

Southwestern Oregon Community College

REQUEST FOR PROPOSAL FOR ENGINEERING AND ARCHITECTURAL SERVICES

COLEDO & SUMNER HALL RENOVATIONS

CONTRACT ADMINISTRATOR:

Southwestern Oregon Community College

Jeffrey J. Whitey

Project Manager

jwhitey@socc.edu

SUBMITTAL LOCATION:

Southwestern Oregon Community College Administrative Services

Attn: Jeffrey J. Whitey

1988 Newmark Avenue

Coos Bay, OR 97420

jwhitey@socc.edu

Southwestern Oregon Community College (“College”) is seeking proposals from firms for the architectural and engineering services for **Coaledo & Sumner Hall Renovations** (the “Project”), located at 1988 Newmark Avenue, Coos Bay, OR 97420. The college will transform these two academic buildings from traditional, lecture-centric multi-classroom buildings into more flexible learning spaces for five Career Technical Education (CTE) programs. In this space, students will be better able to collaborate and will have sufficient space to use equipment and engage in practical elements of their programs. In 2020-21, the college received a grant from the state of Oregon matched by a U.S. Economic Development Administration (EDA) grant for a total of \$5.5 million in funding for the Project. The intent of this RFP is for the consultant to provide design services for the renovations.

Project Description:

Coaledo & Sumner Halls are located at 1988 Newmark Avenue, Coos Bay, OR 97420.

Built in 1965, Coaledo Hall holds original science labs and traditional classrooms. With this Project, the college will renovate the 9,800 sq. ft. building for the Forestry/Natural Resources and Computer Science/Cyber Security Programs to create flexible classroom learning, student collaboration spaces and faculty offices. In 2018, the college did seismic upgrades on Coaledo. This included installation of concrete sheer walls and footings, metal and wood beam drag ties, and new stronger beam brackets. The college also installed a new rooftop fan system.

Sumner Hall was built in 1982. The college partially remodeled a section of the building in the early 1990’s for a nursing lab. With this Project, the college will renovate the 8,440 sq. ft. building to create modern classrooms and labs for Dental Assisting, Fire Science and Criminal Justice programs.

Pre- Design/Schematic Design would begin immediately upon award and approval of the resulting design contract. Construction is anticipated to start in October of 2022 with the Project completion expected by February 2023.

Reservations: The College reserves the right to add or subtract from the list of required services outlined in this RFP. The College reserves the right to seek clarifications of each Proposal. The College reserves the right to negotiate final contracts in the best interest of the College. The College reserves the right to reject any or all Proposals and reserves the right to cancel this RFP at any time if doing so would be in the public interest, as determined by the College in its sole and absolute discretion.

The total overall estimated Architect/Engineer services budget for this Project are estimated not to exceed **\$400,000.00**.

Attached please find the Project RFP and a sample contract that is subject to change prior to signing by the winning Proposer. The Owner will serve as the contracting agency for the Project.

Submission: Respondents shall submit their proposal to:

Jeffrey J. Whitey, Project Manager
Southwestern Oregon Community College Administrative Services
1988 Newmark Avenue
Coos Bay, OR 97420
jwhitey@socc.edu

Proposals must be received no later than **4 p.m. on Wednesday March 16, 2022.**

All proposals that are not time-stamped by the deadline will be considered late and will be returned to the proposer unopened.

LEGAL PUBLICATION
SOUTHWESTERN OREGON COMMUNITY COLLEGE
1988 Newmark Avenue
Coos Bay, OR 97420

Southwestern Oregon Community College (“College”) is seeking proposals from firms for the architectural and engineering services for **Coaledo & Sumner Hall Renovations** (the “Project”), located at 1988 Newmark Avenue, Coos Bay, OR 97420.

In 2020-21, the College applied for and received an Economic Development Administration (“EDA”) Grant for the Project. The intent of this RFP is for the consultant to provide design services for the renovations.

Proposals and a copy of the RFP may be obtained from and filed with the College’s Project Manager, **Jeffrey J. Whitey** at Southwestern Oregon Community College Administrative Services, 1988 Newmark Avenue, Coos Bay, OR 97420 or via email at jwhitey@socc.edu. The RFP, questions and addenda are also available on OregonBuys and the College’s website [Bids and Requests for Proposals - Main View | Procurement | Administrative Services | Portal \(socc.edu\)](#).

Minority and women-owned businesses are encouraged to submit a Proposal. Proof of Oregon licensing and adequate professional liability insurance is required for those who will work on the Project. The College reserves the right to reject any Proposal not in compliance with any prescribed public bidding procedure or requirement, and may reject any and all Proposals for good cause upon the College’s finding that it is in the public interest to do so. No Proposal will be received or considered by the College unless the Proposal contains a statement as to whether the Consultant is a resident Consultant as defined in ORS 279A.120. The selection process will be the Formal Selection Procedure under OAR 137-048-0220 and the College’s applicable Board Policies.

All Proposers responding to the RFP will do so solely at their own expense, and the College is not responsible for any Proposer expenses associated with the RFP.

Mandatory pre-proposal walk-throughs will be held **11:00AM Friday March 4, 2022** at **Coaledo Hall 1988 Newmark Avenue, Coos Bay, OR 97420**. Please contact Administrative Services at crichards@socc.edu to schedule a time slot in advance. Respondents shall submit their proposal to **Jeffrey J. Whitey, Project Manager, Southwestern Oregon Community College Administrative Services, 1988 Newmark Avenue, Coos Bay, OR 97420** or via email to jwhitey@socc.edu.

The deadline for submitting a Proposal or response to the RFP is **Wednesday March 16, 2022 at 4 p.m.** **Proposals received after the deadline will not be considered.**

Published on: _____, 202_ and _____, 202_
Published in _____

SOUTHWESTERN OREGON COMMUNITY COLLEGE

Jeffrey J. Whitey, Project Manager

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REQUEST FOR PROPOSAL

Section 1. GENERAL INFORMATION

Southwestern Oregon Community College (“College”) is seeking proposals from firms for the architectural and engineering services for **Coaledo & Sumner Hall Renovations** (the “Project”), located at 1988 Newmark Avenue, Coos Bay, OR 97420. The selection process will be the Formal Selection Procedure under OAR 137-048-0220. The proposals will be received per the following:

1 PROPOSALS DUE:

Deadline: 4:00 PM – Wednesday March 16, 2022
To: Jeffrey J. Whitey, Project Manager
Southwestern Oregon Community College Administrative Services
1988 Newmark Avenue
Coos Bay, OR 97420
Or electronically: jwhitey@socc.edu

2 PRE-PROPOSAL CONFERENCE: Mandatory pre-proposal walk-throughs will be held at **11:00AM Friday March 4, 2022 at Coaledo Hall 1988 Newmark Avenue, Coos Bay, OR 97420**. Please contact **Carol Richards** at **crichards@socc.edu** to schedule a time slot in advance.

3 MINIMUM PRE-QUALIFICATIONS FOR ARCHITECT/ENGINEER FIRMS: Certain minimum qualifications have been established in order for the proposers to be considered for the contracts described in the RFP.

3.1 Proposers shall have five or more years continuous experience as a current Architect or Engineer firm that has completed at least two other projects of comparable size, cost and complexity during that time.

3.2 Proposers shall have key personnel available for the time and magnitude of the project throughout its duration. Key personnel assigned to the project shall maintain their assigned position throughout the project unless requested to be removed by the Owner or unless otherwise approved by the Owner.

3.3 Due to the fast-paced timeline associated with this RFP, proposers may self-certify that they meet these requirements by filling out the enclosed prequalification statement. Prequalification is mandatory. Proposals that do not contain the signed Prequalification Statement will be deemed nonresponsive to this RFP and will be disqualified from further consideration.

4 RFP METHOD: The Owner will use the Request for Proposal (RFP) competitive procurement method. The process has several major components, including but not limited to:

- 1) RFP Notice;
- 2) Walk-through of the Site;
- 3) Question / Answer Period;
- 4) Receipt of Proposal Response;
- 5) Objective Proposal Evaluation, scoring and short list;

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- 6) Reference Checks;
- 7) Interviews and scoring (at the option of the College);
- 8) Recommendation to the Board and Board Approval;
- 9) Contract Negotiation.

- 5 **EVALUATION FACTORS:** Architect/Engineers responding to this request will be evaluated objectively on several factors as set forth in the RFP, including but not limited to qualifications, prior experience, proposed cost control approach, proposed schedule, and overall project approach for the complete work.
- 6 **RFP CONTACT:** The primary contact person for this solicitation is **Jeffrey J. Whitey, Project Manager**. Between the period of time that the RFP is issued and the time when the Intent of Award is posted, please direct all contact regarding the solicitation and the Architect/Engineer process or the evaluation process for this project to this individual, unless specially re-directed by RFP Contact.
- 7 **RFP DOCUMENTS:** A copy of the RFP specifications and documents are on file and may be obtained for review at the Information of Record address below or on the College’s website or OregonBuys. Request may also be made by contacting the RFP Contact.
- 8 **INFORMATION OF RECORD:** The official source of information for this project until the Intent of Award is located on the College’s website and OregonBuys. Information can also be obtained from **Jeffrey J. Whitey, Project Manager, jwhitey@socc.edu**.
- 9 **INTERESTED PARTIES LIST:** As a courtesy, the Owner will provide copies of Addenda items (official changes/revisions/updates to the process or documentation) via email to Architect/Engineer firms who register on the Interested Parties List, but it is important for all Architect/Engineer firms to understand that it is their responsibility to check with the RFP Contact for regular updates. Please contact **Jeffrey J. Whitey** by email at **jwhitey@socc.edu**, to ensure your firm is on the Interested Parties List, if you have not already been informed that you are.
- 10 **OWNER’S RIGHT TO CANCEL PROCESS OR REJECT PROPOSALS:** The Owner may cancel a solicitation process, or reject any proposal in whole or in part when it is in the Owner’s best interest as determined by the Owner. This may include rejecting any proposal not in compliance with all prescribed public contracting procedures and requirements, and for good cause, rejection of all proposals upon a finding that it is in public interest to do so. If the Owner chooses to reject the proposal in part, it may in certain instances provide notice of any correction or modifications to prospective Architect/Engineer firms who originally submitted proposals, solicit supplemental information from them, and set an expedited deadline for their supplemental submissions.
- 11 **COMPENSATION:** Compensation will be based on a total “not-to-exceed” amount for services and reimbursable expenses, with “not-to-exceed” maximums for the following individual phases of the design: Pre-Design/ Schematic Design, Design Development, Construction Documents, Bidding, and Construction Administration services, including record documentation. The amount of compensation will be negotiated with the Apparent Successful Proposer.

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Section 2. OVERVIEW OF PROJECT

The Project requires that the successful proposer provide architectural and engineering services for the Coaledo & Sumner Hall Renovations and develop rehabilitation and mitigation strategies per ASCE Standard 41-17 and the 2014 Oregon Structural Specialty Code (“OSSC”). It is the wish of the College to rehabilitate the buildings to meet the rehabilitation objective of “Life Safety.”

All new construction will comply with Executive Order 12699, "Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction," which imposes requirements that federally-assisted facilities be designed and constructed in accordance with the most current local building codes determined by the awarding agency or by the Interagency Committee for Seismic Safety in Construction (ICSSC) and the most recent edition of the American National Standards Institute Standards A58, Minimum Design Loads for Buildings and Other Structures.

All new construction will be designed to comply with the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12101 et seq.), the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) and the Accessibility Guidelines for Buildings and Facilities regulations, as amended (36 C.F.R. part 1191), and will be responsible for conducting inspections to insure compliance with these requirements.

Will observe and comply with federal procurement rules, as set forth in 2 C.F.R. part 200, as applicable, for award of any contracts for architectural engineering, grant administration services, or construction financed with EDA investment assistance.

The following project components are intended to be an outline of the work to be performed; however, the list is not an all-inclusive list. It is anticipated that the selected Architect or Engineering firm will provide a comprehensive menu of planning, design and construction administration services throughout the lifespan of the project. The Scope of Services listed herein is provided to establish a general understanding of the project requirements. The actual scope of services will be finalized during fee/contract negotiations.

The College expects that representative(s) of the Engineering firm, partnership, or individual will develop and maintain a cooperative team approach with all other parties associated with the project throughout all phases of the work. The successful proposer will be required to produce complete construction documents in accordance with the project timeline.

1 PROJECT ASSESSMENT/ PRELIMINARY DESIGN PHASE - *Work may include but is not limited to the following:*

1.1 Meet with College Staff and Representatives, including but not limited to the College’s President, V.P. of Administrative Services, Instructional leadership, Director of Facilities and school site staff to review specific facility and program needs.

1.2 Meet with various College departments including but not limited to: Executive team, College Administrators, and Facilities.

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1.3 Investigate and review applicable federal (Economic Development Administration-EDA), state, local, and College standards, codes, and regulations pertaining to the proposed Project and identify design issues relating to functional opportunities, needs, directives and constraints imposed thereby. Such investigations shall include, but not be limited to, energy, historic, and others who may have jurisdiction over or impact on the projects.

1.4 Thoroughly research and document existing conditions both in the facilities and on the site at a particular school.

1.5 Work with College and general Contractor to arrive at an “Agreed-upon” prioritized Scope of Work.

1.6 Submit the Project Assessment package in a report form that will include schematic level drawings and outline specifications.

1.7 Reconcile each Construction Cost Estimate with College’s Construction Cost Budget.

2 SCHEMATIC DESIGN DEVELOPMENT THROUGH CONSTRUCTION DOCUMENTS PHASE - *Work may include but is not limited to the following:*

2.1 Provide life-cycle cost analysis and other pertinent information as required for the Owner to make critical decisions on major building systems.

2.2 Facilitate a collaborative process to gain design input and feedback from project stakeholders.

2.3 Prepare design phase documents (SD, DD, CD) for submittal and College review in accordance with the agreed upon schedule.

2.4 Work in close coordination with the general contractor and the College’s V.P. of Administrative Services to keep project within the agreed upon budget.

2.5 The CD design package submitted for permit shall be a fully coordinated and complete set of construction documents. The City of Coos Bay is the Authority Having Jurisdiction for this project.

2.6 Participate in review of contract documents with the College, Authority Having Jurisdiction, local Fire Marshal, and representatives of other State or Local agencies as needed.

2.7 Develop the Scope of Work for the College to initiate surveys and geotechnical work as required.

3 CONSTRUCTION PHASE - *Work may include but is not limited to the following:*

3.1 Participate in Construction Administration (CA), including weekly onsite walk-throughs of the projects during construction, review of submittals, in-person attendance at regular Owner- Engineer- Contractor (OAC) meetings, preparation and implementation of College approved Change Orders (with drawings if applicable/necessary), promptly respond to Requests For Information (RFIs), prompt and thorough review of contractor payment requests, and attend other construction related meetings as required.

3.2 Perform the project close-out tasks, which will include the preparation of punch lists, review of warranties and guarantees, and the review and approval of final contractor payments.

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- 4 POST CONSTRUCTION AND CLOSE OUT PHASE - *Work may include but is not limited to the following:*
 - 4.1 Facilitate an efficient and thorough punch list process.
 - 4.2 Assist as necessary for timely resolution to any warranty issues.
 - 4.3 Review Contractor supplied Operations and Maintenance (O&M) documentation.
 - 4.4 Submit to the College a “Record” set of documents. This will include incorporation of the Construction Contractor’s marked up documents showing changes made through the course of construction and submitting the same in editable “AutoCAD.dwg” as well as provide PDF versions of the final drawings, and provide specification documents in both Microsoft Word and PDF.
- 5 OTHER SERVICES - *Work may include but is not limited to the following:*
 - 5.1 Assist the College in coordination, research, report preparation, and other tasks required for project execution.
 - 5.2 As necessary, participate in community outreach events, representing the College and Project Team, as requested by the College.
 - 5.3 As necessary, present to the College’s Board of Education.
 - 5.4 Assist the College in communicating with its staff, community, and news media to enhance understanding and develop ongoing support for the projects.

Section 3. OVERVIEW OF SERVICES NEEDED

- 1 ARCHITECT/ENGINEER FUNCTION: The Architect/Engineer is responsible for providing design services for Coaledo & Sumner Hall renovations. The Architect/Engineer will advise the Owner and the Design Team in the completion of design process and perform all other services typical of an Architect/Engineer. The Architect/Engineer shall be skilled in developing schedules, surveys, design development, performing value engineering, analyzing alternative designs, costs and constructability issues, studying labor conditions, and coordinating and communicating these activities through the design phases to all members of the Project Team.
- 2 PRE-CONSTRUCTION PHASE: During the Pre-construction Phase, the Architect/Engineer shall be responsible for assessing the priority of projects, assisting with budgets and implementation with priority first being given to those with the highest safety or security concerns. Architect/Engineer shall identify and work with a Design Team to implement such recommendations by providing the Owner with the highest quality improvements or additions within the specified time frames and budget.
- 3 CONSTRUCTION PHASE: During the Construction Phase, the Architect/Engineer shall be responsible for engineering designs, project implementation and all other services typically provided by an architect/engineer. All other work will be competitively bid and awarded by the Architect/Engineer. The Architect/Engineer agrees to be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. The Architect/Engineer agrees to supervise any required subsurface explorations such as borings and soil tests to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others.

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The Architect/Engineer agrees to attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award. The Architect/Engineer agrees to review proof of bidder's qualifications and recommend approval or disapproval.

The **Southwestern Oregon Community College Board**, sitting as the local contract review board (“College Board”), will serve as the contracting agency for the project and has approved this procurement process.

Section 4. SCOPE OF WORK

The Architect/Engineer shall provide the services described in the sample contract document, as well as the following:

1 INTEGRATED APPROACH:

1.1 An integrated project team approach shall be required. This includes:

- Participating in design meetings to help establish project budgeting and best value considerations.
- Acting on behalf of the College in the design of the Project.
- Coordinating with College Personnel on the project scope, budgeting, and execution.
- Acting as the quality assurance/quality maintenance supervisor over the Project, including but not limited to advising the College throughout the construction phase, attending College Board of Education meetings on the Project, advising the College on Project methodologies or disputes, ensuring that the construction process is efficient, proper, in compliance with state, local and federal laws and that Contractor is abiding by the terms and conditions of the construction agreement with the College for the construction work to be performed on the Project.
- The Architect/Engineer, as selected, will not be able to provide construction services on behalf of the College but will oversee construction services. The Architect/Engineer shall, at all times, act in the best interest of the College.

2 PRECONSTRUCTION SERVICES:

2.1 The Design Team shall consist of any person(s) or entities hired to assist Architect/Engineer, including a contractor, its agents, employees and/or representatives, in implementing and constructing the projects identified by the Architect/Engineer.

2.2 Upon authorization to proceed, provide preliminary evaluation of the budget, program and other documents prepared by the Architect/Engineer and its consultants.

2.3 During the course of the design, consult with the Owner and the Design Team regarding design planning for rehabilitation work, selection of materials and systems, materials and labor availability, time requirements, costs, Alternative designs and materials, budgets and economics. Attend meetings with the Owner and Design Team to be held at the Architect/Engineer’s office, or at such other places as agreed to between the Owner and Design Team.

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- 2.4 Prepare scheduling, cost estimates, value-engineering recommendations, review Design Team’s documents for constructability, and provide different options for sequencing of the work.
- 2.5 Provide estimating and cost control services. Provide recommendations to the Owner for keeping costs within the project budget. Prepare estimates and estimate reconciliations at major design milestones. Develop a project budget and reporting system and provide monthly cost status reporting, including cash flow projections.
- 2.6 Implement a cost-loaded scheduling system for use during the preconstruction and construction phases.
- 2.7 Implement all long-lead procurement items and recommend and implement an early purchase phase project approach if warranted.
- 2.8 Public engagement efforts including but not limited to various public communications, electronic engagement, and leading focus groups;
- 2.9 The project will be built under the jurisdiction of the **City of Coos Building Department and Coos County Building Division**. The Architect/Engineer will submit for and obtain all required permits and retain copies for the Owner’s permanent files. All plan check and building permit fees and any required System Development Charges will be paid by the Owner. All other permit fees will be applied for and paid for by the general contractor.

3 CONSTRUCTION PHASE SERVICES:

The Architect/Engineer responsibilities include, but are not limited to, some or all of the following tasks:

- 3.1 Performing all architectural and engineering services for the projects identified in the pre-construction phase.
- 3.2 Conduct regular site progress meetings with the Owner and Design Team representatives, at least monthly. Promptly produce and distribute minutes of all such meetings.
- 3.3 Coordinate the work of subconsultants and vendors. Provide regular and on-going quality inspection, ensuring that the work complies with the contract documents and all applicable codes and regulations.
- 3.4 Report progress of the work and recommend such action as may be necessary to keep the project on schedule and within budget.
- 3.5 The Architect/Engineer will observe construction work to verify conformance with bid documents and quality control guidelines. The general contractor will further establish and maintain a Quality Control (QC) program for the construction portion of the Project.
- 3.6 The general contractor shall establish and implement Drug Testing and Safety Plans in accordance with State Law under 279C.505(2) but Architect/Engineer will oversee construction services and ensure contractor compliance with all laws.

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- 3.7 Provide training to the Owner’s operational and maintenance staff, as needed. Prepare Operations and Maintenance Manuals and As-Built Documentation on marked up copies of the contract documents including drawings and specifications, as defined in the contract documents.
- 3.8 Prior to completion of the one year warranty period conduct a review of the project with the Owner and the Design Team to identify any issues that are covered by the warranty and in need of correction, repair, or replacement.
- 3.9 Various other related services, as requested by Owner, to assist with the implementation of projects recommended by Architect/Engineer during the pre-construction of the Project.

4 COORDINATION OF CONTRACTS:

The above is considered as a general overview of the scope of services expected from the Architect/Engineer, but is not intended to relieve the Architect/Engineer of professional responsibility to perform services in all areas necessary for the Owner to have completed, fully operational and renovated **Coaledo & Sumner Halls**, exceeding current conditions, on schedule and within budget, at the end of the contract term.

Section 5. LEGAL INFORMATION

- 1 CONTRACT FORMAT: The Owner will negotiate with the Architect/Engineer using a standard contract. The contract terms which may be negotiated include the details of contract performance, timing assignments of risk, fee and costs, and other matters that affect cost or quality. A sample contract is attached to this RFP.
- 2 COMPLIANCE WITH LAW: All Architect/Engineer firms must be “Equal Opportunity Employers” and comply with the appropriate provisions of state and federal law. All firms shall be required to comply with ORS 656.017 regarding Worker’s Compensation. The project requires that a contractor or subconsultant to be licensed under ORS 468A.720 for asbestos abatement. Architect/Engineer need not be licensed under ORS 468A.720 for asbestos abatement but shall confirm that any contractors or subconsultants be licensed under ORS 468A.720 for asbestos abatement, as required. No proposal will be received or considered by the Owner unless the proposal contains a statement as to whether the firm is a resident Proposer as defined in ORS 279A.120.

All First-Tier subcontractor disclosures pursuant to ORS 279C.370 must be submitted to the College no later than **5 p.m. on Thursday, March 17 2022.**

THE COLLEGE MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE.

- 3 PREVAILING WAGE RATES: Prevailing wage rates for public works contracts in Oregon are required for any contractor or subcontractor working on the construction phase of the Project.

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- 4 **OWNERSHIP OF DOCUMENTS:** All documents, reports, proposal submittals, working papers or other material submitted to the Owner from the Architect/Engineer firm shall become the sole and exclusive property of the Owner, the public domain (except for materials deemed to be excluded as trade secrets), and not the property of the Architect/Engineer firm. The Architect/Engineer firm shall not copyright, or cause to be copyrighted, any portion of any said documents submitted to the Owner as a result of this solicitation.
- 5 **PUBLIC RECORDS:** Notwithstanding any requirements to make Proposals open to public inspection, the Owner may withhold information exempt or conditionally exempt from disclosure under Oregon Public Records law on the following conditions: 1) If the proposer reasonably believes there are any grounds for exempting information for disclosure under such law, they shall mark the information accordingly; 2) Many exemptions are conditioned upon official or judicial determinations. It shall be the Proposer's obligation to establish that the information is exempt from disclosure; 3) The proposer shall defend, indemnify, and hold the Owner harmless from any claim or administrative appeal, including costs, expenses and any attorney's fees, related to a request to disclose information which Proposer has labeled as confidential. The Owner will not keep confidential information about cost, price, and delivery, which may be open to public inspection. Generally, any resulting contract is a public record. The Owner shall be entitled to use information which the Proposer has labeled as confidential, in whole or in part, for proposal evaluation and may make copies for this purpose. Any restrictions related to the information marked confidential do not apply, if the Owner has the right to or has obtained the information from another source.
- 6 **NO GUARANTEE OF CONTRACT:** This request for Architect/Engineer does not commit the Owner to award a contract and to pay any cost incurred by companies responding to the proposal. Any and all costs incurred by a prospective Architect/Engineer firm associated with the submission of a Proposal, interview, contract negotiation, and related expenses are solely the responsibility of that firm. The College is not responsible for any Proposer expenses associated with this RFP.
- 7 **MECHANICS LIENS OR STOP NOTICES:** The resultant contract shall at all times indemnify and hold the Owner harmless from all claims, losses, demands, damages, cost, expenses or liability costs for labor or materials in connection with repair, alteration or installation of structures, improvements, equipment or facilities, and from the cost of defending against such claims, including attorney's fees and costs.

Section 6. PROTEST PROCESS

- 1 **PROTEST OF PROCESS AND SOLICITATION:** A prospective Proposer may protest RFP terms and conditions, consultant selection or awards pursuant to OAR 137-048-0240. Unless otherwise specified in the invitation to propose, the protest shall be filed with the RFP Contact no later than 5 calendar days prior to the date proposals are due or 7 calendar days after the date of the selection notice.
 - 1.1 **PROPOSER'S WRITTEN PROTEST SHALL INCLUDE:**
 - A detailed statement of the legal and factual grounds for the protest;
 - A description of the resulting prejudice to the Proposer; and
 - A statement of the desired changes to the Contract terms and conditions, including any specifications.

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1.2 A PROPOSER SHALL MARK ITS PROTEST AS FOLLOWS:

- “Contract Provision Protest;” and
- RFP Document number (or other information as specified in the RFP document).

1.3 OWNER RESPONSE: The Owner is not required to consider a Proposer’s request for change or protest after the deadline established for submitting such request or protest. The Owner shall provide notice to the applicable Person if it entirely rejects a project. If the Owner agrees with the Proposer’s request or protest, in whole or in part, the Owner shall resolve the protest according to OAR 137-048-0240(3).

1.4 EXTENSION OF CLOSING: If the Owner receives a Written request for change or protest from a Proposer in accordance with this rule, the Owner may extend the RFP due date if the Owner determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the RFP Document.

2 PROTEST OF INTENT TO AWARD: Anyone responding to the Request for Proposal who is not recommended for award by the evaluation committee may protest the recommendation, which is also the Intent to Award, to the College Board, sitting as the local contract review board (“**College Board**”).

2.1 FORMAT: Any protest must be made in writing, be received before the contract is awarded by the Owner, clearly state the grounds for the protest, and indicate what condition(s) resulted in the proposal not being recommended for award. Any protest which does not comply with the applicable procedures may be rejected.

2.2 TIMING: Any protest must be received by the Owner no later than seven (7) calendar days after notice of the Owner’s decision was mailed. Upon receipt of the protest, the Owner shall notify the proposer recommended for award of the protest and the evaluation committee. The Proposer and the evaluation committee shall have three (3) calendar days from the date the protest was filed to respond to the protest in writing, if they so desire.

2.3 OWNER RESPONSE: When a protest is filed, the Owner shall prepare written analysis of the protest, and make a recommendation to the **College Board** as to appropriate action to be taken.

2.4 THE GROUNDS FOR PROTEST ARE:

- The evaluation committee has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials.
- Different criteria were used to evaluate different proposals.
- The evaluation committee unfairly applied the evaluation criteria to a proposal.
- A member or members of the evaluation committee had a relationship with a proposer that represented a conflict of interest.
- The criteria used to evaluate the proposals did not pertain to the services or products requested.

- A member or members of the evaluation committee demonstrated bias toward a proposal or proposer.
- The Owner abused its direction in rejecting the protester’s proposal as nonresponsive.
- The evaluation of the proposals is otherwise in violation of any provisions of ORS 279A or ORS 279B of 279C.
- All higher ranked proposals are nonresponsive.

2.5 **REVIEW OF PROTEST CRITERIA AND DECISION:** The Owner shall present the issues orally or in writing at a public meeting. The appellant shall then have ten (10) minutes to specifically address the protest criteria, and the evaluations committee’s recommendation and the recommended proposer(s) shall have a total of ten (10) minutes to respond, divided between them as they wish.

If a protest is timely filed, the **College Board** shall consider the evaluation committees recommendation and the allegations of the protest before rendering a final decision and shall state the conclusions reached and reasons, either in writing or on record in a public meeting of the **College Board**. Any decision to overturn the recommendation shall be based on a finding that one of the criteria above occurred to the substantial prejudice of the appellant.

Section 7. RFP PROCESS

- 1 **RFP POSTED:** Public notice of the RFP will be published in appropriate publications. The selection process will be the Formal Selection Procedure under OAR 137-048-0220.
- 2 **PRE-PROPOSAL WALK-THROUGH:** Mandatory pre-proposal walk-throughs will be held between **11:00 am and 12:00 pm, Friday March 4, 2022** at **1988 Newmark Avenue, Coos Bay, OR 97420**. Please contact **Jeffrey J. Whitey** at **jwhitey@socc.edu** to schedule a time slot in advance. A representative from each Architect/Engineer firm is required to attend. The Pre-Proposal Walk-through will be the opportunity to discuss the project with the Owner and the Design Team. A written addendum will be issued no later than **4:00 pm PST, Friday March 11, 2022** to formalize any Owner responses to oral questions raised by the firms at these Walk-throughs.
- 3 **WRITTEN QUESTIONS AND ADDENDA:**
 - 3.1 Questions regarding the information contained in the RFP must be submitted to the RFP Contact no later than **4:00 PM PST, Tuesday March 8, 2022**. All questions must be **RECEIVED** by the specified date and time. No oral questions will be accepted other than at the Pre-proposal Conference. E-mail questions to the address below.
 - For technical questions / clarifications, or for questions regarding the RFP process:
Jeffrey J. Whitey, Project Manager
Southwestern Oregon Community College Administrative Services
jwhitey@socc.edu

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3.2 All questions received by the parties listed above that require clarification or modifications to the terms and conditions of the RFP will be answered by addenda to this RFP. Addenda will be emailed to those on the Interested Parties List no later than **4:00 PM PST, Friday March 11, 2022** and posted on the College's website. No information received in any manner different than as described herein will serve to change the RFP in any way, regardless of the source of the information. Any request for clarification, changes, or protest of anything contained in an addendum must be received by the date and time stated in the addendum, or they will not be considered. Anonymity of the source of the specific questions will be maintained in the written response.

4 **ADDENDA:** If in the Owner's opinion, additional information or interpretation is necessary; such information will be supplied in the form of an addendum. Addenda shall have the same binding effect as though contained in the main body of the RFP. Any oral instructions or information concerning the specifications or other information given out by the Owner or Design Team to prospective firms shall not bind the Owner. All addenda shall be issued by the RFP Contact in the same manner of posting as the original RFP document.

Southwestern Oregon Community College will respond in writing to all questions. All answers will be provided as a numbered questions and answer document, for example, RFP Q&A #1 and posted on OregonBuys and the College's website.

If it becomes necessary for Southwestern Oregon Community College to revise any part of this RFP, or to provide clarification or additional information after the documents are released, updates will be posted on OregonBuys and the College's website. Please check the web page frequently for updates.

It is the proposer's responsibility to check the College's website and OregonBuys frequently for any updates.

5 **PROTEST OF SOLICITATION PROCESS:** Protest of the specifications or contract terms and conditions pertaining to the RFP must be submitted in writing to the RFP Contact no less than seven (7) calendar days before the proposal opening. All responses will be made in the form of addendum and sent to all firms on the Interested Parties List.

6 **RFP PROPOSAL DUE AND OPENED:** Interested Architect/Engineer firms' proposals must be received no later **4 p.m. PST on Wednesday March 16, 2022**. Submittals shall be to:

Jeffrey J. Whitey, Project Manager
Southwestern Oregon Community College Administrative Services
1988 Newmark Avenue
Coos Bay, OR 97420
jwhitey@socc.edu

RFP's will be opened at the school College office by the RFP Contact. Since this process involves an RFP and not a straight Bid, the names of participants submitting proposals may be announced, but their cost proposals will not. Information is available and all proposals may be reviewed at the **Southwestern Oregon Community College Administrative Services** office located at **1988 Newmark Avenue, Coos Bay, OR 97420** by appointment only, once the Intent of Award is announced.

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- 7 **LATE SUBMISSIONS:** A proposal shall be considered late if received at any time after **4:00 PM PST, on Wednesday March 16, 2022.** Proposals received after the specified date and time will be rejected and returned unopened.

- 8 **INITIAL EVALUATION:** Proposals submitted in response to this solicitation will be reviewed and scored by the Evaluation Committee of at least three (3) members selected from the following staff/groups:
 - College Administrative Staff
 - College Board of Education
 - CTE Program Advisory Committee
 - College Foundation

- 9 **SHORTLIST:** The top three (3) finalists will be invited to an interview by the Committee. The Owner will provide the top three (3) finalists with written notice. A Proposer not included in the shortlist may protest. For information regarding the Protest process, see Section 6 of this RFP.

- 10 **REFERENCES:** References for the finalists will be checked by members of the Committee. Response information will be provided to all members of the Committee.

- 11 **INTERVIEWS:** Interviews are optional in the College’s sole and absolute discretion. Should interviews be held, the shortlisted firms will all be asked the same questions in regards to:
 - Project understanding
 - Project approach
 - Project innovation
 - Project communication philosophy
 - Understanding of the Architect/Engineer delivery methods

If elected by the College, interviews to be held at the Southwestern Oregon Community College Office, located at 1988 Newmark Avenue, Coos Bay, OR 97420. Dates available for interviews with the top finalists will be approximately Monday, March 21, 2022. All Architect/Engineer firms should ensure these dates are kept available for potential scheduling.

- 12 **INTERVIEW QUESTION SCORING:** Interview questions will be scored based on the following criteria:

90-100% - The candidate demonstrates a complete understanding of the question subject matter and significantly exceeds response expectations.

70-89% - The candidate demonstrates a strong understanding of the question subject matter and meets or exceeds response expectations.

40-69% - The candidate demonstrates a general understanding of the question subject matter, but answers may contain some weaknesses and deficiencies.

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20-39% - The candidate demonstrates a vague understanding of the question subject matter and communicates a below average response.

0-19% - The candidate demonstrates an insufficient understanding of the question subject matter.

- 13 **FINAL EVALUATION:** The results of the proposal evaluations, interviews and reference checks shall be used to determine a final ranking for the finalists. The College will request that finalists submit a pricing proposal pursuant to the requirements of ORS 279C.110(5)(c)(A) and (B). During the construction phase of RFP considerations, the College shall not assign more than 15% of the overall weight of the evaluation criteria to any one Architect/Engineer's price proposal.
- 14 **SELECTION:** The evaluation committee will provide a recommendation to the **College Board** for their consideration and approval. This is currently scheduled for **Monday March 28, 2022**. For information regarding the Protest of Intent of Award, refer to Section 6 of this RFP.
- 15 **NON-SELECTED PROPOSERS:** If proposers that are not-selected wish to follow up with the Owner, they may request a meeting within seven (7) days of announcement of Notice of Intent to Award.
- 16 **CONTRACT NEGOTIATIONS:** Upon **College Board** approval of the Evaluation Committee's recommendation, the Owner will proceed to negotiate a contract with the approved Architect/Engineer firm. If negotiations are not successful, the Owner may break off negotiations and begin negotiations with the number two ranked Architect/Engineer firm, and so forth until a contract is negotiated. The **College Board** must approve and make final award of Contract.
- 17 **ARCHITECT/ENGINEER WITHDRAWAL FROM PROCESS:** Once submitted, any firm proposing may withdraw the proposal at any time prior to the day of opening. However, all proposals shall be irrevocable for a period of sixty (60) days from the day of the opening.

Section 8. RFP SCHEDULE

The milestones for the selection process are defined below. **The dates are approximate and SUBJECT TO CHANGE.**

Activity	Date
1. Legal Advertisements/Request for proposals announcement	Thursday February 17, 2022
2. Pre-proposal conference/Mandatory Site Visit	11:00 AM to 12:00 PM Thursday March 4, 2022 – contact 541-888-7206 to schedule
3. Last day to submit questions for clarification	Tuesday March 8, 2022 - Time 4 PM
4. Addendum issued/Owner’s written response to questions	by Friday March 11, 2022 - Time 4 PM
5. Last day to submit proposals	Wednesday March 16, 2022 - Time 4 PM
6. Evaluation Committee meets	March 17 to March 18, 2022
7. Evaluation Committee interviews min. top three proposers (at the College’s option)	Monday March 21, 2022
8. Notice of Intent to Award	Wednesday March 23, 2022
9. Award Contract	Monday March 28, 2022
10. College finalized contract with successful proposer	April 2022
11. Construction Completion Deadline	February 2023

Section 9. EVALUATION CRITERIA

Proposals will be evaluated on the basis of the following areas and points assigned:

<u>Evaluation Criteria</u>	<u>Maximum Possible Points</u>
Cover Letter	5 points
Firm Experience	25 points
Architect/Engineer Related Experience	15 points
Key Personnel Experience	5 points
Overall Project Understanding / Approach	20 points
Scheduling Approach	5 points
Miscellaneous	15 points
References	10 points
Maximum Possible Points	100 points

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If not already included elsewhere above, **miscellaneous allocations** may consider qualifications under OAR 137-048-0220(4)(B)(i-xv), including but not limited to: a Proposer’s proven cost control, availability and capability to perform the Project; the amount and type of resources, number of experienced staff persons Proposer has committed to perform to the Project; the current projected workloads of staff; Proposer’s resources; the portion of time Proposer estimates it would spend on the Project; Proposer’s performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations; price and cost data from previous projects, costs controls and contract administration; status and qualified of any required license or certifications; Proposer’s knowledge and understanding of the Project approaches to staging and scheduling and proposed solutions to any perceived design and constructability issues; results from interviews; design philosophy; whether Proposer owes a liquidated and delinquent debt to the State of Oregon; and any other criteria the College deems relevant to the Project.

Section 10. SUBMISSION REQUIREMENTS

- 1 **RESPONSE FORMAT:** The responses shall be organized in the manner and shall be presented in the same sequence as indicated below. Any deviation from the format may result in the Evaluation Committee being unable to locate specific information which may result in a loss of points.

Proposals shall be limited to twenty-five (25) 8-1/2 x 11 pages total, or the electronic equivalent, including all exhibits and/or attachments. 11x17 sheets and fold-outs should not be used. All pages shall be numbered. The following pages are exempt from the 25 page limit: cover and back of submittals, a one page cover letter, a one page table of contents, resumes of key personnel, tab and blank divider pages, certificate evidencing proof of sufficient insurance coverage, and the non-collusion and proposal forms.

The Proposals shall be tabulated in separate sections in response to the detailed proposal requirements. No other material shall be submitted.

The Proposer and all firms, subsidiaries and individuals providing professional services shall be currently licensed to practice in each of their respective areas of professional expertise in the State of Oregon, and shall comply with all State of Oregon Engineer and Professional Engineer licensure requirements.

The Proposal must be signed by an officer of your firm with the authority to commit the firm.

The College may reject any submittal not in compliance with all prescribed public bidding procedures and requirements, and may cancel this solicitation or reject for good cause, all responses upon finding by The College that it is in the public interest to do so.

Please note that throughout this Project, the College will not accept responses or queries that require the College to pay the cost of production or delivery.

Responses received after the closing date and time will not be considered.

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- 2 **DOCUMENTS REQUIRED:** Proposal Packages must include the following:
- Response documents and all requested additional related items such as resumes, schedules, certificate of insurance, etc.
 - Statement of Prequalification (Attached as Exhibit A)
 - Statement of Assurance (Attached as Exhibit B)
 - Previous Architect Planning Work with SWOCC (Attached as Exhibit C)
 - An executed copy of the Certification Regarding Lobbying, as required by Section 1352, Title 31, of the U.S. Code.
- 3 **SAMPLE CONTRACT:** A sample contract is attached to this RFP. The College reserves the rights to change the terms of the sample contract, if in the public interest or for terms more favorable to the College. The College and the Architect/Engineer shall negotiate terms prior to entering into a finalized contract.
- 4 **NUMBER OF RESPONSES REQUIRED:** Proposers shall submit ONE proposal with accompanying attachments to **Jeffrey J. Whitey** at **Southwestern Oregon Community College Administrative Services, 1988 Newmark Avenue, Coos Bay, OR 97420** or **jwhitey@socc.edu**.

Section 11. ARCHITECT/ENGINEER’S RESPONSE DOCUMENT

Proposals must reply to each of the following items. Responses must appear in the same order listed below. Concise and direct answers are encouraged.

- 1 **COVER LETTER:** A letter of introduction stating that the applicant wishes to be considered for the project. Include full name of firm or joint venture, RFP contact person, email address, mailing address, telephone and facsimile numbers. If joint venture, the relationship of the two parties shall be indicated in terms of percentage participation in the work and in the fee.
- 2 **FIRM EXPERIENCE:**
- 2.1 **Firm Description:** Provide a brief description of your firm’s history, the type of work you have performed and your capabilities. Include an Annual Volume of Figures for the past five years and provide a certificate of insurance evidencing proof of sufficient professional liability insurance. If a joint venture, provide the information for each of the firms involved. List the sub-consulting firms that will be part of your team during the Pre-Construction phase of the work.
 - 2.2 **Project Experience:** Describe overall firm experience, and provide a listing, in chronological order, in chart format, of your firm’s last (2-5) completed projects of a similar nature performed within the last 5 years. Include completion date; name of owner; contact person; and current phone number; name of any additional Engineers, contact person and current phone number; and contact person name and telephone number for each; location of job; description of job (i.e., remodel or new construction, County’s, etc.); the construction cost and building area (in gross square feet) of each reference project; the construction delivery method used for each reference project; whether the project was completed on schedule and

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within the budget or not; responsibilities of those involved on each reference project who would provide services on these projects; a Gantt chart providing a proposed schedule for the Pre-Design/Schematic Design, Design Development, and Construction Documents phases for each project; and photographs of job completion.

- **Specific Facility Experience:** Describe specific experience, and provide a listing as indicated above of your firm’s experience in the following types of facilities, including all information indicated above:
 - a *Public Agencies and Public Contracting:* Describe your firm’s experience on projects for public agencies and performed under public contracting statutes and requirements.
 - b *Remodeling:* Describe your firm’s experience on projects where interior and exterior remodeling was done to existing timber framed structures.

3 **ARCHITECT/ENGINEER AND RELATED EXPERIENCE:** Describe firm experience with renovation projects for the public sector. The listing should follow the format described above in the previous item (if the firm’s public sector renovation project experience is limited, experience with Engineering, Design/Build or other Architect/Engineer services for the private sector can be discussed).

4 **KEY PERSONNEL EXPERIENCE:**

4.1 **Organization of Team:** Provide a project organization chart showing your proposed staff for this job, including all professional staff in the following areas; project management; estimating; pre-construction and construction phase services. Also include Oregon registration numbers when applicable. Identify your Lead engineer or Engineer of Record, associate engineer, project engineers, consultant, IT personnel, interior designer, and land use consultant.

4.2 **Team Member Resumes:** Include resumes for all individuals listed in the chart. Indicate the proposed percentage or full time equivalent (FTE) that each person will work on this project during the Pre-Construction Phase Services, and the Construction Phase Services. (100% = 1.0 FTE). The resumes shall include each individual’s education, work history, length of tenure with your firm, and relevant, prior experience.

4.3 **Additional Team Members:** For those individuals that are not full time, describe how they will work on the project. If your proposal involves individuals from more than one firm, describe prior experience, if any, of the firms and individuals work with each other, and how the proposed team will work for this project.

By listing the individuals in the proposal, the firm assures that these individuals will work on the project at an approximate minimum of the percentages shown. The Owner reserves the right to request a substitution of personnel if deemed to be in the best interest of the Owner.

4.4 Should the firm be invited to an interview, the key personnel listed above will need to be in attendance and questions may be directed solely to them.

5 OVERALL PROJECT UNDERSTANDING / APPROACH:

- 5.1 **Organizing the Project:** Describe your firm’s overall Architect/Engineer plan for completing the project. Discuss your approach to reviewing the program, and services to be provided during design and managing construction. Within the parameters described in this RFP, how would you organize and monitor the work to ensure quality, function, timely completion and cost within or under budget?
- 5.2 **Project Management:** Describe how your firm will approach the project management aspects of this project. How will your firm ensure that the Owner’s needs are met?
- 5.3 **Organizational Tools:** Discuss your firm’s approach to providing the successful Architect/Engineer services, including cost, schedule and quality effectiveness. Include specific examples of actual products, such as estimates, progress reports, schedules, constructability reviews, value engineering studies, forms, general conditions budgets, organizational structures, etc.
- 5.4 **Problem Solving:** Describe your approach to problem solving for this project. Describe the largest challenge your firm faced within the last five years in working on similar projects, and how you resolved that challenge.

6 SCHEDULING APPROACH: Describe how your firm will ensure the schedule requirements are met. Specifically, how will your firm organize your work, staffing, and coordination of team members in order to ensure that all schedule milestones are achieved? How will your firm report progress and mitigate delays?

7 COST CONTROL: Give a description of how your firm will manage the work to control costs and optimize savings during the pre-construction and construction phases. Cost control concerns how Architect/Engineer will work with contractors to implement and build the recommendations of Architect/Engineer. For example, will Architect/Engineer engage in value engineering to cut costs? Provide any strategies to control costs throughout project development and delivery.

8 FEE: Fees are not required for the initial proposal. The successful proposer will work with contractors and subcontractors during the construction phase of the Project to consider fees in awarding construction contracts and subcontracts. The successful proposer’s fee will be either a fixed price or a cost reimbursement fee with an agreed upon reasonable maximum that complies with all EDA requirements. The successful proposer’s compensation shall not be based on the use of the ‘cost plus a percentage of cost’ or a ‘percentage of construction cost’ form of compensation. The “Not to Exceed Cost” is to be determined by the successful proposer during the pre-construction phase of the Project. Pursuant to public contracting rules, certain proposers will be asked to provide a reasonable fee breakdown that is based on competition of specific milestones and covers all service fees necessary for the successful execution of the project during the solicitation process.

9 REFERENCES: Provide at least three (3) references for projects of similar size and scope including client name, key contact’s name, address, email, and phone number.

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- 10 ADDITIONAL REQUIREMENTS: Pursuant to OAR 580-061, by submitting a proposal, the proposer certifies that the proposer has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

Pursuant to OAR 580-061-0040, Proposers are hereby notified that policies applicable to consultants and contractors have been adopted that prohibit sexual harassment and that proposers and their employees are required to adhere to the College's policy prohibiting sexual harassment in their interactions.

By submission of your proposal, the signatory (a duly authorized representative of the submitting firm) must certify that the firm is not, to the best of their knowledge, in violation of any Oregon tax law. For purpose of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

During the term of the resulting contract, the successful proposer will be required to maintain in full force, at its own expense, from insurance companies authorized to transact business of insurance in the state of Oregon, each insurance coverage/policy as set forth in the contract.

The College did not use Request for Qualifications ("RFQ") in the solicitation process for this RFP. The successful proposer will be selected by competitive proposals. Any response to publicized requests for qualifications will be honored to the maximum extent practicable, as determined by the College.

This Project is funded largely by EDA funds. Appendix II to 2 CFR Part 200 - Contract Provisions for Non-Federal Entity Contracts under Federal Awards is expressly incorporated to the terms of this RFP by reference.

Exhibit A
PREQUALIFICATION STATEMENT

PROJECT TITLE: **Coaledo & Sumner Hall Renovations**
 Architect/Engineer/Consultant

PROJECT LOCATION: **Coos Bay, Oregon**

Proposers must meet certain minimum Prequalification Criteria in order to be eligible to submit proposals. In the interest of expediting the contract awards and reducing preparation expense to potential Proposers, the Owner will allow Proposers to self-certify that they meet the following pass/fail Prequalification Criteria and are therefore eligible to propose on this procurement:

Specialized Experience: The Proposer must have completed at least two projects of similar or greater scope, which have been contracted in the Northwest United States (Alaska, Washington, Oregon, Idaho, Montana, Northern California) within the last five years.

Do you meet these criteria () Yes or () No ?

Availability: The Proposer’s anticipated work in terms of time and magnitude for the time period **April 2022 through April 2023**, must accommodate this project, including availability of key personnel for this project.

Do you meet these criteria () Yes or () No ?

Licenses: The Proposing firm and its subconsultants must have all appropriate licenses and registrations.

Do you meet these criteria () Yes or () No ?

If not, how do you propose conforming to this requirement?

Signature of authorized person

Title of authorized person

END OF DOCUMENT

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Exhibit B
STATEMENT OF ASSURANCES

PROJECT TITLE: **Coaledo & Sumner Hall Renovations**
 Architect/Engineer/Consultant

PROJECT LOCATION: **Coos Bay, Oregon**

- 1) The undersigned attests that he/she has the authority and/or responsibility to represent the organization submitting this Proposal in all phases of the Request for Proposal (RFP) process and in this Statement of Assurances.
- 2) The Firm understands that this RFP is considered an integral part of the RFP process, and RFP terms shall be binding on the Firms. Failure of the successful Firm to accept these obligations in a Contract as authorized by the Statement of Assurances may result in cancellation of an award.
- 3) The proposer accepts all terms and conditions contained in this RFP and the RFP and Proposal Response, and any modifications will be made part of the contract documents. It is understood that all proposals become part of the public file on this matter, unless limited and specific information is identified and exempt under Oregon Public Records Law.
- 4) The undersigned understands that any false or substantially incorrect statement in the RFP or Statement of Assurances may disqualify this Proposal from further consideration or any further Contract.
- 5) Firm understands that in responding to the RFP, Firm agrees to comply with all applicable federal, state, and local laws, regulations and requirements related to the RFP and performance of any resulting Contract, including but not limited to those referenced in this RFP.
- 6) The undersigned acknowledges receipt of and agrees to be bound by Exhibits A and B, as well as any additional addenda or Exhibits issued until intent of Award has been posted.
- 7) The Firm certifies that the Consultant can meet the insurance requirements outlined in the sample Contract (Insurance Coverage Required) and that the Firm understands that such coverage must be kept active during the entire term of the Contract, if selected. Consultant shall commence no work under this contract until the Consultant and every subconsultant has obtained all appropriate licenses and registrations.
- 8) Non-Collusion: The undersigned certifies that:
 - a) This bid has been arrived at independently and is being submitted without collusion with any other vendor of materials, supplies, equipment or services to limit independent bidding or competition, and
 - b) The contents of this bid have not been communicated by the undersigned or its employees or agents to any person not an employee or agent of the undersigned and will not be communicated to such person prior to the official opening of the bid.
- 9) The Consultant is a resident Consultant _____ or nonresident Consultant _____ of the State of Oregon as defined in ORS 279A.120.
- 10) The Undersigned certifies that they are in compliance with all appropriate licenses and registrations.

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- 11) The Undersigned agrees, if awarded a contract, that they will comply with the provisions of **ORS 279C.800 – 279C.870** or **Davis-Bacon 40 U.S.C 3141 et seq** as applicable, pertaining to the payment of the prevailing wage rates. By signing below the Undersigned agrees that he/she affirmatively acknowledges the following:
- (a) Compliance with ORS 279C.838 and 40 USC 3141 et seq (if both state and federal Davis-Bacon applies. IF the state rate is higher, the contractor and every sub-contractor shall pay at least the state rate); or compliance with ORS 279C.840 (Davis-Bacon does not apply, and only the state prevailing rate of wage is to be paid); or compliance with 40 USC 3141 et seq (only Davis-Bacon rate of wage applies, or is the highest one for all of the job categories).
- 12) In the event the Proposer is awarded the contract and fails to complete the work within the time frame specified, including extensions granted, liquidated damages shall be paid to the Owner as outlined in the General Conditions as incorporated into a final executed contract between the parties.
- 13) By signing this page Consultant hereby certifies that s/he has not discriminated against minority, women or emerging small business enterprises in obtaining any required sub-contracts, and Consultant hereby certifies that to the best of Consultant knowledge, s/he is in compliance with all Oregon Tax laws described in ORS 305.380(4).

I, the undersigned, have read and thoroughly understand the requirements, special provisions, Proposal Instructions and all other Conditions of the RFP issued by **Southwestern Oregon Community College** for the **Coaledo & Sumner Hall Renovations Project**. I have read and understand the entire contract provisions included in the RFP and agree to abide by and fulfill the requirements thereof if awarded the Contract as a result of this RFP.

Firm Name: _____

Address: _____

Phone: _____ **Fax:** _____

Authorized Representative's Signature: _____

Type or Print Name: _____

Representative's Title: _____

Date: _____

Federal Business I.D. No. _____

NOTARY:

Subscribed and sworn before me this _____ day of _____, 20_____.

_____ Notary Public for the State of _____.

My commission expires _____.

END OF DOCUMENT

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Exhibit C
Previous Architect Planning Work with SWOCC

EDA GRANT ESTIMATE MEMO COALEDO AND SUMNER RENOVATION



MEMORANDUM

Date: December 18, 2020
To: EDA Grant Application
From: Mark Stoller
Project: SWOCC Master Plan - Coaledo and Sumner Construction Budgets

COALEDO AND SUMNER HALL RENOVATION BUDGET DEVELOPMENT

At the conclusion of the Southwest Oregon Community College 2020-2030 Master Plan, Opsis Architecture prepared opinions of cost for the future renovation of Coaledo Hall and Sumner Hall. These cost opinions utilized a cost per square foot method based on program use and level of renovation complexity (low, medium, high). Also included is a 30% Project Soft Cost Allowance to cover design fees, permitting and other owner associated cost. The costs used in the analysis were based on projected market conditions for the 2021 – 2023 biennium, specific to the Southern Oregon Coast.

Exhibit D Previous Architect Planning Work with SWOCC

COALEDO HALL RENOVATION

Building Area 9800 sf

			Assumed Area	\$\$ / sf	Const Cost	
C5, C7, C10	General Purpose Use	Med Reno	2500 sf	\$200	\$500,000	
C2, C3, C6	Basic Lab Use	High Reno	3600 sf	\$350	\$1,260,000	
Rest of building	Finishes Upgrade	Light Reno	3700 sf	\$100	\$370,000	
			9800 sf		\$2,130,000	\$217.35 sf Const. Cost
					<u>\$639,000.0</u>	Soft Costs (30%)
					\$2,769,000.0	\$282.55 Proj. Cost
					\$276,900.0	Market Escalation (10%)
					\$3,045,900.0	\$310.81 TOTAL PROJ COST

SUMNER HALL RENOVATION

Building Area 8500 sf

			Assumed Area	\$\$ / sf	Const Cost	
S1,S2C,S3B	Dental Programs	High Reno	1850 sf	\$350	\$647,500	
S3A, S3G, S10, S11	General Purpose Use	High Reno	1800 sf	\$200	\$360,000	
S22, S14, 513	Cadaver Lab and Support	High Reno	850 sf	\$350	\$297,500	
S12	Radiology	High Reno	950 sf	\$350	\$332,500	
Rest of building	Finishes Upgrade	Light Reno	3050 sf	\$100	\$305,000	
			8500 sf		\$1,942,500	\$228.53 sf Const. Cost
					<u>\$582,750.0</u>	Soft Costs (30%)
					\$2,525,250.0	\$297.09 Proj. Cost
					\$252,525.0	Market Escalation (10%)
					\$2,777,775.0	\$326.80 TOTAL PROJ COST

07.24.20

COALEDO HALL RENOVATION

Building Area 9800 sf

			Assumed Area	\$\$ / sf	Const Cost	
C5, C7, C10	General Purpose Use	Med Reno	2,500 sf	\$200 sf	\$500,000	
C2, C3, C6	Basic Lab Use	High Reno	3,600 sf	\$350 sf	\$1,260,000	
Rest of building	Finishes Upgrade	Light Reno	3,700 sf	\$125 sf	\$462,500	
			9,800 sf		\$2,222,500	\$226.79 sf Const. Cost
					\$666,750.0	Soft Costs (30%)
					\$2,889,250.0	\$294.82 Proj. Cost
					\$288,925.0	Project Contingency (10%)
					\$3,178,175.0	\$324.30 TOTAL PROJ COST

SUMNER HALL RENOVATION

Building Area 8500 sf

			Assumed Area	\$\$ / sf	Const Cost	
S1,S2C,S3B	Dental Programs	High Reno	1,850 sf	\$350 sf	\$647,500	
S3A, S3G, S10, S11	General Purpose Use Cadaver Lab and	High Reno	1,800 sf	\$200 sf	\$360,000	
S22, S14, 513	Support	High Reno	850 sf	\$350 sf	\$297,500	
S12	Basic Lab Use	High Reno	950 sf	\$350 sf	\$332,500	
Rest of building	Finishes Upgrade	Light Reno	3,050 sf	\$125 sf	\$381,250	
			8,500 sf		\$2,018,750	\$237.50 sf Const. Cost
					\$605,625.0	Soft Costs (30%)
					\$2,624,375.0	\$308.75 Proj. Cost
					\$262,437.5	Project Contingency (10%)
					\$2,886,812.5	\$339.63 TOTAL PROJ COST

Exhibit E
Previous Architect Planning Work with SWOCC



SOUTHWESTERN
AN OREGON COMMUNITY COLLEGE

SWIFTER (Strategic Workforce Initiative
Furthering Today's Economic Recovery)



The Plan to renovate Coaledo and Sumner Halls

- **What:** Revitalize 18,240 sq. ft. of instructional space for Career & Technical Education / High-Skill Professional Training.
- **Where:** Coos Bay Campus
- **Cost:** \$5.5 million
- **Need:** Identified as “Year 1-5 priority” in 2020-30 Master Facilities Plan



Facilities are in suspended operation due to current COVID-19 restrictions that require social distancing protocols for CTE classes, and/or remote instruction.

SWIFTER – Coaledo Hall

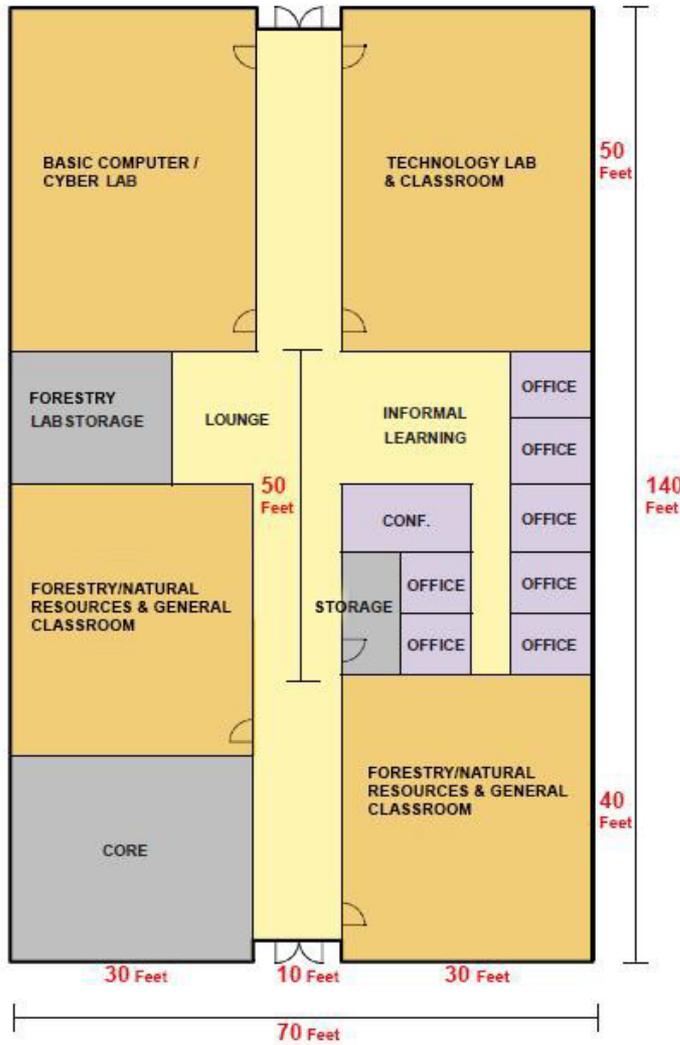
Built in 1965, Coaledo Hall holds original science labs and classrooms.

The college will renovate the 9,800 sq. ft. building for the Forestry/Natural Resources and Computer Science/Cyber Security Programs.

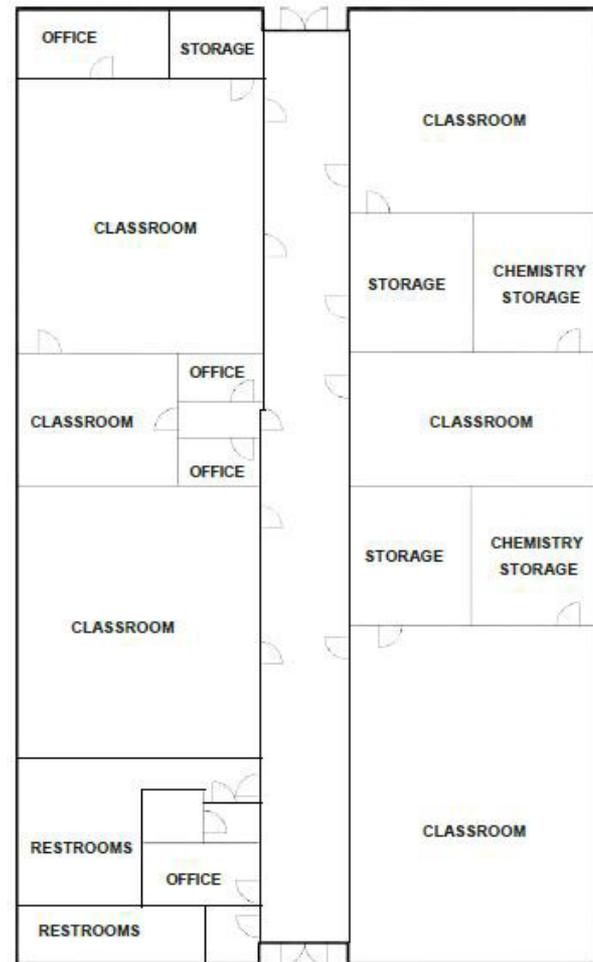
The project will create flexible classroom learning and student collaboration spaces.



Proposed



Existing



COALEDO HALL

SWIFTER – Sumner Hall

Built in 1982, Sumner Hall holds original nursing labs, storerooms and one classroom.

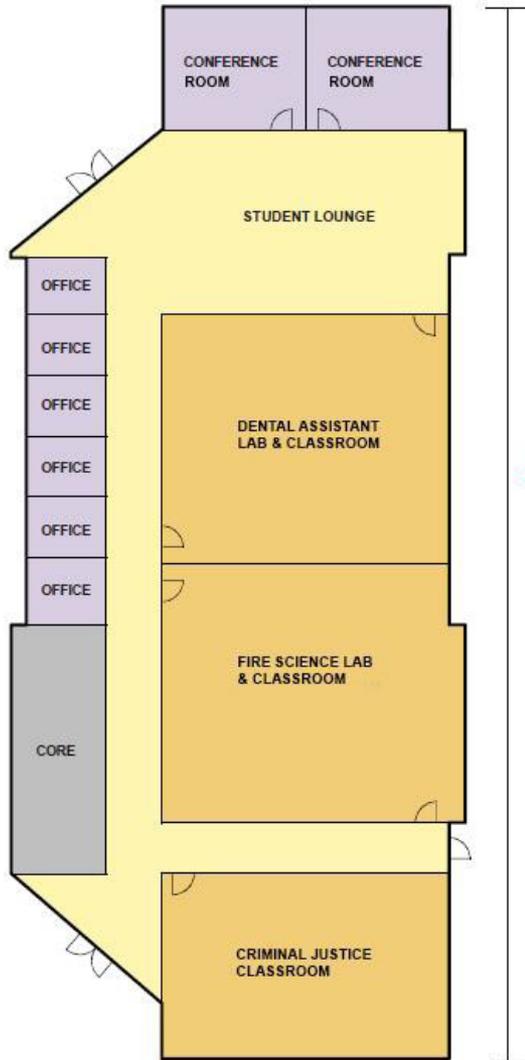
Labs are outdated in classroom configurations by today's standards.

The college will renovate the 8,440 sq. ft. Sumner Hall to create modern classrooms and labs for Dental Assisting, Fire Science and Criminal Justice programs.

The dental assisting program and faculty office is currently housed in two metal storage buildings.



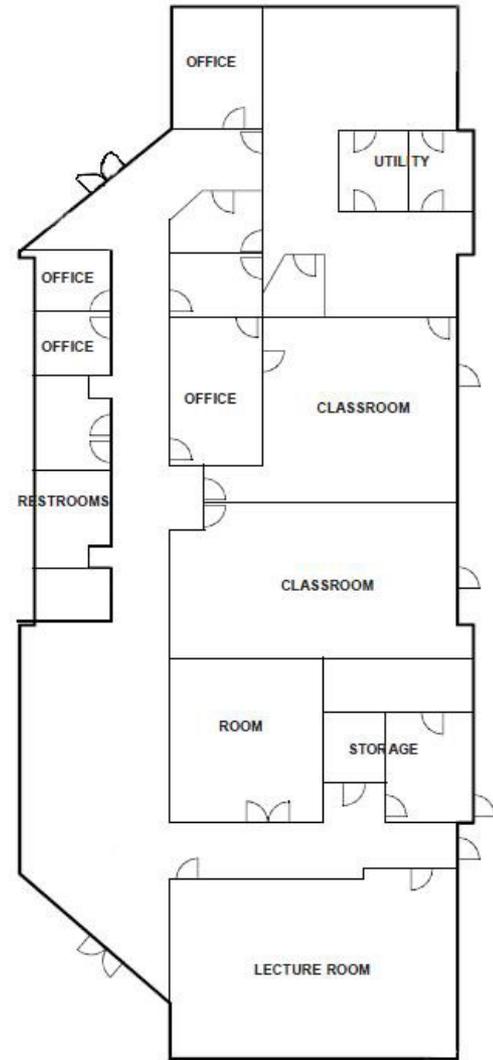
Proposed



60 Feet

170 Feet

Existing



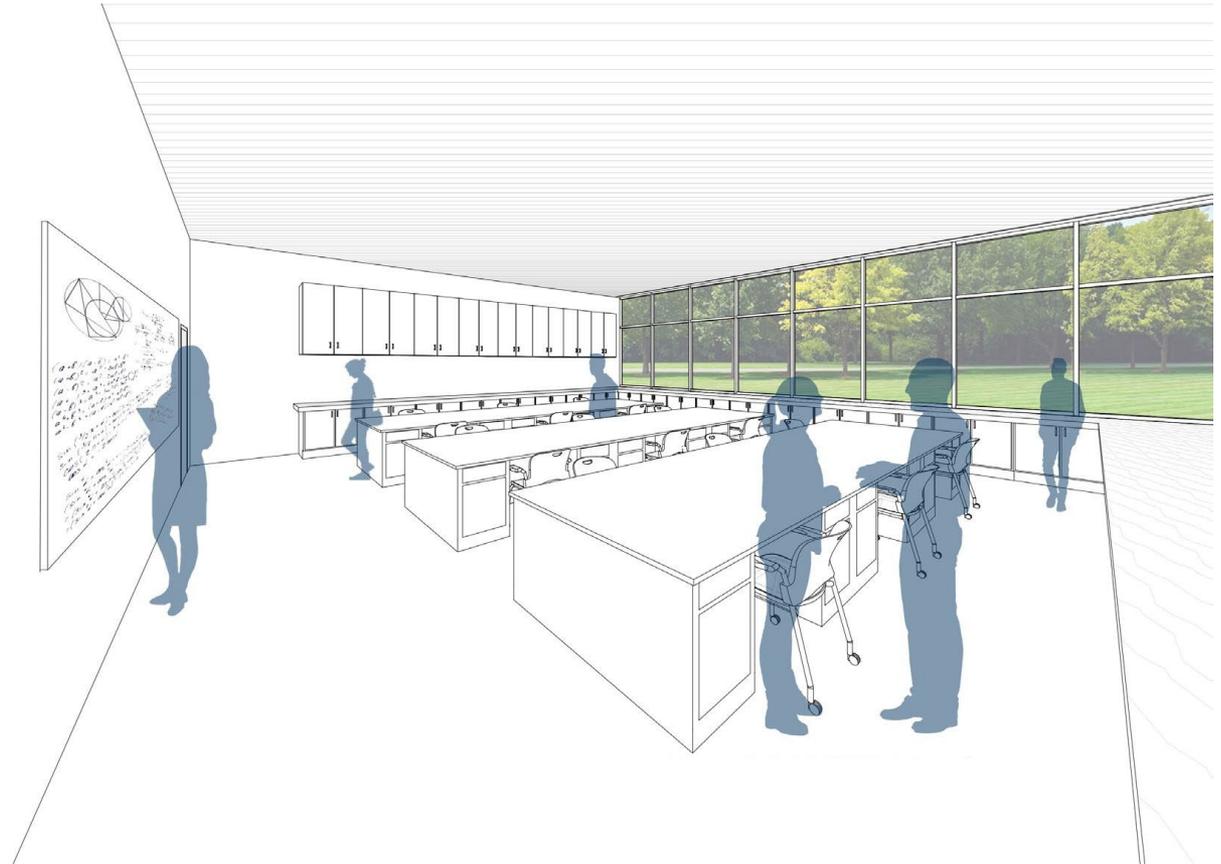
SUMNER HALL

SWIFTER – a plan to modernize space for today's needs

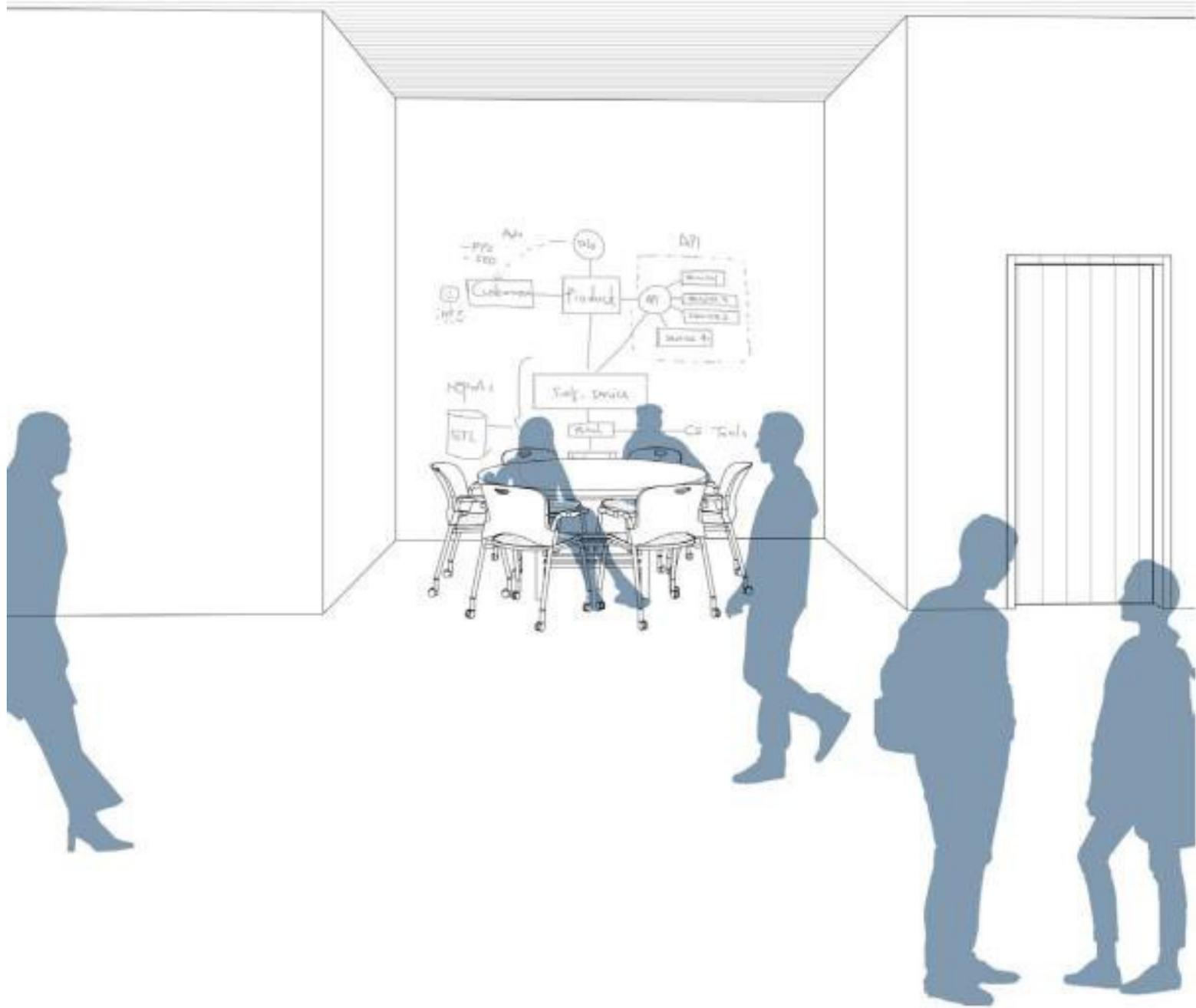
Specialized technology will allow improved distance learning between the Coos and Curry campuses, which are 105 miles apart. It will improve remote access for students.

The modernized space also will have:

- simulation labs,
- flexible learning space,
- ADA access,
- faculty offices next to program space, and
- student collaboration areas.







SAMPLE CONSULTANT AND RELATED SERVICES CONTRACT

Southwestern Oregon Community College

THIS CONSULTANT AND RELATED SERVICES CONTRACT (the “Contract”) is between the Southwestern Oregon Community College, by and through its College Board (the “Owner”), and _____ (the “Architect/Engineer” or “Consultant”) (collectively, the Owner and the Architect/Engineer are referred to as the “Parties”). This Contract is for all Services related to completion of the project more located at **1988 Newmark Avenue, Coos Bay, OR 97420** and particularly described as follows (the “Project”):

Company _____ DSD Contract # _____

Address _____ SSD Project/Phase _____

City, State Zip _____ Federal Tax ID # _____

Phone _____ Fax # _____

The Project requires that the successful proposer provide architectural and engineering services for the Coaledo & Sumner Hall Renovations and develop rehabilitation and mitigation strategies per ASCE Standard 41-17 and the 2014 Oregon Structural Specialty Code (“OSSC”). It is the wish of the College to rehabilitate the buildings to meet the rehabilitation objective of “Life Safety.” This contract was awarded pursuant to the Coaledo & Sumner Hall Renovations Request for Proposals dated March 16, 2022 (“RFP”). The terms of the RFP, as may be amended by addendum from time to time, are expressly incorporated into this Contract by reference.

This Contract shall become effective on the date the Contract is fully executed by both the College and the successful Consultant and/or Consultant’s firm and all required Southwestern Oregon Community College approvals have been obtained. This date is known as the Contract “Effective Date.” No Services shall be performed prior to the Contract Effective Date. The Contract shall expire, unless otherwise terminated or extended, on _____, 202_. Generally, “the Services” to be performed by the Consultant on the Project consist of the following:

Consultant services in the form of architectural and engineering Project programming; conceptual design; and project estimating.

The Services are more specifically described in the **EXHIBIT 1: Statement of Work**, attached to this Contract. The Owner agrees to pay Consultant a sum not to exceed (\$_____) for performance of the Services, which does not include all allowable expenses. Architect/Engineer progress payments shall be made in accordance with **EXHIBIT 2, Consultant Compensation**.

Southwestern Oregon Community College does not discriminate on the basis of race, color, gender, sexual orientation, marital status, religion, national origin, age, disability status, gender identity, or protected veterans in employment, education, or activities as set forth in compliance with federal and state statutes and regulations.

This Contract consists of the introductory provisions and signature page(s) of this Contract, Section 1-Relationship Of The Parties, Section 2-Consultant’s Professional Responsibility, Section 3-Responsibilities Of The Owner, Section 4-General Contract Provisions and the following exhibits attached hereto and incorporated herein by this reference:

Exhibit 1: Statement of Work

Exhibit 2: Consultant Compensation

Exhibit 3: Insurance Provisions

Exhibit 4: EDA Form CD-512

Exhibit 5: EDA Contracting Provisions for Construction Projects

EXCEPT AS PROVIDED IN OAR 137-048-0220 ET SEQ, THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS OF THIS CONTRACT CAN NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED SOUTHWESTERN OREGON COMMUNITY COLLEGE APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. CONSULTANT, BY ITS AUTHORIZED REPRESENTATIVE’S SIGNATURE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS CONTRACT, AND ANY AMENDMENTS TO THIS CONTRACT, MAY BE EXECUTED IN COUNTERPARTS (EACH OF WHICH SHALL BE AN ORIGINAL AND ALL OF WHICH SHALL CONSTITUTE BUT ONE AND THE SAME INSTRUMENT) OR IN MULTIPLE ORIGINALS. A FAXED FORM OF THIS CONTRACT OR ANY AMENDMENT THERETO, EXECUTED BY ONE OR MORE OF THE PARTIES, WILL CONSTITUTE A COUNTERPART HEREOF, AS LONG AS THE COUNTERPART BEARING THE PARTY’S ORIGINAL SIGNATURE IS TRANSMITTED.

<p>OWNER: Southwestern Oregon Community College</p> <p>By: _____ _____, Its _____</p>	<p>ARCHITECT/ENGINEER:</p> <p>By: _____ _____, Its _____</p>
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Southwestern Oregon Community College does not discriminate on the basis of race, color, gender, sexual orientation, marital status, religion, national origin, age, disability status, gender identity, or protected veterans in employment, education, or activities as set forth in compliance with federal and state statutes and regulations.

1. RELATIONSHIP OF THE PARTIES

1.1. The Consultant shall provide the Services for the Project in accordance with the terms and conditions of this Contract. The Consultant's performance of Services shall be as a professional consultant to the Owner to carry out the activities of the Project and to provide the technical documents and supervision to achieve the Owner's Project objectives.

1.2. In administering this Contract, the Owner may retain the services of an independent project manager, and potentially, other consultants as needed to fulfill the Owner's objectives.

1.3. The Consultant shall provide a list of all sub-consultants which the Consultant intends to utilize on the Project (the "Sub-consultants"). This list shall include such information on the qualifications of the Sub-consultants as may be requested by the Owner. The Owner reserves the right to review the Sub-consultants proposed, and the Consultant shall not retain a Sub-consultant to which the Owner has a reasonable objection.

1.4. The Consultant shall provide to the Owner a list of the proposed key Project personnel of the Consultant and the Sub-consultants to be assigned to the Project. This list shall include such information on the professional background of each of the assigned personnel as may be requested by the Owner. The Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel and Sub-consultants identified by Consultant. Therefore, Consultant shall make available key personnel and Sub-consultants as identified in its Proposal. Any attempted substitution without written consent of Owner shall constitute a material breach of the Contract. In the event that key personnel or Sub-consultants become unavailable to Consultant, the Parties shall mutually agree upon appropriate replacements. Likewise, the Consultant shall remove any individual or Sub-consultant from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

2. CONSULTANT'S PROFESSIONAL RESPONSIBILITY

2.1. By execution of this Contract, the Consultant agrees that:

2.1.1. The Consultant is an experienced firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract to design and administer a project having this scope and complexity; and will perform such Services pursuant to the standard of care defined in Section 4.4.1 of this Contract.

2.1.2. The Consultant has the capabilities and resources necessary to perform Consultant's obligations under this Contract.

2.1.3. The Consultant either is, or will in a manner consistent with the standard of care defined in Section 4.4.1 of this Contract, become familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project. All drawings, specifications, deliverables and other documents prepared by the Consultant shall be prepared in accordance with this standard of care in an effort to accurately reflect, fully comply with and incorporate all such laws, rules, and regulations.

2.2. The Consultant hereby agrees that it will prepare, in a manner consistent with the standard of care defined in Section 4.4.1 of this Contract, all drawings, specifications, deliverables and other documents pursuant to this Contract so that they are complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of the Consultant) and that the Project, if constructed in accordance with the intent established by such drawings, specifications, deliverables and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended.

2.3. The Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables and other documents prepared by the Consultant, at no additional cost to the Owner. Except as provided in Supplemental Services within Exhibits A and B, the Consultant further agrees, at no additional cost to the Owner, to render assistance to the Owner in resolving problems relating to the Project design or to specified materials.

3. RESPONSIBILITIES OF THE OWNER

The Owner's responsibilities under this Contract are to provide a budget that includes contingencies for design, bidding, changes in the Work during construction, fees for permitting and other governmental approvals, and other cost described below which are the responsibility of the Owner.

4. GENERAL CONTRACT PROVISIONS

4.1. Contract Performance. The Consultant shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant's Services set forth in Exhibit A. The passage of the Contract expiration date shall not extinguish, prejudice, or limit either party's right to enforce this Contract with respect to any default or defect in performance. Time is of the essence in the performance of this Contract.

4.2. Access to Records. For not less than three (3) years after the Contract's expiration, 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 Consultant and the Sub-consultants which pertain to the Contract for the purpose of making audits, examination, excerpts, and transcripts. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. Consultant shall provide the Owner and the other entities referenced above with full access to these records in preparation for and during litigation.

4.3. Funds Available and Authorized. Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Owner receiving from the Oregon

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Legislative Assembly funds sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

4.4. Representations and Warranties.

4.4.1. Consultant's Representations and Warranties; Standard of Care. Consultant represents and warrants to Owner that: (i) Consultant has the power and authority to enter into and perform this Contract; (ii) When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; (iii) Consultant shall, at all times during the term of this Contract be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent; (iv) The Services under this Contract shall be performed in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions; (v) the persons executing this Contract on behalf of the Consultant have the actual authority to bind the Consultant to the terms of this Contract; and (vi) the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon the Consultant and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant.

4.4.2. Automated Systems; Representations and Warranties. Consultant represents and warrants to Owner that the "Automated Systems" specified, designated and planned pursuant to this Contract shall operate in conformance with the agreed-upon specifications for those Automated Systems For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire/life safety systems, security systems and any other electrical, mechanized or computerized devices serving the Project.

4.4.3. Representations and Warranties Cumulative. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations and warranties provided herein.

4.5. Insurance and Indemnity. Consultant shall maintain in effect for the duration of this Contract, or any other time periods required herein, the insurance required by this Contract, as set forth in Exhibit 3-Insurance Provisions. The Consultant shall indemnify, defend, save, and hold harmless Southwestern Oregon Community College from Professional Liability claims, as described in 4.5.2 and all other liability claims as described in 4.5.1.

4.5.1. Claims Other than Professional Liability. Consultant shall indemnify, defend, save, and hold harmless Southwestern Oregon Community College, its officers, agents, and employees, from all claims, suits, or actions of whatsoever nature resulting from or arising out of the acts or omissions of the Consultant or its Sub-consultants, subcontractors, agents, or employees under this Contract.

4.5.2. Claims for Professional Liability. Consultant shall indemnify, defend, save, and hold harmless Southwestern Oregon Community College, its officers, agents, and employees, from all claims, suits, or actions arising out of the professionally negligent acts or omissions of the Consultant or its Sub-consultants, subcontractors, agents, or employees in performance of professional services under this Contract.

4.5.3 Owner Defense Requirements. Notwithstanding the foregoing defense obligations under Sections 4.5.1 and 4.5.2, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of Southwestern Oregon Community College, nor purport to act as legal representative of Southwestern Oregon Community College No.1, without the prior written consent of the Superintendent. Southwestern Oregon Community College may, at anytime at its election assume its own defense and settlement of any claims, in the event that it determines that the Consultant is prohibited from defending the College, that the Consultant is not adequately defending the College's interests, that an important governmental principle is at issue, or that it is in the best interests of the College to do so. Southwestern Oregon Community College reserves all rights to pursue any claims it may have against the Consultant if the College elects to assume its own defense.

4.5.4 Owner's Actions. This Section 4.5 does not include indemnification by the Consultant of the Owner for the Owner's acts or omissions, whether related to the Contract or otherwise.

4.6. Employment Status.

4.6.1. Consultant, Consultant's employees and the Sub-consultants are not "officers, employees, or agents" of the College or the Owner, as those terms are used in ORS 30.265. Consultant shall perform all Services as an independent contractor. Although Owner reserves the right (i) to set the delivery schedule for the Services to be performed and (ii) to evaluate the quality of the completed performance, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible for determining the appropriate means and manner of performing the Services.

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

4.7. Successors & Assignments. The provisions of this Contract shall be binding upon and shall inure to the benefit of the Parties, and their respective successors and assigns. After the original Contract is executed, the Consultant shall not enter into any new Sub-consultant agreements for any of the Services scheduled under this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of the Owner.

4.8. Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, and ordinances applicable to the Services under this Contract.

4.9. Governing Law; Jurisdiction; Venue. This Contract 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 Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Clackamas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States College Court for the College of Oregon. In no event shall this Subsection be

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construed as a waiver by the Southwestern Oregon Community College 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. CONSULTANT, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

4.10. Tax Compliance Certification.

4.10.1. By signature on this Contract, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of the Consultant and that the Consultant is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws.

4.10.2. For the purposes of this certification, "Oregon Tax Laws" means those taxes and programs listed in ORS 305.380(4), namely 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.

4.11. Severability. The Parties agree that if any term or provision of this Contract 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 Contract did not contain the particular term or provision held to be invalid.

4.12. 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 the Contract.

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

4.14. Third Party Beneficiaries. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against the Owner or Consultant. Consultant's Services under this Contract shall be performed solely for the Owner's benefit, and no other entity or person shall have any claim against Consultant because of this Contract for the performance or nonperformance of Services hereunder.

4.15. Ownership of Work Product; Confidentiality.

4.15.1 Definitions. As used in this Section 4.15, and elsewhere in this Contract, the following terms have the meanings set forth below:

a. "Consultant Intellectual Property" means any intellectual property owned by Consultant and developed independently from this Contract.

b. "Third Party Intellectual Property" means any intellectual property owned by parties other than The Owner or Consultant.

c. "Work Product" means every invention, discovery, work of authorship, trade secret or other tangible or intangible item and all intellectual property rights therein, and all copies of plans, specifications, reports and other materials, that Consultant is required to deliver to the Owner under this Contract, whether completed, partially completed or in draft form.

4.15.2 Work Product. All Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of the Owner. The Owner and Consultant agree that such original works of authorship are "work made for hire" of which the Owner is the author within the meaning of the United States Copyright Act. If for any reason the original Work Product created pursuant to this Contract is not "work made for hire", Consultant hereby irrevocably assigns to the Owner any and all of its rights, title, and interest in all original Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon the Owner's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in the Owner. Consultant forever waives any and all rights relating to original Work Product created pursuant to this Contract, 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.

4.15.3 Consultant Intellectual Property. In the event that Work Product is Consultant Intellectual Property, Consultant hereby grants to the Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Consultant Intellectual Property, including the right of the Owner to authorize contractors, consultants and others to use the Consultant Intellectual Property, for the purposes described in this Contract.

4.15.4 Third Party Works. In the event that Work Product is Third Party Intellectual Property, Consultant shall secure on the Owner's behalf and in the name of the Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the Third Party Intellectual Property, including the right of the Owner to authorize contractors, consultants and others to use the Third Party Intellectual Property, for the purposes described in this Contract.

4.15.5 Consultant Intellectual Property-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, Consultant hereby grants to the Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Consultant Intellectual Property employed in a Contract Work Product, including the right of the Owner to authorize contractors, consultants and others to use the pre-existing elements of the Consultant Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.

4.15.6 Third Party Works-Derivative Work. In the event that Work Product created by Consultant under this Contract is a derivative work based on Third Party Intellectual Property, or is a compilation that includes Third Party Intellectual Property, Consultant shall secure on the Owner's behalf and in the name of the Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, including the right to authorize

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contractors, consultants and others to use the pre-existing elements of the Third Party Intellectual Property employed in a Contract Work Product, for the purposes described in this Contract.

4.15.7 Limited Owner Indemnity. To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.397, the Consultant shall be indemnified, and held harmless by the Owner from liability arising out of re-use or alteration by the Owner, which was not specifically contemplated and agreed to by the Parties in this Contract or under separate contract.

4.15.8 Consultant Use of Work Product. Consultant, despite other conditions of this provision, shall have the right to utilize the Work Product on its brochures or other literature that it may utilize for its sales and, in addition, unless specifically otherwise exempted, the Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

4.15.9 Confidential Information. Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is confidential to the Owner or the Owner's clients. Any and all information marked confidential, or identified as confidential in a separate writing, that the Owner provides to Consultant or its employees or agents in the performance of this Contract shall be deemed to be confidential information of the Owner ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Consultant shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Consultant) publicly known; (b) is furnished by the Owner to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Consultant's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than the Owner without the obligation of confidentiality, (e) is disclosed with the written consent of the Owner, or; (f) is independently developed by employees or agents of Consultant who can be shown to have had no access to the Confidential Information.

4.15.10 Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties, or use Confidential Information for any purposes whatsoever other than the provision of Services to the Owner under this Contract, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist the Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise the Owner immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with the Owner in seeking injunctive or other equitable relief in the name of the Owner or Consultant against any such person. Consultant agrees that, except as directed by the Owner, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with *Southwestern Oregon Community College does not discriminate on the basis of race, color, gender, sexual orientation, marital status, religion, national origin, age, disability status, gender identity, or protected veterans in employment, education, or activities as set forth in compliance with federal and state statutes and regulations.*

this Contract, and that upon termination of this Contract or at the Owner's request, Consultant will turn over to the Owner all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

4.15.11 Injunctive Relief. Consultant acknowledges that breach of this Section 4.15, including disclosure of any Confidential Information, will give rise to irreparable injury to the Owner that is inadequately compensable in damages. Accordingly, the Owner may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the Owner and are reasonable in scope and content.

4.15.12 Publicity. Consultant agrees that news releases and other publicity relating to the subject of this Contract will be made only with the prior written consent of the Owner.

4.15.13 Security. Consultant shall comply with all virus- protection, access control, back-up, password, and other security and other information technology policies of the Owner when using, having access to, or creating systems for any of the Owner's computers, data, systems, personnel, or other information resources.

4.16. Termination.

4.16.1. Parties Right to Terminate for Convenience. This Contract may be terminated by written mutual consent of the Parties.

4.16.2. Owner's Right to Terminate for Convenience. Owner may, at its sole discretion, terminate this Contract by written notice to the Consultant specifying the termination date of the Contract.

4.16.3. Owner's Right to Terminate for Cause. Owner may terminate this Contract, in whole or in part, immediately upon notice to Consultant, or such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

4.16.3.1. Owner lacks lawful funding or other expenditure authority at levels sufficient to allow Owner, in the exercise of its reasonable discretion, to pay for Consultant's Services;

4.16.3.2. Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the Services under this Contract are prohibited, or Owner is prohibited from paying for such Services from the planned funding source;

4.16.3.3. Consultant no longer holds any license or certificate that is required to perform the Services;

4.16.3.4. Consultant fails to provide the Services called for in Exhibit A within the times specified or allowed under this Contract, fails to perform any of the provisions of this Contract, or so fails to perform the Services as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures in such time as Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency).

4.16.4. Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by the Owner,

Consultant shall immediately cease all activities related to the Services or the Project.

4.16.5. Consultant's Right to Terminate for Cause.

4.16.5.1. Consultant may terminate this Contract if Owner fails to pay Consultant pursuant to this Contract, provided that Owner has failed to make such payment to Consultant within fifteen (15) calendar days after receiving written notice from Consultant of such failure to make payment.

4.16.5.2. Consultant may terminate this Contract, for reasons other than non-payment, if Owner commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform under the Contract within the time specified, or so fails to perform as to endanger Consultant's performance under this Contract, and such breach, default or failure is not cured within 10 calendar days after delivery of Consultant's notice, or such longer period as Consultant may specify in such notice.

4.16.6. Delivery of Work Product/Retained Remedies of Owner. As directed by the Owner, Consultant shall upon termination, deliver to the Owner all then existing Work Product and other property that, if the Contract had been completed, would be required to be furnished to the Owner. By Consultant's signature on this Contract, Consultant allows Owner to use said Work Product and other property for Owner's intended use. The rights and remedies of the Owner provided in this Section 4.16 - Termination related to defaults by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

4.16.7. Payment upon Termination

4.16.7.1. In the event of termination pursuant to Sections 4.16.1, 4.16.2, 4.16.3.1, 4.16.3.2 or 4.16.5, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Owner plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) which Owner has against Consultant, except in the event of a termination under 4.16.3.1 where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with Section 4.3. Within 30 days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Contract Services completed before termination and all Contract close-out costs actually incurred by Consultant. Owner shall not be obligated to pay for any such costs invoiced to and received by the Owner later than 30 days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall pay any excess to Owner upon demand.

4.16.7.2. In the event of termination pursuant to section 4.16.3.3 or 4.16.3.4, Owner shall have any remedy available to it in law or equity. Such remedies may be pursued separately, collectively and/or in any order whatsoever. If it is determined for any reason that Consultant was not in default under section 4.16.3.3 or 4.16.3.4, the rights and obligations of the Parties shall be the same as if the Contract was terminated pursuant to Section 4.16.2.

4.17. Foreign Consultant. If Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by

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those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to entering into this Contract.

4.18. Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to Consultant or Owner at the address or number set forth on Exhibit A to this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section 4.18. 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 the transmitting machine generates a receipt of the transmission. To be effective against Owner, any facsimile communication or notice must be confirmed by telephone notice to Owner's Representative for the Project as indicated in Exhibit A to this Contract, and shall not be deemed to be given until such confirmation is completed. 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.

4.19. Media Contacts; Confidentiality. Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without the Owner's prior written authorization.

4.20. Conflict of Interest. Except with Owner's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

4.21. Overtime. The Consultant agrees that employees shall be paid at least time and one half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C 201 to 209 from receiving overtime.

4.22. ORS 279C.540. The Consultant agrees that employees employed under this contract for services shall receive at least time and a half pay for work performed on the legal holidays specified in ORS 279C.540 (1)(b)(B) to (G).

4.23. Hours of Work Notice Requirements. The Consultant shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

Exhibits 1 through 5 are attached:

SOUTHWESTERN OREGON
COMMUNITY COLLEGE
NONSTANDARD PROFESSIONAL
SERVICES CONTRACT

EXHIBIT 1 to Sample Contract

Statement of Work

The Owner and the Architect/Engineer agree that the following Services shall be provided by the Consultant for the design of the Project. The completed Project is intended to be functional structures and improved sites that can be legally occupied and fully used for the intended functions as constructed.

Consultant’s key personnel assigned to this contract phase are:

- 1.
- 2.
- 3.
- 4.
- 5.

1. PROJECT DESCRIPTION:

The Project requires that the successful proposer provide architectural and engineering services for the Coaledo & Sumner Hall Renovations and develop rehabilitation and mitigation strategies per ASCE Standard 41-17 and the 2014 Oregon Structural Specialty Code (“OSSC”). It is the wish of the College to rehabilitate the buildings to meet the rehabilitation objective of “Life Safety.”

Approximate Project Milestone Dates – Subject to Change

Completing preliminary plans and associated cost estimates	_____, 2022
Completing final plans, specifications, and cost estimates	_____, 2022
Securing required State and local approvals	_____, 2022

2. PROJECT PHILOSOPHY:

- 2.1. The Consultant commits to oversee and direct the design of the Project to obtain the greatest long-term value for Southwestern Oregon Community College, and which reflects the prudent expenditure of public funds within the constraints of the Project program, context, and budget. In pursuing this goal, the Consultant, with the Owner’s assistance, commits to:

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- 2.1.1. Develop a design that is appropriate for the context of the Project and the nature of its function, both present and future.
 - 2.1.2. Avoid expenditures for aesthetic effect which are disproportionate to the Project as a whole.
 - 2.1.3. Help assure the Project is completed on time and within budget.
 - 2.1.4. Apprise the Owner throughout the Project concerning the economic impact of all design decisions.
 - 2.1.5. Document all Project requirements and provide traceability of requirements, to the Owner's satisfaction, throughout the Project.
3. **PRE-CONSTRUCTION ENGINEER SERVICES** During the Pre-Construction Phase, the Consultant shall provide those engineering Services necessary to refine programming, site-related limitations and requirements for the Project. Some of the described Services will be provided during this activity phase and some during other phases of Project design. Grouping herein is for convenience to identify the Services required for the Project. The Consultant's Services during the pre-construction phase shall consist of:
- 3.1. **PROGRAMMING:** Services consisting of confirming and refining the program information already developed for the Project, and detailing the space needs, sizes, interrelationships and special requirements such as telecommunications systems, access control, standby power and security for each area of the new facility. The refined program text information shall be delivered in an 8 1/2" X 11" format and drawings may be 11" X 17" format for presentation and approval by the Owner.
 - 3.2. **SITE DEVELOPMENT PLANNING:** Services consisting of preliminary site development planning services including, but not limited to, an executive summary, a building analysis, and a comparative evaluation of conceptual site development designs, based on: land utilization; structures placement; facilities development; movement systems, circulation and parking; utilities and Project description; preliminary systems descriptions; code review; master plan; Owner requirements; subsurface conditions; ecological requirements and landscape concepts.
 - 3.3. **NEEDS ANALYSIS:** Services consisting of gathering information from the Owner and Project stakeholders to identify requirements, problems, issues, expectations, concerns, as well as Project goals beginning with prioritizing projects based on the highest safety and security risk.
 - 3.4. **ARCHITECTURAL SPACE PLANNING SERVICES:** Consultant shall analyze space utilization needs and assessments in accordance with DAS "Space Standards" requirements. (These can be reviewed at: <http://www.das.state.or.us/DAS/FAC/index.shtml> under 'Policies' or will be provided by Owner to Consultant upon request.) Consultant shall provide diagrams showing functional relationships of the various program areas of the Project. Consultant shall provide an efficiency analysis of the programmed space needs. Consultant shall work with Owner and comply with current DAS Policy.
 - 3.5. **ENGINEERING SPACE PLANNING:** Services consisting of space utilization needs and assessments. Provide diagrams showing functional relationships of the various program areas of the Project. The Consultant shall provide an efficiency analysis of the programmed space needs. Consultant shall work with Owner as requested.
 - 3.6. **ON-SITE UTILITY STUDIES:** Services consisting of establishing requirements and preparing initial designs for on-site utilities required for the Project.
 - 3.7. **OFF-SITE UTILITY STUDIES:** Services consisting of: determination of requirements for connections to utilities.

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4. **SCHEMATIC DESIGN SERVICES** In the schematic design phase, from the Owner-approved programming information, Consultant shall provide those Basic Services necessary to prepare schematic design documents consisting of drawings and other documents illustrating the general scope, scale and relationship of Project components (the “Schematic Design Documents”) for acceptance by Owner. Designs will be conceptual in character and based on program requirements provided by Owner. Consultant’s Services during Phase 2 shall consist of the following:
- 4.1. ARCHITECTURAL DESIGN/DOCUMENTATION Services: Consultant shall respond to program requirements and prepare: conceptual building plans; preliminary sections and elevations; and development of approximate dimensions, areas and volumes. These Services shall also include the following:
- 4.1.1. Single-line drawings showing complete building layout, identifying the various major areas, core areas and their relationships.
- 4.1.2. Identification of all proposed finishes (includes all exterior surfaces, doors and windows).
- 4.2. STRUCTURAL DESIGN/DOCUMENTATION Services. Consultant shall recommend basic structural materials and systems, analyses, and develop conceptual design solutions for a primary structural system and alternate structural systems. These Services shall also include the following:
- 4.2.1. Structural systems layout with overall dimensions and floor elevations. Identification of structural system (pre-cast, structural steel with composite deck, structural steel with bar joists, etc.).
- 4.2.2. Identification of foundation requirements (fill requirements, piles, caissons, spread footings, etc.).
- 4.3. MECHANICAL DESIGN/DOCUMENTATION Services. Consultant shall consider alternate materials, systems and equipment and develop conceptual design solutions for: energy sources; energy conservation; heating and ventilating; air conditioning; plumbing; fire protection; and general space requirements necessary to allow for installation and utilization. These Services shall also include the following:
- 4.3.1. Block heating, ventilating and cooling load calculations including envelope and internal loads
- 4.3.2. Minimum of two HVAC systems that appear compatible with loading conditions for subsequent life-cycle costing.
- 4.3.3. Single-line drawings of all mechanical equipment spaces, duct chases and pipe chases.
- 4.3.4. Location of all major equipment in allocated spaces.
- 4.4. ELECTRICAL DESIGN/DOCUMENTATION Services. Consultant shall respond to program requirements, recommend basic electrical materials and systems, analyses, and develop conceptual design solutions for: lighting; electrical; security and telecommunications systems. These Services shall also include the following:
- 4.4.1. An illumination plan showing estimated quantity of light from all sources and for all areas. Incorporation of daylight strategies to minimize artificial lighting. Recommendations for types and quantities of fixtures to be used.
- 4.4.2. Major electrical equipment roughly scheduled indicating size and capacity.
- 4.4.3. Complete preliminary one-line electrical distribution diagrams with indications of final location of service entry, switchboards, motor control centers, panels, transformers and onsite power generator
- 4.4.4. Legend showing all symbols used on drawings.

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- 4.5. CIVIL DESIGN/DOCUMENTATION Services. Consultant shall consider alternate materials and systems and develop conceptual design solutions for on site utility systems and fire protection systems.
 - 4.6. MATERIALS RESEARCH/SPECIFICATIONS Services. Consultant shall: identify potential architectural materials, systems and equipment, including their criteria and quality standards, which are consistent with the conceptual design; investigate availability and suitability of alternative architectural materials, systems and equipment; and coordinate similar activities of other disciplines. Consultant shall include research for less toxic materials that provide safer alternatives for people and the building environment.
 - 4.7. INTERIOR DESIGN Services. From the approved “Needs Analysis,” Consultant shall provide interior space planning based on functional relationships, DAS policy, code requirements, finishes, colors, systems, furniture and equipment. Consultant shall integrate interior space planning with conceptual design solutions for architectural, structural, mechanical, electrical and equipment requirements in order to establish an integrated design approach for a fully functional and coordinated building environment. Consultant shall obtain design input from Owner. The space plan shall include the number and location of all workstations and office layouts, loose furniture, special equipment, high density filing systems, and other rooms. Consultant shall perform these Services within the constraints of the proposed furniture system, taking into account panel dimensions and standards to provide basic workstation layouts that provide block dimensions.
 - 4.8. PROJECT DEVELOPMENT SCHEDULING Services. Consultant shall update the Critical Date Schedule as previously established.
 - 4.9. STATEMENT OF PROBABLE CONSTRUCTION COST Services. Consultant shall develop a probable construction cost range, +/- 20%, for the Project (the “Schematic Design Phase Statement of Probable Construction Cost”) based on the most recent schematic design studies, current area, volume, or other unit costs, and expected Project contingencies and consistent with the construction cost budget.
 - 4.10. COMMISSIONING PROCESS INTEGRATION Services. Consultant shall coordinate those activities directly related to the commissioning of the building at the Project. These Services include working with the commissioning agent (the “CA”) in the development of a clearly defined design intent for the Project building and its systems. Consultant shall review and respond to all CA input provided throughout the Project. Consultant shall collaborate with the CA and provide specifications that list and describe the duties of the contractor that will perform the work on the Project (the “Contractor”) in the commissioning processes.
5. **DESIGN DEVELOPMENT SERVICES** In the design development phase Consultant shall provide those Basic Services necessary to prepare, from the Owner-approved Schematic Design Documents, the design development documents consisting of drawings and other documents to fix and describe the size and character of the entire Project, including architectural, structural, mechanical, electrical, and other systems, materials and such other elements as may be appropriate (the “Design Development Documents”). Consideration shall be given to availability of materials, equipment and labor, construction sequencing and scheduling, economic analysis of construction and operations, Owner's safety and maintenance requirements, sustainability and energy conservation. Outline specifications shall be prepared in accordance with the Construction Specification Institute standards and shall include, but not be limited to, general and product information. Consultant's Services during Phase 3 shall consist of the following:
- 5.1. ARCHITECTURAL DESIGN/DOCUMENTATION Services: On an ongoing basis, Consultant shall develop and expand architectural Schematic Design Documents to establish the scope, relationship, forms, size and appearance of the Project through: plans, sections and elevations; typical construction details; and equipment layouts. These Services shall also include the following:

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- 5.1.1. Floor plans with final room locations including all openings.
 - 5.1.2. Building sections showing coordination and relationship between components.
 - 5.1.3. Wall sections showing final dimensional relationships, materials and component relationships.
 - 5.1.4. Identification of all fixed and loose equipment to be installed.
 - 5.1.5. Finish schedule identifying all finishes.
 - 5.1.6. Door and hardware schedule showing final quantity plus type and quality levels.
 - 5.1.7. Site plan, including grading and drainage.
 - 5.1.8. Preliminary development of details and large scale blow-ups.
 - 5.1.9. Legend showing all symbols used on the drawings.
 - 5.1.10. Outline specifications, in accordance with the CSI standards.
 - 5.1.11. Reflected ceiling development including ceiling grid and all devices that penetrate ceiling (i.e., light fixtures, sensors, sprinkler heads, ceiling register or diffusers, etc.).
- 5.2. STRUCTURAL DESIGN/DOCUMENTATION Services. On an ongoing basis, Consultant shall develop the specific structural system(s) and Schematic Design Documents in sufficient detail to establish: basic structural system and dimensions; final structural design criteria; foundation design criteria; preliminary sizing of additional major structural components; critical coordination clearances; and outline specifications or materials lists. These Services shall also include the following:
- 5.2.1. Plan drawings with all structural members located and sized.
 - 5.2.2. Footing, beam, column and connection schedules.
 - 5.2.3. Final building elevations.
 - 5.2.4. Outline specifications.
 - 5.2.5. Foundation drawings.
- 5.3. MECHANICAL DESIGN/DOCUMENTATION Services. On an ongoing basis, Consultant shall develop and expand mechanical Schematic Design Documents and develop outline specifications or materials lists to establish: approximate equipment sizes and capabilities; preliminary equipment layouts; required space for equipment; required chases and clearances; acoustical and vibration control; visual impacts; and energy conservation measures. These Services also include the following:
- 5.3.1. Heating and cooling load calculations for each space and major duct or pipe runs sized to interface with structural elements
 - 5.3.2. Major mechanical equipment scheduled indicating size and capacity.
 - 5.3.3. Duct work and piping systems substantially located and sized.
 - 5.3.4. Devices in ceiling located.

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5.3.5. Legend showing all symbols used on the drawings.

5.3.6. Outline specifications.

5.4. ELECTRICAL DESIGN/DOCUMENTATION Services. On an ongoing basis, Consultant shall develop and expand electrical Schematic Design Documents and develop outline specifications or materials lists to establish: criteria for lighting, electrical, security and telecommunications systems; approximate sizes and capacities of major components; preliminary equipment layouts; required space for equipment; and required chases and clearances. These Services also include the following:

5.4.1. All power consuming equipment and load characteristics.

5.4.2. Total electrical load.

5.4.3. Major electrical equipment (switchgear, distribution panels, emergency generator, transfer switches, UPS system, etc.) dimensioned and drawn to scale into the space allocated.

5.4.4. Complete preliminary site lighting design.

5.4.5. Outline specifications.

5.4.6. Lighting, power, telecommunications and office automation devices and receptacles shown on the plan.

5.4.7. Final light fixture schedule

5.4.8. Interior electrical loads estimate for systems furniture, receptacles, lighting, food service equipment, and any other special use areas.

5.5. CIVIL DESIGN/DOCUMENTATION Services. On an ongoing basis, Consultant shall develop and expand civil Schematic Design Documents and develop outline specifications or materials lists to establish the final scope and preliminary details for on site engineering services.

5.6. LANDSCAPE DESIGN/DOCUMENTATION Services. On an ongoing basis, Consultant shall develop and expand landscape Schematic Design Documents and develop outline specifications or materials lists to establish final scope and preliminary details for landscape work.

5.7. MATERIALS RESEARCH/SPECIFICATIONS Services. Consultant shall: prepare for Owner's approval the proposed Special Conditions of the construction contract (the "Construction Contract"); develop architectural outline specifications or itemized lists and brief form identification of significant architectural materials, systems and equipment and their criteria and quality standards; coordinate similar activities of other disciplines; produce a design manual, including design criteria and outline specifications or materials lists. Where applicable, Consultant shall include: less toxic materials specifications or materials lists reviewed by third-party certification programs; safer products which are already commercially available to the extent that is practical; safer options that also limit premium costs and overall lifecycle costs.

5.8. INTERIOR DESIGN/DOCUMENTATION Services. Consultant shall further develop and coordinate the approved schematic interior space plan based on functional relationships, DAS policy, code requirements, finishes, colors, systems and equipment. Consultant shall develop conceptual design solutions that are coordinated with architectural, structural, mechanical, electrical and equipment requirements and dimensions in order to establish an integrated design approach for a fully functional building. Consultant's coordination Services shall include verification of the building layout with the selected furniture system. Consultant shall provide workstation layout including low voltage ports, service voltage, special equipment, and panel feeds.

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- 5.9. PROJECT DEVELOPMENT SCHEDULING Services. Consultant shall review and update previously established schedules for the Project.
- 5.10. STATEMENT OF PROBABLE CONSTRUCTION COST Services. Consultant shall update and refine the Schematic Design Phase Statement of Probable Construction Cost of the Project as it is related to the construction cost budget and taking into consideration: availability of materials and labor; Project delivery procedures; construction sequencing and scheduling; changes in scope of the Project; and adjustments in quality standards. Completion of these Services shall result in the “Design Development Phase Statement of Probable Construction Cost.”
- 5.11. VALUE ENGINEERING Services. Consultant shall lead a review team during the design development phase of the Project. Consultant shall provide an intensive analysis of the entire Project.
- 5.12. COMMISSIONING PROCESS INTEGRATION Services. Consultant shall provide Services to coordinate those activities directly related to the commissioning of the building at the Project. These Services include working with the CA to develop a clearly defined design intent for the Project building and its systems. Consultant shall review and respond to all CA input provided throughout the Project. Consultant shall collaborate with the CA and provide specifications that list and describe the Contractor’s duties in the commissioning processes.
6. **CONSTRUCTION DOCUMENTS SERVICES** In the Construction Documents phase Consultant shall provide those Basic Services necessary to prepare, from the approved Design Development Documents, construction documents consisting of drawings, specifications and other documents setting forth in detail the requirements for construction of the Project, as well as the documents pertaining to bidding and contracting for the construction of the Project (the “Construction Documents”). Consultant's Services during Phase 4 shall consist of the following:
- 6.1. Upon written authorization from Owner to proceed, Consultant shall prepare, from the approved Design Development Documents, working drawings and specifications setting forth in detail the requirements for the construction of the entire Project. Additional requirements of the documents are:
- 6.1.1. Owner shall provide the General and Supplemental General Conditions of the Construction Contract, which Consultant shall incorporate into the Construction Documents.
- 6.1.2. Complete specifications shall be prepared using the Construction Specifications Institute's 3-part and 16-division format.
- 6.1.3. Consultant shall provide Owner with in-progress Construction Documents as needed during development of this phase.
- 6.1.4. After review and approval of the 100% complete draft Construction Documents by Owner, Consultant shall continue with preparation of the final documents, including final specifications for all authorized work on the Project, and shall incorporate in those final documents the comments and any modifications or changes desired by Owner, any modifications required for compliance with all applicable codes, regulations or standards, and the approved program or prior written approvals and instructions of Owner. The resulting final Construction Document submittal shall be a complete, fully coordinated, integrated package, suitable for bidding distribution, without any significant addenda or further clarifications required.
- 6.2. ARCHITECTURAL DESIGN/DOCUMENTATION Services: Consultant shall prepare drawings based on approved Design Development Documents setting forth in detail the architectural construction requirements for the Project.

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- 6.3. STRUCTURAL DESIGN/DOCUMENTATION Services. Consultant shall prepare final structural engineering calculations; drawings, and specifications based on approved Design Development Documents, setting forth in detail the structural construction requirements for the Project.
- 6.4. MECHANICAL DESIGN/DOCUMENTATION Services. Consultant shall prepare final mechanical engineering calculations, drawings, and specifications based on approved Design Development Documents, setting forth in detail the mechanical construction requirements for the Project.
- 6.5. ELECTRICAL DESIGN/DOCUMENTATION Services. Consultant shall prepare final electrical engineering calculations, drawings, and specification based on approved Design Development Documents, setting forth in detail the electrical construction requirements for the Project.
- 6.6. CIVIL DESIGN/DOCUMENTATION Services. Consultant shall prepare final civil engineering calculations, drawings, and specifications based on approved Design Development Documents, setting forth in detail the civil construction requirements.
- 6.7. LANDSCAPE DESIGN/DOCUMENTATION Services. Consultant shall prepare drawings and specifications based on approved Design Development Documents, setting forth in detail the landscape requirements for the Project.
- 6.8. MATERIALS RESEARCH/SPECIFICATIONS Services. Consultant's in house architectural personnel shall: assist Owner in development and preparation of: bidding documents which describe the time, place, and conditions of bidding; bidding forms; and architectural specifications describing materials, systems ,and equipment; workmanship; quality and performance criteria required for the construction of the Project (the "Bidding Documents"). These personnel shall also coordinate the development of specifications by other disciplines and compile the Project Manual, including conditions of the contract, Bidding Documents and specifications.
- 6.9. PROJECT DEVELOPMENT SCHEDULING Services. Consultant shall review and update previously established schedules for the Project.
- 6.10. STATEMENT OF PROBABLE CONSTRUCTION COST Services. Consultant shall update and refine the Design Development Phase Statement of Probable Construction Cost of the Project related to the construction cost budget and shall take into consideration: availability of materials and labor; Project delivery; procedures; construction sequencing, and scheduling; changes in scope of the Project; and adjustments in quality standards. Completion of these Services shall result in the "Construction Documents Phase Statement of Probable Construction Cost."
- 6.11. ALL SPECIFIED ITEMS SHALL BE STANDARD, cataloged, manufactured items or "off the shelf" items. No custom items shall be designed or specified without prior written authorization of Owner. No proprietary or "sole source" items shall be specified. Brand name products may be specified so long as "approved equal" is included with their specification, if there is no other practical method of specification.
- 6.12. RECYCLED PRODUCTS SHALL BE USED where they are economically feasible. Consultant shall give preference to materials and supplies manufactured from recycled materials under the following conditions:
 - 6.12.1.The recycled product is available;
 - 6.12.2.The recycled product meets applicable standards;
 - 6.12.3.The recycled product can be substituted for a comparable non-recycled product; and
 - 6.12.4.Recycled product costs do not exceed the costs of non-recycled products by more than five percent.

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- 6.13. INTERIOR DESIGN/DOCUMENTATION Services. Consultant shall further develop and coordinate the space plan based on approval by Owner of the Design Development Documents. Consultant shall consult and coordinate with Owner to develop the detailed drawings with all information required for bidding. These Services shall include detailed requirements for the selected system furniture power and low voltage feeds.
- 6.14. PLAN REVIEW INITIATION & COORDINATION Services. Consultant shall prepare all necessary project documents, with appropriate formatting and registration stamps, for submission to the mandatory authority having jurisdiction (the "AHJ") over the Project to obtain the building permit. Consultant shall apply and fill out all necessary documentation for a complete "plan check" submission prior to AHJ code review. In addition, Consultant shall meet with the AHJ as requested and answer project related questions and review applicable code compliance issues. Consultant shall be responsible for paying the "plan check" fees and will be reimbursed without markup as a Reimbursable Expense per Section B.2 of this Contract. The Construction Contractor will pay the building permit fee and all trades permits per the State of Oregon General Conditions for Public Improvement Contracts.
- 6.15. COMMISSIONING PROCESS INTEGRATION Services. Consultant shall coordinate those activities directly related to the commissioning of the building at the Project. These Services shall include working with the CA in the development of a clearly defined design intent for the building and its systems. Consultant shall review and respond to all CA input provided throughout the Project. Consultant shall collaborate with and provide specifications that list and describe the Contractor's duties in the commissioning processes.
7. **CONSTRUCTION CONTRACT ADMINISTRATION SERVICE** In the construction administration phase Consultant shall provide those Basic Services necessary for the administration of the Construction Contract as set forth in the General Conditions and Supplemental General Conditions of the Construction Contract. Consultant shall receive and transmit information as a representative of Owner during the construction of the Project and shall advise and consult with Owner. Instructions to Contractor shall be forwarded through Consultant. Consultant shall have authority to act on behalf of Owner only to the extent provided in the Construction Contract. The construction phase for each portion of the Project will commence with the award of the Construction Contract to the Contractor, and will terminate when the Construction Contract warranty period expires. Consultant's Services during Phase 6 shall consist of the following:
- 7.1. OFFICE CONSTRUCTION ADMINISTRATION Services. Consultant shall process submittals, including receipt, review of, and appropriate action on shop drawings, product data, samples and other submittals required by the Construction Contract and all documents specifically incorporated by reference into the Construction Contract (the "Contract Documents"). Consultant shall distribute submittals as required and shall maintain a master file of submittals and related communication.
- 7.2. INSPECTION COORDINATION Services. With respect to independent inspection and testing agencies, Consultant shall: administer and coordinate field testing and inspections by independent agencies as required by the Contract Documents; recommend the scope, standards, procedures, and frequency of testing and inspections; arrange for testing and inspection on Owner's behalf; notify inspecting and testing agencies of status of the Work requiring testing and inspection; evaluate compliance by testing and inspection agencies with required scope, standards, procedures, and frequency of testing and inspections; review reports on inspections and tests and notify Owner and Contractor of observed deficiencies in the Work. Consultant shall oversee, and coordinate with Owner and Contractor, the review of any system furniture installation by the Contractor to verify that dimension requirements are met.
- 7.3. SUPPLEMENTAL DOCUMENTS Services. Consultant shall: prepare, reproduce and distribute supplemental drawings, specifications, and interpretations in response to requests for clarification by the Contractor or Owner and as required by construction exigencies; and forward Owner's instructions and provide guidance to the Contractor on Owner's behalf relative to changed requirements and schedule revisions.

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- 7.4. QUOTATION REQUESTS/CHANGE ORDERS Services. Consultant shall: prepare, reproduce and distribute drawings and specifications to describe Work to be added, deleted, or modified; review proposals from Contractor for reasonableness of quantities and costs of labor and materials; review and make recommendations regarding changes in time for substantial completion; review and make detailed recommendations, including, if requested, a specific alternative cost breakdown, regarding impact on space planning design; negotiate with Contractor on Owner's behalf regarding costs of Work proposed to be added, deleted, or modified; assist in the preparation of appropriate modifications of the Construction Contract; coordinate communications, approvals, notifications, and record keeping regarding changes in the Work.
- 7.5. PAYMENT REVIEW Services. Consultant shall: evaluate and certify applications for payment, including review and determination of whether each charge is accurate and constitutes payment for fully authorized and completed Work, and maintain complete records regarding performance of this Service.
- 7.6. PROJECT CLOSEOUT Services. Upon notice from the Contractor that the Work, or a designated portion thereof which is acceptable to Owner, is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended, Consultant shall:
- 7.6.1. Perform a detailed inspection, with Owner's representative, of the Work for conformity to the Contract Documents to verify the list submitted by the Contractor of items to be completed or corrected; and determine the amounts to be withheld until final completion.
 - 7.6.2. Issue certificates of substantial completion and perform inspection(s) upon notice by Contractor that the Work is ready for final inspection and acceptance.
 - 7.6.3. Notify Owner and Contractor of deficiencies found in follow up inspection(s), if any;
 - 7.6.4. Perform a final inspection with Owner's representative to verify final completion of the Work, and receipt and transmittal of warranties, affidavits, receipts, and releases and waivers of lien or bonds indemnifying Owner against liens;
 - 7.6.5. Issue final certificate(s) for payment; and
 - 7.6.6. Issue a summary of expenses in accordance with OAR 125-248-0120. In accordance with this requirement Consultant shall maintain and provide Owner with records regarding direct expenses including both general and specific travel expenses, whether reimbursable or not. This summary shall include all expenses incurred by Consultant and any Sub-consultants as a direct result of the performance of Services.
- 7.7. RECORD DOCUMENT SERVICES Consultant shall provide Owner with accurate record drawings and record specifications manuals for the Project as more particularly described in this Section. Consultant shall deliver to Owner, within ___ days from receipt of the Contractor's working record documents, the following record documents (the "Record Documents"):
- 7.7.1. Hardcopy Set - The Record Documents shall consist of two (2) complete sets of record drawings, prepared on reproducible vellum or 24 lb. (minimum) bond media (the "Record Drawings"). The Record Drawings shall include all drawing sheets used for bidding including; addenda, all changes resulting from regulatory reviews, change orders and as-built conditions. Consultant is not responsible for the accuracy of the working as-built drawings furnished by Contractor.
 - 7.7.2. Electronic Set - A complete set of Record Drawings (as described above in Section A.6.07(a) above) and generated in AutoCAD (version as directed by Owner) shall be provided to Owner by Consultant, as well as an electronic version of the complete specifications in a file format approved by Owner.

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Consultant shall verify that all electronic drawings are readable and that all AutoCAD xreference (“Xrefs”) files are bound and formatted in such a way as to be readable by the AutoCAD version they are saved in. Consultant shall provide a list of all drawings, including Xrefs that are associated with the Record Drawings. The electronic Record Documents shall be provided on recordable (not re-recordable) compact discs.

7.8. WARRANTY REVIEW Services. Consultant shall: consult with and make recommendations to Owner, during the duration of the Construction Contract warranty period, concerning inadequate performance of materials, systems, and equipment under warranty; perform inspections prior to expiration of the warranty period to ascertain adequacy of performance of materials, systems, and equipment; and document defects or deficiencies and assist Owner in preparing instructions to the Contractor for correction of noted defects.

7.9. CONSTRUCTION CONTRACT ADMINISTRATION SERVICES. Consultant shall perform Construction Contract administration Services as set forth in this section and the Contract Documents.

7.9.1. Consultant shall visit the site at weekly intervals, and upon special circumstances as requested by Owner, to be familiar with the progress and quality of the Work, and to determine if the Work is generally proceeding in accordance with the Contract Documents. Consultant, in conjunction with the payment review, shall report to Owner on the accuracy of Contractor’s working record drawings each month during construction. However, Consultant shall not be required to make exhaustive or continuous on site inspections to check the quality or quantity of the Work. On the basis of such on site observations, Consultant shall report such visits, observations, and information in a weekly written report to Owner.

7.9.2. Consultant shall not have control or charge of, and shall not be responsible for construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work. Consultant, by virtue of its position alone and without regard for Consultant’s actual involvement on site, shall not have control or charge of, and shall not be responsible for the acts or omissions of Contractor and any subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

7.9.3. Subject to the concurrence of Owner, Consultant shall be the interpreter of the requirements of the Contract Documents, regarding the performance thereunder by both Owner and Contractor. Accordingly, Consultant shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either Owner or Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between Owner and Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents. Owner shall render a final determination in the event that Owner disagrees with Consultant’s proposed interpretation or decision.

7.9.4. Consultant shall review and take appropriate action on Contractor’s submittals, including shop drawings, product data, and samples, checking for conformance with the design concept of the Work and the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. Consultant shall forward to Owner one (1) copy of all approved shop drawings, product data, and samples, together with correspondence related to these documents as a record of the Work. Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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- 7.9.5. Consultant shall conduct construction observations and reviews to determine “Substantial Completion” and “Final Completion” (as those terms are defined in the Construction Contract) and shall receive and forward to Owner written warranties and related documents required by the Contract Documents and assembled by Contractor. Consultant, with Owner's concurrence, shall prepare and certify a “Certificate of Substantial Completion” and a “Certificate of Final Payment” under the Construction Contract.
- 7.9.6. Consultant agrees to be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Consultant.
- 7.9.7. Consultant agrees to supervise any required subsurface explorations such as borings and soil tests to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Consultant or Owner.
- 7.9.8. Consultant agrees to attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award, when applicable.
- 7.9.9. The Consultant agrees to review proof of bidder's qualifications and recommend approval or disapproval.
- 7.9.10. Consultant agrees to submit a report not less frequently than quarterly to the Owner covering the general progress of the job and describing any problems or factors contributing to delay.

END OF EXHIBIT 1

SOUTHWESTERN OREGON
COMMUNITY COLLEGE
NONSTANDARD PROFESSIONAL
SERVICES CONTRACT

EXHIBIT 2 to Sample Contract

Consultant Compensation

B.1 BASIS OF COMPENSATION

B.1.01 The Owner shall compensate the Consultant for the performance of Services set forth in the Statement of Work, as defined in **Exhibit 1**, as follows:

The Owner shall reimburse the Consultant for any allowable Reimbursable Expenses for actual mileage. Consultant will charge for service by progress billing at the following hourly rate:

B.1.02 Payments for Services and Reimbursable Expenses shall be made monthly, following Owner's review and approval of detailed invoices submitted by Consultant and acceptance of the Services or approval of Reimbursable Expenses by the Owner. Payments for Services shall be in proportion to the Services performed.

B.1.03 Post-Project Services: All Services performed after both the pre-construction phase and the construction phase of the Project are completed, including, but not limited to, any construction management, warranty oversight, and any such related work outside the scope of the initial planning stage of Project are considered Services to be provided on an "as needed" basis and will be performed only if authorized by the Owner in writing. The cost for each such Service shall, at Owner's sole discretion, be either a fixed price mutually agreed to by the Owner and Consultant prior to authorization to proceed with the Service, or shall be a maximum, not-to-exceed contract price indicated below for that Service (as those amounts may be revised in accordance with this Section) derived from Consultant's personnel time to complete the Service multiplied by the hourly rates for those personnel as set forth above. It is the goal of the Owner and Consultant to agree to a maximum, not-to-exceed contract price for any Post-Project Services for which the actual scope of Service can be defined and agreed to.

B.1.04 Reimbursable expenses, described in paragraph B.2.01, shall be defined as the direct cost expended by the Consultant, the Consultant's employees and Sub-consultants for performance of Services rendered to complete the Project.

B.1.05 The Owner and Consultant agree in accordance with the terms and conditions of this Contract that:

a. If the scope of the Project or if the Consultant's Services is changed materially, the Consultant shall request in writing, before services are provided, that compensation be adjusted and that the Contract be amended to describe the additional Services to be performed and the compensation for those additional Services. If the Owner agrees to allow additional Services to be performed, the Parties must prepare and fully execute a written amendment to the Contract fully memorializing the Parties' agreement, and all required Southwestern Oregon Community College approvals must be obtained, before the Contract will be deemed amended and before Consultant begins performance of any additional Services pursuant to the amended Contract.

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- b. The fee for preparing routine change orders adding or deleting Work from the Project shall be considered part of the compensation for Basic Services.
- c. The Consultant shall make such revisions to completed Contract Documents as are necessary to correct errors or omissions appearing therein, consistent with generally accepted standards of professional practice and with the Consultant's standard of care under Section 4.1.4 of the Contract, when required to do so by the Owner and without additional compensation.

B.2 REIMBURSABLE EXPENSES

- B.2.01 Reimbursable Expenses are in addition to the Compensation for Project Services and include actual expenditures made by the Consultant, the Consultant's employees and the Sub-consultants in the interest of the Project for the expenses listed in the following Subparagraphs:
 - a. Expense of reproductions, postage and handling of drawings, specifications, deliverables and other documents, excluding reproductions for the office use of the Consultant and the Sub-consultants.
 - b. Sub-consultants engaged by Consultant.
 - c. Reimbursement of mileage expenses shall not exceed the current federal rate per mile.
 - d. Expense of renderings, models and mock-ups requested by the Owner.
 - e. Communications expenses.

END OF EXHIBIT 2

SOUTHWESTERN OREGON COMMUNITY
COLLEGE NONSTANDARD PROFESSIONAL
SERVICES CONTRACT

EXHIBIT 3 to Sample Contract

Insurance Provisions

During the term of this Contract, or such other time period provided herein, the Consultant shall maintain in force at its own expense, each insurance coverage or policy noted below:

C.1.01 Required by the Owner of Consultants under the following circumstances:

Workers' Compensation insurance All employers, including the Consultant, that employ subject workers who work under this Contract 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. The Consultant shall ensure that each of its Sub-consultants and subcontractors complies with these requirements. The Consultant warrants, represents and agrees that Consultant is an independent contractor and not an employee or agent of the College and that Consultant is solely responsible for the maintenance of its own workers compensation for its employees, agents and representatives.

C.1.02 Required by the Owner

Professional Liability/Errors & Omissions insurance with a combined single limit, or the equivalent, of not less than: \$2,000,000 each claim, incident or occurrence. This insurance must cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Any deductible shall not exceed \$25,000 each claim, incident, or occurrence.

C.1.03 Required by the Owner

General Liability insurance with a combined single limit, or the equivalent, of not less than: \$2,000,000 each occurrence for Bodily Injury and Property Damage and a \$3,000,000 annual aggregate. It shall include contractual liability coverage for the indemnity provided under this Contract. The policy, or an endorsement or amendment to the policy, must provide that Southwestern Oregon Community College and its divisions, officers and employees are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract. Any deductible shall not exceed \$25,000 each claim, incident, or occurrence.

C.1.04 Required by the Owner

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than: Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$2,000,000 per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that Southwestern Oregon Community College, and its officers and employees are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

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C.1.05 “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 this Contract for a duration of 24 months, or the maximum time period available to the Consultant in the marketplace if less than 24 months. Consultant will be responsible for furnishing certification of “tail” coverage as described or continuous “claims made” liability coverage for 24 months following Contract expiration. 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 Contract. Evidence of suitable coverage will be a condition of final acceptance and payment under the Contract.

C.1.06 Notice of Cancellation or Change

There shall be no cancellation, material change, reduction of limits, reduction in any aggregate limits, or intent not to renew the insurance coverage(s) without 30 days prior written notice from the Consultant or its insurer(s) to the Southwestern Oregon Community College.

C.1.07 Certificates of Insurance

As evidence of the insurance coverage required by this Contract, the Consultant shall furnish acceptable insurance certificates to the Southwestern Oregon Community College prior to commencing performance of the Services. The certificate(s) will specify all of the parties who are “additional insureds” and must contain terms indicating that the relevant policies (except for Workers’ Compensation coverage or Professional Liability/Errors & Omissions coverage) has been endorsed or amended to name Southwestern Oregon Community College and its officers and employees as “additional insureds” under the Consultant’s policies. Insuring companies or entities are subject to College acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the College. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

C.1.08 Deductibles

Deductibles are the sole responsibility of the consultant, GC, and sub-contractors with a maximum allowable deductible of \$25,000 or less. Any higher deductible amount requires written college approval.

END OF EXHIBIT 3

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Southwestern Oregon Community College- Architect/Consultant Contract

EXHIBIT 4
FORM CD-512

United States Economic Development Provisions

FORM CD-512
(REV 12-04)

U.S. DEPARTMENT OF COMMERCE

**CERTIFICATION REGARDING LOBBYING
LOWER TIER COVERED TRANSACTIONS**

Applicants should review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying."

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

EXHIBIT 5
United States Economic
Development Provisions
For Construction Projects

OMB Number: 0610-0096
Expiration Date: 11/30/2021

U. S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION



EDA CONTRACTING PROVISIONS
FOR CONSTRUCTION PROJECTS

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.

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1. **DEFINITIONS**

Agreement – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

Architect/Engineer - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

Contract – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

Contract Documents – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

Contractor – The individual or entity with whom the Owner has entered into the Agreement.

Drawings or Plans – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

EDA - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA's role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

Owner – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

Recipient – A non-Federal entity receiving a Federal financial assistance award directly from EDA to carry out an activity under an EDA program, including any EDA-approved successor to the entity.

Specifications – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

Subcontractor – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

(a) All contracts in excess of the simplified acquisition threshold - currently fixed at \$150,000 (*see* 41 U.S.C. §§ 134 and 1908) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement.

(c) All construction contracts awarded in excess of \$10,000 by recipients of federal assistance and their contractors or subcontractors shall contain a provision requiring compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967, and Department of Labor implementing regulations at 41 C.F.R. part 60.

(d) All prime construction contracts in excess of \$2,000 awarded by Recipients must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 3.

(e) All contracts awarded by the Recipient in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704 (the Contract Work Hours and Safety Standards Act) as supplemented by Department of Labor regulations at 29 C.F.R. part 5.

(f) All contracts must include EDA requirements and regulations that involve a requirement on the contractor or sub-contractor to report information to EDA, the Recipient or any other federal agency.

- (g) All contracts must include EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.
- (h) All contracts must include EDA requirements and regulations pertaining to copyrights and rights in data.
- (i) All contracts and subgrants in excess of \$150,000 must contain a provision that requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. § 7401 *et seq.*) and the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 *et seq.*), and Executive Order 11738, *Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans*.
- (j) Contracts must contain mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
- (k) Contracts must contain a provision ensuring that contracts are not to be made to parties on the government wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180.
- (l) Contracts must contain a provision ensure compliance with the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) under which contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- (m) If the Recipient is a state agency or agency of a political subdivision of a state, any contract awarded must contain a provision ensuring compliance with section 6002 of the Solid Waste Disposal Act (42 U.S.C. § 6962), as amended by the Resource Conservation and Recovery Act related to the procurement of recovered materials.

4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR'S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.

9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Architect/Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. **CLAIMS FOR EXTRA COSTS**

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

13. **CONTRACTORS AND SUBCONTRACTORS INSURANCE**

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

- (1) Workers' Compensation
- (2) Contractor's Public Liability and Property Damage
- (3) Contractor's Vehicle Liability
- (4) Subcontractors' Public Liability, Property Damage and Vehicle Liability
- (5) Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds \$150,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed \$150,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's

authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**
(as required by section 602 of PWEDA)

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a

reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) **Withholding**

EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations

have ceased. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) **Payrolls and basic records**

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at <https://www.dol.gov/whd/forms/wh347.pdf>. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. part 3; and

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 15(c)(2)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 3729 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 15(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, EDA or its designee may, after written notice to the Contractor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. § 5.12.

(d) **Apprentices and Trainees.**

(1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training (Bureau), or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any

apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity

requirements of Executive Order 11246, *Equal Employment Opportunity*, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 3145) as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States”). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. § 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. § 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.

(j) **Certification of Eligibility.**

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages, liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (c) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (c) of this section.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

Economic Development Administration
Contracting Provisions for Construction Projects

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by EDA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of

this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph 17(a)(1) and the provisions of paragraphs 17(a)(1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(9) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.

(10) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.

(11) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case

to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading, and other than contracts and subcontracts with depositories of Federal funds in any amount and with financial institutions which are issuing and paying agents for U.S. savings bonds and savings notes) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;

(4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;

(5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;

(6) Requiring each party to a subcontract to take the affirmative steps of this section; and

(7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

(1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;

(2) Protect the lives, health, and safety of other persons;

(3) Prevent damage to property, materials, supplies, and equipment; and

(4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

(1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708); and

(2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

20. **CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS**

- (a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.
- (b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.
- (c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.
- (d) The Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.
- (e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.
- (f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to 31 U.S.C. § 1352, regarding lobbying restrictions. The section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying – Lower Tier Covered Transactions*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations:** Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of 31 U.S.C. § 1352, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic

Preservation Officer (SHPO) for recovery of the items. *See* the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 *et seq.*, formerly at 16 U.S.C. § 470 *et seq.*) and Executive Order No. 11593 of May 31, 1971.

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of \$150,000

(a) **Definition.** “Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Contractor agrees to:

(1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the Excluded Parties List System, part of the System for Award Management (SAM), pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;

(2) Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the Excluded Parties List System or the Contractor knows that it has been recommended to be placed on the List;

(3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

(4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures over \$5,000, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint or other surface coatings used in a residential property does not contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight. For purposes of this section, “residential property” means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not

including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

- (b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

25. **ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201) for the State in which the Work under the Contract is performed.

26. **ENVIRONMENTAL REQUIREMENTS**

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

- (1) **Wetlands.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.
- (2) **Floodplains.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.
- (3) **Endangered Species.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS**

As required by Executive Orders 12549 and 12689, *Debarment and Suspension*, 2 C.F.R. Part 180 and implemented by the Department of Commerce at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), the Contractor agrees that:

- (1) By entering into this Contract, the Contractor and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared Economic Development Administration Contracting Provisions for Construction Projects

ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

See also 2 C.F.R. part 180 and 2 C.F.R. § 200.342.

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.

29. **BUY AMERICA**

To the greatest extent practicable, contractors are encouraged to purchase American-made equipment and products with funding provided under EDA financial assistance awards.