Port of Brookings Harbor

This Institution is an Equal Opportunity Provider

REQUEST FOR PROPOSALS (RFP)

PROFESSIONAL ENGINEERING SERVICES

BOAT YARD STORMWATER IMPROVEMENTS PROJECT

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1. RFP IDENTIFICATION

RFP No.: PBH-ENG-2026-01
Issuing Agency: Port of Brookings Harbor
Project Location: Port of Brookings Harbor Boatyard, Brookings, Oregon
Issue Date: October 28, 2026
Proposals Due: December 2, 2026, 10am Pacific Time

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2. NOTICE TO PROPOSERS

The Port of Brookings Harbor (Port) invites qualified, licensed engineering consulting firms to submit proposals for professional engineering services for the design and permitting of improvements to the Port's boatyard facilities, including reconstruction of a marine travel lift system rated for 85-ton capacity.

This solicitation is issued as a Qualifications-Based Selection (QBS) pursuant to Oregon Revised Statutes (ORS) Chapters 279A and 279C for architectural and engineering services.

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3. PROJECT DESCRIPTION

Port intends to modernize and reconstruct its existing boatyard infrastructure to support commercial fishing, marine services, and Port operations. The project generally includes:

- Heavy-duty boatyard resurfacing suitable for marine industrial use
- Stormwater collection and industrial water quality treatment improvements
- Electrical power distribution upgrades and exterior yard lighting
- Demolition and reconstruction of a marine travel lift system designed for 85-ton rated capacity
- Coordination with the Port operations, tenants, and regulatory agencies

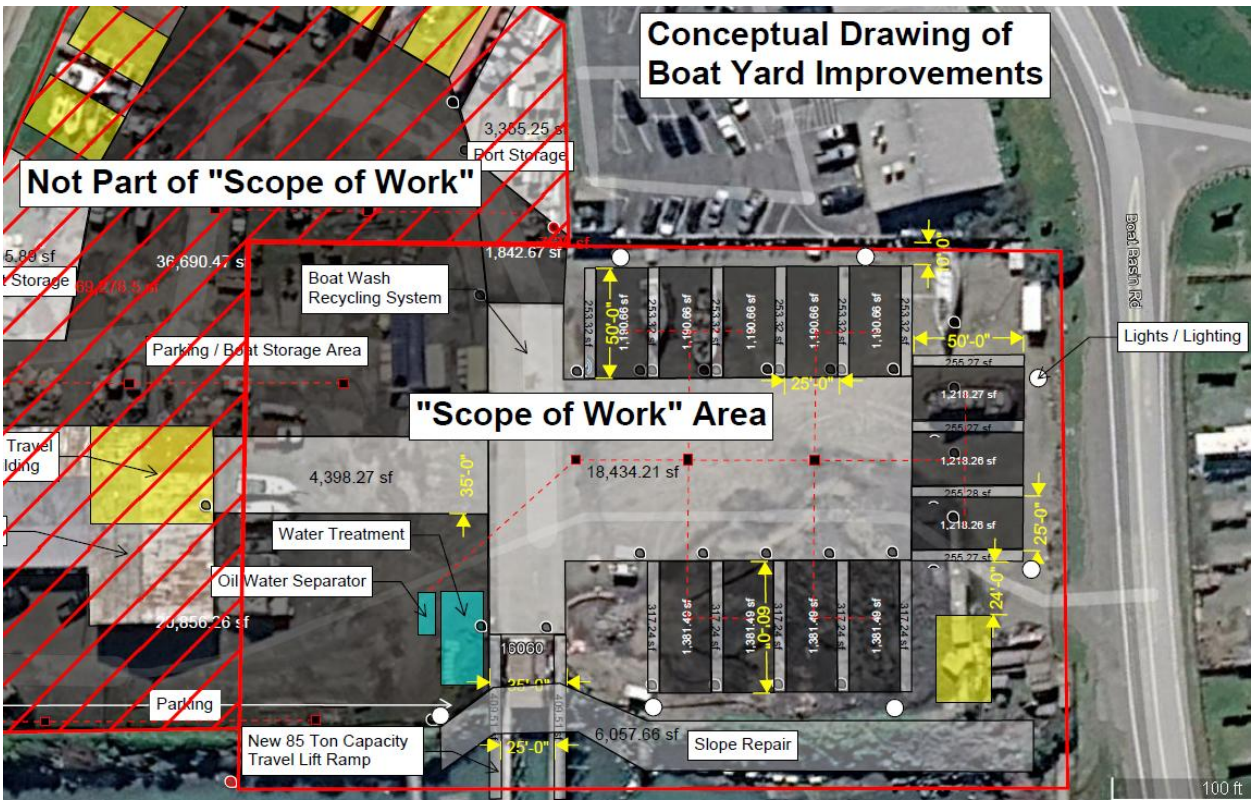
The project site is located within Oregon's designated Coastal Zone and will require coordination with county, state, and federal agencies.

4. PROCUREMENT METHOD AND LEGAL COMPLIANCE

- This RFP is governed by ORS 279A and ORS 279C.
- Selection shall be based on the proposer's qualifications and experience.
- Cost proposals shall not be submitted at this stage.
- Port will negotiate a contract with the highest-ranked firm.
- If negotiations are unsuccessful, Port may terminate negotiations and proceed with the next-ranked proposer.
- If this project is funded in whole or in part with U.S. Environmental Protection Agency (EPA) Community Grants assistance (e.g., Congressionally Directed Spending / Community Project Funding), the selected Consultant shall comply with all applicable EPA award terms and conditions and federal assistance requirements, including those summarized below.
- Uniform Guidance / EPA assistance regulations: Comply with 2 CFR Part 200 (Uniform Guidance) and EPA's regulation at 2 CFR Part 1500, as applicable.
- EPA procurement requirements: Support Port in meeting applicable federal procurement standards (including competition requirements, required contract provisions, and documentation/recordkeeping). Where applicable, comply with EPA procurement standards at 2 CFR 200.317–200.327 and EPA supplements at 2 CFR 1500.10–1500.11.
- Cost share (recipient responsibility): EPA Community Grants generally include a 20% non-federal cost share requirement unless waived/modified by EPA per the award terms and applicable guidance. The Consultant shall provide budget and documentation support as reasonably needed for compliance.
- Build America, Buy America (BABA): For covered infrastructure projects, comply with domestic preference requirements for iron, steel, manufactured products, and construction materials, including documentation and any approved waivers, as applicable.
- Davis-Bacon and Related Acts (DBRA): If the project includes EPA-funded construction subject to DBRA, comply with prevailing wage requirements, contract clauses, and related reporting and oversight requirements, as applicable.
- American Iron and Steel (AIS) (if applicable): For covered water infrastructure components, comply with AIS domestic sourcing requirements, certifications, and documentation, as applicable.
- Environmental review / cross-cutting requirements: Support completion of any required federal environmental review and comply with applicable cross-cutting authorities identified in the EPA award terms and conditions.
- Reporting, audits, and access to records: Provide information needed for performance/progress reporting; retain and provide access to records as required; and cooperate with any applicable audit requirements.

5. SCOPE OF SERVICES

The selected Consultant shall provide professional engineering services including, but not limited to, the following tasks:



5.1 Project Management and Coordination

- Coordinate with Port staff and reviewing agencies
- Integrate Port operational requirements and construction phasing needs

5.2 Existing Conditions Assessment

- Site visits and condition assessments
- Review of available as-built drawings and Port records
- Preparation of an Existing Conditions Technical Memorandum

5.3 Civil and Surface Engineering

- Design heavy-duty pavement sections suitable for:
  - 85-ton travel lift wheel loads
  - Boat blocking, staging, and marine maintenance activities
- Design demolition limits and construction phasing
- Incorporate durability provisions for coastal and saline environments

5.4 Storm Drainage and Water Quality

- Stormwater collection system design
- Industrial stormwater treatment compliant with Oregon DEQ requirements
- Supporting documentation for permitting and Port review

5.5 Electrical Power and Lighting

- Evaluation and design of electrical service and distribution
- Exterior lighting design for safety, security, and operations

5.6 Travel Lift Demolition and Reconstruction

- Demolition plans for existing travel lift infrastructure
- Structural and civil design of foundations, slabs, and ramp for an 85-ton rated travel lift
- Coordination with travel lift manufacturer design requirements

5.7 Permitting and Environmental Support

- Technical support for Curry County land use review
- Joint Permit Application for USACE, ODSL and ODEQ
- Oregon DEQ 1200-Z stormwater permit support

5.8 Construction Documents

- Civil, structural, and electrical drawings suitable for public works bidding
- Technical specifications
- Stormwater treatment calculations and details
- Engineer's Opinion of Probable Construction Cost
- Record (as-built) drawings

5.9 Optional Construction-Phase Services

- Submittal and shop drawing review
- Responses to Requests for Information (RFIs)
- Limited construction observations

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6. PROPOSAL SUBMITTAL REQUIREMENTS

6.1 Format and Length

Proposals shall not exceed 30 pages, excluding résumés and required forms.

6.2 Proposal Contents

Proposals shall be organized as follows:

1. Cover Letter
2. Firm Overview and Qualifications
3. Relevant Marine and Port Project Experience
4. Project Team and Key Personnel
5. Project Approach and Understanding
6. Proposed Schedule and Availability
7. References (minimum of three, preferably public owners or ports)
8. Required Certifications and Forms

Proposals must provide all information requested and required under this RFP. Proposals that do not provide all such information may be rejected as non-responsive.

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7. SOLICITATION CLARIFICATIONS AND PROTESTS

- Informal Questions or Requests for Clarification: Any Proposer requiring clarification of the information provided in this RFP may submit specific questions or comments in writing to the individual listed under Section 16 of this document (the "Procurement Contact"). Email is the preferred form of written communication. The deadline for submitting such questions is set forth in Section 9.

- Request for Change or Protest of Solicitation or Contract Documents: Any Proposer wishing to protest this RFP or request a change to any provision, specification, or term contained in the solicitation documents, must submit such questions, comments, or protests to the Procurement Contact. The deadline for submitting such protests is set forth in Section 9.
- Content of Solicitation Protest/Request for Clarification: The prospective Proposer's written request for change or protest of the RFP must include all of the following and otherwise comply with OAR 137-048-0240(1):

    (1) Sufficient information to identify the solicitation that is the subject of the protest or request;

    (2) The reasons for the protest or request, including any grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, or is legally flawed;

    (3) Evidence or supporting documentation that supports the grounds on which the protest is based; and

    (4) A statement of the desired changes to the procurement process or the solicitation document that the prospective Proposer believes will remedy the conditions upon which the prospective Proposer based its protest or request.

- Addenda: If Port determines that a change or clarification to the solicitation documents is necessary, such information, clarification, or interpretation will be supplied in a written addendum, posted on the Port's website and OregonBuys.

  Addenda shall have the same binding effect as though contained in this RFP. The title of official in charge of the procurement shall issue all addenda not less than seven days prior to the proposal submission deadline. Unless otherwise specified within an addendum, the Port's issuance of addenda will not extend the proposal due date and time.

  Minor clerical errors related to or within addenda issued by Port, including clerical errors in an addendum's numbering or title, do not remove the responsibility of the proposer to acknowledge all addenda.

  Statements made by the Port's representatives are not binding on Port unless confirmed by a written addendum.

- Extension of Closing: Port may extend the proposal due date and time set forth in Section 9 if it determines an extension is necessary to consider and respond to a properly filed protest under this Section 7.

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8. PROPOSAL EVALUATION AND SCORING

Each evaluator will score proposals submitted to Port based on the following criteria:

Written Evaluation Criteria – Proposal Phase 1	
Relevant Marine / Port Experience	**Maximum Points Available: 30**

Travel Lift & Heavy Industrial Facility Experience	**Maximum Points Available: 25**
Project Team Qualifications	**Maximum Points Available: 20**
Project Approach & Understanding	**Maximum Points Available: 15**
Schedule & Availability	**Maximum Points Available: 10**
Total Points	**Maximum Points Available: 100**

Interview Evaluation Criteria – Proposal Phase 2 (if conducted)	
A. Proposed Key Staff and Staff Experience; Staff Capacity, Subcontracting Describe in detail the experience level and capabilities of your key staff – those who will be assigned to this project.	**Maximum Points Available: 10**
B. Engineering Philosophy and Approach Describe in detail what makes your engineering approach work better than the competition.	**Maximum Points Available: 10**
C. Integrity and professional ethics. Integrity is critical to Port. Describe in detail how your firm demonstrates professional ethics over pure profit.	**Maximum Points Available: 10**
	Total Points Available: 30

9. ANTICIPATED SCHEDULE

- RFP Issued: October 28, 2026
- Questions and Clarification Requests Due: November 16, 2026
- Deadline for Protest of RFP: November 25, 2026
- Proposals Due: December 2, 2026, by 10 am Pacific time
- Proposal Review and Scoring: December 3, 2026
- Interviews (if conducted): December 9, 2026
- Consultant Selection/Notice of Intent to Award: December 9, 2026
- Deadline for Filing Protest of Award: December 15, 2026, by 5pm.
- Board Approval of selected highest ranked firm: December 16, 2026
- Board approval of contract and fee: January 20, 2027

Port reserves the right to modify this schedule.

10 PROPOSAL EVALUATION AND AWARD

10.1 Clarification of Responses

In the event that one or more proposals are in need of clarification, Port will request such clarification in writing and will afford the Proposer(s) contacted an opportunity to respond in kind, with the necessary clarification.

10.2 Site Visits/Informational Activities

At any point before or after the opening of proposals, Port may conduct site visits, demonstrations, informational and group activities with Proposers for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation documents or to consider and respond to requests for modifications to the proposal requirements. Port will use procedures designed to accord Proposers fair and equal treatment with respect to any opportunity for discussion and revisions of proposals.

10.3 Proposal Evaluation

The evaluation process of this RFP will be comprised of a

- A written proposal.
- Interviews (should Port determine they are required).

An Evaluation Committee, consisting of not less than three individuals, will evaluate the proposals. Each evaluator will independently evaluate and score proposals in accordance with the Evaluation Criteria.

(a) **Written Proposal Evaluation – Proposal Phase 1**

(i) Each evaluator will independently score proposals in accordance with the Evaluation Criteria.

(ii) Port will average the written proposal scores per category and then sum the category averages for a total written evaluation score for each proposal.

(b) **Invitation for Interview**

(i) After scoring the written proposals under Section 8 of this RFP, the Evaluation Committee may conduct interviews with one or more of the top-ranked proposers if the Evaluation Committee determines that interviews are necessary or desirable in its sole determination.

(ii) The number of proposers selected for interviews is at the sole discretion of the Evaluation Committee.

(iii) Proposers selected for interviews will be notified by the Evaluation Committee at least 3 business days in advance of the interview date.

(iv) No additions, deletions or substitutions may be made to proposals during the interviews/presentations that cannot be viewed as clarification.

(c) **Interview Evaluation**

(i) Each evaluator will score the interview evaluation criteria.

(ii) Port will average the interview scores per category and then will sum the category averages for a total interview evaluation score for each proposal.

(iii) Port will sum the written evaluation score and the total interview evaluation score to achieve a total score per proposer.

(d) **References**

Port reserves the right to investigate references, including customers other than those listed in a Proposer's submission. This inquiry may include without limitation investigation of past performance of any Proposer with respect to its successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, and its lawful payment of employees and subcontractors.

10.4 Notification of Intent to Award

Port will notify Proposers of its Intent to Award by email.

10.5 Negotiation

(a) After Port has issued the Notice of Intent to Award, Port will commence serial negotiations with the highest-ranked eligible Proposer.

(b) At any time during negotiations, Port may terminate negotiations with the highest-ranked Proposer, or the eligible Proposer with whom it is currently negotiating if Port believes that:

(i) The eligible Proposer is not negotiating in good faith; or

(ii) Further negotiations or negotiations with the eligible Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

(c) If Port terminates negotiations with an eligible Proposer, Port may then commence negotiations with the next highest-ranked eligible Proposer.

(d) Port reserves the right to negotiate final contract terms with the selected Proposer(s) to the fullest extent allowed by law and as in the best interest of Port, including a maximum compensation level that Port alone determines is fair and reasonable.

10.6 Award of Contract

If Port awards a contract pursuant to this RFP it will award a contract to the responsible Proposer whose proposal Port determines in writing is the most advantageous to Port based upon the evaluation process and criteria described in this RFP, applicable preferences, and the outcome of any negotiations authorized by this RFP.

10.7 Protest of Contract Award

A Proposer may protest the Intent to Award a contract in accordance with OAR 137-048-0240, provided the Proposer is adversely affected because (a) the Proposer would be eligible to be awarded the contract in the event that the protest is successful and (b) the reason for the protest is Proposer is the highest ranking Proposer because all higher-ranked proposals are non-responsive or failed to meet the requirements of this RFP, or all higher-ranked proposers are not qualified to perform the services required under this RFP.

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11. CONTRACT TERMS

- The selected Consultant will enter into the Port's standard professional services agreement, a form of which is attached to this RFP as Attachment A
- Consultant must maintain insurance acceptable to Port
- Consultant must hold Oregon professional licenses required to perform the scope of services described in this RFP
- Consultant must comply with all applicable federal, state, and local laws

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12. RESERVATION OF RIGHTS

Port reserves the right to:

- Reject any or all proposals
- Waive minor informalities or irregularities
- Cancel or reissue this RFP
- Modify the scope of services

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13. SOLICITATION TERMS AND CONDITIONS

- Proposers will bear sole responsibility for all costs incurred in preparing and providing their proposals in response to this RFP. Port is not liable to any Proposer for any loss or expense caused by or resulting from the cancellation of a solicitation or rejection of a proposal.
- All material submitted for any portion of a proposal in response to this RFP, or during any phase of this solicitation, will become the property of Port and will not be returned to Proposers.
- All Proposers represent and warrant that by responding to this RFP, they have been sufficiently informed in all matters relating to the performance of services solicited under this RFP and its attachments. Prior to submitting a proposal, all Proposers will make a careful examination of this RFP and its provisions, including but not limited to all terms and conditions and specifications. Failure to take these precautions will not release a proposer from performing the services solicited under this RFP in strict accordance with the terms of any contract awarded as a result of this RFP.

14. CONFIDENTIAL INFORMATION

- Port is subject to the Oregon Public Records Law (ORS 192.311 to 192.478), which requires Port to disclose all records generated or received in the transaction of Port business, except as expressly exempted under ORS 192.338 to 192.355, or other applicable law.
- Pursuant to ORS 279C.107, Port need not open proposals for public inspection until after execution of the contract(s) awarded under this section. Thereafter, Port will not disclose records submitted by a Proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations:
    - The Proposer must mark all proposal pages containing the records it has determined as confidential under Oregon Public Records Law and must segregate those pages in the following manner:
        - Such pages must be clearly marked "Confidential" on each page of the confidential document.
        - Proposer must separate confidential pages from its other proposal pages by providing the confidential pages to Port in a separate e-mail file attachment.
        - In its proposal, Proposer must cite the specific statutory exemption in Oregon Records Law exempting such pages from disclosure.
    - Proposers may not mark an entire proposal confidential. Should a proposal be submitted in this manner, Port will hold no portion of the proposal as confidential, unless such a portion is segregated as required above and is determined exempt from Oregon Public Records Law.
- Notwithstanding the above procedures, Port reserves the right to disclose information that Port determines, in its sole discretion, is not exempt from disclosure or that Port is directed to disclose by the Curry County District Attorney or a court of competent jurisdiction.
- Prior to disclosing such information, Port will make reasonable attempts to notify the Proposer of the pending disclosure.

15. PROPOSAL SUBMITTAL INSTRUCTIONS

Proposals shall be submitted by the deadline to:

Electronic Submission:
Gary@portofbrookingsharbor.com

Travis@portofbrookingsharbor.com

OR

Hard Copy Submission by mail:
Port of Brookings Harbor
PO Box 848
Brookings, OR 97415

Hand Delivery:
Port of Brookings Harbor
16330 Lower Harbor rd.
Brookings, OR 97415

Late proposals will not be accepted.

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16. POINT OF CONTACT

All communications regarding this RFP shall be directed to:
Travis Webster and Gary Dehlinger
Port/ Project Managers
Port of Brookings Harbor
Email: Travis@portofbrookingsharbor.com
Gary@portofbrookingsharbor.com
Phone: 541-469-2218

- End of RFP-

Attachment A

DESIGN PROFESSIONAL SERVICES AGREEMENT
between
Port of Brookings Harbor
and
CONSULTANT NAME

Contract No. _____

This Design Professional Services Agreement (this "Agreement") is made by and between the Port of Brookings Harbor, an Oregon port organized under ORS Chapter 777 ("Owner") and ("Consultant") for (the "Services") on (the "Project"). The parties agree as follows:

CONSULTANT DATA

Consultant attests that it is an independent contractor solely responsible for the work performed under this Agreement. Consultant and its subconsultants, employees, and agents shall not be deemed employees of Owner. Consultant shall be responsible for all federal, state, and local taxes and any and all fees applicable to payments for the Services under this Agreement.

Full Business Name:

Address:

City, State, ZIP:

Business Telephone:

Facsimile:

Email:

Federal Tax Identification Number (TIN) or Social Security Number (SSN):

Consultant must submit a completed "Request for Taxpayer Identification Number and Certification" (Form W-9) with this signed Agreement. Payment information will be reported to the Internal Revenue Service under the name and TIN or SSN, whichever is applicable, provided by Consultant.

Consultant certifies under penalty of perjury that Consultant is a

☐ Sole Proprietor ☐ Corporation ☐ Limited Liability Company

☐ Partnership ☐ Other [describe: _____]

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Attachment A

TERMS AND CONDITIONS

1. Initial Project Information

a. Project Description:

b. Construction Cost Budget:

c. Scheduled Construction Commencement and Completion:

d. This Agreement consists of these Terms and Conditions and the following exhibits:

Exhibit A: Scope of Services
Exhibit B: Project Narrative
Exhibit C: Construction Budget
Exhibit D: Project Schedule
Exhibit E: Owner's Request for Proposals
Exhibit F: Consultants' Proposal
Exhibit G: Project Team
Exhibit H: Fee Proposal
Exhibit I: Insurance Requirements
[List any other exhibits needed for the particular project]

Any Consultant proposal attached to this Agreement is incorporated solely for: (i) any statement of fees and schedule that is consistent with the entire Agreement; and (ii) any statement of Consultant's and its subconsultants' and subcontractors' scope of services that is consistent with the remainder of this Agreement or that provides basic services in addition to those stated in this Agreement. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the terms of this Agreement or is not included in this Agreement, such proposed terms are void and are expressly and wholly subject to the terms of this Agreement.

2. Consultant's Duties

a. Consultant Representative. Consultant shall identify a representative authorized to act for Consultant on the Project. Owner has the right to review and approve any representative proposed by Consultant, which approval shall not be unreasonably withheld. Consultant shall not appoint a representative to whom Owner has reasonably and timely objected. Consultant shall not substitute representatives without Owner's review and approval. Consultant acknowledges that this Agreement was awarded in part on the basis of the unique background and abilities of the key personnel and subconsultants identified by Consultant. Consultant shall not remove, reassign, or replace key personnel without Owner's prior written consent.

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b. Subconsultants. Consultant shall identify by firm, name, and title the primary subconsultants who will perform the Services under this Agreement. Consultant shall not engage or assign any person or entity to whom Owner has made a reasonable and timely objection. Owner has the right to review and approve any subconsultant substitutions proposed by Consultant. Owner shall not unreasonably withhold its review and approval of these substitutions. Upon Owner request, Consultant shall promptly provide copies of Consultant's agreements with subconsultants.

c. Conflicts. Consultant represents that Consultant has no existing interest and shall not acquire any interest, direct or indirect, that would appear to interfere in any manner or degree with the performance of the Services under this Agreement and that Consultant shall employ no person having such interest.

d. Insurance. Before beginning the Services, Consultant shall obtain and maintain for the duration of this Agreement all insurance coverages listed in Exhibit I (Insurance Requirements). Maintenance of insurance coverage is a material element of this Agreement and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach.

3. Scope of Consultant's Services

a. Legal and Policy Compliance. Consultant shall provide the Services described in detail in Exhibit A in accordance with the terms of this Agreement, federal, state, or local law or ordinance, and applicable Owner rules, policies, and administrative directives. Consultant shall provide the Services so that the Project will be completed as expeditiously and economically as possible within the total budgeted cost to Owner and in Owner's best interests.

b. Standard of Care. Consultant shall perform the Services with skill, care, and diligence in accordance with the standard of care applicable to such Services performed by recognized firms providing similar services in the area and on projects similar to the Project. Consultant shall be responsible to Owner for all Services provided whether provided by Consultant or by subconsultants it engages.

c. Licensing. All persons or entities providing the Services under this Agreement shall be licensed as may be required by Oregon law.

d. Owner-Provided Information. Consultant shall rely on its professional judgment as to the accuracy and completeness of Owner-provided services and information. Consultant shall provide prompt written notice to Owner if Consultant becomes aware of any material deficiencies, errors, omissions, or inconsistencies in Owner services or

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information or if in Consultant's opinion the construction budget will not be sufficient to complete the Project as programmed.

e. Time Is of the Essence. Time is of the essence in the performance of this Agreement. Upon receipt of Owner's written notice to proceed, Consultant shall begin providing the Services and shall complete its performance in accordance with Exhibit D ("Project Schedule"). Consultant shall not be responsible for delay in performance to the extent those delays are caused by circumstances beyond Consultant's reasonable control.

f. Additional Services. Consultant shall perform only the Services authorized by this Agreement. Additional Services (as defined in Exhibit A) will be compensated only as authorized in writing by Owner. Owner will not pay for Additional Services made necessary by Consultant or any subconsultant mistakes.

g. Approvals; Permits. Consultant represents that it and its subconsultants have expertise and working knowledge of the applicable approval and permit application requirements of any governmental jurisdiction and shall be responsible to provide the Services in the form and at the time required to obtain such approvals or permits. To the extent required by Exhibit A, Consultant shall assist Owner in preparing and submitting any such applications and will execute such applications on Owner's behalf. Consultant shall not execute such documents for Owner.

h. Independent Contractor. Consultant shall perform all the Services as an independent contractor. Although Owner reserves the right to set the delivery schedule for the Services and to evaluate quality of completed Services, Owner cannot and will not control the means and manner of Consultant's performance. Consultant is responsible to determine the appropriate means and manner of performing the Services. Consultant, Consultant's employees, and any subconsultants are not "officers, employees, or agents" of the State of Oregon or Owner (as those terms are used in ORS 30.265) and shall have no authority to bind Owner for the payment of any cost or expense without Owner's express written approval.

i. Other Service Providers. Owner reserves the right to enter into other agreements for work additional or related to the Project, and Consultant agrees to cooperate fully with these other contractors and with Owner's personnel. When requested by Owner, Consultant shall coordinate its performance under this Agreement with such additional or related work. Consultant shall not interfere with the work performance of any other contractor or Owner employees.

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4. Owner's Duties

a. Written Information. Unless otherwise provided for under this Agreement, Owner shall provide written information in a timely manner on requirements and limitations on the Project. This information shall include Owner's objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

b. Owner Representative. Owner shall identify a representative authorized to act on its behalf (the "Owner Representative") on all Project matters. The Owner Representative will have the sole authority to make decisions for Owner under this Agreement.

c. Geotechnical Services. ~~Owner shall furnish the services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests, and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations~~.

d. Other Consultants. Owner shall coordinate the services of its own consultants with Consultant's Services. Upon Consultant's request, Owner shall furnish copies of the scope of services in the contracts between Owner and Owner's consultants.

e. Surveys, etc. ~~Owner shall provide surveys or other property descriptions to describe physical characteristics, legal limitations, and utility locations for the Project site, and a written legal description of the site. The surveys and legal information will include, as applicable, grades and centerlines of streets, alleys, pavements, and adjoining property and structures; locally designated floodplain; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, and public utility easements; encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and necessary data with respect to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. Consultant shall promptly review the information and notify Owner of corrections or additions required~~.

f. Site Access. Owner shall provide Consultant access to the Project site before the Services begin and shall cause Owner's contractors to provide Consultant access to their work wherever it is in preparation or progress.

5. Drawings, Specifications, and Other Documents

a. Instruments of Service. Instruments of service ("Instruments of Service") include drawings, specifications, and other documents, including those in electronic form, prepared by or on behalf of Consultant for Owner's use with respect to the Project.

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Consultant will be deemed the author and owner of the Instruments of Service and may retain all common law, statutory, and other reserved rights, including copyrights.

b. Authorized Use. Consultant grants to Owner a nonexclusive, irrevocable, and perpetual license to use and reproduce Consultant's Instruments of Service for purposes of constructing, using, and maintaining the Project. Consultant will obtain similar nonexclusive, irrevocable, and perpetual licenses from Consultant's subconsultants consistent with this Agreement. All copies, including those in electronic form, of drawings, specifications, or other Instruments of Service provided to and retained by Owner under this Agreement will be the property of Owner, and Owner may use them without Consultant's further authorization for any proper purpose relating to the Project, including but not limited to additions to or completion of the Project. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project does not constitute a publication in derogation of Consultant's reserved rights. If and upon the date Consultant is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, make changes, corrections, or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project. Notwithstanding any other provision of this Section 5, Instruments of Service may be continuously used for construction of the Project until the Project is complete, regardless of any dispute between the parties, including without limitation any dispute for payment.

c. Changes; Unauthorized Use. Consultant is not responsible for changes to Instruments of Service made by others without Consultant's knowledge and authorization. Any unauthorized use of the Instruments of Service will be at the user's sole risk and without liability to Consultant. Owner's use or distribution of the Instruments of Service for any purpose other than a purpose authorized under this Agreement will be at Owner's risk, and to the fullest extent permitted by law, including the limitations of the Oregon Constitution and the Oregon Tort Claims Act, Owner agrees to indemnify and hold harmless Consultant and its principals, employees, and subconsultants from and against claims, damages, losses, and expenses (including attorney fees) for personal injury or death or damages to property arising out of or resulting from Owner's unauthorized use of the Instruments of Service.

d. Records Maintenance. Consultant shall maintain complete and accurate records of all the Services performed and all documents produced under this Agreement for six years after completion or abandonment of the Project. Consultant shall make these records available to Owner upon reasonable notice.

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e. Delivery of Project Records. Upon Owner's written request or following the termination of this Agreement for any reason and at no cost to Owner, Consultant shall promptly deliver to Owner all Project records, including all administrative documents produced, compiled, or maintained by Consultant as a part of the Services provided for the Project, including the following:

(i) One reproducible hard-copy set of the construction and permit documents, including the bidding requirements, specifications, and cost estimates for the Project;

(ii) One set of fixed-image CADD files of the drawings that comprise the construction and permit documents;

(iii) One set of nonfixed-image CADD drawing files of the site plans, floor plans (architectural, plumbing, structural, mechanical, and electrical), roof plans, sections, and exterior elevations of the Project; and

(iv) All final or draft studies, reports, calculations, drawings, maps, models, photographs, technology data, and documents prepared by Consultant under this Agreement.

6. Term and Termination

a. Start and End Dates. This Agreement becomes effective on the date of the last authorized signature below. Unless earlier terminated as provided below, this Agreement shall continue through .

b. Convenience. Upon seven days' written notice, Owner may terminate this Agreement at any time for its convenience. If Owner terminates for convenience, Consultant may invoice Owner and Owner shall pay all undisputed invoice(s) for the Services performed until Owner's notice of termination.

c. Breach. Either party may terminate this Agreement in the event of a material breach by the other. To be effective, the party seeking termination must give to the other party written notice of the breach and its intent to terminate. If the breaching party fails to cure the breach within 15 days of the date of the notice, the nonbreaching party may terminate this Agreement at any time thereafter by giving a written notice of termination.

d. Other. Except as indicated in this section, termination will have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring before the effective date of such termination.

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7. Payments

a. Payment Schedule. Owner shall pay Consultant for the Services performed under this Agreement according to the provisions of [attach payment schedule as an exhibit or reference the location of the exhibit].

b. Monthly Invoices. Consultant shall provide Owner with monthly invoices detailing the Services rendered and reimbursable expenses incurred in the preceding month. Invoices shall include itemization of all approved Agreement amendments whether or not they are currently being billed. Consultant expressly waives any right to additional payment for any Services in the absence of Owner's written authorization or request.

c. Payment Method. Upon work completion and acceptance, invoice approval, and according to this Agreement's Terms and Conditions, Owner shall pay Consultant for Services rendered and for reimbursable expenses authorized under this Agreement net 30 days. Owner shall make no deductions from Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to contractors or on account of the cost of construction changes other than those for which Consultant is liable.

d. Reimbursables. Upon Owner's request, Consultant shall provide to Owner all records of reimbursable expenses, expenses pertaining to a change in the Services, and any Services performed on the basis of hourly rates or expense shall be available to Owner or Owner's Representative at mutually convenient times. Consultant shall save these records for at least three years after final payment.

e. Errors and Omissions; Fee Adjustments. Owner will not pay for any change order fee increases due to Consultant's errors or omissions. Regardless of the structure of Consultant's fee, the fee may be adjusted downward if, in accordance with this Agreement, Owner reduces the Services to be provided under this Agreement.

f. Record Maintenance. Consultant shall maintain complete and accurate records in accordance with accepted accounting practices in the industry. Consultant shall make available to Owner for review and audit all Project-related accounting records and documents, and any other financial data. Upon Owner's request, Consultant shall submit exact duplicates of originals of all requested records to Owner.

g. Non-Appropriation; Adequate Funding. Owner is prohibited from contracting for the Services for which it has not received appropriated funds. If payment for the Services under this Agreement extends into Owner's next fiscal year, Owner's obligation to pay for such work shall be subject to approval of future Board of Directors appropriations to fund this Agreement. Moreover, continuation of this Agreement at specified levels is

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specifically conditioned on adequate funding under Owner's budget adopted in June of each year. Owner reserves the right to adjust the level of the Services provided for in this Agreement in accordance with funding levels adopted by Owner's Board of Directors.

8. Indemnification

a. Claims for Other Than Professional Liability. Consultant shall defend, indemnify, and hold harmless Owner and its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, and costs, including attorney fees and expenses of whatsoever nature resulting from or arising out of the acts or omissions of Consultant or its subconsultants, subcontractors, agents, or employees under this Agreement.

b. Claims for Professional Liability. Consultant shall indemnify and hold harmless Owner and its officers, agents, and employees from and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of whatsoever nature arising out of the professionally negligent acts, errors, or omissions of Consultant or its subconsultants, subcontractors, agents, or employees in the performance of professional services under this Agreement.

c. Exception. Nothing in Sections 8.a or 8.b requires Consultant or Consultant's surety or insurers to indemnify Owner and its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property caused in whole or in part by the negligence of Owner and its officers, agents, and employees. Nothing in the foregoing limits or otherwise affects any requirement in Sections 8.a or 8.b that requires Consultant to indemnify Owner and its officers, agents, and employees against liability for damages for death or bodily injury to persons or damage to property arising from the fault of Consultant or Consultant's agents, representatives, employees, or subconsultants.

9. Compliance with State of Oregon Public Contracting Code

a. Nondiscrimination (Required by ORS 279A.110). Consultant shall not discriminate against a disadvantaged business enterprise, a minority-owned, woman-owned, or veteran-owned business, or an emerging small business certified under ORS 200.055. Additionally, Consultant must comply with all applicable requirements of federal, state, and local civil rights law and rehabilitation statutes and must not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, source of income, or political affiliation in programs, activities, services, benefits, or employment.

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b. Tax-Compliance Warranty (Required by ORS 279B.045). Consultant represents and warrants that Consultant has complied with the applicable tax laws of the State of Oregon or a political subdivision of the State of Oregon (collectively, the "Tax Laws"), including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Consultant covenants that Consultant will continue to comply with the Tax Laws during the term of this Agreement. Failure by Consultant to comply with the Tax Laws before the execution of this Agreement or during the term of this Agreement is a default for which Owner may terminate this Agreement and seek damages and other relief available under the terms of this Agreement or under applicable law.

c. Payment of Labor (Required by ORS 279B.220 and 279C.505).

(i) Consultant shall make payment promptly, as due, to all persons supplying labor or material to Consultant for the performance of the Services provided for in this Agreement;

(ii) Consultant shall pay all contributions or amounts due the Industrial Accident Fund from Consultant or subconsultant incurred in the performance of this Agreement;

(iii) Consultant shall not permit any lien or claim to be filed or prosecuted against Owner on account of any labor or material furnished;

(iv) Consultant shall pay to the Oregon Department of Revenue all sums withheld from employees under ORS 316.167; and

(v) If Consultant fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to it by any person in connection with this Agreement as such claim becomes due, Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement. The payment of a claim in this manner shall not relieve Consultant or Consultant's surety, if any, from obligation with respect to any unpaid claims.

d. Payment for Medical Care and Workers' Compensation (Required by ORS 279B.230 and 279C.530).

(i) Consultant shall promptly, as due, make payment to any person, copartnership, association, or corporation furnishing medical, surgical, and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for the services and all moneys and sums that Consultant collected or deducted from the

SAMPLE

wages of employees under any law, contract, or agreement for the purpose of providing or paying for the services.

(ii) All subject employers working under this Agreement are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

e. Hours of Labor; Pay Equity; Salary Discussions (Required by ORS 279B.020, 279B.235, and 279C.540).

(i) Maximum Hours. Consultant shall pay its employees at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (January 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25). These requirements do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC §§ 201 to 209 from receiving overtime.

(ii) Notice to Employees. Consultant shall give notice in writing to its employees who perform work under this Agreement, either at the time of hire or before commencement of work on this Agreement, 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.

(iii) Consultant shall comply with ORS 652.220 (prohibiting discriminatory wage rates based on sex and requiring that employer not discriminate against an employee who is a complainant). Compliance is a material element of this Agreement. Failure to comply is a breach that entitles Owner to terminate this Agreement for cause.

(iv) Consultant may not prohibit any of Consultant's employees from discussing the employee's wage, salary, benefits, or other compensation with another employee or another person, and Consultant may not retaliate against an employee who does so.

f. Limitation on Claims. For Consultant's employees subject to Oregon employment laws and as required by ORS 279C.545, any worker employed by Consultant shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Consultant within 90 days from the completion of this Agreement, providing Consultant has:

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(i) Caused a circular clearly printed in boldface 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work; and

(ii) Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

10. Other Provisions

a. Controlling Law; Dispute Resolution, Venue. Any dispute under this Agreement or related to this Agreement will be governed by Oregon law and subject to litigation in Curry County Circuit Court. If a claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the District of Oregon.

b. Attorney Fees. If a suit or action is filed to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to costs and disbursements provided by statute, any sum which a court, including any appellate court, may adjudge reasonable as attorney fees. If "in-house" counsel represents the prevailing party, the prevailing party shall nevertheless be entitled to recover reasonable attorney fees based on the reasonable time incurred.

c. Waiver; Severability. Waiver of any default or breach under this Agreement by Owner will be effective only in the specific instance and for the specific purpose given. Any such waiver does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.

d. Amendments. Any amendments, consents to, or waivers of the terms of this Agreement shall be in writing and signed by the authorized representatives of both parties.

e. Media/Publications. Consultant shall issue no news release, press release, or other statement to members of the news media or any other publication regarding this Agreement or the Project within one year of Project completion without Owner's prior written authorization. Consultant shall not post or publish any textual or visual representations of the Project without approval of Owner.

f. Nondiscrimination. Consultant shall comply with all applicable requirements of federal and state civil rights law and rehabilitation statutes and shall not discriminate based on race, color, gender, age, religion, national origin, U.S. military veteran status, marital

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status, sexual orientation, disability, source of income, or political affiliation in programs, activities, services, benefits, or employment in connection with this Agreement.

g. Successors in Interest. This Agreement will bind and inure to the benefit of the parties and their successors and approved assigns, if any. Except as previously disclosed and approved, Consultant shall not enter into any subconsultant agreements for any of the Services or assign or transfer any of its interest in this Agreement without Owner's prior written consent.

h. No Third-Party Beneficiaries. Owner and Consultant are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement provides any benefit or right, directly or indirectly, to third persons unless they are individually identified by name in this Agreement and expressly described as intended beneficiaries of this Agreement.

i. Notices and Communications. Notices and communications between the parties to this Agreement must be sent to the following addresses:

Owner	**Consultant**
Name of Port Contact Person	Name of Consultant Contact Person
Department	Consultant Name
Address	Address
Email	Email

(i) The party giving notice will provide notice in writing, dated and signed by a duly authorized representative of that party. Notice is not effective for any purpose whatsoever unless served in one of the following manners:

(a) If notice is given by email or personal delivery, it is deemed delivered on the day of delivery.

(b) If notice is given by overnight delivery service, it is deemed delivered one day after the date deposited, as indicated by the delivery service.

(c) If notice is given by United States mail, it is deemed delivered three days after the date deposited, as indicated by the postmarked date.

(d) If notice is given by registered or certified mail with postage prepaid, return receipt requested, it is deemed delivered on the day the notice is signed for.

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j. Entire Agreement. When signed by the authorized representatives of both parties, this Agreement (and the attached exhibits) is their final and entire agreement. As their final and entire expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties and their agents and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

[*Signatures on following page*]

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Attachment A

I HAVE READ THIS AGREEMENT, INCLUDING ALL EXHIBITS. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT, AND TO BE BOUND BY ITS TERMS ON BEHALF OF THE PARTY I REPRESENT.

CONSULTANT	**OWNER**
Consultant Name	Port of Brookings Harbor
Signature	Signature
Consultant's Printed Name and Title	Port Official's Printed Name and Title
Date of Signature	Date of Signature

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EXHIBIT A

SCOPE OF SERVICES

A. SERVICES GENERALLY

1. Instruments of Service. Consultant shall provide such drawings, specifications, reports, illustrations, diagrams, and examples as are required to communicate the scope and nature of the Project for the following purposes:

   a. Defining the Project for Owner, Owner's independent consultants, and other agencies or affiliates of Owner who may have interest or association with the Project;

   b. Obtaining required permits and approvals for the Project; and

   c. Delineating the scope of the work for competitive bidding and construction.

2. Consultant Services required for successful completion of the work shall include the following:

Service Description	Provided by	Required for Project
Architecture		
Civil Engineering		
Survey		
Geology		
Traffic		
Planning		
Structural Engineering		
Mechanical/Plumbing Engineering		
Electrical Engineering		
Low Voltage		
FF&E Design		
LEED Certification		
Commissioning		
Other:		

3. Startup. Upon final execution of this Agreement with Owner, Consultant shall:

   a. Within the first week following execution of this Agreement, review the proposed Project Schedule and prepare a detailed Services list and work plan to Owner's

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satisfaction. Consultant shall also identify milestone activities or dates, specific task responsibilities, and required completion times necessary for the review and approval by Owner and by all regulatory agencies.

b. Review the developed work plan with Owner and its representatives to familiarize them with the proposed tasks and schedule and develop necessary modifications.

4. Scope of Services,. Consultant scope of Services shall be in accordance with the Proposal for Services and shall include the following components (as selected):

SCOPE OF SERVICES	
Pre-Design Phase	y
Planning	y
Programming	y
Public/Stakeholder Participation	y
Cost Estimating	y
Schematic Design Phase	y
Design Development Phase	y
Construction Documents Phase	y
Permits & Approvals	y
Bidding Phase	y
Construction Phase	y
Record Drawings & Close-Out Phase	y
Commissioning Assistance	y
Other Services	When needed

5. Pre-Design Phase. Where applicable, Consultant shall perform Pre-Design Services to identify working parameters for the Project, including site and jurisdictional constraints. Consultant shall:

a. Review Owner's program, schedule, constraints, criteria, special equipment, systems, and site requirements as required to develop the parameters for Schematic Design.

b. Review all data pertinent to the Project including survey, site maps, existing facility plans and specifications, geotechnical reports and recommendations, soil testing results reports, pertinent historical data, and other relevant information provided by Owner.

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c. Where applicable, validate existing plans and site conditions for the purpose of preparing as-built drawings of existing facilities where work shall be performed to ensure proper fit between new and existing work.

d. Investigate and review applicable federal, state, local, and Owner 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 neighborhood association groups who may have jurisdiction over or impact on the Project.

e. Review existing utility connections on site and consult with applicable utility service providers to confirm availability of and identify design issues related to the provision of new, modification of existing, or capping and/or removal of abandoned utilities.

f. Review such other reference information Owner may provide.

6. Planning Phase. Where applicable, Consultant shall work with Owner's personnel to identify the process by which a Project program or multiple Project programs can be developed. The work may contain individual or multiple sites and may provide provisions for later phases of the design to be completed by separate design consultants. The work may also include budgetary planning and phasing of individual or multiple Projects.

7. Programming. Where applicable, Consultant shall perform Programming Services to identify working parameters for the Project. Consultant shall identify and analyze functional, design, and operational parameters, and size, scope, and budget requirements that will guide the Project's design. As a final deliverable, Consultant shall prepare for Owner's review and acceptance an architectural program, in narrative and diagrammatic form. Consultant shall develop the program narrative in conjunction with Owner's staff and consultants and shall be responsible for the work, which shall include the following:

a. Review Owner's program objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, and general site requirements, to establish appropriate guidelines around which and within which the Project will be designed.

b. Review such other reference information Owner may provide.

8. Public/Stakeholder Participation.

a. Consultant shall, in conjunction with Owner, develop and implement a public and internal stakeholder participation program that provides opportunities for Owner

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to present the Project to stakeholders and to solicit questions, comments, and suggestions in an open and collaborative forum. Project stakeholders may include neighborhood residents, and other stakeholders that Owner may identify. Consultant shall be responsible to prepare, facilitate, and document the required number of meetings. Following each meeting, Consultant shall prepare a detailed written report of the proceedings, along with recommendations to Owner with respect to follow-up actions or communications, if any.

b. Consultant shall identify each required meeting on the Project Schedule and shall be responsible to prepare the meeting agendas. Consultant's reports will include documentation of the date, time, and location of the meetings, the names and addresses of attendees, the intended objectives and target audience, commentary/minutes of the discussions, and copies of all presentation and resultant outcome materials.

c. In conjunction with Owner, Consultant shall develop and implement internal Owner stakeholder meetings that provide opportunities to present the Project and to solicit questions, comments, and suggestions from Owner's administrative and staff personnel in an open and collaborative forum during the course of the design. Internal stakeholder meetings will be conducted for the purpose of explaining current design information in light of applicable design standards, and discussion of design components and systems, all to the effect of validating the proposed design as in conformance with the needs of Owner.

9. Construction Cost Estimates. Consultant shall develop and maintain Construction Cost Estimates within the parameters of Owner's Construction Budget through all phases of its Services. Consultant shall base all Construction Cost Estimates on the most current architectural program as approved by Owner and shall prepare updated Construction Cost Estimates at the following phases of the Project: end of Schematic Design, end of Design Development, and at 90% Construction Documents, all as provided below. The following conditions apply to each Construction Cost Estimate prepared by Consultant:

a. Base all costs on current price information appropriate to the level of design detail, with escalation rate and duration clearly identified as a separate line item. Cost escalation rates and projected bid and construction dates shall be as approved by Owner.

b. Present each Construction Cost Estimate in a building systems format (e.g., foundations, substructure, structural system, exterior wall enclosure, window systems, etc.) for new buildings, and summarized by the Construction Specification Institute ("CSI") category for buildings being modernized.

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c. Include contingencies for design, bidding, and construction as individual line items, with the percentage and base of calculation clearly identified.

d. Include all information and estimates from Owner and Owner's consultants that are intended to be part of the Construction Cost Budget.

e. Reconcile each Construction Cost Estimate with Owner's Construction Cost Budget. Where Consultant Cost Estimate exceeds the Construction Cost Budget, Consultant shall at its sole expense provide design scenarios with associated costs that will bring the Construction Cost Estimate within the Budget. Consultant shall be responsible for the accuracy of each Construction Cost Estimate.

B. SCHEMATIC DESIGN PHASE

1. Consultant shall utilize the written and approved program developed as a result of the Pre-Design Phase, or review the architectural program and information furnished by Owner, and shall review laws, codes, and regulations applicable to Consultant's Services.

2. Consultant shall prepare a preliminary evaluation of Owner's program, schedule, budget for the work, Project site, and the proposed procurement or delivery method and other Initial Project Information, each in terms of the other, to ascertain the Project requirements. Consultant shall notify Owner of (a) any inconsistencies discovered in the information, and (b) other information or consulting Services that may be needed for the Project.

3. Consultant shall present its preliminary evaluation to Owner and shall discuss with Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. Consultant shall reach an understanding with Owner regarding the requirements of the Project.

4. Based on the Project's requirements agreed upon with Owner, Consultant shall prepare and present for Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

5. Based on Owner's approval of the preliminary design, Consultant shall prepare Schematic Design Documents for Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections, and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

6. Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on

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program and aesthetics, in developing a design that is consistent with Owner's program, schedule, and budget for the cost of the work.

7. Consultant shall consider the value of alternative materials, building systems, and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with Owner's program, schedule, and budget for the cost of the work.

   a. Consultant shall prepare and submit to Owner a Construction Cost Estimate for the approved Schematic Design Documents, based on area, volume, or similar conceptual estimating techniques and prepared in accordance with the provisions of this Agreement.

   b. Consultant shall submit the Schematic Design Documents and the Construction Cost Estimate to Owner, and request Owner's approval.

C. DESIGN DEVELOPMENT PHASE

1. Based on Owner's approval of the Schematic Design Documents, and on Owner's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Design Development Documents for Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical, and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications identifying major materials, components, and systems and establishing general quality levels.

2. If Owner elects to proceed with value engineering, Consultant and its subconsultants shall cooperate with Owner's value engineer by providing requested information and advising Owner and its value engineer, in good faith, concerning design changes that the value engineer may propose. Consultant shall make such changes as Owner may direct. Substantial changes inconsistent with previous Owner approvals may be compensated as Additional Services, as described below in Section J.

3. Consultant shall prepare and submit an updated Construction Cost Estimate based on an itemization of major categories with each specification division and otherwise in accordance with the provisions of this Agreement.

4. Consultant shall submit the Design Development Documents to Owner, advise Owner of any adjustments to the Construction Cost Estimate, and request Owner's approval.

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D. CONSTRUCTION DOCUMENTS PHASE

1. Based on Owner's approval of the Design Development Documents and on Owner's authorization of any adjustments in the Project requirements or the Construction Cost Budget, Consultant shall prepare Construction Documents for Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of drawings and specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Project. Owner and Consultant acknowledge that in order to construct the Project, Owner's Contractor(s) (as defined below in Section G) will be required to provide additional information, including shop drawings, product information, product samples, and other similar submittals, which Consultant shall review.

2. Consultant shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

3. Consultant shall compile a Project manual that includes the construction contract documents and forms and construction specifications and may include bidding requirements and sample forms.

4. Upon achieving 90 percent completion of the Construction Documents, Consultant shall prepare and submit an updated Construction Cost Estimate based on the work depicted in the Construction Documents and in accordance with the provisions of this Agreement.

5. Consultant shall submit the Construction Documents to Owner, advise Owner of any adjustments to the Construction Cost Estimate, and request Owner's approval.

6. If Owner elects to conduct a constructability review of the completed Construction Documents with its own consultant, a report shall be provided to Consultant and Consultant shall revise the Construction Documents accordingly and shall respond in writing to each comment made by the constructability reviewer in one of the following ways:

    a. Indicate where or how the comment is reflected in a change to the Construction Documents, or

    b. Explain why the comment is not reflected in a change to the Construction Documents.

7. Owner may require Consultant to supplement its submittal or to prepare an additional submittal if Consultant's response is insufficient to allow the constructability reviewer to confirm the changes.

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E. PERMITS AND APPROVALS

Consultant shall coordinate with the appropriate jurisdictions, including but not limited to state, county, and local jurisdictions, Historic Preservation organizations, neighborhood associations, and utility purveyors, to ascertain required review and approval processes for construction of the work. Consultant shall be responsible for establishing points of contact with each jurisdiction, scheduling required meetings, and submitting appropriate documentation in a timely fashion such that the work can proceed according to the Project Schedule. Consultant shall identify all requisite costs associated with the review and approval processes and shall provide timely notice to Owner of such costs to ensure that payments can be secured without delay to the Project.

F. BIDDING PHASE

1. The Bidding Documents shall consist of bidding requirements and proposed contract documents, which include the Construction Documents.

2. Following Owner's approval of the Construction Documents, Consultant shall assist Owner in bidding the Project by the following:

    a. Establishing the initial electronic files of the Bidding Documents for distribution to the entity responsible for distribution of the Bidding Documents to prospective bidders;

    b. Participating in the pre-bid conference for prospective bidders;

    c. Preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to Owner for incorporation into formal addenda;

    d. Participating in the opening of the bids; and

    e. Assisting in the review of the bids for the purpose of determining the responsibility of the bidders.

3. Consultant shall provide to Owner, within 48 hours of occurrence, electronic record of the following items produced in this phase:

    a. Meeting report/minutes from the pre-bid site walk.

    b. Upon completion of the Bidding Phase, Consultant shall produce a conforming set of the Construction Documents incorporating all addenda issued. Consultant shall provide Owner with two complete, reproducible sets of plans and specifications marked as a "Conforming Set."

4. Consultant shall consider requests for substitutions, if the Bidding Documents permit substitutions, shall keep a record of all substitutions proposed, including Consultant's

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evaluative reports and conclusions, and shall prepare addenda for distribution identifying approved substitutions to all prospective bidders.

5. For the purposes of this section, "Bidding Documents" includes other types of solicitation documents, such as a request for proposals, if Owner approves an alternative procurement process for the Project under Owner's public contracting rules.

G. CONSTRUCTION PHASE

1. Consultant shall provide administration of the contract for construction between Owner and its contractor ("Contractor") as set forth below and in conformance within that contract.

2. Consultant shall participate in and provide to Owner, within 48 hours of occurrence, an electronic record of the meeting report/minutes from the Project kick-off meeting;

3. Consultant shall advise and consult with Owner during the Construction Phase. Consultant shall have no authority to act on behalf of Owner except to the extent, if any, provided in this Agreement. Consultant will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the construction work, nor will Consultant be responsible for the failure of others to perform the construction work in accordance with the requirements of the construction contract documents. Consultant shall be responsible for Consultant's negligent acts or omissions, but shall not have control over or charge of, and will not be responsible for, acts or omissions of Contractor or of any other persons or entities performing portions of the construction work.

4. Consultant's responsibility to provide Construction Phase Services commences with the award of the contract for construction and ends on the date Consultant issues the final certificate for payment.

5. Evaluation of the Work. Consultant shall visit the site at intervals appropriate to the stage of construction, and at a minimum, once per week, to become generally familiar with the progress and quality of the portion of the construction work completed, and to determine, in general, if the work observed is being performed in a manner indicating that the work, when fully completed, will be in accordance with the Construction Documents. Visits may be necessary more than once a week or outside of regular intervals if the particular stage of construction requires prompt evaluation, including without limitation inspection of work in areas that will be subsequently covered and become inaccessible. Consultant will respond promptly to Owner's request for on-site evaluation in such circumstances. On the basis of the site visits, Consultant shall keep Owner reasonably informed about the progress and quality of the construction work as it is completed, and report in writing to Owner (a) known deviations from the Construction Documents and from the most

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recent construction schedule submitted by Contractor, and (b) defects and deficiencies observed in the work.

6. Change Orders.

   a. Consultant shall review all of Contractor's change order requests to determine if those requests are valid and appropriate. Consultant shall recommend to Owner whether the change should be approved, partially approved, returned to Contractor for clarification, or rejected.

   b. Consultant shall furnish all necessary additional drawings for supplementing, clarifying, and/or correcting purposes and for change orders. Owner shall request these drawings from Consultant, who shall provide the drawings at no additional cost unless Owner designates the request as Additional Services. Consultant shall submit original tracings and/or drawings and contract wording for change orders to Owner for duplication and distribution.

7. Submittals.

   a. Consultant shall review Contractor's schedule of submittals and advise Owner if the schedule is complete and if proposed review durations are adequate. Consultant shall provide Owner with proposed revisions to this schedule and advise Owner on whether Owner should approve the schedule.

   b. Consultant shall review and approve or take other appropriate action upon Contractor's submittals, such as shop drawings, Project data, samples, and change orders, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the contract documents.

   c. Consultant's action upon Contractor's submittals shall be taken as expeditiously as possible so as to cause no unreasonable delay in the construction of the Project or in the work of separate Contractors, while allowing sufficient time in Consultant's professional judgment to permit adequate review. In no case shall the review period associated with a single, particular submittal exceed ten calendar days from its receipt by Consultant. Consultant's response to each submittal shall be a substantive and acceptable response.

8. Requests for Information ("RFIs"). During the course of construction as part of the basic Services, all RFIs must be responded to as expeditiously as possible so as not to impact and delay the construction progress. Should Consultant determine that a response is not possible within three business days, Consultant shall promptly notify Owner that additional review time will be needed. In no case shall the review period associated with an RFI exceed seven calendar days from the receipt by Consultant. Consultant's response

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to each RFI shall be a substantive and acceptable response. This seven-day time period shall not include time when a submittal is within Owner's control or if the submittal is being reviewed by a permitting jurisdiction. In no way does this provision reduce Consultant's liability if it fails to prepare acceptable documents in a professionally reasonable time.

9. Payment Statements. Within three days of receipt, Consultant shall review and certify the amounts due Contractor and shall issue certificates in such amounts. Consultant's certification for payment will constitute a representation to Owner, based on Consultant's evaluation of the work and on the data comprising the Contractor's application for payment, that, to the best of Consultant's knowledge, information, and belief, the work has progressed to the point indicated and the quality of the work is in accordance with the construction contract documents. The foregoing representations are subject to (a) an evaluation of the work for conformance with the construction contract documents upon Substantial Completion, (b) results of subsequent tests and inspections, (c) correction of minor deviations from the construction contract documents prior to completion, and (d) specific qualifications expressed by Consultant.

10. Notices of Deficient Work. Based on on-site observations, Consultant shall keep Owner informed of the progress and the quality of the work and shall endeavor to guard Owner against defects and deficiencies in the work. Consultant shall notify Owner in writing of any defects or deficiencies in the work by Contractor that Consultant may observe. However, Consultant will not be a guarantor of Contractor's performance.

H. RECORD DRAWINGS AND CLOSE-OUT PHASE

1. As-Built Drawings. Consultant shall review and evaluate for Owner Contractor's as-built documentation of the actual construction performed during the Project that Contractor prepares and submits. As-builts are documents that show the actual construction performed during the Project, including changes necessitated by change orders, RFIs, and Supplemental Drawings/Documents, and detailed by Contractor.

2. Record Drawings**.** Consultant shall incorporate all construction information from as-built drawings, sketches, details, and clarifications, and prepare one set of final Record Drawings for Owner. Consultant may insert the following notice on the Record Drawings:

> *"These drawings [or corrected specifications] have been prepared based on information submitted, in part, by others. Consultant has provided a review of such information consistent with its legal standard of care."*

3. Manuals/Warranties. Consultant shall review equipment, operation, and maintenance manuals, and a complete set of warranty documents for all equipment and installed

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systems, to ensure that they meet the requirements of the plans and specifications and shall submit a written summary of such review to Owner.

4. Project Completion. Consultant shall conduct inspections to establish or confirm the date of Substantial Completion and the date of Final Completion of Contractor's work. At Substantial Completion, Consultant shall review Contractor's punch list, conduct a visual inspection of the completed work, and prepare an updated punch list of conditions observed and recommending correction, completion, or replacement by Contractor. Consultant shall review the Project again upon Final Completion to confirm compliance with the construction contract documents and shall issue a final certificate for payment representing to Owner to the best of Consultant's knowledge and belief that the work is completed and in compliance with the requirements of the construction contract documents.

5. Upon request of Owner and prior to the expiration of one year from the date of Substantial Completion, Consultant shall, without additional compensation, conduct a meeting with Owner to review the facility operations and performance for the purpose of assisting Owner in the evaluation of work relative to Contractor's Warranty.

6. LEED Certification. If LEED Certification is identified for the Project and performance verification is a part of the LEED Certification process, Consultant shall coordinate the review meeting and assemble all parties as required to evaluate building performance and shall coordinate the preparation and submittal of all applicable documents and reports.

I. COMMISSIONING ASSISTANCE

If commissioning is required as a part of the Project Services, Consultant shall coordinate with Owner and Contractor to ensure that commissioning services are scheduled and completed at appropriate times during the construction process and after Substantial Completion.

J. ADDITIONAL SERVICES

Additional Services shall be considered accepted as a part of this Agreement only when they have been reviewed and approved by both parties and incorporated into a formal Agreement amendment signed by the authorized representatives of both parties. Consultant shall perform the following Additional Services when authorized or directed by Owner in writing:

1. Making revisions in drawings, specifications, or other documents when such revisions are:

   a. Inconsistent with approvals or instructions previously given by Owner;

   b. Required by the enactment or revisions of codes, laws, or regulations before the preparation of the construction documents; and

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c. Due to changes required as a result of Owner's failure to respond to a written request from Consultant within a reasonable time.

2. Providing Services made necessary by significant documented Owner-initiated changes in the Project, including but not limited to size, quality, complexity, Owner's schedule, or method of bidding and contracting for construction.

3. Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing Services required in connection with replacement of that work.

4. Providing Services made necessary by the default of Contractor(s), by major defects, or deficiencies in the work of Contractor(s).

5. Providing Services as directed by Owner that are not part of the Services of this Agreement. Consultant shall notify Owner, in writing, prior to starting any of the Services, that it considers the Services it has been directed to do as not part of the Services under this Agreement.

6. Providing Services as an expert and/or witness for Owner in any mediation, arbitration, and/or trial in which Consultant is (a) not a party and (b) did not in any way cause the dispute that is being adjudicated.

7. Providing training, adjusting, or balancing of systems and/or equipment outside of any Services required by commissioning that may be a part of this Agreement.

8. For Consultant's Additional Services the fee to be paid shall be determined in one of the following manners and identified as a part of the extra service authorization.

a. Owner may elect to negotiate a fixed fee for Additional Services.

b. Owner may compensate Consultant on a time-and-material basis for the Additional Services based on the following criteria: (i) additional labor fee shall be calculated based on the approved hourly billing rates as listed below and an agreed-upon level of efforts for the principals and employees of Consultant, and (ii) actual expenditures made by Consultant on the Project and supported by receipts.

c. Owner may negotiate a fixed fee for a portion of the Additional Services and agree on a time-and-material compensation for the remainder portion of the Additional Services.

d. Owner may compensate Consultant on a percentage basis of the final negotiated pricing on change order work accomplished by Contractor.

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9. No adjustment in Consultant fee shall be made based on a net change to the construction contract award amount as the total Consultant fee payable hereunder is a negotiated amount.

The following rates include overhead, administrative cost, and profit and shall be used to calculate the fee for authorized Additional Services. Subconsultants' hourly rates indicated below include Consultant's administration fee/markup fee.

[Add Rates]

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EXHIBIT B

PROJECT NARRATIVE

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EXHIBIT C

CONSTRUCTION BUDGET

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EXHIBIT D

PROJECT SCHEDULE

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EXHIBIT E

OWNER'S REQUEST FOR PROPOSALS

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EXHIBIT F

CONSULTANT'S PROPOSAL

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EXHIBIT G

PROJECT TEAM

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EXHIBIT H

FEE PROPOSAL

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EXHIBIT I

INSURANCE REQUIREMENTS

A. MINIMUM INSURANCE LIMITS

Consultant shall procure, prior to commencement of the Services of this Agreement, and shall maintain for the duration of this Agreement and six years thereafter, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Services hereunder by Consultant and its agents, representatives, employees, and subconsultant(s). Consultant's liabilities, including but not limited to Consultant's indemnity obligations under this Agreement, will not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Agreement, and Consultant's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Agreement, as required or when requested, may be treated as a material breach of contract by Owner. Coverage shall be at least as broad as the following scopes and limits:

1. Commercial General Liability. $1,000,000__ per occurrence and $2,000,000__ aggregate for bodily injury, personal injury, and property damage.

2. Commercial Automobile Liability. $1,000,000__ per accident for bodily injury and property damage.

3. Workers' Compensation Liability. Consultant shall require and ensure that each of its subconsultants or subcontractors comply with this requirement.

4. Employers' Liability. $100,000__ per occurrence.

5. Professional Liability. $1,000,000__ per claim and $2,000,000__ aggregate limits subject to no more than $10,000 per claim deductible. Consultant shall maintain professional liability coverage through completion of construction and two years thereafter.

Owner reserves the right to modify the limits and coverages described herein, with appropriate credits or changes to be negotiated for such changes.

B. DEDUCTIBLES AND SELF-INSURANCE RETENTION

Consultant shall inform Owner in writing if any deductibles or self-insured retention exceeds $10,000. At its sole discretion, Owner may (1) accept the higher deductible, (2) require Consultant to insure such deductibles or self-insured retention as respects Owner and its officers, officials, employees, and volunteers, or (3) require Consultant to provide a surety bond guaranteeing Consultant's payment of deductible or self-insured losses and related investigations, claim administration, and defense expenses.

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C. OTHER INSURANCE PROVISION

1. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions: Owner, Owner's program manager, or both, and their representatives, consultants, trustees, officers, officials, employees, agents, and volunteers ("Additional Insureds") are to be covered as Additional Insureds with respect to liability arising out of activities performed by or on behalf of Consultant; Instruments of Service and completed operations of Consultant; premises owned, occupied, or used by Consultant; or automobiles owned, leased, hired, or borrowed by Consultant. The coverage will contain no special limitations on the scope of protection afforded to the Additional Insureds.

2. For any claims related to the Project, Consultant's insurance coverage shall be primary insurance with respect to the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds shall be in excess of Consultant's insurance and not contributory.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, will not affect coverage provided to the Additional Insureds.

4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage will not be suspended, voided, or canceled by either party, or reduced in coverage or in limits, except after 30 days' prior written notice by certified mail, return receipt requested, has been given to Owner.

D. ACCEPTABILITY OF INSURERS

Insurance shall be placed with insurers admitted in Oregon with a current A.M. Best's rating and FSC no lower than A-VII. Consultant shall inform Owner in writing if any of its insurers have a rating and FSC lower than A-VII. At its sole discretion, Owner may (1) accept the lower rating or (2) require Consultant to procure insurance from another insurer.

E. VERIFICATION OF COVERAGE

Consultant shall furnish Owner with:

1. Certificates of insurance showing maintenance of the required insurance coverage; and

2. Original endorsements affecting general liability and automobile liability coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements shall be received and approved by Owner before Services commence.

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