



**OREGON INSTITUTE OF TECHNOLOGY  
ENGINEER’S AGREEMENT  
[PROJECT NAME]  
CONTRACT NUMBER [NUMBER]**

This ENGINEER’S AGREEMENT (this “Agreement”) is made by and between

“Engineer”:  
[NAME]  
[ADDRESS]  
[ADDRESS]  
Phone: [PHONE]  
Fax: [FAX]  
Email: [EMAIL]

and “Owner”:  
Oregon Institute of Technology  
Facilities Services  
Attn: Thom Darrah, Director  
3201 Campus Drive  
Klamath Falls, OR 97601  
Phone: 541-885-1661  
Email: [Thom.Darrah@oit.edu](mailto:Thom.Darrah@oit.edu)

regarding “Project”: [PROJECT NAME]

The Project includes [INSERT PROJECT DETAILS/DESCRIPTION. PLEASE BE SPECIFIC.].

The Engineer and the Owner shall be referred to collectively as the “Parties,” and individually as a “Party.”

WHEREAS, the Owner desires to have the assistance of the Engineer to provide certain professional services for the Project; and

WHEREAS, the Engineer, with the aid of certain consultants (“Consultants”), is willing and able to perform such professional services in connection with the Project.

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

**I. RELATIONSHIP BETWEEN THE PARTIES**

- A. Scope of the Project. The scope of the Project, as described in more detail above, includes the following: [architectural and engineering design and construction administrative services through the design, bidding, and construction phases of the Project.]
- B. Scope of Services. The scope of Services to be performed under this Agreement includes the following: [Engineer to provide all necessary architectural, engineering, and design services, bid schedule, construction estimates, bid package that include construction drawings, specifications, and bid documents, bidding process services, and detailed

construction administration and inspections.]

- C. Critical Date Schedule. The Engineer shall perform the Services according to the following critical date schedule:

Pre-Design/Schematic Design Phase	[DATE-DATE]
Design Development Phase	[DATE-DATE]
Construction Documents Phase	[DATE-DATE]
Bidding Phase	[DATE-DATE]
Construction Administration Phase	[DATE-DATE]
[ADDITIONAL SERVICE]	[DATE-DATE]

- D. Effective Date. This Agreement is effective on [DATE] (the “Effective Date”). No Services shall be performed or payment made prior to the Effective Date.

- E. Defined Terms. In addition to any terms defined elsewhere in the body of this Agreement, certain terms that are capitalized and/or set forth in bold letters throughout the Agreement are defined as follows:

“Additional Services” means additional Services performed by the Engineer that are beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Engineer personnel or Consultants, plus Reimbursable Expenses, in accordance with an agreed-upon schedule of charges, and performed by the Engineer after the Owner has given prior written authorization to proceed with performance of the Services and the Parties have executed an amendment or supplement to this Agreement, as more particularly described in **Section VIII** of this Agreement.

“Basic Services” are those Services more particularly described in **Subsections A, B, C, D and E of Section VII** of this Agreement.

“Construction Contract” is defined as the contract entered into between the Owner and the Contractor to provide all Work necessary to construct the Project, including the original base contract for construction of the Project, the Oregon Institute of Technology General Conditions For Public Improvement Contracts, any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor’s performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder or proposer to any such solicitation documents.

“Construction Documents” means drawings, specifications, and other documents setting forth in detail the requirements for construction of the Project, as well as the documents pertaining to bidding and contracting for the construction of the Project

“Contractor” is defined as the general contractor that is awarded the contract to construct the Project.

“Design Criteria” means the Oregon Institute of Technology Design Criteria in effect at the time of the Effective Date of this Agreement, which by reference, is incorporated into this Agreement.

“Direct Construction Cost” means the cost to the Owner of all divisions of construction,

including portable equipment only if designed or specified by the Engineer for inclusion in the construction specifications.

“Reimbursable Expenses” are those expenses described in **Subsection B of Section III** of this Agreement.

“Services” are all those services to be performed by the Engineer under the terms of this Agreement.

“Work” is defined as the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the Project by the Contractor that is eventually awarded the Construction Contract for the Project.

F. Directives for Performance of the Services.

- i. The Engineer shall provide, with the assistance of the Consultants, the professional Services more particularly described in **Section VII** below for this Project.
- ii. The Engineer shall provide a schedule for the performance of the Services upon execution of this Agreement. **Time is of the essence in the performance of this Agreement.**
- iii. The total cost for the Project is [AMOUNT]. The Direct Construction Cost budget is estimated at [AMOUNT].
- iv. The Engineer shall fully cooperate with Owner to meet all Project budgets. Owner understands that Engineer, in providing opinions of probable construction cost, has no control over the cost or availability of labor, equipment, or materials, or over market conditions or Contractor’s method of pricing, and that Engineer’s opinions of probable construction costs are made on the basis of Engineer’s professional judgment and experience. Engineer makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from Engineer’s opinion of probable construction cost. In the event the Engineer’s opinion of probable construction cost exceeds the budget for the Project listed in **Subsection iii** above 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 the Project listed earlier in this **Section** by more than ten percent (10%), Engineer, upon notice from Owner and prior to the award of the construction contract, agrees to modify, at Engineer’s sole expense, Engineer’s Schematic Design documents, Design Development documents or Construction Documents (or with owners approval those portions of those documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage). This redesign effort shall constitute Engineer’s sole responsibility with respect to its opinions of probable construction cost, and Engineer agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the opinion of probable Construction Cost, or the bids or negotiated price, so that they do not exceed the Project budget.
- v. The Engineer shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Engineer’s performance of Services

shall be as a professional Engineer to the Owner to perform the professional services necessary for the Project, and to provide the technical documents and supervision required to achieve the Owner's Project objectives.

- vi. In administering this Agreement, the Owner may employ the services of an independent project manager and other consultants as needed to fulfill the Owner's objectives.
  - vii. The Engineer shall utilize the key personnel and Consultants identified on the attached **Exhibit 1** in the performance of the Services for the Project. In addition to the full names, titles/positions and a summary of the duties and Services to be performed by the key personnel and Consultants that are included in the attached **Exhibit 1**, the Engineer agrees to promptly provide such additional information on the professional background of each of the assigned personnel and Consultants as may be requested by the Owner. The Engineer acknowledges that the Owner's award of this Agreement to the Engineer was made on the basis of the unique background and abilities of the Engineer's key personnel and Consultants originally identified in the Engineer's RFP proposal or cost proposal. Therefore, the Engineer specifically understands and agrees that any attempted substitution or replacement of a key person or Consultant by the Engineer, without the written consent of the Owner, shall constitute a material breach of this Agreement. In the event that key personnel or Consultants become unavailable to the Engineer at any time, Engineer shall replace the key personnel and Consultants with personnel or Consultants having substantially equivalent or better qualifications than the key personnel or Consultants being replaced, as confirmed and approved by Owner. Likewise, the Engineer shall remove any individual or Consultant from the Project if so directed by Owner in writing following discussion with the Engineer, provided that Engineer shall have a reasonable time period within which to find a suitable replacement. The Engineer represents and warrants that the key personnel and Consultants identified on the attached **Exhibit 1** are fully licensed to perform the particular Services assigned to them on the Project.
  - viii. Engineer shall make no news release, press release or statement to a member of the news media regarding this Project without prior written authorization from Owner.
- G. Suspension of Agreement by Owner. The Owner may suspend the Parties' performance of this Agreement in the event any of the following circumstances arise:
- i. Owner fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient to pay for the Engineer's Services;
  - ii. Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
  - iii. Engineer, or one of Engineer's Consultants currently performing Services, no longer holds any license or certificate that is required to perform the Services; or

- iv. The public interest otherwise requires suspension of performance of the Agreement, as reasonably determined by the Owner.

Any suspension of performance under this provision constitutes a temporary stoppage of performance of the Agreement, and does not constitute a termination of the Agreement pursuant to **Section XIX** of this Agreement. In the event that the condition(s) causing the suspension have been rectified and suspension is no longer required, the Parties will take all actions necessary to reactivate performance of the Agreement. In the event that the Owner determines that the conditions causing suspension of the Agreement are not likely to be rectified in a reasonable amount of time, the Owner retains the right to terminate this Agreement, pursuant to **Section XIX**. In the event of a suspension of performance pursuant to this Section of the Agreement, the Engineer agrees to remain contractually obligated to perform the Services under this Agreement for the same hourly rates set forth in **Section III C** of this Agreement for a period of three years after the Effective Date of the Agreement. If the Agreement is reactivated and the Engineer is required to perform Services beyond this date or such other time period agreed to by the Parties, the Parties may negotiate updated hourly rates for the Engineer and any Consultants and amend this Agreement accordingly.

## II. ENGINEER'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. Standard of Care. The Engineer shall perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care to ensure the orderly progress of the Project.
- B. Performance Requirements. In addition to performing the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions, the Engineer shall perform the Services in accordance with the following requirements:
  - i. All plans, drawings, specifications, and other documents prepared by the Engineer shall accurately reflect, incorporate and comply with all applicable statutes, rules, building codes, regulations, ordinances and other laws which are applicable to the design and construction of the Project, and shall be complete and functional for the purposes intended;
  - ii. All plans, drawings, specifications, and other documents prepared by the Engineer pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Services to be performed;
  - iii. The Project, if constructed in accordance with the intent established by such plans, drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended;
  - iv. The Engineer shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents. It shall be the responsibility of Engineer throughout the period of performance under this Agreement to use due care and perform with professional competence. Engineer

will, at no additional cost to Owner, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by Engineer. Except as provided in **Section VIII** of this Agreement and at no additional cost, Engineer further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project; and

- v. The Owner's review or acceptance of documents, or 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 plans, drawings, specifications, or other documents. Any review or acceptance by the Owner will not relieve the Engineer of any responsibility for complying with the standard of care set forth herein. The Engineer is responsible for all Services to be performed under this Agreement, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services.

The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided.

C. Engineer's Representations and Warranties. Engineer represents and warrants to Owner that:

- i. Engineer has the power and authority to enter into and perform this Agreement;
- ii. When executed and delivered, this Agreement shall be a valid and binding obligation of the Engineer enforceable in accordance with its terms;
- iii. Engineer shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
- iv. The Engineer is an experienced architecture firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Agreement and to design or administer a project having this scope and complexity;
- v. The Engineer has the capabilities and resources necessary to perform the obligations of this Agreement; and
- vi. The Engineer either is, or in a manner consistent with the standard of care set forth in this Agreement will become, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project.

### III. COMPENSATION.

The maximum, not-to-exceed, total amount payable under this Agreement is [AMOUNT] (the "Maximum Compensation"), for the combination of Basic Services and Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed and approved amendment or supplement to this Agreement. Engineer progress payments shall be made according to the provisions and schedule set forth in **Section IV** of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. Basic Services. The Engineer shall perform the Basic Services, directly or through the Consultants (including those Consultants identified in **Section III C**), on a **time and materials basis for each Phase of the Project**, with a total not to exceed of **[AMOUNT]**.
- B. Reimbursable Expenses. The Owner shall reimburse the Engineer for any allowable Reimbursable Expenses, up to a maximum amount of **[AMOUNT]** with the Reimbursable Expenses breakdown as follows:

**[INSERT]**

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

- i. cost; or
- ii. the rate allowed in the Oregon Institute of Technology Contractor Travel Reimbursement, attached as **Exhibit 2** to this Agreement.

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures.

- C. Additional Services. The Owner will compensate the Engineer for Additional Services performed by the Engineer, whether directly or through its Consultants, beyond the scope of the Basic Services described in **Section VII**, based on hourly rates for Engineer personnel or Consultants, plus Reimbursable Expenses, in accordance with the following schedule of charges for the duration of this Agreement (except in the case of a suspension and reactivation of performance beyond the date agreed to by the Parties, as more particularly described in **Section IG**), but only when the Owner has given prior written authorization and the Parties have executed an amendment or supplement to this Agreement. Any compensation for Additional Services performed prior to receiving the Owner's prior written authorization will not be allowed. The Engineer will bear the burden that a service qualifies as an Additional Service.

ENGINEER

Principal	\$__ /hour
Associate Principal	\$__ /hour
Associate	\$__ /hour
Project Engineer	\$__ /hour
Project Manager	\$__ /hour

Specification Writer     \$\_\_ /hour  
 Business Director        \$\_\_ /hour  
 Interior Designer         \$\_\_ /hour  
 Job Captain                \$\_\_ /hour  
 Senior Technician        \$\_\_ /hour  
 Engineer Intern         \$\_\_ /hour  
 Technician                 \$\_\_ /hour  
 Marketing Manager        \$\_\_ /hour  
 Office Coordinator        \$\_\_ /hour

CONSULTANTS

[NAME]  
 [JOB TITLE]                \$\_\_ /hour

These charges shall also be used to determine amounts owed the Engineer in the event this Agreement is terminated as provided in **Section XIX, D1**, or suspended pursuant to **Section IG**. Any amounts so derived may not exceed the limitations for each phase as specified by **Section IV** hereof.

IV. PAYMENTS

The Owner shall make monthly progress payments to the Engineer based upon invoices submitted by the Engineer for Services rendered and/or Reimbursable Expenses incurred during the preceding month. Payment requests, invoices and required documentation shall be submitted in the form and format stipulated by the Owner. One copy of each invoice, with required documentation, must be delivered to the following address:

Facilities Services  
 Oregon Institute of Technology  
 3201 Campus Drive  
 Klamath Falls, OR 97601

Payments to the Engineer will be made following the Owner’s receipt of the required documentation, review, and approval of the invoices. Approval of the invoices and/or any payment does not constitute a waiver by the Owner that the Services were performed consistent with this Agreement.

Payments to the Engineer for such Services performed and invoiced will be made for each phase as follows, with final payment for each phase subject to written acceptance of the phase by the Owner. The total of all payments for Basic Services shall not exceed the maximum amount set forth in **Section IIIA** for Basic Services, and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in **Section IIIB** for Reimbursable Expenses. The total of all such payments, for Services and Reimbursable Expenses, shall not exceed the Maximum Compensation. Owner reserves the right to retain up to five percent (5%) of the compensation limit set forth below for each phase, subject to Owner’s acceptance of the Services and any deliverables for each phase. Notwithstanding “not to exceed” limits established in **Section IIIA** for each phase of Services, should an individual phase of design, beginning with Programming/Pre-Design, be completed without reaching the not-to-exceed limit for that phase, the balance remaining will be transferred to the next phase of work in succession through Project completion. At the completion of the Project, any remaining balance will revert to the Owner.



- A. Pre-Design/Schematic Design Phase: Not to exceed [AMOUNT].
- B. Design Development Phase: Not to exceed [AMOUNT].
- C. Construction Documents Phase: Not to exceed [AMOUNT].
- D. Bidding Phase: Not to exceed [AMOUNT].
- E. Construction Administration Phase: Not to exceed [AMOUNT].

No deduction shall be made from the Engineer's fee on account of penalty, liquidated damages, or other sums withheld from payment to the Contractor.

#### V. SERVICES OF ENGINEER'S CONSULTANTS

The Consultants shall be paid by the Engineer out of the Maximum Compensation, and the Parties understand and agree that the Owner has no direct or indirect contractual obligation or other legal duty to pay the Consultants or ensure that the Engineer makes full and timely payment to the Consultants for Consultant services rendered on the Project. Services performed by the Engineer through the Consultants shall be included on the Engineer's invoices at the Engineer's cost, without markup. The Engineer shall provide to the Owner copies of the Consultant's invoices submitted to the Engineer, along with the Engineer's requests for payment that are submitted to the Owner under this Agreement.

#### VI. TIME OF PERFORMANCE

This Agreement shall take effect on the Effective Date and Engineer shall perform its obligations according to this Agreement, unless terminated or suspended, through final completion of construction and completion of all warranty work.

#### VII. ENGINEER'S SERVICES

- A. Pre-Design/Schematic Design Phase. In consultation with the Owner, and in compliance with the Design Criteria for the Oregon Institute of Technology Projects provided by the Owner, the Engineer shall:
  - i. generally, from the current concept, coordinate with design disciplines;
  - ii. identify scale, placement, and orientation of Program Requirements;
  - iii. identify applicable building codes, administrative, and permit processing requirements as relevant;
  - iv. verify, by on-site inspection unless specifically stated otherwise by the Owner, existing conditions and systems, including but not necessarily limited to architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the Work to be executed on the Project;
  - v. in consultation with Consultant Team, Owner Representatives, and other

designated persons, use all available information to evaluate the Program Requirements, and with appropriate data and graphics propose a series of improvements deemed necessary and desirable to satisfy the Program Requirements, including; space needs, budget, availability of utilities, effect of codes and ordinances, safety and energy requirements, handicapped access to all spaces, historical character of the building, etc.;

- vi. based on the revised Program Requirements, develop Schematic Design studies consisting of drawings, and other documents for the Owner's approval;
- vii. provide documents suitable for submission to the City of Klamath Falls Plan Review;
- viii. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project; Owner shall pay for all required appeals and plan review fees;
- ix. prepare a comprehensive State Energy Efficiency Design ("SEED") Analysis of the Project, provide all documentation required for a SEED Award to the Owner for the Project and provide all other Services for the Project that are required under the SEED Program of the State of Oregon Department of Energy, consistent with the requirements of ORS 276.900 through 276.915 and OAR 330-130-0010 through 330-130-0080, that are applicable to this phase of the Services. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by 20% or more, and shall be a "model of energy efficiency" as that term is described in the above-referenced administrative rules;
- x. submit to the Owner an estimate, consistent with the requirements of Section I.F.4 above and prepared by an independent cost estimator, of the probable Direct Construction Cost of the Project based upon current area, volume or other appropriate unit costs, and compare and reconcile this independent cost estimate;
- xi. submit to the Owner the following documents, information and other data:
  - 1. written report of the results of a Fire and Life Safety review with the City of Klamath Falls;
  - 2. interior colors, materials and finishes recommendations;
  - 3. a project schedule delineating the estimated time required for the Engineer to complete the Design Development and Construction Documents Phases of the Project;
  - 4. recommendations by the Consultants (structural, mechanical, electrical) of the technical requirements necessary to implement the Program Requirements;
  - 5. equivalent LEED scorecard; and
  - 6. preliminary plans, elevations, and other drawings necessary to describe

the entire scope of the Project. These drawings may be used for local municipal review and campus review; and

- xii. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon “1% For Art Program”, set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.
- B. Design Development Phase. Upon notification of the Owner’s approval of the Services performed by the Engineer under the Schematic Design Phase, and upon written authorization from the Owner to proceed, the Engineer, in consultation with the Owner and in compliance with the Design Criteria for Oregon Institute of Technology Projects provided by the Owner, shall:
- i. prepare drawings and other documents to fix and describe the size and character of the entire Project as to architectural, site development, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be appropriate and in accordance with governing codes and ordinances;
  - ii. verify, by on-site inspection unless specifically stated otherwise by the Owner, prior to completion of the Construction Documents Phase, existing conditions as required to address significant constructability issues;
  - iii. ensure that the Project complies with the State of Oregon Structural Specialty Code and with the American with Disabilities Act Accessibility Guidelines (ADAAG), latest version, and allows for access to programs, activities, and services in the most integrated setting possible. The Owner will be responsible for review of accessibility and interpretation of ADAAG for compliance with Federal requirements;
  - iv. submit to the Owner, for approval, one independent cost estimate of probable Direct Construction Cost of the Project consistent with the requirements of Section I.F.4 above and based upon the current unit costs referred to above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
  - v. assist the Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project and at the Engineer’s expense revise such documents if required for approval of the Plan by the City of Klamath Falls (Owner shall pay for all required appeals and plan review fees);
  - vi. prepare a comprehensive State Energy Efficiency Design (“SEED”) Analysis of the Project, provide all documentation required for a SEED Award to the Owner for the Project and provide all other Services for the Project that are required under the SEED Program of the State of Oregon Department of Energy, consistent with the requirements of ORS 276.900 through 276.915 and OAR 330-130-0010 through 330-130-0080, that are applicable to this phase of the

Services. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by 20% or more, and shall be a “model of energy efficiency” as that term is described in the above-referenced administrative rules.

- vii. submit to the Owner the following documents, information and other data:
    - 1. preliminary recommendations for interior colors, finishes, and materials;
    - 2. one-line diagrams for mechanical systems design(s);
    - 3. one-line diagrams for electrical systems design(s);
    - 4. complete outline specification and Project manual;
    - 5. recommendations for additive alternates equivalent to 10% of the base bid estimate;
    - 6. recommendations for construction phasing to ensure continued operation of Owner’s activities;
    - 7. four copies of the energy analysis conforming to ORS 276.905 to 276.915 (State Agency Facility Energy Design) and ORS 469.010, more particularly described above;
    - 8. equipment layouts showing location, size, and configuration of all equipment in the Project;
    - 9. an up-date of the Fire and Life Safety requirements resulting from previous reviews with the City of Klamath Falls; and
    - 10. a list of additive alternates, following consultations with the Owner; and
  - viii. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon “1% For Art Program”, set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.
- C. Construction Documents Phase. Upon notification of the Owner’s approval of the Services performed by the Engineer under the Design Development Phase and upon written authorization from the Owner to proceed, the Engineer, in consultation with the Owner and in compliance with the Oregon Institute of Technology Projects provided by the Owner, shall:
- i. prepare working drawings and specifications, setting forth all necessary plans, elevations, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship;

- ii. ensure that the Project complies with the American with Disabilities Act Accessibility Guidelines (ADAAG), latest version, and allows for access to programs, activities, and services in the most integrated setting possible (the Owner will be responsible for review of accessibility and interpretation of ADAAG for compliance with federal requirements);
- iii. prepare Construction Documents as may be required to expedite the Work in phases so as to take maximum advantage of weather and availability of facilities for demolition and reconstruction;
- iv. prepare specifications setting forth descriptions of materials and equipment, methods of installation, and standards of workmanship, including (in the appropriate section of Division 1 of the specifications) a complete listing of all warranties required under the technical portions of the specifications;
- v. develop all required bidding information;
- vi. provide the Owner two (2) hardcopy and one (1) electronic copy sets of the one hundred percent (100%) complete Project manual, including specifications and drawings, for review and approval prior to advertising the Project for bid;
- vii. submit to the Owner, for approval, a second independent cost estimate of probable Direct Construction Cost of the Project, consistent with the requirements of Section I.F.4 above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the Owner;
- viii. assist Owner to file the required documents for the approval of various governmental agencies having jurisdiction over the Project (Owner shall pay for all required plan review fees);
- ix. prepare bidding documents with ten percent (10%) additive alternates.
- x. prepare a comprehensive State Energy Efficiency Design (“SEED”) Analysis of the Project, provide all documentation required for a SEED Award to the Owner for the Project and provide all other Services for the Project that are required under the SEED Program of the State of Oregon Department of Energy, consistent with the requirements of ORS 276.900 through 276.915 and OAR 330-130-0010 through 330-130-0080, that are applicable to this phase of the Services. When completed, the Project shall exceed the State Building Code requirements for energy efficiency by twenty percent (20%) or more, and shall be a “model of energy efficiency” as that term is described in the above-referenced administrative rules.
- xi. submit to the Owner the following documents, information and other data:
  - 1. final recommendations for interior colors, materials, and finishes;
  - 2. structural calculations;
  - 3. heat gain/loss and HVAC system design calculations; and

4. electrical system design load calculations; and
  - xii. perform those design Services during this phase of the design for fine arts and crafts to be identified and incorporated into the Project, pursuant to the State of Oregon "1% For Art Program", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of fine arts or crafts to be part of the Project and consisting of consultations with the Owner on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the Project.
- D. Permitting and Bidding Phase. Upon notification of the Owner's approval of the Services performed by the Engineer under the Construction Documents Phase, and upon written authorization from the Owner to proceed, the Engineer shall:
- i. furnish the Contractor with one fully reproducible set of the Construction Documents, including working drawings and specifications for each bid package (assume four separate bid packages), complete as required for bid and construction purposes (for additional copies, see Section VIII, Additional Services);
  - ii. identify all required permitting and noticing; submit all necessary documentation to Local and State jurisdictions as required by law; respond to all jurisdiction notices for correction or revision; coordinate Contractor assumption of permit responsibility
  - iii. review published bid advertisement, instructions to bidders, and bid package in its entirety to make such recommendations for timely correction by addendum; respond in writing to Bidder inquiries, including substitution requests and requests for clarification; supply any written revisions to the Bid Documents as necessary to prepare a proper bid;
  - iv. if requested, review the bids and assist in recommending the award of Construction Contract(s) for the Work;
  - v. coordinate with the City of Klamath Falls to ensure that all plan review/building permit criteria are reflected in the final bid documents;
  - vi. attend the pre-bid conference at the Project site; and
  - vii. if the lowest acceptable bid exceeds the Direct Construction Cost allowance authorized by the Owner by ten percent (10%), then at the Owner's request, and at no additional cost to the Owner, the Engineer shall modify the drawings and specifications in order that new bids may be solicited and a Construction Contract award made within said allowance, consistent with the requirements of Section I.F.4 above.
- E. Construction Administration Phase. Commencing with the Owner's issuance of a notice-to-proceed for construction of the Project, the Engineer shall:
- i. attend the pre-construction conference at the Project site;

- ii. provide general administration of the Work as contemplated by the provisions of the Construction Contract including assisting the Owner with evaluation of the feasibility of the Contractor-provided project time schedule;
- iii. make periodic visits to the Project site with such frequency as to ascertain the progress and quality of the Work, attend progress meetings with the Contractor, determine in general if the Work is proceeding in accordance with the Construction Documents, and submit a written report to the Owner within five (5) business days after each visit, with copies of each report to the Contractor;
- iv. arrange for periodic visits of Consultants to make similar determinations with respect to mechanical and other Work, as applicable;
- v. review and approve or take appropriate action, with reasonable promptness to cause no delay in the Work, regarding shop drawings and samples submitted by the Contractor;
- vi. prepare any supplemental drawings or large-scale details needed to clarify the Construction Documents;
- vii. respond promptly to requests from the Contractor for assistance with unforeseen problems so as to minimize the Owner's exposure to claims for delay;
- viii. advise and consult with the Owner, issuing appropriate instructions to the Contractor;
- ix. check proposed costs of any modifications to the Construction Contract and recommend acceptance or rejection to the Owner (Owner will prepare written change orders);
- x. endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor;
- xi. notify the Owner of any Work which does not conform to the Construction Documents and recommend to the Owner that the Contractor stop the Work whenever, in the Engineer's opinion, it may be necessary for the proper performance of the Construction Contract;
- xii. issue certification to the Owner and the Contractor when all terms of the Construction Contract have been fulfilled to the Engineer's satisfaction;
- xiii. conduct on-site observations to determine the date of final completion, receive written guarantees and related documents assembled by the Contractor and issue recommendation for final acceptance and payment;
- xiv. upon completion of the Work, the Engineer shall, at no additional cost to the Owner, update CAD drawings (plans only) and submit the appropriate compact discs (including "book plans" of the construction area made to Oregon Institute of Technology standards) - compatible with AutoCAD Release latest version - along with one set of 3 mil Mylar drawings reflecting significant changes in the

Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Engineer (the "Record Documents "); and

- xv. review the completed Project near the end of any applicable warranty period(s) in order to identify defects of materials or workmanship and issue a written report to the Owner.

## VIII. ADDITIONAL SERVICES

- A. Copies of Construction Documents. The Engineer shall furnish copies of all Construction Documents upon the written request of the Owner. The Owner shall reimburse the Engineer at the cost of reproduction if in excess of the number specified in Section VII hereof.
- B. Conditions Required to Support Additional Compensation. The Engineer shall be paid, subject to executed amendments or supplements, for extra expenses and services involved if:
  - i. substantial changes are ordered by the Owner after the Owner has acknowledged the acceptance of one or more of the planning phases described above (except changes which are ordered for the purpose of maintaining the Direct Construction Cost of the Project within the allowance specified in Section I);
  - ii. damage occurs as a result of fire or other casualty to the structure;
  - iii. the Contractor becomes delinquent or insolvent and the delinquency or insolvency creates additional work for the Engineer;
  - iv. the Engineer's attendance is required at City of Klamath Falls public and/or planning board presentations;
  - v. the Owner requests detailed demolition drawings of existing structure(s) or if documentation must be made for salvage of existing materials, except as may be required to ensure that new construction may be fit to existing construction;
  - vi. the Owner requests the selection and specification of furnishing(s) outside the scope of the Projects' direct construction allowance;
  - vii. the Owner requests Additional Services not identified under the Basic Services provision of this Agreement, such as study models, renderings, etc.;
  - viii. the Owner requests that the Engineer perform Services related to:
    - 1. selection and installation of new furniture purchased by the Owner for the Project;
    - 2. preparation of any specifications required as part of the installation of the Owner's new furniture at the Project; or
    - 3. preparation of furniture plans for the Owner's use, related to coordinating, moving refinishing and relocating existing furniture at the



Project site.

- C. Payments at the time of Abandonment or Suspension. If any Services performed by the Engineer are abandoned or suspended, the Engineer shall be paid for the Services rendered, under the provisions and limitations of Section I.G and Section IV, in proportion to the amount of Services performed at the time of suspension or abandonment, provided the initiative for such abandonment or suspension is by the Owner and does not result from a design error of the Engineer, a bid overrun, or other breach or default by the Engineer.

#### IX. SURVEY, BORINGS AND TESTS

The Owner shall, so far as the Services under this Agreement may require, furnish the Engineer the following information:

- A. Survey. A survey of the Project site, giving the grades and lines of streets, pavements, and adjoining properties and/or scale drawings reasonably representing existing conditions;
- B. Project Site Conditions; Utilities. The rights, restrictions, easements, boundaries, and contours of the Project site and full information as to sewer, water, gas and electrical service, existing utility tunnels, lines, etc. on site;
- C. Geotechnical Reports. Geotechnical investigation reports with recommendations for soil bearing capacities.

The Owner will pay for chemical, mechanical or other tests when required. The Owner does not warrant the accuracy of any of the information so provided. The Engineer will not be held responsible for errors due to inaccuracy of any of the information so provided.

#### X. ENGINEER'S RESPONSIBILITIES IN REGARD TO ASBESTOS AND OTHER HAZARDOUS SUBSTANCES

The Owner anticipates that this Project will not involve the removal of and destruction of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "Hazardous Substances"). The Owner shall contract separately for the identification and removal of any Hazardous Substances, either prior to the commencement of this Project or at such time as such Hazardous Substances are detected. The Engineer shall not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner and/or professional consultant and/or the contractor and/or subcontractor which the Owner selects relating to the abatement of such Hazardous Substances.

#### XI. INSURANCE PROVISIONS

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

- A. Workers' Compensation. All employers, including Engineer, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. Engineer shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. Commercial General Liability. Engineer shall secure Commercial General Liability ("CGL") insurance on an occurrence basis policy with combined single limit of not less than \$2,000,000 each occurrence/\$4,000,000 annual aggregate for bodily injury and property damage. It shall include personal injury coverage and contractual liability coverage for the indemnity provided under this Agreement.
- C. Automobile Liability. Engineer shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per occurrence, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance.
- D. Professional Liability/Errors & Omissions. Engineer shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its plans, drawings, specifications and/or project manual, and all related work product of the Engineer. 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 \$1,000,000 per claim, incident or occurrence \$2,000,000 annual aggregate.
- E. "Tail" Coverage. If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Agreement for a duration of 24 months or the maximum time period available in the marketplace if less than 24 months. Engineer will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Owner's acceptance of and final payment for the Engineer's Services. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the final acceptance of Work or Services and related warranty, if any.
- F. Certificate of Insurance/Notice to the Owner. Prior to the signature by the Owner to this Agreement, Engineer shall furnish to the appropriate university official Certificates of Insurance as evidence of the insurance coverages required under this Agreement. The certificate(s) should state specifically that the insurance is provided for this Agreement. Insuring companies are subject to acceptance by the Owner. The Engineer shall also provide 30 days' written notice to the Owner if any of the insurance required by this Agreement is canceled or materially changed, or if the aggregate limits have been reduced.
- G. Additional Insureds. The Certificates of Insurance, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall provide that the policies have been endorsed/amended so that the State of Oregon, the Owner, and its institutions, officers, and employees are Additional Insureds with respect to the Engineer's Services to be provided under this Agreement.

- H. Consultant's Insurance. The Engineer shall cause all its Consultants to carry and maintain the insurance coverage required of the Engineer in this Section in amounts and with limits mutually agreed upon by the Owner and the Engineer. In the absence of any such agreement, the amounts and limits shall be the same as those required of the Engineer.
- I. Failure to Maintain. The Engineer's maintenance of its and its Consultants' insurance coverage in full force and effect for the Project is a condition precedent to the Engineer's right to exercise or enforce any right or remedy for money damages against the Owner. Failure by the Engineer to procure and maintain the insurance required above in full force and effect during the performance of services under this Agreement, and during any extensions or Additional Services hereunder, shall constitute a breach of this Agreement, in which case the Owner shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Engineer. The Engineer shall reimburse the Owner upon demand and shall furnish such information needed by the Owner to obtain such insurance or, alternatively, the Owner may immediately terminate this Agreement for cause pursuant to this Agreement.
- J. Self-Insured Retentions/Deductibles. If the Engineer has any self-insured retention or deductibles for any of the required coverages, the Engineer must identify on the certificate of insurance the nature and amount of such self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for such obligations. Satisfaction of all self-insured retentions or deductibles shall be the sole responsibility of the Engineer.

## XII. INDEMNITY

- A. Claims for Other Than Professional Liability. Engineer shall indemnify, hold harmless and defend the Owner 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 Engineer or the Engineer's Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- B. Claims for Professional Liability. Engineer shall save, defend, indemnify and hold harmless the Owner 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 Engineer or its Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- C. Owner Defense Requirements. Notwithstanding the foregoing defense obligations of the Engineer, neither the Engineer nor any attorney engaged by the Engineer shall defend any claim in the name of the Owner, nor purport to act as legal representative of the Owner, without the prior written consent of the Oregon Institute of Technology General Counsel. The Owner may, at any time at its election assume its own defense and settlement in the

event that it determines that the Engineer is prohibited from defending the Owner, that Engineer 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 Engineer if the Owner elects to assume its own defense.

- D. Agency's Actions. **Subsections A and B** above do not include indemnification by the Engineer of the Owner for the Owner's activities, whether related to this Agreement or otherwise.

### XIII. LIMITATION OF LIABILITIES

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

### XIV. [RESERVED]

### XV. OWNERSHIP AND USE OF WORK PRODUCT OF ENGINEER

- A. Work Product. Copies of plans, specifications, reports, or other materials required to be delivered under this Agreement ("Work Product") shall be the exclusive property of Owner. The Owner and the Engineer intend that such Work Product be deemed "Work made for Hire," of which the Owner shall be deemed the author. If for any reason such Work Products are not deemed "Work made for Hire", the Engineer hereby irrevocably assigns to the Owner all of its right, title and interest in and to any and all of such Work Products, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The Engineer shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Engineer forever waives any and all rights relating to such Work Product, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.
- B. Engineer's Use of Work Product. The Engineer, despite other conditions of this Section, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for its sales and in addition, unless specifically otherwise exempted, the Engineer may use standard line drawings, specifications and calculations on other unrelated projects.
- C. Owner Reuse or Modification of Work Product. If the Owner reuses or modifies the Work Product without the Engineer's involvement or prior written consent, to the extent permitted by Article XI, Section 7 of the Oregon Constitution and by the Oregon Tort Claims Act, the Owner shall indemnify, within the limits of the Tort Claims Act, the Engineer against liability for damage to life or property arising from the State's reuse or modification of the Work Product, provided the Owner shall not be required to indemnify the Engineer for any such liability arising out of the wrongful acts of the Engineer or the Engineer's officers, employees, Consultants, subcontractors, or agents.

## XVI. CONSULTANT AGREEMENTS

After the original Agreement is executed, Engineer shall not enter into any new Consultant agreements for any of the Services scheduled under this Agreement or assign or transfer any of its interest in or rights or obligations under this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Engineer shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by Sections XI-INSURANCE, XII-INDEMNITY, XIII -LIMITATION OF LIABILITIES, XV- OWNERSHIP AND USE OF WORK PRODUCT OF ENGINEER, XVIII-MEDIATION, XIX-TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS, XX-TAX COMPLIANCE, XXII-FOREIGN CONTRACTOR, XXIII-COMPLIANCE WITH APPLICABLE LAWS, XXIV-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXV-INDEPENDENT CONTRACTOR STATUS OF ENGINEER, XXVI-ACCESS TO RECORDS and XXIX-NO WAIVER of this Agreement.

## XVII. NO THIRD PARTY BENEFICIARIES

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

## XVIII. MEDIATION

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

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

## XIX. TERMINATION OF AGREEMENT; NON-AVAILABILITY OF FUNDS

- A. Mutual Agreement. The Owner and the Engineer, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days' written notice to the Engineer, may terminate this Agreement for any reason deemed appropriate in its sole discretion.
- B. Termination by Owner. Owner may terminate this Agreement, in whole or in part, immediately upon notice to Engineer, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
  - i. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Engineer's Services;

- ii. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
  - iii. Engineer no longer holds any license or certificate that is required to perform the Services;
  - iv. Engineer commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Services under this Agreement within the time specified herein or any extension thereof, or so fails to perform the Services as to endanger Engineer's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.
- C. **Owner Funding.** 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 therefor and in that regard Owner represents and warrants to Engineer 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 Engineer, 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 Engineer notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.
- D. **Effect of Termination.** In the event of termination of this Agreement:
- i. Pursuant to **Subsections A, B.1 or B.2** above, the Owner, using the Schedule of hourly rates set forth in Section III, and within the limitations specified in Section V shall compensate the Engineer for all Services performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.
  - ii. Pursuant to **Subsections B.3 or B.4** above, the Owner shall have any remedy available to it under this Agreement or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.
  - iii. For any reason, the Engineer shall immediately cease performance of Services under this Agreement, unless Owner expressly directs otherwise in the notice of termination, and shall provide to the Owner all plans, specifications, CAD

drawings on compact discs, mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables had this Agreement been completed.

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

## XX. TAX COMPLIANCE CERTIFICATION

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the Engineer and that the Engineer 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 a state tax imposed by ORS 401.792 to 401.816, ORS chapters 118, 314, 316, 317, 318, 320, 321 and 323; 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.

## XXI. DISCLOSURE OF SOCIAL SECURITY NUMBER

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

## XXII. FOREIGN CONTRACTOR

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

## XXIII. COMPLIANCE WITH APPLICABLE LAW

Engineer shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Agreement. Engineer specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Engineer 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 Engineer to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Engineer of these obligations nor of the requirements of this Agreement. Engineer further agrees to make payments promptly when due, to all persons supplying to such Engineer labor or materials for the performance of the Services to be provided under this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this Agreement; not permit any lien or claim to be filed or prosecuted against the State on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Engineer fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the Engineer or Engineer's surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with

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

XXIV. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

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

XXV. INDEPENDENT CONTRACTOR STATUS OF ENGINEER

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

XXVI. ACCESS TO RECORDS

For not less than three (3) years after the termination or full performance of this Agreement, the Owner, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Engineer and the Consultants which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this Agreement, or any resulting construction contract(s) is involved in litigation, Engineer shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Engineer will provide full access to such documents in preparation for and during any such litigation.

XXVII. SEVERABILITY



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.

XXVIII. FORCE MAJEURE

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

XXIX. NO WAIVER

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

XXX. NOTICE; PARTIES' REPRESENTATIVES

Except as otherwise expressly provided in this Agreement, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Engineer or Owner at the address or number set forth below, or to such other 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 named below. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

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

Engineer:  
[NAME]  
Attn: [NAME], [TITLE]  
[ADDRESS]  
[ADDRESS]  
Phone: [PHONE]  
Fax: [FAX]  
Email: [EMAIL]

Owner:  
Oregon Institute of Technology  
Procurement and Contract Services  
Attn: Vivian Chen, J.D., Director of Procurement, Contracts, and Risk  
27500 SW Parkway Avenue  
Wilsonville, OR 97070  
Phone: 508-821-1266

Email: [Vivian.Chen@oit.edu](mailto:Vivian.Chen@oit.edu)

With Copy to:  
[INSERT]

XXXI. CONFIDENTIALITY.

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

XXXII. CONFLICT OF INTEREST.

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

XXXIII. SURVIVAL

Any provision of this Agreement that contemplates future performance, survives the termination of this Agreement, including without limitation, representations of warranty, the Engineer's standard of care, any indemnity obligations, ownership and use of the Work Product, termination of the Agreement, governing law, venue, consent to exclusive jurisdiction, access to records, insurance, and confidentiality.

XXXIV. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

XXXV. COUNTERPARTS

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

XXXVI. MERGER CLAUSE

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

ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE  
ENGINEER AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[Signature Page Follows.]

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

[ENGINEER], Engineer

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Oregon Institute of Technology, Owner

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 1**

**ENGINEER'S KEY PERSONNEL AND CONSULTANTS**

Key Personnel:

1. [INSERT]
2. [INSERT]
3. [INSERT]
4. [INSERT]
5. [INSERT]

Consultants:

1. [INSERT]
2. [INSERT]
3. [INSERT]
4. [INSERT]
5. [INSERT]



**EXHIBIT 2**

**OREGON TECH CONTRACTOR TRAVEL REIMBURSEMENT POLICY**  
**Rates Effective January 1, 2020**

Category	Rate Summary	Policy
<b>Instate Travel:</b>  Meal per diem \$60.00 B = \$15.00 L = \$15.00 D = \$30.00	All Oregon Cities Meals           \$60.00 Lodging*       \$140.00 *Actual, up to rate	<ul style="list-style-type: none"> <li>• The per diem equals the federal rate using the <i>IRS's High-Low Substantiation Method</i>. All Oregon cities are currently Low Cost Cities.</li> <li>• No receipts are required for meals and incidental expenses (these are reimbursed on a per diem basis).</li> <li>• If meals are provided at the meeting or event, no meal per diem is allowed.</li> <li>• No meal per diem is allowed on one day trips.</li> <li>• Lodging tax is reimbursed as a miscellaneous expense.</li> </ul>
<b>Out-of-State, and Continental US Travel:</b>  <b>High</b> meal per diem \$71.00 B = \$17.75 L = \$17.75 D = \$35.50  <b>Low</b> meal per diem \$60.00 B = \$15.00 L = \$15.00 D = \$30.00	See list of High Cost Cities	<ul style="list-style-type: none"> <li>• The per diem equals the federal rate using the <i>IRS's High-Low Substantiation Method</i>.</li> <li>• No receipts are required for meals and incidental expenses (these are reimbursed on a per diem basis).</li> <li>• If meals are provided at the meeting or event, no meal per diem is allowed.</li> <li>• No meal per diem is allowed on one day trips.</li> <li>• Lodging tax is reimbursed as a miscellaneous expense.</li> </ul>
<b>Non-Continental US and Overseas Non-Foreign Areas (Alaska, Hawaii, Guam, etc.)</b>	Contractor travel to these locations is minimal and the federal tables are complicated. Call for per diem rates.	<ul style="list-style-type: none"> <li>• <b>Contact Oregon Tech Office Business Affairs at 541-885-0567 for current per diem rates for these locations.</b></li> <li>• <b>If meals are provided at the meeting or event, no meal per diem is allowed.</b></li> <li>• 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.</li> <li>• No receipts are required for meals and incidental expenses.</li> </ul>
<b>Mileage for Private Vehicle:</b>	\$0.58 per mile.	<ul style="list-style-type: none"> <li>• Mileage can be calculated one of 3 ways:  1) Mileage Chart (see Excel file)  2) Actual mileage (from the odometer)  3) Mapping software (e.g., mapquest.com)</li> <li>• Mileage cannot be claimed in addition to fees for rented vehicles and fuel expenses for a rented vehicle.</li> <li>• Mileage not reimbursable unless one way trip exceeds 25 miles from origin to destination.</li> </ul>

<b>Pro-ration of meals for partial days involving an overnight stay:</b>  Meal per diems for initial day of travel and final day of travel will be based on the following schedule based on departure and arrival times:	<b>INITIAL Day of Travel – Leave:</b>	<b>Prior to 7:00 am</b>	<b>7:00 am to 12:59 pm</b>	<b>1:00 pm and after</b>
	<b>Meal Allowance</b>	Breakfast, Lunch, Dinner	Lunch, Dinner	Dinner
	<b>FINAL Day of Travel – Return:</b>	<b>Prior to Noon</b>	<b>12:00 noon to 5:59 pm</b>	<b>6:00 pm and after</b>
	<b>Meal Allowance</b>	Breakfast	Breakfast, Lunch	Breakfast, Lunch, Dinner

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

**Airfare:** Only economy rate airfare, plus mandatory taxes and fees, will be reimbursed. Receipts are required.

**Ground Transportation:** Taxicab, train (coach or business class only), and airport shuttle fees will be reimbursed. Receipts are required if over \$25.00 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 contract representative. All miscellaneous expenses must be itemized. Receipts are required if over \$25.00 per item.

**Hosting Expenses:** If the scope of work in your contract authorizes reimbursement for hosting expenses, all expenses must be authorized prior to incurring costs. Contact the contract representative for allowable expenses.

*Travel reimbursement rates may periodically change. Contractor shall be responsible for ensuring that travel reimbursement requests are in accordance with the rates in effect at the time the expense was incurred. The current travel reimbursement rates may be found at <http://www.oit.edu/faculty-staff/purchasing-contracting>.*

*Oregon Tech prefers that requests for travel reimbursement be made by completing the Contractor’s Travel Reimbursement Request.*

