



OREGON INSTITUTE OF TECHNOLOGY
DESIGN AND CONSTRUCTION AGREEMENT

HVAC UPGRADE

OWNER: Oregon Institute of Technology (the "Owner")

DESIGN/BUILDER: _____ (the "CONTRACTOR")

PROJECT: HVAC Upgrade Project (the "Project")

The Owner and the CONTRACTOR are collectively referred to hereafter as the "Parties."

RECITALS:

- A. WHEREAS, Owner issued Request for Proposals #[INSERT] (the "RFP") on [INSERT], in order to obtain the services of a Design/Builder (the "CONTRACTOR") to competently assume responsibility for completion of the design, construction and installation of the HVAC Upgrade Project (the "Project") in two phases as follows: Phase I--design services to complete the design for infrastructure. Products of Phase I will include complete drawings and details that are AutoCAD compatible; Phase II—Supply of materials, construction, installation, turn-over, and as-built documentation;
B. WHEREAS, CONTRACTOR submitted a proposal in response to Owner's RFP and Owner selected CONTRACTOR as the most qualified responsive and responsible contractor to complete the Project;
C. WHEREAS, Owner and CONTRACTOR now wish to memorialize their respective rights and responsibilities regarding CONTRACTOR's completion of the Project; and
D. WHEREAS, Owner is authorized under the laws of the State of Oregon to enter into this Design and Construction Agreement ("Agreement") for the purposes set forth herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and intending to be legally bound hereby, Owner and CONTRACTOR agree as follows (The above recitals are made part of the Agreement.):

1. DEFINITIONS

Key terms used within the Agreement are defined at **Section A.1** of the Oregon Tech General Conditions for Public Improvement Contracts, dated February 1, 2017 (the “Oregon Tech General Conditions”), except as modified or supplemented as follows:

- 1.1. “Agreement” means this document entitled, “Design and Construction Agreement,” excluding exhibits and material incorporated herein by reference, and is interchangeable with the term “Oregon Tech Public Improvement Agreement form” used in Section A.1 of the Oregon Tech General Conditions.
- 1.2. “Contract Documents” means the documents identified in **Section 2.1** of this Agreement.
- 1.3. “Construction Documents” means Owner-approved Plans, drawings, specifications and other documents necessary to allow complete and accurate construction of the Project.
- 1.4. “Construction Work” or “Work” means the providing of all work, services, construction management services, materials, equipment, transportation, tools, labor and incidentals necessary to complete the construction work described in and reasonably inferred from the Contract Documents, including but not limited to the services and work set forth in **Section 3.5** of this Agreement.
- 1.5. “Contract Price” means that amount set forth in the CONTRACTOR’s proposal pertaining to the total fixed cost of the Project for both Design Services and Construction Work.
- 1.6. “Design/Builder” means the CONTRACTOR in its capacity of being responsible for providing all services necessary to achieve the purposes and intent of the RFP including without limitation, Project coordination and supervision, architectural and engineering design, procurement of goods, materials and services necessary to complete the Project, construction work/services, and commissioning services.
- 1.7. “Design Development Documents” means 1) any manufacturer’s complete literature/documentation and technical data; 2) the complete architectural, structural, mechanical, plumbing and electrical drawings and specifications for the Project; 3) all architect’s and professional engineer’s drawings and calculations; and 4) all samples, more particularly set forth in the Specifications, that are initially provided by the Design/Builder after award of the contract and that have NOT yet been finalized after review and approval by the Owner;
- 1.8. “Design Professional” means: 1) an architect who is registered and holds a valid certificate in the practice of architecture in the State of Oregon; 2) an engineer who is registered and holds a valid certificate in the practice of engineering in the State of Oregon; 3) a surveyor who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon; and 4) such other professional person or entity otherwise registered and holding a valid certificate to provide professional design services in the State of Oregon.

- 1.9. “Design Services” means all the design services, construction administration services and related services to be performed by the CONTRACTOR under the Agreement, including but not limited to **Sections 3.3 and 3.4** of this Agreement.
 - 1.10. “Direct Construction Costs” means the costs to the Owner of all divisions of construction, including portable equipment designed or specified in the construction specifications.
 - 1.11. “Facility” means the the Owner’s property located in Wilsonville, Oregon.
 - 1.12. “Notice to Proceed” means the official written notice from Owner that indicates that all of the threshold contractual requirements have been met, including full negotiation of Agreement terms, execution and delivery of all Contract Documents, Owner’s receipt of acceptable and fully executed performance and payment bonds and certificates of insurance, and that the Contractor is authorized to proceed with the work.
 - 1.13. “Owner” means the Oregon Institute of Technology and those individuals designated in writing by Owner to act on its behalf as Authorized Representatives.
 - 1.14. “Phase I” means the Design Services to be performed by the CONTRACTOR, pursuant to **Section 3.3** of this Agreement, including all design services required for the Base Construction Work, as those terms are defined below.
 - 1.15. “Phase II” means the construction administration services and Construction Work to be performed by the CONTRACTOR, if such Construction Work is in fact authorized, pursuant to **Sections 3.4 and 3.5** of this Agreement.
 - 1.16. “Request for Proposals” or “RFP” means a Solicitation Document for the solicitation of competitive, written, signed, and sealed Proposals in which Specifications, price, and delivery (or project completion) are the predominant award criteria.
 - 1.17. “Statement of Work” means the Design Services and Construction Work set forth in detail in the Owner’s outline project manual and site drawings.
 - 1.18. “Substantial Completion Date” means the date on which CONTRACTOR warrants by written notice to Owner’s Authorized Representative that CONTRACTOR has substantially completed the Statement of Work as described for Phase II.
 - 1.19. “Work Product” means the work product required to be delivered by CONTRACTOR under the Agreement, as more particularly defined in **Section 3.3** of this Agreement.
 - 1.20. “Project Management Services” means the project management services that the CONTRACTOR will perform throughout the period of performance of the Agreement, as more particularly described in Section 3.2 of this Agreement.
2. CONTRACT DOCUMENTS; OWNERSHIP OF WORK PRODUCT

The contract documents listed at Section 2.1 of this Agreement (the “Contract Documents”) are intended to reflect the Parties’ understanding of their respective rights and responsibilities concerning completion of the Work within the Contract Time and for the Contract Price.

- 2.1. **Interpretation.** Notwithstanding the order of precedence provision set forth in Section A.3.1 of the Oregon Tech General Conditions, in the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the following order:
 - 2.1.1. All written modifications, amendments and change orders to this Agreement that have been executed by Owner following any required State of Oregon governmental approvals;
 - 2.1.2. This Agreement, including exhibits minus material incorporated by reference;
 - 2.1.3. The Oregon Tech General Conditions;
 - 2.1.4. All design and construction drawings, Plans, Specifications and documents prepared and approved for the Project;
 - 2.1.5. The **Request for Proposals** and all attachments thereto;
 - 2.1.6. The CONTRACTOR’s Proposal submitted in response to the **Request for Proposals**; and
 - 2.1.7. Remaining **Exhibits** and **documents** incorporated into the Agreement by reference.

The **Oregon Tech** General Conditions, to the extent not inconsistent with the Agreement, shall also apply to the work of all subcontractors performing work on the Project.

- 2.2. **Ownership of Work Product.** All drawings, Plans, Specifications, prototypes, reports, and other work product required to be delivered by CONTRACTOR under the Agreement (“**Work Product**”) shall be the exclusive property of Owner. Owner and CONTRACTOR intend that such Work Product be deemed “work made for hire.” If for any reason the Work Product is not deemed “work made for hire,” CONTRACTOR hereby irrevocably assigns to Owner all of its right, title and interest in and to any and all of the Work Product, whether arising from copyright, or any state or federal intellectual property law or doctrine. CONTRACTOR shall execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. CONTRACTOR forever waives any and all rights relating to the 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.
 - 2.2.1. CONTRACTOR, notwithstanding other conditions in this **Section 2.2**, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for marketing and sales, and in addition, CONTRACTOR may use standard line drawings, specifications and calculations on other unrelated projects.

3. **CONTRACTOR’S SERVICES.**

3.1. **General.**

3.1.1. CONTRACTOR agrees that the Design Development Documents approved by CONTRACTOR and Owner shall serve as the basis for the Statement of Work for Phase II.

3.1.2. As the Design/Builder for this Project, CONTRACTOR shall perform all Project Management Services, Design Services, and Construction Work necessary to complete the Project.

3.1.3. CONTRACTOR shall obtain at its own expense, and shall maintain in effect for the duration of the Contract, the insurance coverage required in **Section G** of the Oregon Tech General Conditions, as modified by **Section 9** of this Agreement.

3.1.4. CONTRACTOR shall perform all services in good faith and shall perform all Design Services and Construction Work as expeditiously as is consistent with the highest professional skill, care and the orderly progress of that work.

3.1.5. Within one week after execution of this Agreement, CONTRACTOR shall submit for Owner's approval a schedule for the performance of CONTRACTOR's Design Services and Construction Work, which shall include allowances for periods of time required for Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by Owner shall not, except for reasonable cause, be exceeded by CONTRACTOR or Owner.

3.1.6. Owner reserves the right to review and approve Phase I Design Services before authorizing Contractor to perform Phase II Construction Work.

3.2. **Project Management.**

3.2.1. CONTRACTOR shall appoint a CONTRACTOR staff person as CONTRACTOR's Project Manager (the "CPM", who is identified in **Section 4.3** of this Agreement) who will be reasonably available to Owner and who shall have the expertise and experience required to supervise the Work for the duration of the Project. CPM shall communicate regularly with Owner and shall have the authority to act on behalf of CONTRACTOR. CPM shall consult with the Owner's Project Manager (the "OPM") on issues affecting design, construction, Agreement performance, Project budget and Project schedule. The CPM may be replaced during the Project only with Owner's prior consent, consistent with the provisions of **Section 4.5** of this Agreement.

3.2.2. The CPM shall provide Owner with a status report every week, in which it shall detail the progress of the Work including the following: 1) whether the Work is proceeding according to schedule; 2) any discrepancies, conflicts, or ambiguities in the Construction Documents that require resolution; 3) any safety issues related to the Work; 4) any other matter that requires resolution to ensure timely and cost-effective completion of the Work. At least four working days prior to the scheduled meeting, CONTRACTOR shall submit to Owner a list of identified matters that will require resolution; any matters that require Owner approvals, and any proposed deviations from the Project schedule.

3.2.3. The CPM shall be the principal contact between the OPM and all other CONTRACTOR representatives, and will be responsible for all communications, including, but not limited to, conveying concerns, decisions and formal actions.

3.2.4. The CPM shall be responsible for maintaining thorough and complete project records and regular briefings to the OPM. The CPM will coordinate the flow of

information, communications and formal documents so that Owner has the material required for its timely action on policy, design and budget matters. The CPM will be responsible for transmission of documentation required for Owner approval or actions.

3.2.5. Owner's review of, and response to, any of the matters presented above shall not relieve CONTRACTOR of its obligation to complete the Design Services and Construction Work within the Contract Times set forth in Section 15 of this Agreement, and shall not be construed as relieving CONTRACTOR of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

3.3. Design.

Based on approved Design Development Documents generated by the CONTRACTOR's Design Professional and approved by Owner during Phase I, and any further adjustments in the scope or quality of the Project or in the construction budget authorized by Owner, CONTRACTOR shall prepare, for approval by Owner, Construction Documents, consisting of drawings, Plans, Specifications and other documents setting forth in detail the requirements for construction of the entire Project.

3.3.1. The Construction Documents must meet the following requirements:

3.3.1.1. CONTRACTOR shall provide Specifications that comply with the Construction Specifications Institute's 3-part and 16-division format, shall provide drawings and Plans based on the approved preliminary Design Development Documents and shall set forth in detail the architectural, structural, mechanical and electrical construction requirements for the Project.

3.3.1.2. CONTRACTOR shall provide Owner with catalog cuts of all specified items, if different than Design Development Documents.

3.3.1.3. CONTRACTOR shall provide Owner with in-progress Construction Documents as needed. At the completion of construction the CONTRACTOR shall supply record drawings, and a copy of the final Construction Documents on a re-recordable compact disk.

3.3.1.4. CONTRACTOR shall prepare 95% Construction Documents for review and approval by the Owner, and shall continue with preparation of the final Construction Documents, including final Specifications for all authorized Work on the Project, and shall incorporate into those final Construction Documents the comments and any modifications or changes desired by the Owner, and any modifications required for compliance with applicable codes, regulations or standards. The resulting final Construction Documents shall be a complete, fully coordinated, integrated package, suitable for use in the construction of the Project, without significant addenda or further clarifications required. All submittals shall be made in accordance with the schedule made pursuant to **Section 3.4** of this Agreement.

3.3.1.5. CONTRACTOR shall file all documents required for the approval of governmental authorities having jurisdiction over the Project and shall obtain

all necessary permits. In the event that Owner files any permits, CONTRACTOR shall assist Owner as Owner deems necessary.

3.3.2. All specified items shall be standard, cataloged, manufactured items or “off the shelf” items. No custom items are to be designed or specified without prior written authorization of the Owner. No proprietary or “sole source” items shall be specified. Brand name products may be specified so long as “or approved equal” is included with their specification.

3.3.3. Recycled products shall be used where they are economically feasible. The CONTRACTOR shall give preference to materials and supplies manufactured from recycled materials under the following conditions:

- 3.3.3.1. The recycled product is available;
- 3.3.3.2. The recycled product meets applicable standards;
- 3.3.3.3. The recycled product can be substituted for a comparable non-recycled product; and
- 3.3.3.4. Recycled product costs do not exceed the costs of non-recycled products by more than five percent.

3.4. Construction Administration Services

3.4.1. GENERAL OFFICE CONSTRUCTION ADMINISTRATION. CONTRACTOR shall process submittals, including without limitation, the receipt, review and disposition of shop drawings, product data, and samples. CONTRACTOR shall transmit any such submittals to Owner, as required and shall maintain a master file of submittal communications. CONTRACTOR shall keep a submittal log on a spreadsheet program and send a copy to the Owner on a weekly basis.

3.4.2. INSPECTION COORDINATION. CONTRACTOR shall provide all necessary services relating to independent inspection and testing required by applicable regulatory agencies, or relating to other inspection, testing and commissioning of the systems and equipment installed on the Project site as part of the Work, including but not limited to the following: administration and coordination of field testing as required by the Contract Documents; establishing the scope, standards, procedures and frequency of testing and inspections required to complete the Work; arranging for testing and inspections; notifying inspection and testing agencies of status of any portion of the Work requiring testing and inspection; evaluating compliance by testing and inspection agencies with required scope, standards, procedures and frequency; review of reports on inspections and tests; notifying the Owner of any observed deficiencies in the Work; and, providing copies of all reports on inspections and tests, as well as copies of all correspondence from the testing and inspection agencies, to the Owner.

3.4.3. SUPPLEMENTAL DOCUMENTS. CONTRACTOR shall prepare, reproduce and distribute supplemental drawings, Plans and Specifications and shall issue interpretations in response to requests for clarification by Owner’s Project Manager, or sub-contractors or as required by construction exigencies. CONTRACTOR shall be

responsible for notifying the appropriate parties of Owner's instructions and of changed requirements and schedule revisions.

3.4.4. CHANGE REQUESTS/CHANGE ORDERS, requested or approved by the Owner: CONTRACTOR shall prepare, reproduce and distribute drawings, Plans and Specifications to describe Work to be added, deleted or modified; review proposals from sub-contractor(s) for reasonableness of quantities and costs of labor and materials; review and recommend changes in time for substantial completion; coordinate communications, approvals and notifications. CONTRACTOR shall keep a log of all change requests on a spreadsheet program and copy the Owner bi-weekly.

3.4.5. PAYMENT REVIEW. CONTRACTOR shall evaluate and certify applications for payment and shall maintain detailed records supporting approved applications for payment.

3.4.6. PROJECT CLOSEOUT. CONTRACTOR shall verify that Work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended. CONTRACTOR shall coordinate a detailed inspection with the OPM to ensure that the Work conforms to the Contract Documents; to verify the list submitted by the sub-contractor(s) of items to be completed or corrected; to determine the amounts to be withheld until Final Completion; to issue Certificates of Substantial Completion; to perform inspection(s) upon notice by the sub-contractor(s) that the Work is ready for final inspection and acceptance; to notify Owner and sub-contractor(s) of deficiencies found in follow-up inspection(s), if any; to perform final inspection with the Owner's representative to verify Final Completion of the Work; receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the Owner against liens; and issuance of Final Certificate(s) for Payment.

3.4.7. RECORD DRAWINGS services consisting of: Preparation of record drawings on reproducible mylar, and on a re-recordable compact disk, based on information furnished by the sub-contractor(s) including significant changes in the Work made during construction including modifying the floor plan layouts including partitions, furniture and equipment; transmittal of record drawings and general data, appropriately identified, to the Owner and others as directed.

3.4.8. WARRANTY REVIEW: Prior to the expiration of the warranties of any sub-contractor(s) and manufacturer(s), the CONTRACTOR shall perform a warranty review, documenting defects or deficiencies in installation, materials, systems and equipment and preparing instructions to the sub-contractor(s) and manufacturer(s) for correction of noted defects. The CONTRACTOR shall then follow through to ensure that each defect or deficiency is appropriately addressed and verify that an appropriate remedy has been accomplished. The CONTRACTOR shall copy the Owner on the correspondence related to these warranty issues.

3.5. Construction Services/Construction Management Services.

3.5.1. CONTRACTOR shall have complete control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programs in connection with the Work on the Project, so that, upon completion of the Work the Project shall be structurally sound and shall be a complete, fully-functioning facility suitable for the purposes for which it is intended.

These roles are solely CONTRACTOR's responsibility under the Contract.

CONTRACTOR shall be fully responsible for maintaining construction schedules and for any failure to carry out the Work in accordance with the Contract Documents.

CONTRACTOR shall be deemed to have complete control over or charge of acts or omissions of all CONTRACTOR employees, agents, Design Professionals, and construction managers, as well as subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

3.5.2. CONTRACTOR's responsibility to provide the Design Services and Construction Work under the Contract commences with the execution of this Agreement and terminates upon CONTRACTOR's satisfaction of all obligations set forth in the Agreement including those enumerated at Section K of the Oregon Tech General Conditions.

3.5.3. CONTRACTOR shall provide, supervise and administer all Construction Work of the Project as set forth in this Agreement and in the Oregon Tech General Conditions, current as of the date of this Agreement, unless otherwise provided in the Agreement.

3.5.4. CONTRACTOR's duties, responsibilities and limitations of authority shall not be modified or extended without the express written agreement of the Parties and any required State of Oregon governmental approvals.

3.5.5. Except as may otherwise be provided in the Contract Documents or when direct communications have otherwise been specifically authorized, Owner shall conduct all communications concerning the Design Services and Construction Work through CONTRACTOR's CPM.

3.5.6. Subject to the right to suspend and terminate as provided in Section J of the Oregon Tech General Conditions, in no event shall the existence of any claim, dispute or question constitute a justification for either Party to suspend or terminate the progress of the Work, and both Parties, in such event, shall continue to prosecute the Work and perform under the Agreement diligently, and shall resolve the claim, dispute or question either by agreement or mediation or other lawful means.

3.6. Additional Services. All other services requested by Owner and mutually agreed to in writing by Owner and CONTRACTOR, including, among others, changes in the Design Services or Construction Work described in this Agreement, shall constitute Additional Services and shall be paid by Owner as provided in the written agreement applicable thereto.

4. RELATIONSHIP BETWEEN AND ROLES OF THE PARTIES.

4.1. Owner Responsibilities.

4.1.1. Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project. Owner or such authorized representative shall examine documents submitted by CONTRACTOR and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work. Owner shall render approval of formal

submittals on the Schedule of Performance within ten (10) calendar days after receipt of submittals from CONTRACTOR.

4.1.2. If Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design or Construction Documents, Owner shall give prompt written notice thereof to CONTRACTOR.

4.1.3. Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

4.1.4. No approval or acceptance of Construction Documents or changes herein given by or on behalf of Owner shall establish any warranty or representation on the part of Owner that such Construction Documents or changes are technically sound, complete or correct.

4.1.5. Owner shall communicate with the Design Professionals only through the CPM except in matters of public safety.

4.2. **Independent Contractor.** The service or services to be performed under this Agreement are those of an independent contractor as defined in ORS 670.600. CONTRACTOR represents and warrants that it is not an officer, employee or agent of the Owner as those terms are used in ORS 30.265.

4.3. **CONTRACTOR's Key Personnel.** The CONTRACTOR's Project staff shall consist of the following personnel. The CONTRACTOR's personnel identified herein shall be considered unique, key personnel, and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld.

4.3.1. [NAME] shall be the CONTRACTOR's Principal-in-Charge.

4.3.2. [NAME] shall be the CPM and shall participate in all meetings throughout the Project term.

4.3.3. [NAME] shall be the CONTRACTOR's Design Professional that will provide all design services provided for in the Contract.

4.3.4. [NAME] shall be the CONTRACTOR's on-site job superintendent for the Construction Work throughout the Project.

4.4. **Design Builder's Consultants/Subcontractors.** The CONTRACTOR shall be assisted by the consultants and/or subcontractors set forth in **Exhibit 1** hereto. The Parties acknowledge and agree that the consultants/subcontractors have been reviewed and approved by the Owner, prior to the execution of this Agreement.

4.5. **Replacement of CONTRACTOR's Project Team.** If the CONTRACTOR intends to substitute Key Personnel, Consultants, or Subcontractors, a request must be given to Owner at least 10 days prior to the intended time of substitution. When Owner has approved replacements, the CONTRACTOR 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, if feasible. Once a replacement for any Key Personnel,

Consultants or Sub-contractors is authorized, further replacement shall not occur without the written permission of Owner.

5. COMPENSATION OF CONTRACTOR.

Owner shall pay CONTRACTOR the fixed Contract Price stated in Section 6 of this Agreement for all Design Services and Construction Work according to the provisions of **Section E** "Payments" of the Oregon Tech General Conditions on the dates listed below:

5.1.Design Services. Once each month following execution of this Agreement, the CONTRACTOR shall submit its application for payment to Owner for Design Services performed during the prior month. Subject to the terms and conditions of Section E of the General Conditions, Owner will make payment within 45 Days of receipt of an application for payment.

5.2.Construction Work. Once each month following commencement of Construction Work, the CONTRACTOR shall submit its application for payment to Owner in compliance with the terms and conditions of Section E of the General Conditions. Owner will make payment to the CONTRACTOR, subject to the terms and conditions of Section E of the General Conditions, within 45 Days of receipt of each application for payment. Owner shall withhold retainage in the amount of 5% from all payments relating to Construction Work, in accordance with the provisions of Subsection E.5 of the General Conditions.

6. CONTRACT PRICE.

The "Contract Price," namely the total fixed cost of the Project for both Design Services and Construction Work payable under the Contract, unless increased or decreased by the price of approved change orders, is \$ _____, and includes the entire cost of all labor, materials, tools, equipment, Consultants' fees, transportation, components and systems, allowances, bonds and insurance premiums, filing and review fees, incidentals, contingencies, and CONTRACTOR'S overhead and profit, and is composed of the following component parts:

- (a) Phase I Design Services \$ _____
(Time and Material Not to Exceed)
- (b) Phase II Construction Work \$ _____
(Estimated Lump Sum Amount)

Total Contract Not to Exceed Price \$ _____

7. **CHANGES IN THE WORK.** Adjustments to the Contract Price required by changes in the Design Services or Construction Work beyond the stated scope may be determined by any of the methods listed in **Section D** of the Oregon Tech General Conditions.

8. **RESERVED.**

9. **INSURANCE.** During the term of this Agreement, CONTRACTOR shall maintain in full force, at its own expense, from companies licensed to do business in Oregon, each

insurance coverage required by **Sections G.2 and G.3** of the Oregon Tech General Conditions.

- 9.1. **Professional Liability/Errors & Omissions.** CONTRACTOR shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its drawings and project manual, and all related work products of the CONTRACTOR. The policy may be either a practice based policy or a policy pertaining to the specific project. Professional Liability insurance to be provided shall have a combined single limit of not less than \$3,000,000.

10. **GENERAL SUBCONTRACTING REQUIREMENTS.**

- 10.1. Other than Work performed pursuant to Articles 3.4 or 3.5 of this Agreement, CONTRACTOR shall subcontract the Work to Subcontractors other than the Contractor and its Affiliates.
- 10.2. The Contractor shall comply with Oregon Tech Policy (“Policy”) 580-061-0030(3) and the MWESB Management Plan in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises. Compliance shall include pass-through requirements for Subcontractor demonstrations of good faith efforts for all subcontract Offer packages, for which set goals shall not be utilized.
- 10.3. In additionl to the MWESB Management Plan, CONTRACTOR shall comply with the Owner’s Good Faith Effort outreach and reporting requirements. CONTRACTOR shall require all first tier subcontractors to also comply with the Good Faith Effort. Completion and submission of the required forms is an obligation under this Agreement for final payment.

11. **CONTRACTOR’S OBLIGATIONS UNDER SUBCONTRACTS.**

- 11.1. No use of a Subcontractor shall relieve the CONTRACTOR of any of its obligations or liabilities under the Agreement. The CONTRACTOR shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CONTRACTOR shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CONTRACTOR and any such Subcontractor.
- 11.2. The CONTRACTOR shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the Oregon Techf General Conditions fully effective as applied to Subcontractors. CONTRACTOR shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of CONTRACTOR to incorporate the provisions of this Agreement in each subcontract. The CONTRACTOR shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.

12. **SUBCONTRACTOR SELECTION.**

- 12.1. The selection of all Subcontractors and suppliers shall be made by competitive Offers in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall comply with the open and competitive nature of public procurement, taking into account industry subcontracting practices.
13. **MISCELLANEOUS LABOR.**
- 13.1. The CONTRACTOR may provide normal layout, clean up, and other “pick-up” work required to complete the Project with its own forces, without the necessity of subcontracting.
- 13.2. If the CONTRACTOR desires to perform any other Construction Work through third-party subcontractors or other entities, that Construction Work shall be bid according to the provisions of **Section 12** of this Agreement.
14. **ACCOUNTING; AUDIT ACCESS.** The CONTRACTOR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Agreement; the accounting and control systems shall be satisfactory to Owner. Owner and Owner’s representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to the CONTRACTOR’s records, books, correspondence, instructions, drawings, Plans, Specifications, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the CONTRACTOR shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Agreement closeout. The CONTRACTOR shall cooperate fully with Owner in the performance of such audits.
15. **CONTRACT TIME**
- 15.1. **Date of Commencement.** The Design Services work shall commence within five days of CONTRACTOR’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless the parties mutually agree otherwise in writing.
- 15.2. **Substantial Completion.** Substantial Completion for the entire Construction Work shall be achieved no later than September 1, 2016.
- 15.3. **Final Completion of the Construction Work.** Final Completion of the Construction Work, or identified portions of the Construction Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this **Section 15** (“Contract Time”) shall be subject to adjustment in accordance with the Oregon Tech General Conditions.
16. **INDEMNITY**
- 16.1. **Claims for Other Than Professional Liability.** CONTRACTOR shall indemnify, hold harmless and defend the Owner and its colleges and universities and any public agencies for which Services are performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities of the CONTRACTOR or the CONTRACTOR’s Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.

- 16.2. **Claims for Professional Liability.** CONTRACTOR shall save, defend, indemnify and hold harmless the Owner and its colleges and universities and any public agencies for which Services are to be performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits or actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of or relating to the professional negligent acts, errors or omissions of CONTRACTOR or its Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- 16.3. **Owner Defense Requirements.** The Owner may, at anytime at its election assume its own defense and settlement in the event that it determines that the Contractor is prohibited from defending the Owner, that Contractor is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Contractor if the Owner elects to assume its own defense.
- 16.4. **Agency's Actions. Sub-sections 16.1 and 16.2** above do not include indemnification by the CONTRACTOR of the Owner for the Owner's activities, whether related to this Agreement or otherwise.
17. **STANDARD OF CARE; DRAWINGS, PLANS & SPECIFICATIONS.** CONTRACTOR hereby represents and warrants that all drawings, Plans, Specifications, and other documents prepared pursuant to this Agreement will be completed in a manner consistent with the highest professional standard of care, and will function for the purposes intended, and that the Project, if constructed in accordance with such drawings, Plans, Specifications, and other documents, shall be structurally sound and a complete and properly functioning and suitable for the purposes for which it is intended.
18. **CORRECTION OF DRAWINGS, PLANS & SPECIFICATIONS.** CONTRACTOR shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, Plans, Specifications, and other documents. CONTRACTOR will correct, at no additional cost to Owner, any and all inconsistencies, errors and omissions in the drawings, Plans and Specifications.
19. **FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS.** CONTRACTOR shall not be compensated for work performed under this Agreement by any other agency or department of the State of Oregon. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available for this Project and in that regard Owner represents and warrants to CONTRACTOR that this Agreement is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to CONTRACTOR, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an

event of default under any other provision of the Agreement, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give CONTRACTOR notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.

20. **MISCELLANEOUS.**

- 20.1. **Governing Law; Jurisdiction; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between the Owner and the CONTRACTOR that arises from or relates to the Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, the it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Subsection be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. CONTRACTOR, BY EXECUTION OF THE AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
- 20.2. **Foreign Contractor.** If CONTRACTOR is not domiciled in or registered to do business in the State of Oregon, CONTRACTOR shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to the Agreement. CONTRACTOR shall demonstrate its legal capacity to perform the work under the Agreement in the State of Oregon prior to entering into the Agreement.
- 20.3. **Notices.** Except as otherwise expressly provided in the Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to CONTRACTOR or Owner at the addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Owner, such facsimile transmission must be confirmed by telephone notice to Owner's Representative for the Project set out below. Any notice by personal delivery shall be deemed to be given when actually delivered.

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

CONTRACTOR:

Telephone:

Address:

OWNER:

Sara Mansfield, Campus Operations Manager

Oregon Institute of Technology
27500 SW Parkway Ave.
Wilsonville, OR 97070
Telephone: (503) 821-1291
Email: Sara.Mansfield@oit.edu

- 20.4. **Disclosure of Tax Identification Number.** CONTRACTOR must provide its federal tax ID number to Owner. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
- 20.5. **Compliance with Applicable Law.** CONTRACTOR agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. CONTRACTOR specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. CONTRACTOR also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of CONTRACTOR to comply with any or all such laws, ordinances, rules, and regulations shall not relieve CONTRACTOR of these obligations nor of the requirements of the Agreement. CONTRACTOR further agrees to make payments promptly when due, to all persons supplying to such CONTRACTOR labor or materials for the performance of the Services to be provided under the Agreement; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of the Agreement; not permit any lien or claim to be filed or prosecuted against the State on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If CONTRACTOR fails or refuses to make any such payments required herein, Owner may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the CONTRACTOR from obligation with respect to any unpaid claims. CONTRACTOR and all subcontractors shall pay not less than the prevailing rate of wage for an hour's work as required by Section C of the General Conditions.

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

- 20.6. **Tax Compliance Certification.** By signature on this Agreement, the undersigned hereby swears or affirms under penalty of perjury that the undersigned is authorized to act on behalf of the CONTRACTOR and has authority and knowledge regarding the payment of taxes, and that CONTRACTOR is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 320.005 to 320.150 and 403.200 to 403.250, ORS chapters 118, 314, 316, 317, 318, 321 and 323 and sections 10

to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

- 20.7. **Severability.** The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
- 20.8. **Waiver.** The failure of the Owner to enforce any provision of the Agreement shall not constitute a waiver by the Owner of that or any other provision of the Agreement.
- 20.9. **Media Contacts; Confidentiality.** The CONTRACTOR shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without the Owner's prior written authorization. Furthermore, except in the case where the Owner specifically authorizes disclosure of the Owner's confidential information in writing, the CONTRACTOR shall maintain the confidentiality of the Owner's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the CONTRACTOR from establishing a claim or defense in an adjudicatory proceeding. The CONTRACTOR shall require of its subcontractors similar agreements to maintain the confidentiality of the Owner's information.
- 20.10. **Conflict of Interest.** Except with Owner's prior written consent, the CONTRACTOR shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise the CONTRACTOR's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS OF THE AGREEMENT CAN NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THE AGREEMENT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. THE CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THE AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS AGREEMENT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT.

IN WITNESS WHEREOF, and intending to be legally bound, the authorized representatives of the Parties hereto subscribe their names.

CONTRACTOR

Oregon Institute of Technology

By _____

By _____

Title _____

Title _____

Date _____

Date _____

EXHIBIT 1 – SUBCONTRACTORS