (or, with Owner’s approval, those portions of Project Documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage)(Consultant’s modifications are hereafter, “Project Documents Modification”).

ii. The Project Documents Modification shall constitute Consultant's sole responsibility with respect to its opinions of probable construction costs, and Consultant agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the probable construction costs so that they do not exceed the applicable Project budget. Consultant agrees that any Project Documents Modification may be in addition to obligations that may be imposed by Section 10 of this Retainer Contract.

7. SCHEDULE. Consultant acknowledges that time is of the essence in the performance of all Services. Upon Owner’s request, either prior to execution of a Supplement or at any time thereafter, Consultant shall submit to Owner a written schedule for performance of Consultant’s Services (“Schedule”). The Schedule shall be in form and level of detail as required by Owner. Consultant will perform the Services in accordance with the terms of the Schedule. Consultant shall periodically reevaluate the Schedule and promptly notify Owner in writing of any actual or anticipated deviations from the Schedule. Any adjustments to the Schedule shall be allowed only with prior written approval of Owner.

8. STANDARD OF CARE. By execution of this Retainer Contract, Consultant agrees that Consultant and any other persons or entities for whom Consultant is responsible, which shall include Sub-Consultants hired by Consultant, shall exercise a high degree of care, diligence, skill, and judgment in the rendition of all Services, which in no event shall be less than that exercised by consultants of similar reputation performing work or providing services for projects of a size, scope, and complexity similar to the Services for which Consultant is retained.

9. CONSULTANT’S REPRESENTATIONS AND WARRANTIES. Consultant represents and warrants to Owner that:

A. Consultant has the power and authority to enter into, and perform Services in accordance with, the terms of this Retainer Contract.

B. Upon execution and delivery, this Retainer Contract is a valid and binding obligation enforceable in accordance with its terms.

C. Consultant is responsible for all Services performed under this Retainer Contract, including all Services performed by a Sub-Consultant hired by Consultant, and accepts liability for its Services as further described in this Retainer Contract.

D. All information provided by Consultant in Attachment 1 is true and accurate.
E. Consultant shall remain duly licensed to perform the Services at all times during the Term and, if there is no licensing requirement to perform the Services, Consultant shall remain qualified and competent to perform Services at all times during the Term of this Retainer Contract.

F. If Consultant is a certified MWESB registered with the State of Oregon, Consultant will maintain this certification for the duration of this Retainer Contract. If Consultant plans to suspend its certification as an MWESB with the State of Oregon, written notice shall be provided to the Owner 30 days in advance of terminating said certification. At no time shall the Consultant terminate certification if Consultant has an actively executed Supplement under this Contract.

G. Consultant is experienced, having the skill, legal capacity, and professional ability necessary to perform the Services required for Projects contemplated in this Retainer Contract and all Supplements in a manner consistent with the standard of care set forth in this Retainer Contract.

H. Consultant has the capabilities and resources necessary to perform the obligations of this Retainer Contract.

I. Consultant either is, or warrants that it will become in a manner consistent with the standard of care set forth in this Retainer Contract, familiar with all Applicable Laws pertaining to the Services set forth in any Supplements to this Retainer Contract.

10. PROJECT DOCUMENTS. Project Documents prepared by the Consultant as part of its Services shall comply with all Applicable Laws and be complete and functional for the purposes intended. Consultant further agrees to the following:

A. All Project Documents prepared by Consultant shall accurately and completely describe existing conditions for the scope of the Services to be performed.

B. Projects constructed in substantial conformance with Consultant’s Project Documents shall be structurally sound, complete, properly functioning, and suitable for the purposes for which they are intended.

C. Consultant is responsible for confirming that the project conforms to the UO Campus Plan (http://uplan.uoregon.edu/plandoc/CampusPlan/CampusPlan.html) and Design and Construction Standards (https://campusops.uoregon.edu/capital-construction/campus-construction-standards). Documents that are applicable, are those that are active at the time that a Contract Supplement is executed. Failure of design to conform to these campus documents will constitute an errors and omissions responsibility of Consultant.

D. Consultant recognizes that electronic drawing files such as Autocad or Revit files are Work Product identified in this Contract as Work for Hire. Such work shall be turned over to the Contractor or other Consultant, to further develop data on a Project, as directed by the Owner. Consultant’s delivery of all Work Product and Project Documents to the Owner is a condition precedent to Owner’s obligation to pay final payments to Consultant.

E. Consultant is responsible for any negligent inconsistencies, errors, or omissions in the Project Documents. While the Consultant cannot guarantee that the Project Documents are completely free of all minor human errors and omissions, it is Consultant’s responsibility to conform to the standard of care set forth in this Retainer Contract throughout the performance of the Services. The Consultant shall, at no additional cost to Owner, correct any and all errors and omissions in the Project Documents prepared by the Consultant. Consultant agrees that all costs
incurred by Owner, including all direct, indirect, consequential or incidental costs and damages, as a result of any errors and omissions in the Project Documents furnished by Consultant shall be compensable to Owner, including, without limitation, increased costs of construction or increased value of the Construction Contract for the Project. Further, Consultant shall assist Owner, at no additional cost, to resolve other problems arising from Consultant’s errors or omissions, including, but not limited to, correcting design of the Project, or materials specified for use. Without limiting the generality of the foregoing, the Consultant’s failure to conform to the Campus Plan and/or the Design and Construction Standards published at the time a Supplement is executed shall constitute one example of an error or omission of the Consultant. Owner may, in its sole discretion, provide a written release of the Consultant of all or a portion of any liability under this paragraph with respect to each error or omission by the Consultant.

F. Owner’s review or acceptance of Project Documents, authorization to continue to the next phase of design, bidding process participation, or construction administration, shall not be deemed as approval of the adequacy of the Project Documents. Any review or acceptance by Owner will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein.

G. Consultant’s Project Documents for all new facilities or, if applicable, renovated facilities, shall be consistent with (i) Sections 503 and 504 of the Rehabilitation Act of 1973, (ii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), (iii) Oregon Building Codes, and (iv) all other Applicable Laws to ensure Owner’s facilities are accessible to people with physical limitations. Consultant’s Project Documents shall also be consistent with the Owner’s Universal Access Policy. The implementation of Owner’s policies shall in no way negate compliance with required State and Federal laws and codes listed above.

H. The terms included in this Section 10 are in addition to, and not in lieu of, any representations or warranties provided by Consultant herein.

11. COMPENSATION. Owner agrees to compensate Consultant for all Services performed in accordance with an executed Supplement. The conditions for payment shall be clearly set forth in a Supplement and consistent with the following:

A. Fees for Services and Direct Expenses. Each Supplement will indicate whether Consultant will be compensated for Services and related direct expenses on a Time and Materials basis or on a Fixed Price basis.

i. If the Parties agree Consultant is to be paid on a Time and Materials basis, Consultant will be compensated for its Services as follows: 1) at the specified fixed hourly rates set forth in the Schedule of Charges for direct labor hours, plus 2) actual materials costs, including, if appropriate, material handling costs. Each Supplement for which Consultant is to be paid on a Time and Materials basis will also include a clearly defined not-to-exceed amount. Consultant will not be paid more than the not-to-exceed amount without an executed Supplement Amendment.

a) At Owner’s sole discretion, the Schedule of Charges may be negotiated for a particular Supplement, in which case the Consultant will be compensated for its direct labor hours according to the Schedule of Charges set forth in that Supplement. Modification to the Schedule of Charges will apply only to that particular Supplement and will not apply to any other Supplements issued to Consultant.
ii. If Consultant is to be paid on a Fixed Price basis, Owner reserves the right to request from Consultant a breakdown of anticipated costs included in the Fixed Price prior to execution of the Supplement.

B. **Reimbursable Expenses.** The Owner shall reimburse Consultant and its Sub-Consultants for actual, reasonable, and necessary Reimbursable Expenses incurred in the performance of Services at cost with no mark up.

   i. Pre-approved travel expenses incurred shall be reimbursed at cost with no mark-up, and shall not exceed the rates set forth in the Travel Policy in effect on the effective date of the Supplement. Consultant shall ensure that all travel expenses submitted for reimbursement conform to the Travel Policy in effect on the effective date of the Supplement. Unless stated otherwise in a Supplement, travel expenses must be pre-approved by Owner. Travel expenses will not be reimbursed for Services rendered within 25 miles of the Consultant’s office.

   ii. Consultant’s requests for reimbursement of Reimbursable Expenses specifically authorized in the Supplement must include documentation of actual expenditures.

C. **Fees for Sub-Consultant’s Services.** Unless otherwise provided in a Supplement, Owner shall only reimburse Consultant for the actual, direct costs of Services performed by its Sub-Consultants, and shall not reimburse Consultant for any overhead or mark-up of costs added to the direct cost of a Sub-Consultant’s Services.

D. **Fees for Additional Services.** Upon execution of any Supplement Amendment, Owner agrees to compensate Consultant for Additional Services (and Reimbursable Expenses) performed by the Consultant (or its Sub-Consultants) according to the terms of this Section 11.

E. **Maximum Compensation.** The maximum compensation paid to Consultants pursuant to any Supplement will not exceed the maximum allowable under Owner’s Policy 580-063 or any successor policy or procedure, including professional fees, Sub-Consultant fees, and Reimbursable Expenses (the “Maximum Compensation”).

F. **Fees for Termination.** Compensation to be paid to the Consultant in the event a Supplement is terminated as provided in Section 22 of this Retainer Contract shall be determined in accordance with this Section 11. Owner agrees to pay Reimbursable Expenses incurred before notice of termination is delivered to Consultant.

12. **PAYMENTS.** Owner’s payments to Consultant shall be consistent with the following:

   A. All monthly payments for Services performed will be made by the Owner based upon invoices submitted by the Consultant for Services rendered and Reimbursable Expenses incurred during the preceding month. Payment requests, invoices, and required documentation must be submitted to Authorized Owner’s Representative indicated in the Supplement. One copy of each invoice, with required documentation, must be delivered to the Owner’s address set forth in the Supplement.

   B. Payments to the Consultant will be made following Owner’s review and approval of the invoices and required documentation, acceptance of the Services performed, and approval of the Reimbursable Expenses incurred. Payments to the Consultant for Services performed and invoiced
(including Reimbursable Expenses) may be made for each phase of Consultant’s Services in percentages if set forth in the Supplement. The total of all payments for Services may not exceed the Maximum Compensation set forth in any Supplement and if completed on a Time and Materials basis, the hourly rates set forth in the Schedule of Charges. The total of all payments for Reimbursable Expenses may not exceed the Maximum Compensation set forth in any Supplement or the rates set forth in the Travel Policy.

C. Owner shall have the right to withhold payment from Consultant for any unsatisfactory Service until such Service is performed to the satisfaction of the Owner.

D. No deductions will be made from Consultant's compensation or Reimbursable Expenses for penalties or liquidated damages.

13. **KEY PERSONS.** The Parties may agree in a Supplement that Consultant’s Services must be performed by one or more Key Person(s). In such a case, the Parties shall identify each of Consultant’s employees that shall be considered Key Person(s) for that Project in the Supplement. Each Supplement will also set forth the conditions applicable to Consultant’s Services performed by the Key Person(s).

14. **RETAILER CONTRACT ADMINISTRATION.** Owner may designate an Authorized Owner’s Representative in each Supplement who shall act on behalf of Owner with respect to the Project. Unless directed otherwise, Consultant shall: 1) include the Authorized Owner’s Representative in all communications arising out of or relating to the Project, and 2) accept directives only from Authorized Owner’s Representative and not from Owner’s other employees, consultants, or contractors. Owner may replace Authorized Owner’s Representative at its sole option. If such a replacement is made, Owner shall notify Consultant in writing. Consultant acknowledges that the Authorized Owner’s Representative may not have the authority to execute Supplements or Supplement Amendments, and hereby agrees that only Supplements and Supplement Amendments executed by Owner’s staff with delegated authority to do so shall be binding.

15. **PROJECT COORDINATION.** Consultant shall cooperate with other consultants and contractors Owner may employ from time to time to provide goods and services in connection with a Project. Consultant’s cooperation will include all steps reasonably necessary to achieve Owner’s Project objectives. Consultant shall be responsible for completing its Services in a manner that facilitates timely Project completion.

When the Parties agree that Consultant is responsible for coordinating with a Contractor, such coordination shall include, unless indicated otherwise, the following:

A. Consultant’s cooperation with the Contractor to ensure the Project is constructed in accordance with the Project schedule. The Project schedule shall be provided by the Owner or Contractor, if Owner makes an express delegation of that responsibility.

B. Consultant shall interpret matters concerning the requirements of Construction Contracts only when Owner makes an express written delegation of that responsibility to Consultant, and such interpretation shall be limited to the scope of the delegation. If delegated to Consultant, responses to requests for interpretation of a Construction Contract will be made in writing within any time limits agreed upon or with reasonable promptness. Delegated interpretations and decisions of the Consultant will be consistent with the intent of, and reasonably inferable from, the Construction Contract.
C. Consultant shall timely review all submittals, shop drawings, product data and samples (collectively, “Submittals”) made by the Contractor. Owner, or Contractor, if so delegated, shall provide Consultant with a copy of Contractor’s Submittal schedule, which should: 1) be coordinated to Contractor’s Work schedule, and 2) allow Consultant reasonable time to review Submittals. Consultant’s approval of Submittals shall not be unreasonably delayed or withheld. Submittals upon which the Consultant is not expected to take responsive action may be identified by the Owner. Only Submittals which Owner indicates will not require Consultant’s responsive action may be returned by Consultant without action.

D. If requested, Consultant shall timely review Contractor’s applications for progress payments, and certify to Owner the amounts due Contractor through certificates of payment for such amounts in such form specified or acceptable to Owner in Owner’s reasonable discretion.

E. If a Contractor proposes a requested deviation from the Project Documents, Consultant agrees to timely review the requested deviation and to provide Owner and Contractor with written recommendations, which are subject to Owner’s approval in Owner’s sole and absolute discretion.

F. The Parties further agree that Consultant may be responsible for the inspection of Contractor’s Work if set forth in a Supplement. In such a case, Consultant shall complete requested inspections within a reasonable time, including after substantial completion of Contractor’s Work. If corrections to Contractor’s Work are required, Consultant shall inform Owner and Contractor of the necessary correction.

G. Except as otherwise provided in a Supplement, the Authorized Owner’s Representative is the Contractor’s primary point of contact regarding a Project. Consultant’s communications with the Contractor must include the Authorized Owner’s Representative at all times, unless directed otherwise in writing.

H. When Project coordination tasks increase Consultant’s duties beyond those reasonably anticipated by the Parties in the Supplement, the Parties shall execute a Supplement Amendment setting forth the terms and payment for any Additional Services. The full execution of a Supplement Amendment is a condition precedent to Owner’s obligation to pay Consultant for Additional Services.

16. MWESB REPORT REQUIREMENT. For each Project, 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.

A. Consultant shall submit annual MWESB Reports on June 30 of each year a Supplement is active (“Annual MWESB Report”). Supplements first executed within ninety days before June 30 of the year of execution by Consultant may, at the discretion of Owner, be exempt from submitting the Annual MWESB Report otherwise due on June 30. The Annual MWESB Reports must include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months.

B. Consultant shall submit a final MWESB Report shall be submitted per Owners policies and procedures as a condition of final payment (“Final MWESB Report”). The Final MWESB Report must include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Project.
17. SERVICES OF CONSULTANT'S SUB-CONSULTANTS. Upon receiving prior written approval of Owner, which shall not be unreasonably withheld, Consultant may employ Sub-Consultants in the performance of its Services. Consultant shall be responsible for any Service performed by a Sub-Consultant. All Sub-Consultant agreement(s) must require the Sub-Consultant to be bound by the following Sections of this Retainer Contract: 19-INSURANCE, 20-INDEMNITY, 22-TERMINATION, 23-SUSPENSION OF SERVICES, 25-COMPLIANCE WITH APPLICABLE LAW; 27-CHOICE OF LAW; JURISDICTION AND VENUE, 28-MEDIATION, 30-CONSULTANT AS INDEPENDENT CONTRACTOR, 31-ACCESS TO RECORDS, 32-OWNERSHIP OF WORK PRODUCT, 33-MINIMUM WAGE RATES FOR PUBLIC WORKS, 37-NO WAIVER, 41-FOREIGN CONTRACTOR, and 42-MEDIA CONTACTS.

Consultant shall pay any Sub-Consultants out of the Maximum Compensation. The Owner has no contractual obligation or legal duty to pay any Sub-Consultants or ensure that the Consultant makes full and timely payment to the Sub-Consultants for Services rendered on the Project.

Services performed by Consultant through its Sub-Consultants must be included in Consultant’s invoices at the cost incurred by the Consultant without mark-up, unless otherwise agreed by the Parties in writing. Consultant shall provide to the Owner: 1) copies of Sub-Consultant’s invoices submitted to the Consultant, and 2) Consultant’s requests for payment to the Owner under this Retainer Contract.

In the event that a Sub-Consultant is replaced or substituted for by the Consultant, the Consultant shall disclose such an event in writing to the Owner. The Owner may, in its sole discretion, accept the substitute Sub-Consultant or may request a different substitute Sub-Consultant. The substitution may not disrupt or alter the terms of the Project, and the Consultant shall take all actions reasonably necessary to ensure the cooperation of former and current Sub-Consultants in the complete and timely performance of the Services.

18. SUCCESSORS AND ASSIGNS. The provisions of this Retainer Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Upon execution of this Retainer Contract, Consultant shall not enter into any new Sub-Consultant agreements for Services set forth in an executed Supplement or assign, delegate, or otherwise transfer any of its interest in, rights to, duties, or obligations under this Retainer Contract or a Supplement hereto without Owner’s prior written consent, which shall not be unreasonably withheld.

19. INSURANCE PROVISIONS. For each Supplement executed pursuant to this Retainer Contract, Consultant shall maintain in full force, at its own expense, and for the duration of the Project, any and all insurance required by Owner and set forth in the Supplement pertaining to that Project. In addition, the Consultant agrees to the following:

A. If any insurance required in a Supplement is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Project for a duration of 24 months or the maximum time period available to the Consultant in the marketplace if less than 24 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following completion of the Project. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the Supplement. Evidence of suitable coverage will be a condition of final acceptance and payment under a Supplement.

B. Prior to the execution of a Supplement by Owner, the Consultant shall furnish certificates of insurance to Owner as evidence of the insurance coverage required by the Supplement (each a “Certificate” and collectively the “Certificates”). Complete copies of insurance policies, trust
agreements, or other related documentation must be provided to Owner upon request. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.

C. All Certificates, except for Workers' Compensation, must include the following language: “The University of Oregon, its officers and employees are named an additional insured with respect to their interests.” Consultant shall provide an endorsement from the insurance company to this effect.

D. The Certificates required to be provided by the insurance company or companies must give a 30-calendar day notice (without reservation) to Owner if the insurance is canceled. If Consultant receives a non-renewal or cancellation notice from an insurance carrier regarding coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant shall notify Owner within ten (10) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, Consultant shall stop Services pursuant to any Supplement, unless all required insurance remains in effect. Any failure to comply with the reporting provisions of this Section, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to Owner and its divisions, officers, and employees. Owner may suspend Consultant’s Services until a new Certificate of insurance is provided to Owner evidencing the replacement coverage. Consultant expressly agrees that Owner reserves the right to withhold payment to Consultant until evidence of reinstated or replacement coverage is provided to Owner.

E. Consultant shall obtain insurance coverage required for each Supplement from insurance companies or entities acceptable to the Owner and that are eligible to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner.

F. If Consultant changes any insurance carrier during the term of a Supplement, Consultant shall provide Owner with Certificate(s) from the new carrier(s) in accordance with the terms of this Retainer Contract and the Supplement.

G. Unless prohibited by Consultant’s insurance policy, Consultant agrees to waive all rights of subrogation against Owner and its governing board and their respective directors, officers, employees, agents, volunteers, and members for any damages, costs, losses, expenses, or other amounts incurred or arising as a result of the Retainer Contract or any Supplement.

20. INDEMNITY, RESPONSIBILITY FOR DAMAGES. Owner and Consultant hereby agree to the following:

A. Claims Other than Professional Liability. Consultant shall indemnify, hold harmless, save, and, subject to Owner’s selection of counsel and right to participate, defend Owner and its officers, directors, agents, employees, volunteers, and members from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), fines, penalties, demands and actions of any nature whatsoever which arise out of, result from, or are related to the (a) acts or omissions, including professionally negligent acts or omissions, of the Consultant and its Sub-Consultants, partners, joint venturers, agents, or employees acting under the Retainer Contract, (b) failures of the Consultant and its Sub-Consultants, partners, joint venturers, agents, or employees
to observe or perform any duty or obligation under the Retainer Agreement which is to be observed or performed by the Consultant, or (c) any breach of any agreement, representation, or warranty of the Consultant contained in the Retainer Contract. Consultant’s obligations under this Section shall also be construed to include (a) any act, claim or amount arising or recovered under workers’ compensation law, or (b) any enforcement, civil, or investigatory action of any government regulatory entity with respect to any potential violation of Applicable Law.

B. **Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, or purport to act as legal representative of the Owner, without the prior written consent of the Owner. The Owner may at any time elect to assume its own defense and settlement in the event that: (1) it determines that the Consultant is prohibited from defending the Owner; (2) Consultant is not adequately defending the Owner’s interests; (3) an important governmental principle is at issue; or (4) it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Consultant if the Owner elects to assume its own defense.

C. **Owner’s Actions.** Sub-section A above does not include indemnification by the Consultant of the Owner for the Owner's activities, whether related to this Retainer Contract, a Supplement entered into pursuant to this Retainer Contract, or otherwise.

21. **AMENDMENTS TO THE RETAINER CONTRACT.** Any changes to the provisions of this Retainer Contract require the written execution of an amendment hereto. The Services of the Consultant with regard to any specific Project shall be specified in a Supplement, which must be executed by the Parties prior to commencement of any Services.

22. **TERMINATION.** This Retainer Contract and/or any Supplement may be terminated as follows:

A. At any time by mutual consent of the Parties.

B. By Owner, upon written notice to the Consultant specifying the termination date. Without limiting the foregoing sentence, Owner may terminate the Retainer Contract or any Supplement under this subsection if Consultant: (1) commits a material breach of any covenant, representation, warranty, obligation or agreement pursuant to this Retainer Contract or any Supplement hereto; (2) fails to perform the Services called for in a Supplement within the time specified or allowed in the Supplement; (3) fails to perform the Services as to endanger performance of a Supplement in accordance with its terms; or (4) commits a material breach of any other Supplement executed pursuant to this Retainer Contract. (Cumulatively these four events will be referred to as “Event(s) of Default.”)

C. Termination for the following events shall be effective immediately and considered a “Termination for Cause”:

i. Consultant no longer holds the required licenses or certificates to perform the Services;

ii. Consultant is listed on the Bureau of Labor and Industry’s (“BOLI”) list of contractors ineligible to receive public works contracts, or any other list maintained by the state of Oregon, or federal government, as updated from time to time (collectively the “Debarment Lists”). Consultant as well as any firm, corporation, partnership, or association
in which the Consultant has a financial interest appearing on the Department Lists shall be ineligible to provide Services to Owner; or

iii. Owner provides the Consultant with notice of an Event(s) of Default and Consultant fails to cure the default to the satisfaction of the Owner within ten days of receiving such notice.

D. Consultant may terminate this Retainer Contract if Owner fails to pay Consultant per the terms of this Retainer Contract or a Supplement, provided that Owner has failed to make payment within 15 calendar days after receiving written notice from Consultant of such failure to make payment.

E. Upon receiving a notice of termination under subsection B or upon a Termination for Cause event under subsection C, Consultant shall immediately cease all Services related to the Project, except as otherwise directed in writing by the Owner.

F. Upon termination, Consultant shall deliver to Owner all existing Project Documents and other property that, if the Supplement had been completed, would be required to be furnished to Owner. All existing Project Documents delivered to Owner shall be subject to the ownership provisions of Section 32. The rights and remedies of Owner provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Retainer Contract.

G. In the event of termination, Consultant’s sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Owner plus Consultant’s reasonable close-out costs less previous amounts paid and any claim(s) which Owner has against Consultant. Within 30 days of the termination date, Consultant shall submit an itemized invoice for all Services completed before termination and all close-out costs actually incurred. Owner shall not be obligated to pay invoices received by Owner later than 30 days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall remit excess to Owner upon demand.

H. In the event of termination under this Section, Owner shall retain any remedy available in law or equity. Such remedies may be pursued separately, collectively, and in any order whatsoever. In the event of Termination for Cause and notwithstanding Sections 22.G. and 11.F., Consultant will not be compensated for any Services performed after such event, including any close-out costs. If it is determined that a Termination for Cause event did not occur, the rights and obligations of the Parties shall be the same as if the Retainer Contract or Supplement was terminated pursuant to subsection (B) of this Section 22; termination will be deemed to have occurred at the time owner believed the Termination for Cause event occurred.

I. In no event, including negligence or strict liability, shall: (1) Owner be liable to Consultant or any third party for consequential, incidental or other indirect damages; or (2) Owner’s liability exceed the amount payable under this Retainer Contract. The foregoing limitations shall apply regardless of whether Consultant’s remedies fail of their essential purpose.

23. **SUSPENSION OF SERVICES.** Owner, at its sole discretion, may suspend Consultant’s Services. To suspend Services, Owner shall deliver written notice to Consultant stating the effective date and length of the suspension. Owner shall provide Consultant written notice of the time and date, determined at Owner’s sole discretion, when Consultant’s Services may resume. Owner shall not be obligated to pay Consultant for Services performed during any suspension of Services as set forth in this Section. Consultant shall not resume Services until written notice is provided by Owner. Length of suspension shall be
determined at Owner’s sole discretion but shall not exceed 180 days. If notice to resume Services is not received within 180 days from date of suspension, the Supplement is considered terminated as of the 180th day under Section 22.B. The rates set forth in the Schedule of Rates in Attachment 2 shall remain constant for each Project and Supplement entered into during the Term of this Retainer Contract unless (1) the Owner authorizes the Consultant to resume performing Services after the Term of this Contract has expired pursuant to Section 3 of this Retainer Contract or (2) the Owner authorizes the Consultant to resume performing Services pursuant to an extended Term as identified in a subsequent amendment to this Retainer Contract. In addition, upon Owner’s notification to Consultant to resume performing Services, if Owner identifies substantive changes in the scope of Services to be performed by Consultant under the executed Supplement, Consultant may request a modification to the Schedule of Rates.

24. ASBESTOS AND OTHER HAZARDOUS SUBSTANCES. It is the Owner’s intention that the Services will not involve the removal, destruction or other remediation of asbestos, asbestos-related materials, hazardous wastes, hazardous substances, or other hazardous materials (collectively, the “Hazardous Substances”). It is understood and agreed that the Owner will contract with other parties for the removal of any Hazardous Substances prior to the commencement of any Project or at such time as Hazardous Substances are detected. It is understood and agreed that the Consultant may 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, another professional consultant not employed by Consultant, contractors, or subcontractors providing services relating to the abatement of such Hazardous Substances.

25. COMPLIANCE WITH APPLICABLE LAW. In addition to any requirements set forth in this Retainer Contract, the Consultant agrees to comply with all Applicable Laws both in the conduct of its business and in its performance of the Services. The Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations including the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), title VI of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of the Consultant to comply with all Applicable Laws shall not relieve the Consultant of its obligations or any other requirements of this Retainer Contract.

26. PAYMENTS TO SUPPLIERS, LIENS. Consultant further agrees to make payments promptly when due to all persons supplying the Consultant labor or materials for Consultant’s, or any Sub-Consultant’s, performance of any Services. Consultant shall pay all contributions or amounts due to the Industrial Accident Fund as incurred in the performance of the Services by Consultant and its Sub-Consultants. Consultant shall not permit any lien or claim to be filed or prosecuted against the State or Owner on account of any labor or material furnished under this Retainer Contract and any Supplement and shall pay 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, Owner may pay such claim. Any such payment shall not relieve Consultant or Consultant's surety from obligations with respect to any unpaid claims.

27. CHOICE OF LAW; JURISDICTION AND VENUE; ATTORNEY FEES. This Retainer Contract and any Supplement will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between Owner and Consultant that arises out of or relates to performance of this Retainer Contract or any Supplement will be brought and conducted solely and exclusively within the Circuit Court for Lane County, in the State of Oregon. Provided, however, that if any such claim, action, or suit may be, and is, brought in a federal forum, it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no way will this section be construed as a waiver by Owner of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the
Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. The Consultant, by execution of this Retainer Contract, hereby consents to the in personam jurisdiction of the above courts.

In the event of a dispute relating to or arising out of this Retainer Contract or any Supplement, the prevailing party shall be entitled to its attorney fees and costs, including, but not limited to: (1) fees and costs incurred on appeal; (2) costs associated with deposition transcripts; and (3) costs associated with the hiring of experts.

28. **MEDIATION.** The Parties, in an effort to resolve any conflicts that may arise during the design or construction of a Project or following the completion of the Project, agree that all disputes arising out of or relating to this Retainer Contract or any Supplement shall be initially submitted to nonbinding mediation, unless the Parties mutually agree otherwise. Notwithstanding Section 27, each Party shall be responsible for its own fees and costs related to the mediation. The Parties shall share the cost of retaining a mediator equally.

The Consultant further agrees to include a similar mediation provision in all agreements with Sub-Consultants performing Services under this Retainer Contract. All participating parties shall exercise good faith efforts to resolve disputes in mediation.

29. **FUNDS AVAILABLE AND AUTHORIZED.** The Consultant agrees that the Consultant’s receipt of payment under any Supplement after the last day of the current biennium may be contingent upon Owner receiving from the Oregon Legislative Assembly appropriations, limitations, bond proceeds, or other expenditure authority or funding sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to pay the Consultant pursuant to a Supplement.

30. **THE CONSULTANT AS INDEPENDENT CONTRACTOR.** Consultant shall perform all Services as an independent contractor. The Consultant agrees to the following:

   A. The Consultant is solely responsible for determining the appropriate means, method, and manner of performing Services. However, Owner reserves the right to: (1) determine and modify the delivery schedule for Services to be performed under a Supplement, and (2) evaluate the quality of the completed performance.

   B. The Consultant is not an officer, employee, or agent of the University of Oregon or Owner, as those terms are used in ORS 30.265.

   C. The Consultant is not a contributing member of the Public Employee's Retirement System and is responsible for any federal or state taxes applicable to compensation or payments paid to the Consultant under a Supplement. The Consultant will not be eligible for any benefits from these payments for federal Social Security, unemployment insurance, or workers' compensation, except as a self-employed individual. If any payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

31. **ACCESS TO RECORDS.** For not less than six (6) years after expiration of this Retainer Contract, 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 which are directly pertinent to Services performed under a Supplement for the purpose of making audit, examination, excerpts, and transcripts. If any part of this Retainer Contract, Supplement, or any resulting Construction Contract(s) is involved in litigation, the Consultant shall retain all pertinent records for not less than six (6) years or until all litigation is resolved, whichever is longer. The Consultant shall provide
Owner and the other entities referenced above with full access to these records in preparation for and during litigation.

32. **OWNERSHIP OF WORK PRODUCT.** Owner and Consultant hereby agree to the following:

A. **Definitions.** The following terms used in this Section 32 have the meanings set forth below:

i. “Consultant Intellectual Property” means any intellectual property owned by the Consultant and developed independently from the Retainer Contract and any Supplement.

ii. “Third Party Intellectual Property” means any intellectual property owned by parties other than Owner or Consultant.

iii. “Work Product” means every invention, discovery, work of authorship, Project Document, trade secret, or other tangible or intangible item, whether completed, partially completed, or in draft form and all intellectual property rights therein, that the Consultant is required to deliver to Owner pursuant to the Retainer Contract and any Supplement.

B. **Work Product.** All Work Product created by the Consultant, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” is the exclusive property of Owner. Owner and the Consultant agree that Work Product that constitutes original works of authorship (the “Original Work Product”) is “work made for hire”, and Owner is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product is not “work made for hire,” the Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner’s reasonable request, the Consultant shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in Owner. The Consultant forever waives any and all rights relating to Original 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 or subsequent modifications. However, see Sections 32.C., 32.D., 32.E. and 32.F. immediately below for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works, and Third Party Intellectual Property derivative works.

C. **Consultant Intellectual Property.** In the event that a portion of the Work Product is Consultant Intellectual Property or is necessary for Owner to reasonably enjoy and use Work Product, the Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf. At the request of the Consultant, Owner shall take reasonable steps to protect the confidentiality and proprietary interests of the Consultant in any Consultant Intellectual Property licensed under this Section within the limits of the Oregon Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

D. **Third Party Intellectual Property.** In the event that any portion of the Work Product is Third Party Intellectual Property, or in the event any Third Party Intellectual Property is needed by Owner to reasonably enjoy and use Work Product, the Consultant shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and
display the Third Party Intellectual Property, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf.

E. **Consultant Intellectual Property-Derivative Work.** If all or any portion of the Work Product is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, the Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize others to do the same on Owner’s behalf.

F. **Third Party Intellectual Property-Derivative Work.** If all or any portion of the Work Product is a derivative work based on Third Party Intellectual Property or is a compilation that includes Third Party Intellectual Property, the Consultant shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Owner’s behalf.

G. **Limited Owner Indemnity.** To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.300, Owner shall indemnify and hold the Consultant harmless from liability arising out of Owner’s re-use or alteration of the Work Product, within the limits set forth in the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400. The indemnity provided under this section shall be payable only from funds of the Owner that are legally available for such purpose, which include, without limitation, all tuition, charges, rents and other operating revenue of the Owner.

H. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 32, the Consultant may refer to the Work Product in its marketing materials and, unless specified otherwise, Owner hereby grants to the Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display Work Product on other unrelated projects for this limited use. This provision explicitly excludes any “Confidential Information” protected from disclosure under the provisions of this Section 32(I) and 32(J) below. Consultant may use the Work Product for other uses only with Owner’s prior written approval.

I. **Confidential Information.** Any and all information that Owner designates as confidential (either on the document itself or through related correspondence) and any other documents or materials (including software) that result from the Consultant’s use of such information and any other Work Product that Owner designates as confidential, is deemed to be confidential information of Owner (“Confidential Information”). Confidential Information does not include information that: (1) is or becomes (other than by disclosure by the Consultant) publicly known; (2) is furnished by Owner to others without restrictions similar to those imposed by this Retainer Contract; (3) is rightfully in the Consultant’s possession without the obligation of nondisclosure prior to the time of Owner’s Confidential Information disclosure; (4) is obtained from a source other than Owner without the obligation of confidentiality; (5) is disclosed with the written consent of Owner; or (6) is independently developed by employees, Sub-Consultants, or agents of the Consultant who can be shown to have had no access to the Confidential Information.
J. **Non-Disclosure.** The Consultant shall hold Confidential Information in strict confidence, using at least the same degree of care that the Consultant uses in maintaining the confidentiality of its own confidential information, and shall not, without Owner’s prior written consent, copy, reproduce, sell, assign, license, market, transfer, dispose of, give, disclose, or otherwise use Confidential Information for any purposes whatsoever outside of the scope of Services of this Retainer Contract and any Supplements. The Consultant shall advise each of its employees, Sub-Consultants, and agents of their obligations to keep Confidential Information confidential. The Consultant shall use reasonable efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. The Consultant shall advise Owner immediately if the Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms this Section 32.J., and the Consultant shall, at its expense, cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner against any such person. Upon termination of this Retainer Contract and any Supplement, or at Owner’s request, the Consultant shall turn over to Owner all documents, papers, and other materials in the Consultant's possession that contain Confidential Information. In the event the Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, the Consultant shall immediately notify Owner of such subpoena or other legal process, provide Owner with copies of all related documentation, including the subpoena or other request for disclosure, and otherwise cooperate with Owner. In the event Owner decides not to oppose such subpoena or other legal process or Owner’s decision to oppose the subpoena or legal process has not been successful, the Consultant shall be excused from the requirements of this provision to the extent necessary to meet the demands of the subpoena or other legal process requesting disclosure of Confidential Information.

33. **MINIMUM WAGE RATES FOR PUBLIC WORKS.** Certain Services performed pursuant to this Retainer Contract may be interpreted by BOLI as subject to Prevailing Wage Rate laws (ORS 279C.800 to 279C.870, and hereinafter, “PWR Law”), or Owner may elect to require Consultant to comply with PWR Law, regardless of applicability, with regard to Services performed pursuant to a Supplement. To the extent Consultant’s Services are subject to PWR Law or upon the election of an Institution, the following terms shall apply:

A. Consultant shall pay all workers in each trade or occupation employed in performing any part of the Services not less than the specified minimum hourly rate of wage, pursuant to ORS 279C.840. The prevailing wage rates that will apply to each Project shall be those in effect at the time the Supplement is executed. Once established, the prevailing wage rates will then be in effect until the Final Completion of the Project. The prevailing wage rates that will apply will be those set forth in the then current version of the following BOLI booklet, together with any amendments to that booklet: “PREVAILING WAGE RATES for Public Works Contracts in Oregon.” Oregon’s prevailing rate of wage can be found on BOLI’s website (currently, www.oregon.gov/BOLI) and the current BOLI booklet referenced above can be found in BOLI’s annual Prevailing Wage Publications (www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx). Consultant shall include the preceding requirement in any subcontract with a Sub-Consultant.

B. If Consultant’s Services are subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Consultant shall pay the higher of the applicable state or federal prevailing rate of wage.

C. Before execution of a Supplement or beginning performance of the Services, the Consultant shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Consultant shall also include in every applicable
contract with a Sub-Consultant a provision requiring the Sub-Consultant to have a public works bond filed with the Construction Contractors Board before performing any Services, unless otherwise exempt, and shall verify that the Sub-Consultant has filed a public works bond before permitting any Sub-Consultant to start performing Services.

D. If the Consultant fails to make timely payment for labor or services, Owner may pay any amounts due and withhold those amounts from payments to the Consultant.

E. As a condition to Owner’s performance hereunder, no person may be employed to Work under this Retainer Contract for more than ten hours in any one day or forty hours in any one week, except in cases of necessity, emergency or where required by public policy. In such instances, Consultant shall pay the employee at time and a half pay:

i. For all overtime in excess of eight hours a day or forty hours in one week when the work week is five consecutive days, Monday through Friday; or

ii. For all overtime in excess of ten hours a day or forty hours in one week when the work week is four consecutive days, Monday through Friday; and

iii. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

iv. This Section does not apply to Consultant’s Services under this Retainer Contract to the extent Consultant is currently a party to a collective bargaining agreement with any labor organization.

v. No restrictions of pay scales included in this Section excuses Consultant from compliance with Schedules for completion of Services in a Supplement.

F. Consultant shall provide written notice to workers of the number of hours per week and days per week they may be required to work.

G. Consultant shall make prompt payment for all medical services for which Consultant has agreed to pay, and for all amounts for which the Consultant collects or deducts from the worker’s wages.

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

35. **DISCLOSURE OF SOCIAL SECURITY NUMBER.** Consultant shall provide its Social Security number or federal tax ID number to Owner, 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.

36. **FORCE MAJEURE.** Neither Party shall be held responsible for delay or default caused by Force Majeure. “Force Majeure” means fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes of any other act, event or occurrence that is beyond the reasonable control of the party and which could not have been avoided by the exercise of care, prudence, foresight and diligence by such
party. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Retainer Contract.

37. **NO WAIVER.** The failure of Owner to enforce any provision of this Retainer Contract shall not constitute a waiver or relinquishment by Owner of the right to such performance in the future nor of the right to enforce any other provision of this Retainer Contract.

38. **RECYCLING.** Consultant shall use recycled products to the maximum extent economically feasible in the performance of the Services.

39. **NOTICES.** Except as expressly provided otherwise in this Retainer Contract, any notices to be given hereunder will be given in writing by personal delivery, email, or mail (postage prepaid) to the Consultant or Owner at the address or number set forth on page 1 of this Retainer Contract and on the Supplement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed (postage prepaid) will be deemed to be given five (5) calendar days after the date of mailing. To be effective against Owner, email transmission must be confirmed by (1) telephone notice to Owner or (2) an email from Owner confirming receipt of Consultant’s notice email. Confirmation will be deemed to be given upon such confirmation. Any notice by personal delivery will 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. Notices specific to a Project will be given as set forth in the Supplement pertaining to that Project.

40. **THIRD PARTY BENEFICIARIES.** Nothing contained in this Retainer Contract or any Supplement shall create a contractual relationship with, or a cause of action in favor of, a third party against Owner or the Consultant. Consultant’s Services shall be performed solely for the Owner’s benefit and no other entity or person shall have any claim against Consultant because of this Retainer Contract for the performance or nonperformance of Services.

41. **FOREIGN CONTRACTOR.** Consultant shall be licensed to do business and provide Services in the State of Oregon by all necessary authorities having jurisdiction over this Retainer Contract, the Project or the Services during the Term of the Retainer Contract. If Consultant is not domiciled or registered to do business in the State of Oregon, Consultant will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies prior to performing any Services. The Consultant shall demonstrate its legal capacity to provide Services in the State of Oregon before entering into any Supplement.

42. **MEDIA CONTACTS.** The Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding a Project without Owner’s prior written authorization.

43. **CONFLICT OF INTEREST.** The 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 Services performed under a Supplement without Owner’s prior consent, which may be withheld in Owner’s sole and absolute discretion.

44. **EXECUTION AND COUNTERPARTS.** This Retainer Contract and any Supplements may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.
45. **AFFIRMATIVE ACTION COMPLIANCE.** Consultant (“contractor” for purposes of this Section) and all Sub-Consultants (“subcontractor” for purposes of this Section) and agents shall abide by the following:

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

46. **MERGER CLAUSE.** THIS RETAINER CONTRACT, TOGETHER WITH ANY OTHER DOCUMENT ATTACHED OR INCORPORATED BY REFERENCE INTO THIS RETAINER CONTRACT, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS RETAINER CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS RETAINER CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS RETAINER CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
47. ACKNOWLEDGEMENT OF RFQ AND CONTRACT REQUIREMENTS.
The signing of this Contract by the Consultant acknowledges that the Consultant has fully read, understands and shall be bound by the requirements of the Solicitation Documents (including the RFQ) and the Retainer Contract, Supplement, Supplement Amendment, and any other amendment. No changes to the Retainer Contract requirements, or the requirements of any other document described in the preceding sentence, will be accepted by the Owner. Consultant demands associated with changing the requirements of the Retainer Contract may, at the discretion of the Owner, result in complete termination of this Retainer Contract.

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Retainer Contract as of the dates written below.

Consultant: __________________________________________
Print Name: ____________________________
Signature: ____________________________
Title: ____________________________
Date: ____________________________

Owner: The University of Oregon
Print Name: Darin C. Dehle
Signature: ____________________________
Title: Director of Campus Design and Construction
Date: ____________________________
ATTACHMENT 1 – RETAINER SUBMITTAL PACKET

Through reference to the submitted information, the Proposal information provided through the four web form portals are incorporated as documentation referenced by this Contract. Documents included but not limited to: Discipline Packets, References, Schedule of Charges, Minimum Qualifications, Company Information, and Service Categories.
ATTACHMENT 2 – TRAVEL REIMBURSEMENT POLICY

<table>
<thead>
<tr>
<th>Category</th>
<th>Rate Summary</th>
<th>Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Instate Travel:</strong></td>
<td></td>
<td>• The per diem equals the federal rate using the IRS’s High-Low Substantiation Method. All Oregon cities are currently Low Cost Cities.</td>
</tr>
<tr>
<td>Meal per diem $52</td>
<td></td>
<td>• No receipts are required for lodging, meals and incidental expenses (these are reimbursed on a per diem basis).</td>
</tr>
<tr>
<td>B = $13.00</td>
<td></td>
<td>• If meals are provided at the meeting or event, no meal per diem is allowed.</td>
</tr>
<tr>
<td>L = $13.00</td>
<td></td>
<td>• No meal per diem is allowed on one day trips.</td>
</tr>
<tr>
<td>D = $26.00</td>
<td></td>
<td>• Lodging tax is reimbursed as a miscellaneous expense.</td>
</tr>
<tr>
<td>All Oregon Cities</td>
<td>Meals $52.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lodging $120.00</td>
<td></td>
</tr>
</tbody>
</table>

| **Out-of-State, and Continental US Travel:** |                          | • The per diem equals the federal rate using the IRS’s High-Low Substantiation Method (see http://ba.uoregon.edu/staff/travel-reimbursement for listing of High Cost Localities). |
| **High** meal per diem $65                  |                          | • No receipts are required for lodging, meals and incidental expenses (these are reimbursed on a per diem basis). |
| B = $16.25                                   |                          | • If meals are provided at the meeting or event, no meal per diem is allowed. |
| L = $16.25                                   |                          | • No meal per diem is allowed on one day trips. |
| D = $32.50                                   |                          | • Lodging tax is reimbursed as a miscellaneous expense. |
| **Low** meal per diem $52                   |                          |                                                                      |
| B = $13.00                                   |                          |                                                                      |
| L = $13.00                                   |                          |                                                                      |
| D = $26.00                                   |                          |                                                                      |
| All other cities, Continental US             | Meals $52.00             |                                                                      |
|                                             | Lodging $120.00          |                                                                      |

| **Foreign & Non-Continental US and Overseas Non-Foreign Areas (Alaska, Hawaii, Guam, etc.)** | Consultant travel to these locations is minimal and the federal tables are complicated. Call for per diem rates. | • Contact UO Campus Design and Construction Office at 541-346-2282 for current per diem rates for these locations. |
|                                                                                         |                                                        | • If meals are provided at the meeting or event, no meal per diem is allowed. |
|                                                                                         |                                                        | • Lodging tax is reimbursed as a miscellaneous expense for Alaska, Hawaii, Puerto Rico, and US possessions. Lodging tax is included in the per diem for foreign travel. |
|                                                                                         |                                                        | • No receipts are required for lodging, meals and incidental expenses. |

| **Mileage for Private Vehicle:**            | 56 cents per mile.                                         | • Mileage can be calculated one of 3 ways: |
|                                            |                                                        |   o Mileage Chart in the Excel file (see Excel file) |
Pro-ration of meals for partial days involving an overnight stay:

<table>
<thead>
<tr>
<th>INITIAL Day of Travel – Leave:</th>
<th>7:00 am to 12:59 pm</th>
<th>1:00 pm and after</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meal Allowance</td>
<td>Breakfast, lunch, dinner</td>
<td>Lunch, dinner</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FINAL Day of Travel – Return:</th>
<th>12:00 noon to 5:59 pm</th>
<th>6:00 pm and after</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meal Allowance</td>
<td>Breakfast</td>
<td>Breakfast, lunch</td>
</tr>
</tbody>
</table>

Rented Vehicles: UO will only reimburse vehicle rental rates for compact and economy cars and their equivalent green class. UO will reimburse for liability insurance issued through the vehicle rental company. Other classes of vehicles may be rented for circumstances that are approved in advance by the UO representative for reasons that include space requirements or inclement weather conditions. Receipts are required.

Airfare: UO will only reimburse actual economy rate airfare, plus mandatory taxes and fees. Receipts are required.

Ground Transportation: Taxicab, train (coach or business class only), and airport shuttle fees will be reimbursed. Receipts are required if over $75 per item.

Incidental Expenses: *Incidental expenses are combined with the meal per diem rate and will not be separately reimbursed.* Incidental expenses include, but are not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and gratuities for services, such as for waiters, taxi drivers, and baggage handlers.

Miscellaneous Expenses: The miscellaneous expenses that can be reimbursed include: fuel expenses for a rented vehicle, parking, tolls, lodging taxes, and checked baggage for up to 2 standard-weight bags. Other miscellaneous expenses can be reimbursed only if approved in advance by the UO representative. All miscellaneous expenses must be itemized. Receipts are required if over $25 per item.

Unallowed Expenses: Expenses for laundry, cleaning and pressing of clothing, and fees and gratuities for services (e.g. waiters, taxi drivers, and baggage handlers) are not reimbursable.
SUPPLEMENT TO RETAINER CONTRACT
FOR PROFESSIONAL CONSULTANTING SERVICES

Supplement No.
Project Name:

This Supplement to Retainer Contract for Professional Consulting Services, dated ________ (the “Supplement”), is entered into between:

“Consultant”: [fill in Consultant information] (“Consultant”)

and “Owner”:

The University of Oregon (UO)
1295 Franklin Blvd
1276 University of Oregon
Eugene, OR 97403-1276
Tel: (541) 346-8292
capcon@uoregon.edu

(each a “Party” and collectively, the “Parties”) pursuant to that certain Retainer Contract entered into between the Parties effective January 1, 2016 (the “Retainer Contract”). Capitalized terms have the meaning defined in the Retainer Contract unless further defined in this Supplement.

1. DESCRIPTION OF THE PROJECT: The project to which this Supplement pertains is described as follows: ________________ (the “Project”).

2. SERVICES TO BE PERFORMED: The Consultant shall perform the following services on the Project: __________ (Attach Exhibit A for more complex services) (the “Services”).
The Consultant shall perform its Services according to the terms and conditions of this Supplement, the Retainer Contract, and Attachment 1 to the Retainer Contract, which are each incorporated herein by this reference.

All Services will be performed in compliance with the University of Oregon Campus Plan and Design and Construction Standards in effect as of the date of this Supplement.

3. SCHEDULE. Consultant shall perform its Services according to the schedule [attached as Exhibit B OR defined within this Section] and Section 7 of the Retainer Contract. Consultant shall begin performing Services immediately upon full execution of this Supplement. This Supplement shall expire as of __________ (the “Schedule”).

[INSERT short form project schedule here OR attach Exhibit B for more extensive project schedule]

4. INCORPORATED DOCUMENTS. This agreement includes the Supplement, the Retainer Contract and Attachment 1 to the Retainer Contract, all of which are intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement excluding the Retainer Contract and Attachment 1, 2) the Retainer Contract excluding this Supplement and Attachment 1, and 3) Attachment 1 to the Retainer Contract excluding this Supplement and Retainer Contract.

5. COMPENSATION. Subject to the Limitations set forth below, Owner shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a [Time and Materials Not to Exceed OR Fixed Fee] basis in accordance with the Schedule of Charges (Attachment 2 to the Retainer Contract) and the provisions of this Supplement.

The maximum compensation for the Consultant's Services including the Reimbursable Expenses (Attachment 3 to the Retainer Contract) is $__________

[Refer to Exhibit C of this Supplement for the Payment Schedule associated with the Services to be performed as identified in Exhibit A.] (Add this Exhibit if Exhibit A is added for more complex scope of work)

Total maximum compensation, including the cost of all Reimbursable Expenses and any Additional Services that may the Parties may agree to through any subsequent execution of a Supplement Amendment, shall not exceed the maximum amount permitted by Owner’s policies and procedures in effect at the time this Supplement is executed.

6. TERM. This Supplement 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 and prior to obtaining all required approvals.

Unless earlier terminated or suspended, Consultant shall perform its obligations according to this Supplement until Consultant’s Services are completed and accepted by Owner. Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Consultant’s Services, including completion of all warranty work and corrections as set forth in this Supplement and the Retainer Contract. The Parties expressly agree that they may execute a Supplement Amendment and extend the date which Consultant’s Services may be completed, which may include a date beyond the Term of the Retainer Contract.
Termination or suspension does not extinguish or prejudice Owner’s right to enforce the Supplement and Retainer Contract with respect to any breach by the Consultant that has not been cured.

7. INSURANCE REQUIREMENTS. Prior to the effectiveness of this Supplement, Consultant shall provide Owner with Certificates of insurance maintained in full force and effect at Consultant’s expense. Further, each insurance policy for which a Certificate is required shall be maintained for the duration of the Term of this Supplement including any extensions or Supplement Amendments that may extend the Term of this Supplement. Unless prohibited by Consultant’s insurance policy, Consultant agrees to waive all rights of subrogation against Owner and its governing board and their respective directors, officers, employees, agents, volunteers, and members for any damages, costs, losses, expenses, or other amounts incurred or arising as a result of this Supplement and the Retainer Contract. Insurance purchased by Consultant must be consistent with the following:

A. Workers' Compensation – The Consultant, its Sub-consultants, if any, and any other employers providing work, labor or materials under the Supplement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires such employers to provide Oregon Workers' Compensation coverage for all their subject workers working in Oregon, unless exempt pursuant to ORS 656.126.

B. Commercial General Liability - The Consultant shall obtain, at the Consultant’s expense, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Owner. This insurance shall include personal injury, products and completed operations, contractual liability, premises liability, and coverage for the indemnity provided under the Retainer Contract and the policy shall be issued on an occurrence basis. Consultant shall provide proof of insurance of not less than $1,000,000.00 per occurrence and $2,000,000.00 in aggregate. Owner incorporates by reference any Owner policies or procedures that require Consultant to obtain increased Commercial General Liability Insurance coverage in the event that Consultant is simultaneously performing multiple Projects or other contracts on Owner’s behalf.

C. Automobile Liability - The Consultant shall obtain, at the Consultant’s expense, Automobile Liability Insurance covering all owned, leased, or hired vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall provide proof of insurance of not less than $1,000,000.00 per occurrence and $2,000,000.00 in aggregate. Owner incorporates by reference any Owner policies or procedures that require Consultant to obtain increased Automobile Liability Insurance coverage in the event that Consultant is simultaneously performing multiple Projects or other contracts on Owner’s behalf or if the Work requires substantial automobile use.

D. Professional Liability/Errors & Omissions - The Consultant shall provide Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by negligent error, omission, or any act in regard to the Project, its plans, drawings, specifications and 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. The Consultant shall provide proof of insurance of not less than $1,000,000.00 per occurrence and $2,000,000.00 in aggregate. Owner incorporates by reference any Owner policies or procedures that require Consultant to obtain increased Professional Liability/Errors & Omissions Insurance coverage in the event that Consultant is simultaneously performing multiple Projects or other contracts on Owner’s behalf.

8. KEY PERSONS. The Parties agree that certain Consultant personnel are specifically valuable to the Project (“Key Persons”). Key Persons shall not be replaced during the Project without the
written consent of Owner, which shall not be unreasonably withheld. If Consultant intends to substitute personnel, Owner must receive Consultant’s notice and request at least 15 days prior to the effective date of substitution. When replacements have been approved by Owner, Consultant shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the Project concurrently. Upon authorization for the replacement of a Key Person, all subsequent substitutions of that Key Person shall require Owner’s written consent in accordance with this Section. The Key Persons for this Project are the following:

[INSERT A DESCRIPTION OF ALL KEY PERSONS HERE. SEE CONTRACTOR RETAINER CONTRACT SUPPLEMENT FOR AN EXAMPLE]

9. NOTICE. Notices specific to the Services described on this Supplement will be given in accordance with Section 39 of the Retainer Contract.

10. OTHER TERMS. Except as specifically modified by this Supplement, all terms of the Retainer Contract remain unchanged and apply to the Project and the Services.

11. EXECUTION AND COUNTERPARTS. The Supplement may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Supplement.

IN WITNESS HEREOF, the Parties have duly executed this Supplement on the dates indicated below.

[Consultant], Consultant

The University of Oregon, Owner

Print Name: _____________________________  Print Name: Darin C. Dehle
Signature: _______________________________  Signature: _______________________________
Title: _________________________________  Title: Director of Campus Design and Construction
Date: _________________________________  Date: _________________________________
EXHIBIT A
SCOPE OF SERVICES
[Attach Scope of Services Template for A/E with complex scope, energy analyst, commissioning, etc.]
(Delete this page and reference to it if simple scope can be defined in the body of the Supplement.)
EXHIBIT B
PROJECT SCHEDULE

[Attach Schedule for the delivery of Services]
(Delete this page and reference to it if simple schedule can be defined in the body of the Supplement.)
EXHIBIT C
PAYMENT SCHEDULE
[Attach Payment Schedule Template]
(Delete this page and reference to it if simple schedule can be defined in the body of the Supplement and Exhibit A is not added to the Supplement.)
This Amendment to Supplement to Retainer Contract for Professional Consulting, dated _________ (“Supplement Amendment”), is entered into between

“Consultant”: [fill in Consultant information] (“Consultant”)

and “Owner”:

The University of Oregon
1295 Franklin Blvd
1276 University of Oregon
Eugene, OR 97403-1276
Tel: (541) 346-8292    Fax: (541) 346-6927
capcon@uoregon.edu

(each a “Party” and collectively, the “Parties”) and amends the Supplement to Retainer Contract for Professional Consulting, dated _________, between the Parties (the “Supplement”). This Supplement Amendment incorporates the terms and conditions of the Supplement and the Retainer Contract entered into between the Parties effective January 1, 2016 (the “Retainer Contract”). Capitalized terms have the meaning defined in the Retainer Contract or the Supplement unless further defined herein. The Parties agree as follows:

1. ADDITIONAL SERVICES: The Consultant shall perform the following services for Owner, in addition to the Services set forth in the Supplement: _________ (Attach Exhibit A for more complex services) (the “Additional Services”).
Consultant shall perform its Additional Services, as well as the Services, according to the terms and conditions of this Supplement Amendment, the Supplement, the Retainer Contract, and Attachment 1 to the Retainer Contract, which are each incorporated herein by this reference. Except as expressly altered in this Supplement Amendment, all other terms and conditions of the Retainer Contract and Supplement remain in full force and effect.

In addition, the Services and the Additional Services will be performed in compliance with the University of Oregon Campus Plan and Design and Construction Standards in effect as of the date of this Supplement.

2. SCHEDULE: Consultant shall perform the Services and the Additional Services according to the schedule [attached as Exhibit B OR defined within this Section] and Section 7 of the Retainer Contract. Consultant shall begin continue Services and shall perform the Additional Services immediately. This Supplement shall expire as of [ ] (the “Schedule”).

[INSERT short form project schedule here OR attach Exhibit B for more extensive project schedule]

3. COMPENSATION. Subject to the limitations set forth below, Owner shall compensate Consultant for Additional Services and Reimbursable Expenses incurred by the Consultant in the performance of the Additional Services in accordance with the Retainer Contract and the Supplement on a [Time and Materials Not to Exceed or Fixed Fee] basis.

The maximum compensation for the Consultant’s performance of the Additional Services is $______ which includes $______ for Additional Services and $______ for Reimbursable Expenses. This amendment increases the maximum compensation under the Supplement from $______ to $_______. The total maximum compensation, including the cost of all Reimbursable Expenses, Services, and Additional Services, shall not exceed the maximum amount permitted by Owner’s policies and procedures in effect at the time this Supplement Amendment is executed.

4. INCORPORATED DOCUMENTS. The Retainer Contract and its associated documents, including this Supplement Amendment, are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement Amendment excluding the Supplement, Retainer Contract, and Attachment 1 to the Retainer Contract, 2) the Supplement excluding this Supplement Amendment, the Retainer Contract, and Attachment 1 to the Retainer Contract, 3) the Retainer Contract excluding this Supplement Amendment, the Supplement, and Attachment 1 to the Retainer Contract, and 4) Attachment 1 to the Retainer Contract, excluding this Supplement Amendment, the Supplement and the Retainer Contract.

5. TERM. This Supplement Amendment is effective on the date it has been signed by every Party hereto (the “Effective Date”). No Services may be performed, or payment made, prior to the Effective Date and prior to obtaining all required approvals.

Unless earlier terminated or extended, Consultant shall perform its obligations according to this Supplement Amendment until Consultant’s Services and Additional Services are completed and accepted by Owner. Further, Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Services, including completion of all warranty work and corrections as set forth in the Retainer Contract, Supplement, and this Supplement Amendment. The Parties expressly agree that they may amend this Supplement Amendment through execution of another Supplement Amendment and extend the termination date of this Supplement Amendment.
Termination or suspension does not extinguish or prejudice Owner’s right to enforce this Supplement Amendment, the Supplement, or the Retainer Contract with respect to any breach by the Consultant that has not been cured.

6. OTHER TERMS. Except as specifically modified by this Supplement Amendment, all terms of the Supplement and Retainer Contract remain unchanged and apply to the Project and the Services and Additional Services.

7. EXECUTION AND COUNTERPARTS. This Supplement Amendment may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Amendment.

IN WITNESS HEREOF, the Parties have duly executed this Amendment on the dates indicated below.

[Consultant], Consultant The University of Oregon, Owner

Print Name: _____________________________ Print Name: Darin C. Dehle
Signature: ______________________________ Signature: ______________________________
Title: _________________________________ Title: Director of Campus Design and Construction
Date: _________________________________ Date: _________________________________
EXHIBIT A
SCOPE OF SERVICES

[Attach Scope of Services Template for A/E with complex scope, energy analyst, commissioning, etc.]
[Delete this page and reference to it if simple scope can be defined in the body of the Amendment.]
EXHIBIT B
PROJECT SCHEDULE
[Attach Schedule for the delivery of Services]
[Delete this page and reference to it if simple schedule can be defined in the body of the Amendment.]
EXHIBIT C
PAYMENT SCHEDULE
[Attach Payment Schedule Template]
(Delete this page and reference to it if simple schedule can be defined in the body of the Supplement and Exhibit A in not added to the Supplement.)