

APPENDIX B

HSS SEISMIC UPGRADE PROJECT
ARCHITECT'S AGREEMENT
WESTERN OREGON UNIVERSITY

This ARCHITECT'S AGREEMENT (the "Agreement") is made between

The Architect:

Phone: ()
FAX: ()

and the Owner:

The STATE OF OREGON acting by and through the
STATE BOARD OF HIGHER EDUCATION on behalf of
Western Oregon University
Physical Plant
345 N. Monmouth Ave.
Monmouth OR 97361

Phone 503 838-8239
FAX:: 503 838-8081

(The Architect and the Owner are referred to collectively as the "Parties" and individually as a "Party")

WHEREAS THE OWNER DESIRES to have the assistance of the Architect to provide professional services for the HSS Seismic Upgrade Project at Western Oregon University in Monmouth, Oregon, as more particularly described in the Request for Proposals, dated (*TBD*) and incorporated into this Agreement by reference, (the "Project"); and

WHEREAS THE ARCHITECT, with the aid of certain Sub-consultants identified in this Agreement (the "Consultants"), is willing and able to perform such professional services in connection with the Project;

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

I. RELATIONSHIP BETWEEN THE PARTIES

A. **Effective Date:** This Agreement is effective on ("*Effective Date*"), or the date it has been signed by Owner's Representative, the last signatory hereto, which ever is later. **No services shall be performed or payment made prior to the Effective Date.**

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

"Basic Services" are those Services more particularly described in Section IV. of this Agreement, as well as such additional Basic Services as may be established by amendment.

"Construction Contract" or "CM/GC Contract" is defined as the contract entered into between the Owner and the Contractor to provide all Work necessary to construct the Project.

"Construction Documents" include Owner-approved plans, drawings, specifications and all other documents necessary to allow complete and accurate construction of the Project.

"Contract Documents" include the Construction Contract, the OUS general conditions and any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor's performance and payment bonds, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents,

and any response by a successful bidder to any such solicitation documents.

“Contractor” or “CM/GC” is defined as the Construction Manager/General Contractor (CM/GC) that is awarded the contract to construct the Project.

“Design Criteria” means the current version of the University’s “Design Criteria for WOU Projects” provided to Architect by the Owner and incorporated herein by reference.

“Direct Construction Costs” are the costs to the Owner of all divisions of construction, including portable equipment designed or specified by the Architect 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 Architect 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.

- C. **Services To Be Performed:** The Architect agrees to provide, with the assistance of the Consultants, the professional Services outlined in Section IV below for this Project.

Such Services shall generally include completion of schematic design, assisting the Owner with selection of a Construction Manager/General Contractor, design development, preparation of the Construction Documents, bidding/award process participation services, and construction administration services.

The Work to be performed includes, but is not be limited to: seismic hazard mitigation, SEED energy conservation measures, ADA Accessibility upgrades, and LEED-EB operational improvements that will enhance the function, operation, and appearance, of the existing 35,000 square feet HSS building.

- D. **Directives for Performance of the Services**

1. The Architect agrees to provide, with the assistance of the Consultants, the professional Services more particularly described in Section IV below for this Project.
2. The Architect shall provide a detailed schedule for the performance of the Services upon execution of this Agreement. **The Architect agrees that time is of the essence in the performance of this Agreement.**
3. The estimated Direct Construction Cost budget range for the Project is \$2.3M to \$2.6M.
4. Architect agrees to fully cooperate with Owner to meet all Project budgets. Owner understands that Architect, 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 Architect's opinions of probable construction costs

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 3 of 25

are made on the basis of Architect's professional judgment and experience. Architect makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from Architect's opinion of probable construction cost. In the event the Architect's opinion of probable construction cost exceeds the budget for the Project listed in subsection 3 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 10 percent, Architect, upon notice from Owner and prior to the award of the Construction Contract, agrees to modify, at Architect's sole expense, Architect's Schematic Design documents, Design Development documents or Construction Documents (or with owners approval those portions of those documents where opinions of probable construction cost or bids exceeded the budget or stipulated percentage). This redesign effort shall constitute Architect's sole responsibility with respect to its opinions of probable construction cost, and Owner agrees to cooperate with Architect in revising the Project scope and quality in order to reduce the probable construction cost, or the bids or negotiated price, so that they do not exceed the Project budget.

5. The Architect shall provide all Services for the Project in accordance with the terms and conditions of this Agreement. The Architect's performance of Services shall be as a professional Architect 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.
6. To achieve the Owner's objectives during all phases of this Agreement and the Project, the Architect shall coordinate and cooperate with the Owner and the CM/GC to incorporate value engineering and to produce an appropriate and cost effective design, and a complete and functional Project.
7. The Architect agrees to 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/services to be performed by the key personnel and Consultants that are included in the attached **Exhibit 1**, the Architect 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 Architect acknowledges that the Owner's award of this Agreement to the Architect was made on the basis of the unique background and abilities of the Architect's key personnel and Consultants originally identified in the Architect's RFP proposal or subsequent cost proposal. Therefore, the Architect specifically understands and agrees that any attempted substitution or replacement of a key person or Consultant by the Architect, 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 Architect at anytime, Architect 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 Architect shall remove any individual or Consultant from the Project if so directed by Owner in writing following discussion with the Architect, provided that Architect shall have a reasonable time period within which to find a suitable replacement. **The Architect 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.**
8. Architect 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.

- E. **Maximum Compensation:** The Owner agrees to pay Architect a sum not to exceed \$_____.00 (the "Maximum Compensation") for accomplishment of Services required under this Agreement, which shall include all Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully-executed and approved amendment to this Agreement. Architect progress payments shall be made according to the schedule set forth in Section VII, FEE PAYMENTS, of this Agreement.
- F. **Suspension of Agreement by Owner.** The Parties understand and agree that the Owner may suspend the Parties' performance of this Agreement in the event any of the following circumstances arise:
1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Architect's Services;
 2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
 3. Architect, or one of Architect's Consultants currently performing Services, no longer holds any license or certificate that is required to perform the Services;
 4. 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 XVII**. In the event of a suspension of performance pursuant to this Section of the Agreement, the Architect 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 until _____, 200_. If the Agreement is reactivated and the Architect 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 Architect and any Consultants and amend this Agreement accordingly.

II. ARCHITECT'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. **Standard of Care.** By execution of this Agreement, the Architect agrees to perform the Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.

All Services, including drawings, documents, plans, reports and specifications prepared by the Architect and/or Architect's Consultants, shall be performed or prepared by the Architect in accordance with the generally accepted standard of care for architects and architects'

Consultants performing work in the Pacific Northwest.

- B. By execution of this Agreement, the Architect specifically agrees to perform the Services in accordance with the following requirements:
1. All plans, drawings, specifications, and other documents prepared by the Architect shall accurately reflect, incorporate and comply with all statutes, rules, 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 (except as to any deficiencies which are due to causes beyond the control of Architect);
 2. All plans, drawings, specifications, and other documents prepared by the Architect pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Services to be performed;
 3. 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;
 4. The Architect shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents. While Architect cannot guarantee that the various documents required under this Agreement are completely free of all minor human errors and omissions, it shall be the responsibility of Architect throughout the period of performance under this Agreement to use due care and perform with professional competence. Architect will, at no additional cost to Owner, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by Architect. Except as provided in Article VII and at no additional cost, Architect further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project;
 5. The Owner's 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 Architect of any responsibility for complying with the standard of care set forth herein. The Architect 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.
 6. 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. Architect represents and warrants to Owner that:
1. Architect has the power and authority to enter into and perform this Agreement;
 2. When executed and delivered, this Agreement shall be a valid and binding obligation of the Architect enforceable in accordance with its terms;

3. Architect shall, at all times during the term of this Agreement be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;
4. The Architect 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;
5. The Architect has the capabilities and resources necessary to perform the obligations of this Agreement;
6. The Architect 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 \$_____.00 (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. Architect progress payments shall be made according to the provisions and schedule set forth in Section VII of this Agreement. The Basic Services shall consist of Schematic Design, Design Development, Construction Documents, CM/GC selection, and Construction Administration Phase Services, as more particularly described in Section IV of this Agreement and shall not be undertaken prior to execution of an amendment to this Agreement and receipt of written Notice to Proceed from the Owner. The Maximum Compensation is more particularly described as follows:

A. BASIC SERVICES:

The Architect shall perform the Basic Services, directly or through the Consultants, for the fixed price of \$_____.00.

B. REIMBURSABLE EXPENSES:

The Owner shall reimburse the Architect for any allowable Reimbursable Expenses, up to a maximum amount of \$_____.00

"Reimbursable Expenses" for the Project mean actual direct expenditures (without overhead, fee, markup or profit) made by the Architect and Consultants in the interest of the Project for the following items: long-distance communications; reproductions, postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of the Architect 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.

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 State of Oregon employees. Travel expenses are only reimbursable when Services are rendered in excess of 25 miles from Architect's or Consultant's office. As of the date of this Agreement, these rates allowed State of Oregon employees are

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 7 of 25

as follows:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$0.375 per mile
Lodging	\$90.00 per night plus tax
als: (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$9.00
Lunch	\$9.00
Dinner	\$18.00
Printing, photography, long distance communications charges, postage, and other direct expenses, and renderings, models, and mock-ups requested by Owner	At cost

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

- C. **ADDITIONAL SERVICES:** The Owner will compensate the Architect, for additional services beyond the scope of the Basic Services described in Section V (the "Additional Services"), performed by the Architect, or any Consultant hired by the Architect, based on hourly rates for Architect's personnel, and Consultants, plus Reimbursable Expenses, in accordance with the fee schedules (provided by Project Architect.) attached as **Exhibit 2** Compensation for Additional Services will be made only when the Owner has given prior written authorization, and the Parties have executed an amendment or supplement to this Agreement.

The charges on the attached fee schedules shall also be used to determine amounts owed the Architect in the event this Agreement is terminated as provided in Section XVII, D.1. Any amounts so derived may not exceed limitations on each phase as specified by Section VII.

IV. ARCHITECT'S SERVICES

A. Preliminary Design

Upon receipt of Owner's written Notice to Proceed, in consultation with the Owner, and in compliance with the Design Criteria for Western Oregon University, the Architect shall:

1. Evaluate and confirm the anticipated scope for the project;
2. Review the budget for construction and indirect costs to assure balance with scope;
3. Develop site and building design concept options;
4. Establish an implementation timeline for design and construction;

B. Schematic Design Phase

1. Identify applicable building codes, administrative rules, and permit processing requirements, as relevant;

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 8 of 25

2. Assess, by on-site inspection, whether existing conditions and systems, including but not necessarily limited to architectural, structural, sewer, water, steam, mechanical and electrical systems are of adequate condition and capacity to support the Work to be performed on the Project. Prepare written findings;
3. In consultation with Consultant team, Owner representatives, and other designated persons, use all available information to evaluate the appropriate data and graphics, propose a series of improvements deemed necessary and desirable to satisfy the FEMA Grant Requirements, the Program Requirements, including; space needs, LEED-EB recommendations, compliance with codes and ordinances, safety and energy requirements, handicapped access to all spaces, preservation of historical character of the structure(s), etc.;
4. Based on the Program Requirements, develop Schematic Design studies consisting of drawings, and other documents requested by the Owner, if any, for the Owner's approval;
5. Provide documents suitable for submission to the City of Monmouth and for the WOU Physical Plant Planning Review.
6. 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;
7. Prepare a comprehensive State Energy Efficiency Design ("SEED") Analysis of the Project, and other Services for the Project that are required under the SEED Program of the State of Oregon Department of Energy.
8. Submit to the Owner an estimate, 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. The Parties understand and agree that the Owner will be obtaining a separate, independent cost estimate of probable Direct Construction Cost of the Project, and that the Architect will consult with the Owner in comparing and reconciling the two independent cost estimates, consistent with the requirements of Section I.D.4 above;
9. As the Contractor for the Project will be a Construction Manager/General Contractor ("CM/GC"), the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. In performing the Direct Construction Cost estimating Services described in Section IV.B.8 above, coordinate the Architect's performance of those Services with the CM/GC, that will be performing Direct Construction Cost verification services under the CM/GC's contract with the Owner; and
 - b. Otherwise fully cooperate with the CM/GC during the design phase and the construction phase(s) of the Project.
 - c. In the event the reconciled Direct Construction Cost estimates prepared by the CM/GC and the independent cost estimator exceed the Owner's Direct Construction Cost budget, revise the Project design to allow construction of the Project within Owner's budget consistent with the requirements of Section I.D.4 above.

10. Submit to the Owner information and other data relevant including:
 - a. written report of the results of a Fire and Life Safety review with the City of Monmouth;
 - b. exterior colors, materials and finishes recommendations;
 - c. a project schedule delineating the estimated time required for the Architect to complete the Design Development and Construction Documents Phases of the project;
 - d. recommendations by Consultants (e.g., structural, mechanical, electrical, etc.) of the technical requirements necessary to implement the Program Requirements;
 - e. preliminary plans, elevations, and other drawing necessary to describe the entire scope of the project. These drawings may be used for Owner review.
11. Perform those design services during this phase of the design for fine arts 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 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. Design Development Phase

Upon notification of the Owner's approval of the Schematic Design Phase, and upon written authorization from the Owner to proceed, the Architect, in compliance with the Design Criteria for Western Oregon University, shall:

1. 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;
2. By on-site inspection prior to completion of the Design Development Phase, assess existing conditions as required to address significant constructability issues;
3. 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.
4. Submit to the Owner for its approval an independent cost estimate of probable Direct Construction Costs for the Project based upon the methodology adopted pursuant to Section IV(B)(8) above, as applied to the final development of the design;
5. As the Contractor for the Project will be a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be

indicated by changes in requirements or general market conditions, and report the Architect's findings to the Owner.

6. 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;
7. Submit to the Owner preliminary plans and specifications, and other relevant data as necessary, to review design progress, and estimate probable construction cost. Information should include:
 - a. sections, elevations, and details as relevant to each respective discipline.
 - b. one-line diagrams for mechanical systems design(s);
 - c. one-line diagrams for electrical systems design(s);
 - d. complete outline specification and Project manual;
 - e. recommendations for alternates equivalent to 10% of the estimated Direct Construction Cost;
 - f. recommendations for construction phasing to ensure uninterrupted operation of Owner's activities and identification of areas to be shut down for interconnection to existing systems;
 - g. four copies of the energy analysis conforming to the requirements of ORS 276.905 to 276.915 (State Agency Facility Energy Design), ORS 469.010. (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 Project.);
 - h. equipment layouts showing location, size, and configuration of all equipment in the Project;
 - i. preliminary recommendations for interior and exterior colors, materials and finishes;
 - j. Fire and Life Safety plan resulting from previous reviews with the City of Monmouth;
8. 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. Construction Documents Phase

Upon notification of the Owner's approval of the Design Development Phase and upon written authorization from the Owner to proceed, the Architect, in compliance with the Design Criteria for Western Oregon University, shall:

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 11 of 25

1. Prepare working drawings and specifications, setting forth all necessary plans, elevations, sections, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship.
2. 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.
3. 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.
4. Include in the appropriate section of Division 1 of the specifications a complete listing of all warranties required under the technical portions of the specifications.
5. Develop all required bidding information and assist the Owner in the preparation of bidding forms.
6. Provide the Owner 5 sets of the 100% complete Project manuals, including the bidding requirements, Construction Contract forms, bonds, conditions of the Construction Contract, specifications, and plans and drawings, for review and approval prior to the date set by Owner for advertising the Project for bid.
7. In the event that the Contractor for the Project is a CM/GC, the Architect shall perform the following Services associated with preparation of the probable Direct Construction Cost of the Project:
 - a. Review and verify any adjustments made by the CM/GC to the previous estimates of probable direct construction costs for the Work based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the Architect's findings to the Owner.
8. 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.
9. Prepare bidding documents with the 10% alternates recommended in accordance with Section IV(C)(7)(e) above.
10. Submit to the Owner information and other relevant data including:
 - b. structural calculations;
 - c. final recommendations for interior colors, materials, and finishes;
 - d. heat gain/loss and HVAC system design calculations; and
 - e. electrical system design load calculations.
 - f. electronic version of the project manual in MS Word (.doc), or Adobe (.pdf) format.
11. Perform those design services during this phase of the design for fine arts 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 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.

12. 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.

E. Bidding Phase

Upon notification of the Owner's approval of the Construction Documents Phase, and upon written authorization from the Owner to proceed, the Architect shall:

1. Furnish the Owner, or the Owner’s Construction Manager/General Contractor (CM/GC) with one fully-reproducible set of the Construction Documents, complete as required for bid and construction purposes (for additional copies, see Section V, Additional Services).
2. Assist the Owner or CM/GC in soliciting bids.
3. Review the bids and assist in recommending the award of Construction Contract(s) for the Work.
4. Coordinate with the City of Monmouth to ensure that all plan review/building permit criteria are reflected in the final bid documents.
5. Attend the pre-bid conference at the Project site.
6. Update bid documents to include addenda and value engineering items for use by the contractor in constructing the building.

If the reconciled estimates between the Architect’s estimate and the CM/GC’s estimate exceeds the Direct Construction Cost allowance authorized by the Owner by more than 10%, then at the Owner's request, and at no additional cost to the Owner, the Architect shall modify the plans, drawings and specifications in order that new bids may be solicited and a Construction Contract award made within said allowance.

F. Construction Phase

Commencing with the award of a Construction Contract by the Owner, the Architect shall:

1. Send members of its architectural, structural, mechanical, and electrical, teams to attend the pre-construction conference at the Project site.
2. 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.

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 13 of 25

3. Ensure that members of the architectural, structural, mechanical, electrical teams make regular visits to the Project site, and attend progress meetings as necessary with the Contractor and Owner to ascertain:
 - a. the progress and quality of the Work;
 - b. determine in general if the Work is proceeding in accordance with the Construction Documents and the Project time schedule;
 - c. answer contractor questions and resolve conflicts, and;

Upon conclusion of each visit, submit a written report to Owner summarizing Consultants' observations and determinations.

4. Review and approve or take appropriate action regarding shop drawings and samples submitted by the Contractor; such actions by Architect shall be taken with reasonable promptness to cause no delay in the construction Work.
5. Prepare any supplemental plans, drawings or large-scale details needed to clarify the Construction Documents.
6. Respond promptly to requests from the Contractor for assistance with unforeseen problems so as to minimize the Owner's exposure to claims for delay.
7. Advise and consult with the Owner, issuing appropriate instructions to the Contractor, as directed by Owner.
8. Check proposed costs of any modifications to the Construction Contract and recommend acceptance or rejection to the Owner, and prepare written change orders.
9. Endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor.
4. Review and authorize contractor's monthly pay request.
11. 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 Architect's opinion, it may be necessary for the proper performance of the Construction Contract.
5. Issue certification to the Owner when all terms of the Construction Contract have been fulfilled to the Architect's satisfaction.
6. Conduct on-site observations to determine the date of final completion, receive written guarantees and related documents assembled by the Contractor, and issue recommendation to Owner for final acceptance and payment.
7. Upon completion of the Work, and at no additional cost to the Owner, update CAD drawings based on the contractor's As-Built drawing set, and provide to the Owner the following:
 - a. a CD containing a complete set of project drawings compatible with AutoCAD, version

2006, and WOU standards.

- b. three set of black line prints and specifications, and one set of 3 mil Mylar drawings marked-up prints, drawings and other data furnished by the Contractor to the Architect. Size of the documents should be similar to the Construction Documents but not larger than 30" x 42" Label these sets as "RECORD DRAWINGS."
 - c. A CD of the Project Manual reflecting significant changes in the Work made during construction based on: addenda, submittals, change orders, ASI's, etc. Label this document as RECORD PROJECT MANUAL."
 - d. Three copies of the Record Project Manual each bound in a three ring binder.
8. Assist the Owner in the implementation of the State's 1% for art program, as applicable.
 9. Assist the Owner in resolving warranty issue that arise during the one-year warranty period, and maintain log of warranty items as they are reported. The log should note how and when they were resolved.
17. Inspect Project Work near end of one-year warranty period in order to identify defects of materials or workmanship, and issue a written report to Owner.

V. ADDITIONAL SERVICES

A. Authorization: Upon written authorization from the Owner the Architect shall provide additional architectural services as desirable and/or necessary to complete the Project. The Owner will compensate the Architect, for additional services beyond the scope of the Basic Services performed by the Architect, or any Consultant hired by the Architect, based on hourly rates for Architect's personnel, and Consultants, plus Reimbursable Expenses, in accordance with the attached fee schedules per Section III C above. Compensation for Additional Services may be made only when the Owner has given prior written authorization, and the Parties have executed an amendment or supplement to this Agreement. The Architect shall be paid, subject to executed amendments or supplements, for extra expense and service involved if:

1. 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).
2. detailed demolition drawings of existing structure(s) are required, 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.
3. the Owner requests assistance with specification preparation, and bidding of free standing furniture, furnishings, and equipment beyond and outside the scope of the Services required in Section IV above.
4. the Owner requests that the Architect provide design services associated with specialized signage for the Project;

5. the Owner requests copies of Construction Documents in excess of the number specified in Section IV.
6. damage occurs as a result of fire or other casualty to the structure.
7. the Contractor becomes delinquent or insolvent.
8. the Architect's attendance is required at City of Monmouth public and/or planning board presentations.

B. Service Suspension: If any Services performed by the Architect are abandoned or suspended, the Architect shall be paid for the Services rendered, under the provisions and limitations of Section VII, 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 Architect, a bid overrun, or other breach or default by the Architect.

VI. SERVICES OF ARCHITECT'S CONSULTANTS

The Owner may authorize and reimburse the Architect for additional consulting Services, upon prior written requests from the Architect for, and upon approval and execution of, amendment(s) to this Agreement. Such arrangements shall be made in advance of performance of the additional Consultants' Services. If the employment of a Consultant reduces the amount of the direct Services designated under this Agreement to be performed by the Architect, an adjustment shall be made for that portion of the Services.

VII. FEE PAYMENTS

Monthly progress payments shall be made for professional Services rendered and/or Reimbursable Expenses incurred during the preceding month. Invoices must include a breakdown of consultant's charges, and back-up documentation for reimbursable expenses billed to the Owner. Send invoice and required documentation to the following address:

Planning Office
Western Oregon University
345 N. Monmouth Ave
Monmouth, OR 97361

Payments to the Architect will be made following the Owner's review and approval of the invoices and required documentation and acceptance of the Services performed and approval of the Reimbursable Expenses incurred. Payments to the Architect for such Services performed and invoiced and such Reimbursable Expenses incurred 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 Services shall not exceed the maximum amount set forth in Section III, A. for Services and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in Section III, B. 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.

- A. Pre-Design Phase, not to exceed \$_____.
- B. Schematic Design Phase, not to exceed \$_____.
- C. Design Development Phase, not to exceed \$_____.
- D. Construction Documents Phase, not to exceed \$_____.
- E. Bidding Phase, not to exceed \$_____.
- F. Contract Administration Phase, not to exceed \$_____. (Acceptance of this phase will be acknowledged by a notice from the Owner of the acceptance of the Work of the construction Contractor.)

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

VIII. SURVEY, BORINGS AND TESTS

The Owner shall furnish the Architect with any of the following information Architect may require to perform the Services called for under this Agreement:

- A. A complete and accurate 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. Geotechnical investigation reports with recommendations for soil bearing capacities.
- C. Chemical, mechanical or other tests when required.

The Architect will not be responsible for errors in the performance of Architect's Services due to inaccuracy of any of the information provided by Owner pursuant to the provisions of this Section.

IX. ARCHITECT'S RESPONSIBILITIES IN REGARD TO ASBESTOS

It is envisioned that this Project will involve the removal of and disposal of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "Hazardous Substances"). It is understood and agreed that the Owner will 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. It is understood and agreed that the Architect 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.

X. INSURANCE PROVISIONS

During the term of this Agreement, Architect shall maintain in full force, at its own expense, from companies licensed to do business in Oregon, each type of insurance coverage noted below.

- A. **Workers' Compensation** - All employers, including Architect, 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. Architect shall ensure that each of its Consultants and subcontractors complies with these requirements.
- B. **General Liability** – Architect shall secure Commercial General Liability insurance with a combined single limit of not less than \$1,000,000 each occurrence/\$2,000,000 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** - Architect shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 each 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** - Architect 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 and Project manual, and all related work product of the Architect. 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/\$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. Architect will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this agreement. This will be a condition of the Final Acceptance of Services and Related Warranty, if any.
- F. **Additional Insured.** 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 State Board of Higher Education, Western Oregon University, its officers, and employees are Additional Insured with respect to the Architect's services to be provided under this Agreement.

Certificate of Insurance. Prior to the signature by the Owner to this Agreement, Architect shall furnish to the appropriate university official Certificates of Insurance as evidence of the insurance coverages required under this Agreement, together with copies of all endorsements required herein. The certificate(s) shall provide that the insurance policies have been endorsed/amended so that the insurance company or companies shall give a 30 calendar day notice (without reservation) to the Owner if the applicable policy is canceled or materially changed, or if the aggregate limits have been reduced. The certificate(s) should state specifically that the insurance is provided for this Agreement. Insuring companies are subject to acceptance by the Owner.

XI. MEDIATION

Architect 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 amendments or supplements hereto, shall be submitted to non-binding mediation unless the parties mutually agree otherwise. Architect 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.

XII. INDEMNITY

- A. Claims for Other Than Professional Liability—Architect 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 Architect or the Architect'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 - Architect 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 Architect or its Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.

XIII. LIMITATION OF LIABILITIES

Except for any liability of the Architect arising under or related to the Architect's failure to perform according to the standard of care, or any other liability arising under or related to the Architect'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. OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT

- A. 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 Architect 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 Architect 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 Architect shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such

rights in the Owner. The Architect 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. The Architect, 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 Architect may use standard line drawings, specifications and calculations on other unrelated projects.

- B. If the Owner reuses or modifies the Work Product without the Architect'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 Architect 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 Architect for any such liability arising out of the wrongful acts of the Architect or the Architect's officers, employees, Consultants, subcontractors, or agents.

XV. SUCCESSORS AND ASSIGNS

The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. After the original Agreement is executed, Architect 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 this Agreement, without Owner's prior written consent. In addition to any provisions Owner may require, Architect shall include in any permitted Consultant agreement under this Agreement a requirement that the Consultant be bound by Sections X-INSURANCE PROVISIONS, XI-MEDIATION, XII-INDEMNITY, XIV-OWNERSHIP AND USE OF WORK PRODUCT OF ARCHITECT, XVII-TERMINATION OF AGREEMENT/NON-AVAILABILITY OF FUNDS, XVIII-TAX COMPLIANCE, XX-FOREIGN CONTRACTOR, XXI-COMPLIANCE WITH APPLICABLE LAWS, XXII-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXIII-EMPLOYMENT STATUS, XXIV-ACCESS TO RECORDS and XXVII-NO WAIVER OF THIS AGREEMENT.

XVI. NO THIRD PARTY BENEFICIARIES

Owner and Architect 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.

XVII. TERMINATION OF AGREEMENT/NON-AVAILABILITY OF FUNDS

- A. The Owner and the Architect, by mutual written agreement, may terminate this Agreement at any time. The Owner, on 30 days written notice to the Architect, may terminate this Agreement for any reason deemed appropriate in its sole discretion.

- B. Owner may terminate this Agreement, in whole or in part, immediately upon notice to Architect, or at such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

HSS SEISMIC UPGRADE PROJECT

Architects Agreement

Page 20 of 25

1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Architect's Services;
 2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Services performed under this Agreement are prohibited or Owner is prohibited from paying for such Services from the planned funding source;
 3. Architect no longer holds any license or certificate that is required to perform the Services;
 4. Architect 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 Architect'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 reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will 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 therefore and in that regard Owner represents and warrants to Architect 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 Architect, 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 Architect notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.
- D. In the event of termination of this Agreement:
1. Pursuant to subsections A, B.1 or B.2 above, the Owner, using the Schedule of hourly changes set forth in Section III, and within the limitations specified in Section VII shall compensate the Architect for all Services performed prior to the termination date, together with Reimbursable Expenses then due, and such amounts shall immediately become due and payable.
 2. Pursuant to 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.
 3. For any reason, the Architect 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 diskettes, Mylar drawings, and all documents, information, works-in-progress or other property that are or would be deliverables

had this Agreement been completed.

4. For any reason, the Architect shall remain responsible to the Owner for the quality of its Services performed and work product produced prior to termination.

XVIII. 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 Contractor 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 a state tax imposed by ORS 401.792 to 401.816 and 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.

XIX. DISCLOSURE OF SOCIAL SECURITY NUMBER

Architect must provide Architect's Social Security number unless Architect 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.

XX. FOREIGN CONTRACTOR

If Architect is not domiciled in or registered to do business in the State of Oregon, Architect 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. Architect shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

XXI. COMPLIANCE WITH APPLICABLE LAWS

Architect agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be performed under this Agreement. Architect specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Architect also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Architect to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Architect of these obligations nor of the requirements of this Agreement. Architect further agrees to make payments promptly when due, to all persons supplying to such Architect labor or materials for the performance of the Services provided for in 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; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Architect 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 Architect or Architect'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 requires that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.

XXII. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and Architect 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, 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 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. THE ARCHITECT, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

XXIII. EMPLOYMENT STATUS

- A. Architect shall perform all required Services as an independent contractor. Although Owner reserves the right (i) to determine (and modify) the delivery schedule for the Work to be performed and (ii) to evaluate the quality of the competed performance, Owner cannot and will not control the means or manner of Architect's performance. Architect is responsible for determining the appropriate means and manner of performing the Work.
- B. Architect is not an officer, employee, or agent of the State or Owner as those terms are used in ORS 30.265.
- C. Architect 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 Architect under this contract. Architect will not be eligible for any benefits from these contract 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 Architect certifies that it is not currently employed by the federal government.

XXIV.ACCESS TO RECORDS

For not less than three (3) years after Agreement expiration or earlier termination, 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 Architect 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, Architect shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Full access will be provided in preparation for and during litigation.

XXV. 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.

XXVI.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.

XXVII. 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.

XXVIII. NOTICE; PARTIES' REPRESENTATIVES

Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Architect 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 XXVIII. Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any communication or 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 communication or notice by personal delivery shall be deemed to be given when actually delivered.

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

Architect:

Telephone:

Address:

Owner – Project Issues:

**Thomas Neal, Director of Physical Plant & Facilities
Operations**

Telephone: 503 838-8129

Address:

**Physical Plant
345 N. Monmouth, Ave
Monmouth, OR 97361**

Owner – Contract Issues:

Darin Silbernagel, Director of Business Services

Telephone: 503 838-8175

Address:

Business Office

345 N. Monmouth, Ave

Monmouth, OR 97361

XXIX. CONFIDENTIALITY.

Architect 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 Architect from establishing a claim or defense in an adjudicatory proceeding. Architect shall require their Consultants to execute similar agreements to maintain the confidentiality of information of Owner.

XXX. CONFLICT OF INTEREST.

Except with Owner's prior written consent, Architect shall not engage in any activity, or accept any employment, interest or contribution that would or would reasonably appear to compromise Architect'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.

XXXI.MERGER CLAUSE

This agreement and 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. The Architect, by the signature of its authorized representative noted below, acknowledges having read and understood this agreement, and the Architect agrees to be bound by its terms and conditions.

IN WITNESS HEREOF, the parties have duly executed this Agreement as of the day and year when signed by Owner.

Architect:

STATE OF OREGON ACTING BY AND THROUGH THE STATE BOARD OF HIGHER EDUCATION, on behalf of Western Oregon University,
Owner's Representative

By _____
Name

By: _____
Darin Silbernagel
Director of Business Services

Title: _____

Date: _____

Date: _____

Federal Tax ID # _____

APPROVED AS TO LEGAL SUFFICIENCY:

BY: _____, Assistant Attorney General

DATE: _____