

ATTACHMENT F

DESIGN/BUILD AGREEMENT

OWNER:

DESIGN/BUILDER:

PROJECT:
(the “**Project**”)

(The Owner and the Design/Builder are collectively referred to hereafter as the “Parties”)

RECITALS

- A. WHEREAS, Owner owns and operates the Building described as the Athletics Storage Facility; and
- B. WHEREAS, Owner issued a Request for Proposals (the “RFP”) dated July XX, 20XX in order to obtain the services of a **Design/Builder** (the “**CONTRACTOR**”) to competently assume responsibility for completion of the design and construction of a solar photovoltaic system at the SOU XXX (the “**Project**”); and
- C. WHEREAS, **CONTRACTOR** submitted a written Proposal in response to Owner's RFP and Owner selected **CONTRACTOR** as the most qualified responsive and responsible design/builder to complete the Project; and
- D. WHEREAS, Owner and Contractor now wish to memorialize their respective rights and responsibilities regarding Contractor’s design and construction of the solar photovoltaic system at the XXX facility; and
- E. WHEREAS, Owner is authorized under the laws of the State of Oregon to enter into the Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained in this document, and intending to be legally bound hereby, Owner and Contractor agree as follows:

AGREEMENT

1. DEFINITIONS

Key terms used within the Contract are defined at **Section A.1** of the Southern Oregon University General Conditions for Public Improvement Contracts, revised February 9, 2016

(the “**SOU General Conditions**”), except as modified or supplemented as follows:

- 1.1 “Agreement” means this 21-page document entitled, “Design/Build Agreement,” excluding exhibits and material incorporated herein by reference, and is interchangeable with the term “SOU Public Improvement Agreement form” used in Section A.1 of the SOU General Conditions.
- 1.2 “Contract Documents” means the documents identified in **Section 2.1** of this Agreement.
- 1.3 “Construction Documents” means Owner-approved Plans, drawings, Specifications and other documents necessary to allow complete and accurate construction of the Project.
- 1.4 “Construction Work” or “Work” means the providing of all work, services, construction management services, materials, equipment, transportation, tools, labor and incidentals necessary to complete the construction work described in and reasonably inferred from the Contract Documents, including but not limited to the services and work set forth in Section 3.5 of this Agreement.
- 1.5 “Contract Price” means that amount set forth in the Contractor’s Proposal pertaining to the total fixed cost of the Project for both Design Services and Construction Work.
- 1.6 “Design/Builder” means the Contractor in its capacity of being responsible for providing all services necessary to achieve the purposes and intent of the RFP including without limitation, Project coordination and supervision, architectural and engineering design, procurement of goods, materials and services necessary to complete the Project, Construction Work, and commissioning services.
- 1.7 “Design Professional” means: 1) an architect who is registered and holds a valid certificate in the practice of architecture in the State of Oregon; 2) an engineer who is registered and holds a valid certificate in the practice of engineering in the State of Oregon; 3) a surveyor who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon; and 4) such other professional person or entity otherwise registered and holding a valid certificate to provide professional design services in the State of Oregon.
- 1.8 “Design Services” means all the design services, construction administration services and related services to be performed by the Contractor under the Contract, including but not limited to Sections 3.3 and 3.4 of this Agreement.
- 1.9 “Direct Construction Costs” means the costs to the Owner of all divisions of construction, including portable equipment designed or specified in the construction Specifications.
- 1.10 “Facility” means XXXXX Ashland, OR.

- 1.11 “Notice to Proceed” means the official written notice from Owner that indicates that all of the threshold contractual requirements have been met, including full negotiation of Contract terms, execution and delivery of all Contract Documents, Owner’s receipt of acceptable and fully executed performance and payment bonds and certificates of insurance, and that the Contractor is authorized to proceed with the work.
- 1.12 “Owner” means Southern Oregon University.
- 1.16 “RFP” means that Request for Proposals dated July XXX, to which this form of Contract is attached and pursuant to which this completed Contract is drafted and executed by the Parties.
- 1.17 “Statement of Work” means the Design Services and Construction Work set forth in detail in the Construction Documents.
- 1.18 “Work Product” means the work product required to be delivered by CONTRACTOR under the Contract, as more particularly defined in **Section 3.3** of this Agreement.
- 1.19 “Project Management Services” means the project management services that the CONTRACTOR will perform throughout the period of performance of the Contract, as more particularly described in Section 3.2 of this Agreement.

2. CONTRACT DOCUMENTS; OWNERSHIP OF WORK PRODUCT

The Contract Documents listed in **Section 2.1 below** of this Design/Build Agreement (the “Contract Documents”) are intended to reflect the Parties’ understanding of their respective rights and responsibilities concerning completion of the Work within the Contract Time and for the Contract Price.

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

The SOU General Conditions, to the extent not inconsistent with the Contract, shall also apply to the work of all subcontractors performing work on the Project.

2.2 Ownership of Work Product. All drawings, Plans, Specifications, prototypes, reports, and other work product required to be delivered by CONTRACTOR under the Contract ("**Work Product**") shall be the exclusive property of Owner. Owner and CONTRACTOR intend that such Work Product be deemed "work made for hire." If for any reason the Work Product is not deemed "work made for hire," CONTRACTOR hereby irrevocably assigns to Owner all of its right, title and interest in and to any and all of the Work Product, whether arising from copyright, or any state or federal intellectual property law or doctrine. CONTRACTOR shall execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. CONTRACTOR forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

2.2.1 CONTRACTOR, notwithstanding other conditions in this **Section 2.1**, shall have the right to utilize such Work Product on its brochures or other literature that it may utilize for marketing and sales, and in addition, CONTRACTOR may use standard line drawings, Specifications and calculations on other unrelated projects.

3. CONTRACTOR'S SERVICES

3.1 General.

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

3.1.2 CONTRACTOR shall obtain at its own expense, and shall maintain in effect for the duration of the Contract, the insurance coverage required in **Section G** of the SOU General Conditions, as modified by **Section 10** of this Agreement.

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

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

3.2 Project Management.

3.2.1 CONTRACTOR shall appoint a CONTRACTOR staff person as CONTRACTOR's Project Manager (the "CPM", who is identified in **Section 4** of this Agreement) who will be reasonably available to Owner and who

shall have the expertise and experience required to supervise the Work for the duration of the Project. CPM shall communicate regularly with Owner and shall have the authority to act on behalf of CONTRACTOR. CPM shall consult with the Owner's Project Manager (the "OPM") on issues affecting design, construction, Contract performance, Project budget and Project schedule. The CPM may be replaced during the Project only with Owner's prior consent, consistent with the provisions of **Section 4.5** of this Agreement.

- 3.2.2** The CPM shall provide Owner with a status report every two weeks, in which it shall detail the progress of the Work including the following: 1) whether the Work is proceeding according to schedule; 2) any discrepancies, conflicts, or ambiguities in the Construction Documents that require resolution; 3) any safety issues related to the Work; 4) any other matter that requires resolution to ensure timely and cost-effective completion of the Work. At least four working days prior to the scheduled meeting, CONTRACTOR shall submit to Owner a list of identified matters that will require resolution; any matters that require Owner approvals, and any proposed deviations from the Project schedule.
- 3.2.3** The CPM shall be the principal contact between the OPM and all other CONTRACTOR representatives, and will be responsible for all communications, including, but not limited to, conveying concerns, decisions and formal actions.
- 3.2.4** The CPM shall be responsible for maintaining thorough and complete project records and regular briefings to the OPM. The CPM will coordinate the flow of information, communications and formal documents so that Owner has the material required for its timely action on policy, design and budget matters. The CPM will be responsible for transmission of documentation required for Owner approval or actions.
- 3.2.5** Owner's review of, and response to, any of the matters presented above shall not relieve CONTRACTOR of its obligation to complete the Design Services and Construction Work within the Contract Times set forth in Section 14 of this Agreement, and shall not be construed as relieving CONTRACTOR of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

3.3 Design.

CONTRACTOR shall prepare, for approval by Owner, Construction Documents, consisting of drawings, Plans, Specifications and other documents as required for the permitting and construction of the entire Project.

- 3.3.1.** The Construction Documents must meet the following requirements:

- 3.3.1.1** CONTRACTOR shall provide drawings and Plans, which set forth the architectural, structural, mechanical and electrical construction requirements for the Project.

3.3.1.2 CONTRACTOR shall provide Owner with catalog cuts of all items not specified in the RFP.

3.3.1.3 CONTRACTOR shall provide Owner with in-progress Construction Documents as needed. At the completion of construction, the CONTRACTOR shall supply record drawings, and a copy of the final Construction Documents in pdf format.

3.3.1.4 CONTRACTOR shall file all documents required for the approval of the Project with the City of Ashland Building Department.

3.3.2 All specified items shall be standard, cataloged, manufactured items or “off the shelf” items.

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

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

3.4 Construction Administration Services

3.4.1 GENERAL OFFICE CONSTRUCTION ADMINISTRATION.

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

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

and tests, as well as copies of all correspondence from the testing and inspection agencies, to the Owner.

- 3.4.3 SUPPLEMENTAL DOCUMENTS.** CONTRACTOR shall prepare, reproduce and distribute supplemental drawings, Plans and Specifications and shall issue interpretations in response to requests for clarification by Owner's Project Manager, or sub-contractors or as required by construction exigencies. CONTRACTOR shall be responsible for notifying the appropriate parties of Owner's instructions and of changed requirements and schedule revisions.
- 3.4.4 CHANGE REQUESTS/CHANGE ORDERS.** With respect to Change Requests and Change Orders requested or approved by the Owner, CONTRACTOR shall prepare, reproduce and distribute drawings, Plans and Specifications to describe Work to be added, deleted or modified; review proposals from sub-contractor(s) for reasonableness of quantities and costs of labor and materials; review and recommend changes in time for substantial completion; coordinate communications, approvals and notifications. CONTRACTOR shall keep a log of all change requests on a spreadsheet program and copy the Owner bi-weekly.
- 3.4.5 PAYMENT REVIEW.** CONTRACTOR shall evaluate and certify applications for payment and shall maintain detailed records supporting approved applications for payment.
- 3.4.6 PROJECT CLOSEOUT.** CONTRACTOR shall verify that Work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended. CONTRACTOR shall coordinate a detailed inspection with the OPM to ensure that the Work conforms to the Contract Documents; to verify the list submitted by the sub-contractor(s) of items to be completed or corrected; to determine the amounts to be withheld until Final Completion; to issue Certificates of Substantial Completion; to perform inspection(s) upon notice by the sub-contractor(s) that the Work is ready for final inspection and acceptance; to notify Owner and sub-contractor(s) of deficiencies found in follow-up inspection(s), if any; to perform final inspection with the Owner's representative to verify Final Completion of the Work; to receive and transmit warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying the Owner against liens; and to issue Final Certificate(s) for Payment.
- 3.4.7 RECORD DRAWINGS.** CONTRACTOR shall provide Design Services consisting of: preparation of record drawings in print and in pdf format, based on information furnished by the sub-contractor(s) including significant changes in the Work made during construction including modifying the floor plan layouts including partitions, furniture and equipment; transmittal of record drawings and general data, appropriately identified, to the Owner and others as directed.

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

3.5 Construction Services/Construction Management Services.

- 3.5.1** CONTRACTOR shall have complete control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programs in connection with the Work on the Project, so that, upon completion of the Work the Project shall be structurally sound and shall be a complete, fully-functioning facility suitable for the purposes for which it is intended. These roles are solely CONTRACTOR's responsibility under the Contract. CONTRACTOR shall be fully responsible for maintaining construction schedules and for any failure to carry out the Work in accordance with the Contract Documents. CONTRACTOR shall be deemed to have complete control over or charge of acts or omissions of all CONTRACTOR employees, agents, Design Professionals, and construction managers, as well as subcontractors, or their agents or employees, or of any other persons performing portions of the Work.
- 3.5.2** CONTRACTOR's responsibility to provide the Design Services and Construction Work under the Contract commences with the execution of this Agreement and terminates upon CONTRACTOR's satisfaction of all obligations set forth in the Contract including those enumerated at **Section K** of the SOU General Conditions.
- 3.5.3** CONTRACTOR shall provide, supervise and administer all Construction Work of the Contract as set forth in this Agreement and in the SOU General Conditions, unless otherwise provided in the Contract.
- 3.5.4** CONTRACTOR's duties, responsibilities and limitations of authority shall not be modified or extended without the express written agreement of the Parties.
- 3.5.5** Except as may otherwise be provided in the Contract Documents or when direct communications have otherwise been specifically authorized, Owner shall conduct all communications concerning the Design Services and Construction Work through the CPM.
- 3.5.6** Subject to the right to suspend and terminate as provided in **Section J** of the SOU General Conditions, in no event shall the existence of any claim, dispute or question constitute a justification for either party to suspend or terminate the progress of the Work, and both parties, in such event, shall continue to prosecute the Work and perform under the Contract diligently,

and shall resolve the claim, dispute or question either by agreement or mediation or other lawful means.

3.5.7 At its own expense, CONTRACTOR shall correct Construction Work which does not conform to the Construction Documents.

3.5.8 CONTRACTOR warrants to Owner that materials and equipment incorporated in the Construction Work will be new unless otherwise specified, and that the Construction Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. CONTRACTOR shall correct at its own expense work not conforming to these requirements in accordance with the terms of the Contract Documents.

3.5.9 CONTRACTOR shall pay all sales, consumer, use and similar taxes and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Construction Work which are either customarily secured or are legally required.

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

4. RELATIONSHIP BETWEEN AND ROLES OF THE PARTIES

4.1 Owner Responsibilities.

4.1.1 Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project. Owner or such authorized representative shall examine documents submitted by CONTRACTOR and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the Work. Owner shall render approval of formal submittals within ten (10) calendar days after receipt of submittals from CONTRACTOR.

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

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

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

4.1.5 Owner shall communicate with the Design Professionals only through CONTRACTOR's Representative except in matters of public safety.

4.2 Independent Contractor. The CONTRACTOR is an independent Contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.

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

4.3.1 _____ shall be the CONTRACTOR's Principal-in-Charge.

4.3.2 _____ shall be the CPM and shall participate in all meetings throughout the Project term.

4.3.3 _____ shall be the CONTRACTOR's Design Professional that will provide all Design Services provided for in the Contract.

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

4.4 Design Builder's Consultants/Subcontractors. The CONTRACTOR shall be assisted by the consultants and/or subcontractors set forth in **Exhibit 3** hereto. The Parties acknowledge and agree that the Consultants have been reviewed and approved by the Owner, prior to the execution of this Agreement.

4.5 Replacement of CONTRACTOR's Project Team. If the CONTRACTOR intends to substitute Key Personnel, Consultants, or Subcontractors, a request must be given to Owner at least 10 days prior to the intended time of substitution. When Owner has approved replacements, the CONTRACTOR shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the Project concurrently, if feasible. Once a replacement for any Key Personnel, Consultants or Sub-contractors is authorized, further replacement shall not occur without the written permission of Owner.

5. COMPENSATION OF CONTRACTOR

Owner shall pay CONTRACTOR the Contract Price stated in Section 7 of this Agreement for all Design Services and Construction Work according to the provisions of **Section E** "Payments" of the SOU General Conditions on the dates listed below:

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

5.2 Construction Work. On the fifth (5th) of each month following commencement of Construction Work, the CONTRACTOR shall submit its application for payment to Owner in compliance with the terms and conditions of Section E of the General

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

6. TERMINATION

- 6.1 Parties Right to Terminate for Convenience.** The Contract may be terminated by written mutual consent of the parties.
- 6.2 Owner's Right to Terminate for Convenience.** Owner may, in its sole discretion, terminate the Contract by written notice to CONTRACTOR specifying the termination date of the Contract. Should the Owner terminate the Contract for convenience by providing 15 days advance written notice thereof to CONTRACTOR, Owner shall pay to CONTRACTOR that sum equal to the percentage of the Work that is completed and accepted by Owner.
- 6.3 Owner's Right to Terminate for Cause.** Owner may terminate the Contract, in whole or in part, immediately upon notice to CONTRACTOR, or such later date as Owner may establish in such notice, upon the occurrence of any of the following events:
- 6.3.1** Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for CONTRACTOR's services;
 - 6.3.2** Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the services under the Contract are prohibited or Owner is prohibited from paying for such services from the planned funding source;
 - 6.3.3** CONTRACTOR no longer holds a license or certificate that is required to perform the services;
 - 6.3.4** CONTRACTOR commits any material breach or default of any covenant, warranty, obligation or agreement under the Contract, fails to perform the Design Services or Construction Work under the Contract within the time specified herein or any extension thereof, or so fails to perform as to endanger CONTRACTOR's performance under the Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.
- 6.4 Cessation of Work.** Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, CONTRACTOR shall immediately cease all activities related to the Contract.
- 6.5 CONTRACTOR's Right to Terminate for Cause.**
- 6.5.1** CONTRACTOR may terminate the Contract if Owner fails to pay CONTRACTOR pursuant to the terms of the Contract, provided that Owner

does not cure its failure to make payment to CONTRACTOR within 15 calendar days after receiving written notice from CONTRACTOR of such failure to make payment.

- 6.5.2** CONTRACTOR may terminate the Contract, for reasons other than non-payment, if Owner commits any other material breach or default of the Contract, and fails to cure such breach or default within 30 calendar days after delivery of CONTRACTOR's notice, or such longer period as CONTRACTOR may specify in such notice.

7. CONTRACT PRICE

The "Contract Price," namely the total fixed cost of the Project for both Design Services and Construction Work payable under the Contract, unless increased or decreased by the price of approved change orders, is **\$XX,XXX**, as established by the CONTRACTOR in its Proposal, and includes the entire cost of all labor, materials, tools, equipment, Consultants' fees, transportation, components and systems, allowances, bonds and insurance premiums, filing and review fees, incidentals, contingencies, and CONTRACTOR'S overhead and profit.

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

9. RESERVED.

- 10. INSURANCE PROVISIONS.** During the term of this Agreement, Design/Builder shall maintain in full force, at its own expense, from companies licensed to do business in Oregon, each insurance coverage required by **Section G.3** of the SOU General Conditions, except as modified below:

10.1 Professional Liability/Errors & Omissions. Design/Builder shall provide the Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its drawings and project manual, and all related work products of the Design/Builder. 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.

11. GENERAL SUBCONTRACTING REQUIREMENTS.

11.1 CONTRACTOR's Obligations under Subcontracts.

- 11.11 No use of a Subcontractor or supplier shall relieve the CONTRACTOR of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CONTRACTOR shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CONTRACTOR shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CONTRACTOR and any such Subcontractor or supplier.
- 11.1.2 The CONTRACTOR shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the SOU General Conditions, fully effective as applied to Subcontractors. CONTRACTOR shall indemnify Owner for any additional cost based on a subcontractor claim which results from the failure of CONTRACTOR to incorporate the provisions of this Contract in each subcontract. The CONTRACTOR shall provide all necessary Plans, Specifications, and instructions to its suppliers and Subcontractors to enable them to properly perform their work.
- 11.1.3 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner and the CONTRACTOR shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Subcontractors.

12. MISCELLANEOUS LABOR.

12.1 The CONTRACTOR may provide normal layout, clean up, and other "pick-up" work required to complete the Project with its own forces, without the necessity of subcontracting.

13. ACCOUNTING; AUDIT ACCESS. The CONTRACTOR shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under the Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including the SOU auditors, shall be afforded reasonable and regular access to the CONTRACTOR's records, books, correspondence, instructions, drawings, Plans, Specifications, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the CONTRACTOR shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Agreement closeout. The CONTRACTOR shall cooperate fully with Owner in the performance of such audits.

14. CONTRACT TIME

- 14.1 Date of Commencement.** The Design Services work shall commence within five days of CONTRACTOR's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing. This Date shall be entered at **the Introduction of** this Agreement.
- 14.2 Substantial Completion.** Substantial Completion for the entire Construction Work shall be achieved no later than *(insert date)* ~~() calendar days after the Date of Commencement ("Scheduled Substantial Completion Date")~~.
- 14.3 Interim Substantial Completion.** Interim Substantial Completion of identified portions of the Construction Work shall be completed pursuant to **Section H** of the SOU General Conditions.
- 14.4 Final Completion of the Construction Work.** Final Completion of the Construction Work, or identified portions of the Construction Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this **Section 16** ("Contract Times") shall be subject to adjustment in accordance with the SOU General Conditions.

15. INDEMNITY

- A. Claims for Other Than Professional Liability.** Contractor shall indemnify, hold harmless and defend the Owner and its colleges and universities and any public agencies for which Design Services and Construction Work are performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of, or relating to the activities of the Contractor or the Contractor's Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- B. Claims for Professional Liability.** Contractor shall save, defend, indemnify and hold harmless the Owner and its colleges and universities and any public agencies for which Design Services are to be performed under this Agreement as supplemented or amended, and their officers, agents, employees and members from and against all claims, suits or actions, losses, damages, liabilities, costs and expenses of whatsoever nature resulting from, arising out of or relating to the professional negligent acts, errors or omissions of Contractor or its Consultants, partners, joint venturers, subcontractors, officers, agents or employees acting under or pursuant to this Agreement or any supplement or amendment hereto.
- C. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Contractor, neither the Contractor nor any attorney engaged by the Contractor 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 SOU General Counsel. The Owner may, at anytime at its election assume its own defense and settlement in the event that it determines that the Contractor is prohibited from defending the Owner, that Contractor is not adequately defending the Owner's interests, or that an important governmental

principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Contractor if the Owner elects to assume its own defense.

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

16. LIMITATION OF LIABILITIES

Except for any liability of the Contractor arising under or related to the Contractor's failure to perform according to the standard of care or any other liability arising under or related to the Contractor's representations and warranties under **Section 17** 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.

17. CONTRACTOR'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

- A. Standard of Care.** By execution of this Agreement, the Contractor agrees to perform the Design Services in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions.
- B. Performance Requirements.** By execution of this Agreement, the Contractor specifically agrees to perform the Design Services in accordance with the following requirements:
1. All Plans, drawings, Specifications, and other documents prepared by the Contractor shall accurately reflect, incorporate and comply with all applicable 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 Contractor);
 2. All Plans, drawings, Specifications, and other documents prepared by the Contractor pursuant to this Agreement shall accurately reflect existing conditions for the scope of the Design 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 Contractor shall be responsible for any negligent inconsistencies or omissions in the Plans, drawings, Specifications, and other documents. While Contractor 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 Contractor throughout the period of performance under this Agreement to use due care and perform with professional competence. Contractor will, at no additional cost to Owner, correct any and all errors and omissions in the Plans, drawings, Specifications, and other documents prepared by Contractor. Contractor further agrees to render assistance to Owner in resolving other problems relating to the design of, or specified materials used in, the Project at no additional cost;

5. 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 Contractor of any responsibility for complying with the standard of care set forth herein. The Contractor is responsible for all Design 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 Design 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. Contractor's Representations and Warranties. Contractor represents and warrants to Owner that:

1. Contractor 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 Contractor enforceable in accordance with its terms;
3. Contractor shall, at all times during the term of this Agreement be duly licensed to perform the Design Services, and if there is no licensing requirement for the profession or services, be duly qualified and competent. Contractor must also be registered with the Oregon Construction Contractors Board and have on file with the Construction Contractors Board the required Public Works Bond.
4. The Contractor is an experienced Contractor firm having the skill, legal capacity, and professional ability necessary to perform all the Design Services required under this Agreement and to design or administer a project having this scope and complexity;
5. The Contractor has the capabilities and resources necessary to perform the obligations of this Agreement;
6. The Contractor 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.

18. COMPLIANCE WITH APPLICABLE LAW

Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Design Services and Construction Work to be provided under this Agreement. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Contractor also shall comply with the Americans with Disabilities Act (current edition), and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of this Agreement. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor labor or materials for the performance of the Design Services and Construction Work 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 Contractor 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 Contractor or Contractor's surety from obligation with respect to any unpaid claims.

19. 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 Contractor that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County; 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 Southern Oregon University of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. **CONTRACTOR, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

20. ACCESS TO RECORDS

For not less than six (6) years after the termination or full performance of this Agreement, the Owner and their duly authorized representatives shall have access to the books, documents, papers, and records of the Contractor 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, Contractor shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The Contractor will provide full access to such documents in preparation for and during any such litigation.

21. 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.

22. 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.

23. 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.

24. 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 Contractor 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 Contractor and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

Contractor: _____

Telephone: _____

Address: _____

Owner: _____, **Project Manger**

Telephone:

Address:

25. CONFIDENTIALITY.

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

26. CONFLICT OF INTEREST.

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

27. 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. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

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

CONTRACTOR

SOUTHERN OREGON UNIVERSITY

By _____

By _____

Title _____

Title _____

Date _____

Date _____

Federal I.D. #: _____

Approved for Legal Sufficiency

SOU General Counsel

Date

SAMPLE

TABLE OF EXHIBITS

EXHIBITS

- Exhibit 1 RFP 2023-XX (including Attachments A through G)
- Exhibit 2 Contractor Proposal
- Exhibit 3 Sub-Consultant/Subcontractor Listing
- Exhibit 4 SOU Standard General Conditions

SAMPLE