

OREGON DEPARTMENT OF ENERGY

Request For Proposals #09-138 ORPIN # 330-1018-09

STATE ENERGY EFFICIENT DESIGN PROGRAM TECHNICAL SUPPORT

Issued: May 22, 2009

Deadline: June 05, 2009

I. Introduction

Summary

The Oregon Department of Energy (the "Department of Energy"), is seeking qualified consultants to support its energy analysis review of projects in the State Energy Efficient Design (SEED) program.

The purpose of this solicitation is to provide the Department of Energy with a pool of qualified consultants who have the skills necessary to complete a SEED project independently and can be called upon to support Department of Energy staff in completing a SEED project.

Background

SEED was established by the Oregon Legislature in 1990 (ORS 276.900-915). This law directs state agencies to work with the Department of Energy to ensure cost-effective energy conservation measures (ECMs) are included in new and renovated public buildings. A revision made in 2001 with the passage of HB 3788 requires that all state facilities constructed on or after June 30, 2001 must exceed the energy conservation provisions of the Oregon State building code by 20 percent or more and serve as models of energy efficiency.

The building types reviewed under SEED are very diverse. Since about 50% of state property is owned or operated by the Oregon University System, a large percentage of SEED projects involve campus buildings ranging from classroom and academic offices, dormitories, libraries, recreation centers, dining halls, to laboratories and sport stadiums. Other state agencies' recent projects include new prison complexes, office buildings, a laboratory, data center, visitor centers, firing ranges and maintenance garages.

The notification of pending SEED projects under OAR 330-130-0030 has increased. Department of Energy staff require assistance from outside consultants to meet the current demand for services.

Funding

Funding for the program is obtained from a charge to the state agency based on a percentage of authorized capital construction cost. Therefore, the amount available for contracts resulting from this RFP is unknown. However, it is anticipated that 10 SEED projects per year will require assistance from Consultants. It is estimated that the minimum amount available for all contracts under this solicitation over the next four years will be \$300,000, with the maximum amount estimated to be \$500,000, depending upon such factors as state building construction activity and Department of Energy's staff availability.

The Department of Energy estimates that individual contract amounts may range from \$5,000 up to \$150,000. Each SEED project will require an executed contract. Each request for services between the Department of Energy and Consultants will stipulate a maximum compensation amount, however, consultants are not guaranteed any particular volume or dollar amount of work, and no contract will exceed \$150,000.

II. Scope of Work

The SEED program consists of a substantial amount of material for review. Proposers are strongly advised to familiarize themselves with the SEED program documentation (SEED guidelines, modeling requirements, energy study format, checklists, forms, etc.) before developing a proposal. Links to SEED program guideline documents are listed in Section IX of this RFP.

Consultants selected through this RFP may be requested to perform a complete SEED project review or a portion of a review, depending on Department of Energy staff workload. This includes, but is not limited to:

1. *Initial Meeting.* Early in the Pre-design or Programming phase of the project, the Consultant will meet with Department of Energy staff, the client agency (Owner) and the Design Team to:
 - A. Discuss the scope of the construction project.
 - B. Present SEED program requirements and explain Owner responsibilities.
 - C. Discuss coordination and scheduling of contracting with Energy Analyst, Commissioning Agent or other sub-consultants of the Owner.

2. *Energy Planning Session.* Early in the Schematic Design phase, the Owner, the Department of Energy, the Design Team, the Consultant, and the Energy Analyst meet to further define the scope of the construction project, energy goals of the project (*20% or more above code*), design criteria, integrated design approach, modeling approach, Energy Systems Performance Verification and Metering Plans and construction schedule. The Consultant will:
 - A. Review Early Planning Session Programming and Design Intent documents prepared by the Energy Analyst and provide the Department of Energy with comments.
 - B. Discuss and develop concepts for ECMs early in the Schematic Design Phase to facilitate decision making.

3. *ECM Scoping Process.* The Owner, the Design Team, the Department of Energy and the Energy Analyst develop a suggested ECM list to capture significant energy saving opportunities. The Energy Analyst coordinates this process. The Consultant will:
 - A. Review the proposed ECM list, project programming documents and design drawings developed to date.
 - B. Independently develop a list of ECMs appropriate for the project.
 - C. Recommend to the Department of Energy which ECMs should be used as a baseline and which ones require further analysis.

4. *Preliminary Energy Analysis Report.* The Consultant reviews the Preliminary SEED study to determine if it is complete and accurate and advises the Department of Energy whether the energy model is sound and follows the SEED guidelines. The Consultant will analyze the cost estimates against SEED requirements for ECM cost effectiveness. The Consultant provides this analysis to the Owner, the Design Team, the Energy Analyst and the Department of Energy. The Consultant verifies the Metering Plan is submitted with the Preliminary SEED Report. The Metering Plan specifies what types of utility meters are to be installed and how long term energy monitoring will be performed.

5. *ECM Review Meeting.* The Owner, the Design Team, the Department of Energy, the Energy Analyst, and the Consultant attend the ECM Review Meeting to discuss and formalize the recommended ECM package.
6. *Design Review.* The Consultant reviews the construction documents, usually at 90-95% completion, in order to advise the Department of Energy whether the ECMs are included and fully documented. The review also ensures that the Metering Plan and the Performance Verification Plan are specified in the documents. The Consultant creates a punch-list for the Department of Energy of items not adequately captured in the drawings and specifications. The Consultant reviews the final construction documents in order to advise the Department of Energy whether the punch-list items are addressed and documents these findings.
7. *Final Report.* The Energy Analyst completes and submits the *Final Energy Analysis Report* to the Owner and the Department of Energy. This report identifies the recommended ECM Package to be incorporated into the final building design. The Consultant reviews this final report for completeness in order to confirm whether issues identified in the Preliminary SEED Study review have been addressed and rectified. Consultant shall document findings from the review and recommend to the Department of Energy whether or not the final report should be approved.
8. *Energy Systems Performance Verification Plan Review.* This plan outlines how the building's energy systems are to be tested during the construction phase and how the building's performance is to be verified with long-term monitoring during occupancy. The Consultant reviews the Performance Verification Plan against SEED requirements and advises the Department of Energy whether it satisfies the requirements and is clearly documented in construction documents.
9. *Job Site Inspections.* The Consultant may be required to make walkthrough site inspections during construction to verify installation of ECMs and monitor execution of the Performance Verification Plan. Consultant shall document and report findings to the Department of Energy.
10. *Post Occupancy Monitoring.* For the first 18 months after Owner takes occupancy, Owner will provide collected utility data to the Department of Energy for comparison with the proposed SEED building energy use. If assigned, the Consultant will perform a final walkthrough in order to verify that ECMs are installed and fully operational, and report findings to the Department of Energy. If the building's energy use is not in compliance with projected energy use or if ECMs are not operational, the Consultant may be assigned to make an additional site visit to assist the Owner in identifying action items to rectify problems.
11. *Other technical services to support Department of Energy staff as requested.*

III. Minimum Qualifications

Proposers are required to demonstrate the following by providing relevant information in the proposal narrative and resumes, and by providing work samples that document the required experience:

1. **Analysis.** Broad experience with commercial and institutional building energy systems and operating characteristics. Experience with life cycle cost analysis and value-engineering methods that identify opportunities to lower long-term operating costs through incorporation of energy conservation measures. Experience in determining accurate cost estimates for evaluating the cost effectiveness of energy-efficiency measures. Experience with life-cycle methods that reflect equipment operation and maintenance costs and take into account the useful life of measures.

2. **Modeling Review.** Three (3) or more years of experience reviewing computerized building energy analysis models produced with modeling programs approved for use under the SEED Program. Simulation program requirements are listed in Appendix I of the SEED Guidelines - see Page 9 of the RFP for links. Modeling review experience must be within the last five (5) years to qualify. Modeling review experience must include:
 - a) Review of models demonstrating basic building features such as internal gains, multiple zones with central HVAC systems, envelope measures that affect thermal transmission, and architectural shading effects.
 - b) Experience with complex energy conservation measures such as system heat recovery, fan and pump ASD applications, and enhanced direct digital control strategies.
 - c) Experience reviewing models of mechanical systems and central plant partial-load operating efficiencies.
 - d) Experience with photometric calculations in estimating light levels.
 - e) Knowledge of energy simulation software capabilities; aware of which energy systems can be successfully modeled; familiar with model limitations and effective model work-around techniques.
 - f) Familiarity with energy simulation program default values and appropriate modifications.
 - g) Familiarity with output reports.
3. **Lead Technical Worker.** For each SEED project, the Consultant will designate a Lead Technical Worker who will be responsible for the overall quality of work. Any person designated as a Lead Technical Worker must be a professional engineer with a minimum of four (4) years experience in work related to the work described in this RFP.
4. **Assistant Technical Worker.** Any person who will provide services as an Assistant Technical Worker must have a technical degree from an accredited two-or four-year college with an additional three years of experience in work related to the work described in this RFP. If a degree is not held, then the total relevant experience must be at least six (6) years.
5. **Design and Construction.** Experience working in a multidiscipline design team and familiarity with typical phases of design documentation, i.e., Pre-Design or Programming, Schematic Design, Design Development, and Construction Documents. Understanding of the project bidding process, submittal approval, construction administration and project closeout, i.e., substitution request, RFI, ASI, Change Orders, and As-built drawings.
6. **Building Energy Systems.** Knowledge of building architectural elements (framing, massing, insulation and glazing) and proper building siting and orientation. Knowledge of lighting design and daylighting controls. Knowledge of building automation systems (direct digital controls) and the importance of fully documented control sequences. Knowledge of methods of reducing energy use in mechanical systems, including HVAC fan systems, air and water distribution systems, boilers and domestic hot water heaters, chillers and cooling towers, motors and variable frequency drives, and pumping systems.
7. **Review of SEED Energy Studies.** Experience in the preparation of SEED Energy Studies. Knowledge of which ECMs are commonly cost effective and applicable for the various building types encountered in the SEED program. Experience performing peer review of other Energy Analyst's models. Experience with quality review methods used in review of energy studies, i.e., sampling of input variables, review of output reports, verification of HVAC system and plant equipment efficiencies. Experience documenting and writing up model and report deficiencies. Experience working collaboratively with Energy Analyst to review work and resolve issues.

8. Design Review. Experience reviewing design drawings and specifications as in-house quality control process or as independent reviewer. Experience validating design is in compliance with minimum codes and standards. Experience verifying ECMs are fully documented in plans and specifications. Experience with quality control sampling methods of design drawings and specifications. Experience documenting design deficiencies and working with design team to resolve issues.
9. Energy Systems Performance Verification (Commissioning). Understanding of SEED performance verification requirements. Experience with third party Commissioning, including roles and responsibilities of participants, preparation of Commissioning plan, functional testing protocols, independent testing of systems, owner training, documenting deficiencies and maintaining issues log, warranty and seasonal follow-up testing. Experience resolving problems and obtaining corrective action.
10. Metering and Utility Tracking. Understanding of SEED metering plan requirements. Experience assuring installation of metering adequate to collect and document building energy usage.
11. Facility Evaluation and Walk-Through Inspection. Experience in preparing for site visits and organizing path through facility. Experience inspecting facilities to confirm energy measures are installed and working. Experience auditing facilities to assess ECM performance and owner operational practices. Experience documenting findings and working with owner to resolve outstanding issues.

Alternative Experience

As an alternative, experience preparing energy studies for “other energy programs” will be considered, if the “other energy program” is comparable to SEED and has a rigorous quality review process. Details of “other energy program” study format, energy analysis and review process requirements must be explained and documented. If “other energy program” energy studies are the basis for qualifying for acceptable SEED Study experience, provide reference and contact information for building owner, program administrator and study technical reviewer. Also provide samples of reports submitted to “other energy programs”.

IV. Pricing

Pricing will be hourly, with maximum not-to-exceed amounts specified in each contract; however, no individual contract will exceed \$150,000.

V. Questions

Questions about the SEED program or the work described in this RFP should be directed to:

Ann Hushagen
Telephone: 503-373-7804
E-mail: ann.hushagen@state.or.us
Toll-free: 800-221-8035 (Oregon only)

Questions about this RFP or the selection procedure should be directed to:

Lorena Wise, Contracts Coordinator
Telephone: 503-378-6968
Email: lorena.wise@state.or.us

VI. Proposal Requirements

Proposal Content

Proposals must include the following elements. Proposals that do not meet the requirements of this solicitation may be rejected as nonresponsive.

1. Cover Letter/Title Page. One or both, must bear the original signature(s) of the official(s) authorized to sign the proposal. Must include the proposer's name, mailing and street addresses, a contact person's name, telephone number(s) and email address.
2. Narrative. Clearly describe qualifications, experience and capability to do the work described in this RFP. Provide sufficient information to meet Minimum Qualifications (Section III.). Identify individuals who are qualified as Lead Technical Workers and Assistant Technical Workers. **This narrative must be 10 pages or less.** Only the first 10 pages will be evaluated.
3. Resume(s). Provide a resume for each individual named in the narrative. Not included in ten-page limit.
4. Work Samples. Provide three successful SEED studies performed within the last five (5) years. Examples of “other energy program” studies will be accepted if the alternative experience meets the requirements of Section III., Minimum Qualifications. Not included in ten-page limit.
5. Form 1 – Key Personnel and Experience. Must be completed for each person who will provide technical services. Not included in ten-page limit.
6. Cost Proposal. Identify hourly rates for all personnel who would perform the work specified in the proposal. Include variations in the rates, if any, for items such as travel time and report writing versus on-site work. Specify the time period for which the rates are guaranteed.

The hourly rates must include all costs, direct and indirect, except travel expenses, which will be reimbursed in accordance with State of Oregon-approved policy and rates. The hourly rate must include all personnel costs, office expenses, equipment and supplies, training, sub-consultants, overhead and any other costs associated with the performance of the work and operation of a business.

Proposal Assembly

The original proposal must be typewritten, single-sided on standard (8½” x 11”) paper. Work samples may be double-sided.

In addition to the original proposal, submit three (3) legible copies of *all* required documents, double-sided where possible.

Proposals and all other documents must be unbound. Do not submit 3-ring binders, plastic covers, or any other materials that are not readily recyclable.

Submission of Proposals

Proposals must be received at the Salem office of the Oregon Department of Energy on or before 5:00 PM Pacific Standard Time, Friday, January 30, 2009. LATE PROPOSALS WILL NOT BE ACCEPTED.

Proposals may **not** be submitted by facsimile (fax) or electronic data interchange (e-mail). It is the responsibility of the proposer to ensure that proposals arrive at the Department of Energy by the deadline. Proposals must be hand delivered or mailed to:

Lorena Wise, Contracts Coordinator
State Energy Efficient Design RFP
Oregon Department of Energy
625 Marion Street NE
Salem, OR 97301-3737

VII. Evaluation of Proposals

An evaluation team will score and rank all proposals using the following criteria. Proposals that do not meet the requirements of this RFP may be considered non-responsive and eliminated from consideration.

1. Experience. Proposal demonstrates that Proposer has the required experience and expertise to perform the work described in this RFP. (25 points)
2. Qualifications. Proposer meets or exceeds the minimum qualifications described in this RFP. (25 points)
3. Quality. Proposal is complete, well-organized and free of errors. Work samples and references demonstrate high quality work. (35 points)
4. Cost. (15 points)

VIII. Consultant Selection

To qualify for final selection, a proposal must score at least 80 points out of 100 possible. Final selection will be based on total score. The Department of Energy reserves the right to award more than one contract under this RFP. Selected Consultants will remain qualified Consultants for no longer than four (4) years. All proposers will be notified of the results of the evaluation.

IX. Protests

Protests to this RFP, including the attached sample contract (Attachment A), are permitted according to the procedures stated in OAR 125-248-0240. Protests will be accepted up to 5:00 PM PST on Tuesday, January 20, 2009 (10 days prior to submittal deadline). Protests received after this time will not be considered. Protests submitted in or with the proposal may cause the proposal to be rejected as non-responsive.

X. Conditions and Reservations

RFP

Cost of developing the proposal, attendance at an interview or any other such costs are entirely the responsibility of the proposer, and shall not be reimbursed in any manner by the Department of Energy.

The Department of Energy reserves the right to issue amendments to this RFP prior to the closing date. In the event it becomes necessary to amend any part of this RFP, the Department of Energy will provide notice of the amendment by posting on the Oregon Procurement Information Network (ORPIN). If amendments to the RFP are issued, each proposer must acknowledge each specific amendment in the transmittal letter accompanying proposals. If a proposer does not acknowledge any amendment, then that proposer may be deemed non-responsive.

The Department of Energy reserves the right to cancel or postpone this solicitation at any time, or to award no contract, or to award multiple contracts.

The Department of Energy reserves the right to request additional information from any or all proposers. Such information may include references, interviews, work samples or other materials.

All proposers will be notified of the results of the selection process.

Contract

Prior to execution of a contract, the Consultant must register in ORPIN. Information and instructions for self-registration are available at the Department of Administrative Services Web site: <http://orpin.oregon.gov/open.dll/welcome> under "Supplier Registration".

The Oregon Department of Energy may not contract with any person who is not established as an independent contractor. Consultants are expected to enter a standard professional services contract with the Department of Energy. An example of the contract is attached to this solicitation (Attachment A). The attached sample contract may be revised following Consultant selection and negotiation of a final contract.

The initial term of any contract resulting from this RFP will vary depending on the Project and on the needs of the Department of Energy. The maximum term of any contract under this RFP will be two years. The Department of Energy reserves the right to extend the term of any contract under this RFP for up to six years, in increments to be determined by the Department of Energy. Any contract awarded under this RFP may also be amended to increase the total contract amount, or to make any other changes that may be necessary for the Department of Energy to operate the SEED program in accordance with applicable statutes and regulations. No minimum number of assignments is guaranteed. The total amount of any contract awarded under this solicitation may not exceed \$150,000.

Qualified Consultants may be contacted by the Department of Energy when a project arises for which SEED technical support is required. The Department of Energy will generally contact qualified Consultants in the order of their ranking, highest to lowest, as recorded by the evaluation team during the evaluation period. Other factors that will be taken into consideration are conflict of interests, availability, location of the project, location of the qualified Consultant and hourly rate comparisons. The Department of Energy does not guarantee that any qualified Consultant will be assigned work. The Department of Energy may request price quotes and check availability from one or more qualified Consultants at the time a need for SEED technical support arises.

When a qualified Consultant is selected for a Project, the Department of Energy will complete the attached sample contract, including a statement of work, deliverables, schedule, payment terms, and other exhibits. Nothing regarding the sample contract is open to negotiation, except for the statement of work, Consultant hourly rates and the maximum amount payable under the contract. The Department of Energy may modify the sample contract from time to time to accommodate changes in law or rules. The statement of work may vary according to the specific project, but all work will be within the Scope of Work described in Section II of this RFP.

Any Consultant under this RFP that is hired by others (architects, contractors, or state agency) to perform SEED-related services has a conflict of interest and is prohibited from entering a contract with, or providing any work on behalf of the Department of Energy for that particular SEED project. Consultants are responsible for disclosing such conflicts of interest immediately upon receiving a request for services from the Department of Energy.

Consultants are required to obtain and provide evidence of the following insurance coverage: Workers' compensation (if applicable), professional liability, comprehensive general liability, and automobile liability, all with a combined single limit or equivalent in an amount not less than \$1,000,000. Automobile liability coverage provided by the Consultant shall include owned, non-owned, and hired motor vehicle coverage. Consultants are required to provide the Department of Energy with certificates of insurance and prior notice of change or cancellation.

Consultants shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

XI. Miscellaneous

Attachments

- Form 1 – Key Personnel and Experience
- Attachment A - Sample Professional Services Contract

Links

SEED Guidelines: <http://oregon.gov/ENERGY/CONS/SEED/Guidelines.shtml>

SEED Toolbox: <http://oregon.gov/ENERGY/CONS/SEED/Toolbox.shtml>

SEED Program Web page: <http://oregon.gov/ENERGY/CONS/SEED/index.shtml>

SEED Administrative Rules: http://www.sos.state.or.us/archives/rules/OARs_300/OAR_330/330_130.html
(OAR 330-130-0010 through 330-130-0100)

Form 1 – Key Personnel and Experience

Name of Individual: _____

Name of Proposer: _____

**Complete this form for each individual designated in the proposal to provide technical services.
List the number of projects completed under each building type**

Building Type	Energy Analysis	Building Simulation	Energy Study Review	Building Energy Systems Design Review	Post-Occupancy and ECM Verification
Office					
Dormitory					
Prison					
Hospital					
Laboratory					
Kitchen					
Maintenance Garage					
Warehouse					
Recreation Center					
Data Center					
Firing Range					
Sport Stadium					
Other - Specify:					

Attachment A
STATE OF OREGON
STANDARD PROFESSIONAL SERVICES CONTRACT
(for Architectural, Engineering, Land Surveying and Related Services)

THIS PROFESSIONAL SERVICES CONTRACT (the "Contract") is between the State of Oregon, by and through its Department of Energy, (the "Agency"), and:

Company _____	Contract # _____
Address _____	PCA Project/Phase _____
City, State Zip _____	Federal ID # _____
Phone _____	Fax # _____

(the "Consultant") (collectively the Agency and the Consultant are referred to as the "Parties"). This Contract is for all Services related to completion of the project more particularly described as follows (the "Project"):

Assisting Agency with its State Energy Efficient Design (SEED) review for _____
[NAME OF BUILDING/S or PROJECT/S].

This Contract shall become effective on the date that the Contract is fully executed by the Parties and all required State of Oregon approvals have been obtained. This date is known as the Contract "Effective Date." No Services shall be performed prior to the Contract Effective Date. The Contract shall expire, unless otherwise terminated or extended, on _____, however, the term shall not exceed two years from the Contract Effective Date. Generally, the services to be performed by the Consultant on the Project consist of the following (the "Services"):

See Exhibit A, Statement of Work and Date Schedule

The Services are more specifically described in the **EXHIBIT A, Statement of Work and Date Schedule**, attached to this Contract. The Agency agrees to pay Consultant a sum not to exceed (\$_____) for performance of the Services, based on estimates described in **EXHIBIT A, Statement of Work and Date Schedule**.

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

- EXHIBIT A: Statement of Work and Date Schedule**
- EXHIBIT B: Rate Schedule**
- EXHIBIT C: Assumptions and Exclusions**
- EXHIBIT D: Insurance Provisions**

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

Signatures

Consultant

Name

Date

Title

Department of Energy

Michael L. Auman, Assistant Director
Central Services Division

Date

Approved for Legal Sufficiency

Assistant Attorney General
(If original contract amount is over \$100,000)

Date

Party Representatives

Consultant

Company Name: _____

Contact Person Name: _____

Title: _____

Telephone: _____

Email: _____

Mailing Address

City, State, Zip

Department of Energy

Lorena Wise, Contracts Coordinator
625 Marion Street NE
Salem, OR 97301-3737
Telephone: 503-378-6968
Email: lorena.wise@state.or.us

1. RELATIONSHIP OF THE PARTIES

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

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

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

1.4. Consultant acknowledges that this Contract was awarded on the basis of the unique background and abilities of the key personnel of Consultant and Sub-consultants identified by Consultant (collectively, the "Key Personnel" and individually, the "Key Person"). Therefore, Consultant shall make available Key Personnel as identified in its proposal. Consultant shall provide to Agency a list of the proposed Key Personnel to be assigned to the Project. This list shall include such information on the professional background of each Key Person as may be requested by Agency. If any Key Person becomes unavailable to Consultant, the Parties shall mutually agree upon an appropriate replacement. Without prior notice to, and the written consent of, Agency, Consultant shall not: (i) re-assign or transfer any Key Person to other duties or positions so that the Key Person is unable to fully perform his or her responsibilities under the Contract; (ii) allow any Key Person to delegate to anyone his or her performance of any management authority or other responsibility required under the Contract; or (iii) substitute any Key Person. Any of these actions shall constitute a material breach of the Contract. Consultant shall remove any individual or Sub-consultant from the Project if so directed by Agency in writing following discussion with Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

2. CONSULTANT'S RESPONSIBILITIES; REPRESENTATIONS AND WARRANTIES

2.1. Consultant agrees that:

2.1.1. The phrase "Standard of Care" that is used in this Contract is defined as follows: the same professional skill, care, diligence and standards as other professionals performing similar services under similar conditions (the "Standard of Care");

2.1.2. Consultant shall perform all Services in accordance with the Standard of Care;

2.1.3. Consultant shall prepare, in accordance with the Standard of Care, all drawings, specifications, deliverables and other documents so that they accurately reflect, fully comply with and incorporate all applicable laws, rules, and regulations, and so that they are complete and functional for the purposes intended, except as to any deficiencies which are due to causes beyond the control of Consultant;

2.1.4. Consultant shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, specifications, deliverables and other documents prepared by Consultant at no additional cost to Agency;

2.1.5. Agency's review or acceptance of documents shall not be deemed as approval of the adequacy of the drawings, specifications, deliverables and other documents. Any review or acceptance by Agency will not relieve Consultant of any responsibility for complying with the Standard of Care;

2.1.6. Consultant shall, at no additional cost to Agency, render assistance to Agency in resolving problems or other issues relating to the Project design or to specified materials;

2.1.7. During the term of the Contract, Consultant shall obtain, hold, maintain and fully pay for all licenses and permits required by law for Consultant to conduct its business and perform the Services. During the term of the Contract, Agency shall pay for and Consultant shall obtain, hold and maintain all licenses and permits required for the Project, unless otherwise specified in the Contract. Consultant shall review the Project site and the nature of the Services and advise Agency throughout the course of the Project as to the necessity of obtaining all Project permits and licenses, the status of the issuance of any such permits and licenses, and any issues or impediments related to the issuance or continuation of any such permits and licenses; and

2.1.8. Consultant shall pay all Sub-consultants and other subcontractors as required by Consultant's contracts with those Sub-consultants and subcontractors. Consultant agrees that Agency has no direct or indirect contractual obligation or other legal duty whatsoever to pay the Sub-consultants and other subcontractors of Consultant or otherwise ensure that Consultant makes full and timely payment to those Sub-consultants and subcontractors for services performed on the Project.

2.2. Consultant represents and warrants to Agency that:

2.2.1. Consultant has the power and authority to enter into and perform this Contract; the persons executing this Contract on behalf of Consultant have the actual authority to bind Consultant to the terms of this Contract;

2.2.2. When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms; the provisions of this Contract do not conflict with or result in a default under any agreement or other instrument binding upon Consultant and do not result in a violation of any law, regulation, court decree or court order or other legal process applicable to Consultant;

2.2.3. Consultant shall, at all times during the term of this Contract, be duly licensed to perform the Services, and if there is no licensing requirement for the profession or Services, be duly qualified and competent;

2.2.4. Consultant is an experienced individual or firm having the skill, legal capacity, and professional ability necessary to perform all the Services required under this Contract;

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

2.2.6. Consultant is, or shall become, in a manner consistent with the Standard of Care, familiar with all current laws, rules, and regulations which are applicable to the design and construction of the Project;

2.2.7. All Services shall be performed in accordance with the Standard of Care;

2.2.8. The Project, when completed, shall be a complete and properly functioning facility suitable for the purposes for which it is intended; and

2.2.9. The published specifications of the "Automated Systems" that Consultant has specified, designated, reviewed or planned pursuant to this Contract conform to the Contract requirements. For the purposes of this subsection, "Automated Systems" shall mean any computers, software, firmware, HVAC systems, elevators, electrical systems, fire or life safety systems, security systems and any other electrical, mechanized or computerized devices serving the Project.

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

3. RESPONSIBILITIES OF AGENCY; SPECIAL CONTRACT PROVISIONS

Agency's responsibilities under this Contract, and certain additional responsibilities of Consultant, are set forth ORS 276.900 – 276.915 and associated rules.

4. GENERAL CONTRACT PROVISIONS

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

4.2. Access to Records. For not less than three (3) years after the Contract's expiration or termination, Agency, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Consultant and the Sub-consultants which pertain to the

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

4.3. Funds Available and Authorized. Agency reasonably believes as of the Effective Date that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within Agency's appropriation, allotment or limitation. Consultant understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Agency's payment of amounts under this Contract attributable to Services performed after the last day of the current biennium is contingent on Agency receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

4.4. Insurance. Consultant shall maintain in effect for the duration of this Contract, or any other time periods required herein, the insurance set forth in **Exhibit D -Insurance Provisions**.

4.5 Indemnity.

4.5.1. CLAIMS FOR OTHER THAN PROFESSIONAL LIABILITY. CONSULTANT SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON AND AGENCY, AND THEIR OFFICERS, AGENTS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF WHATSOEVER NATURE RESULTING FROM OR ARISING OUT OF THE ACTS OR OMISSIONS OF CONSULTANT OR ITS SUB-CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES UNDER THIS CONTRACT.

4.5.2. CLAIMS FOR PROFESSIONAL LIABILITY. CONSULTANT SHALL INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE STATE OF OREGON AND AGENCY, AND THEIR 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 SUB-CONSULTANTS, SUBCONTRACTORS, AGENTS, OR EMPLOYEES IN THE PERFORMANCE OF PROFESSIONAL SERVICES UNDER THIS CONTRACT.

4.5.3. Agency Defense Requirements. Notwithstanding the obligations under Sections 4.5.1 and 4.5.2, neither Consultant nor any attorney engaged by Consultant shall defend any claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of

the State of Oregon or any of its agencies, without the prior written consent of the Oregon Attorney General. Agency may, at any time and at its election, assume its own defense and settlement of any claims in the event that: it determines that Consultant is prohibited from defending the State of Oregon; Consultant is not adequately defending the State of Oregon's interests; an important governmental principle is at issue; or it is in the best interests of the State of Oregon to do so. The State of Oregon reserves all rights to pursue any claims it may have against Consultant if the State of Oregon elects to assume its own defense.

4.5.4. Agency's Actions. This Section 4.5 does not include indemnification by Consultant of the State of Oregon or Agency or their officers, agents, and employees, for the acts or omissions of the State of Oregon, Agency or their officers, agents, and employees, whether within the scope of the Contract or otherwise.

4.6. Consultant's Status.

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

4.6.2. Consultant shall not have control or charge of, and shall not be responsible for, the acts or omissions of other consultants or contractors under contract with Agency who are performing services or construction work on the Project. However, this provision does not in any way change Consultant's professional responsibility to report to Agency any information, including information on the performance of consultants or contractors outside the control or charge of Consultant, concerning activities or conditions that have or could have an adverse effect on Agency or the Project.

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

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

4.8. Compliance with Applicable Law. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Services. Agency's performance under this Contract is conditioned upon Consultant's compliance with the provisions of ORS 279C.505, 279C.515, 279C.520, and 279C.530, which are hereby incorporated by reference. Consultant, the Sub-consultants, if any, and all employers providing Services, labor or materials under this Contract are subject employers under the Oregon workers' compensation law and shall comply with ORS 656.017.

4.9. Governing Law; Jurisdiction; Venue. This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Agency and Consultant that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this "Governing Law; Jurisdiction; Venue" Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. CONSULTANT, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

4.10. Tax Compliance Certification.

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

4.10.2. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 401.792 to 401.816 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320 (Amusement Device and Transient Lodging Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), the elderly rental assistance program under ORS 310.630 to 310.706, and any local taxes administered by the Department of Revenue under ORS 305.620.

4.11. Severability. The Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

4.12. Force Majeure. Neither party shall be held responsible for delay or default in the performance of its obligations due to a cause beyond its reasonable control, including, but not limited to fire, riot, acts of God, terrorist

acts or war where such cause was beyond such party's reasonable control. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under the Contract.

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

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

4.15. Ownership of Work Product; Confidentiality.

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

a. "Consultant Intellectual Property" means any intellectual property that is owned by Consultant and developed independently from this Contract and that is applicable to the Services or included in the Work Product.

b. "Third Party Intellectual Property" means any intellectual property that is owned by parties other than Agency or Consultant and that is applicable to the Services or included in the Work Product.

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

4.15.2. Work Product. Except as provided in Sections 4.15.3 and 4.15.4, all Work Product created by Consultant pursuant to this Contract, including derivative works and compilations, and whether or not such Work Product is considered a "work made for hire" or an employment to invent, shall be the exclusive property of Agency. Agency and Consultant agree that such original works of authorship are "work made for hire" of which Agency is the author within the meaning of the United States Copyright Act. To the extent that Agency is not the owner of the intellectual property rights in such Work Product, Consultant hereby irrevocably assigns to Agency any and all of its rights, title, and interest in all Work Product created pursuant to this Contract, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Agency's reasonable request, Consultant shall execute such further documents and instruments necessary to fully vest such rights in Agency. Consultant forever waives any and all rights relating to Work Product created pursuant to this Contract, including without limitation, any and all rights arising under 17 USC §106A or any other rights of

identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.

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

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

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

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

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

4.15.8. Consultant Use of Work Product. Consultant may refer to the Work Product in its brochures or other literature that Consultant utilizes for advertising purposes and, unless otherwise specified, Consultant may use standard line drawings, specifications and calculations on other, unrelated projects.

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

4.15.10. Non-Disclosure. Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to Agency under this Contract, and to advise each of its employees, Sub-consultants, subcontractors and agents of their obligations to keep Confidential Information confidential. Consultant shall use its best efforts to assist Agency in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Consultant shall advise Agency immediately in the event Consultant learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Consultant will at its expense cooperate with Agency in seeking injunctive or other equitable relief in the name of Agency or Consultant against any such person. Consultant agrees that, except as directed by Agency, Consultant will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at Agency's request, Consultant will turn over to Agency all documents, papers, and other matter in Consultant's possession that embody Confidential Information.

4.15.11. Injunctive Relief. Consultant acknowledges that breach of this **Section 4.15**, including disclosure of any Confidential Information, will give rise to irreparable injury to Agency that is inadequately compensable in damages. Accordingly, Agency may seek and obtain injunctive relief against the breach or threatened breach of this **Section 4.15**, in addition to any other legal remedies that may be available.

Consultant acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Agency and are reasonable in scope and content.

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

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

4.16. Termination.

4.16.1. Parties Right to Terminate by Agreement. This Contract may be terminated at any time, in whole or in part, by written mutual consent of the Parties.

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

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

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

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

4.16.3.3. Consultant no longer holds all licenses or certificates that are required to perform the Services; or

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

4.16.4. Cessation of Services. Upon receiving a notice of termination, and except as otherwise directed in writing by Agency, Consultant shall immediately cease all activities related to the Services or the Project.

4.16.5. Consultant's Right to Terminate for Cause.

4.16.5.1. Consultant may terminate this Contract if Agency fails to pay Consultant pursuant to this Contract, provided that Agency has failed to make such payment to Consultant within forty-five (45) calendar days after receiving written notice from Consultant of such failure.

4.16.5.2. Consultant may terminate this Contract, for reasons other than non-payment, if Agency commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract; fails to perform under the Contract within the time specified; or so fails to perform as to endanger Consultant's performance under this Contract, and such breach, default or failure is not cured within thirty (30) calendar days after delivery of Consultant's notice, or such longer period as Consultant may specify in such notice.

4.16.6. Delivery of Work Product/Retained Remedies of Agency. As directed by Agency, Consultant shall, upon termination, promptly deliver to Agency all documents, information, works in progress and other property that are deliverables or would be deliverables if the Contract had been completed. By Consultant's signature on this Contract, Consultant allows Agency to use Work Product and other property for Agency's intended use. The rights and remedies of Agency provided in this **Section 4.16** are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

4.16.7. Payment upon Termination.

4.16.7.1. In the event of termination pursuant to **Sections 4.16.1, 4.16.2, 4.16.3.1, 4.16.3.2** or **4.16.5**, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Agency plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim(s) which Agency has against Consultant, except in the event of a termination under **Section 4.16.3.1**, where no payment will be due and payable for Services performed or costs incurred after the last day of the current biennium, consistent with **Section 4.3**. Any claims made by Consultant pursuant to **Section 4.16.5.1** will accrue interest in accordance with, and otherwise be subject to, Oregon Revised Statutes §293.462. Within thirty (30) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. Agency shall not be obligated to pay for any such costs invoiced to and received by Agency later than thirty (30) days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall promptly refund any excess amount upon demand.

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

4.17. Foreign Consultant. If Consultant is not domiciled in or registered to do business in the State of Oregon as of the Effective Date, Consultant shall promptly provide to the Oregon Department of Revenue and the Secretary of State's Corporation Division all information required by those agencies relative to this Contract. Consultant shall demonstrate its legal capacity to perform the Services under this Contract in the State of Oregon prior to executing this Contract.

4.18. Notice. Except as otherwise expressly provided in this Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mail, postage prepaid, to Consultant or Agency at the address or number set forth in the Party Representatives table, or to such other address or number as either party may provide pursuant to this "Notice" section. Any notice delivered by mail shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a receipt of the transmission. To be effective against Agency, any facsimile communication or notice must be confirmed by telephone notice to Agency's Representative for the Project as indicated in the Party Representatives table and shall not be deemed to be given until such confirmation is completed. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

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

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

Exhibits A through D are attached.

STATE OF OREGON
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT A
STATEMENT OF WORK AND DATE SCHEDULE

Consultant agrees to provide the services marked X in the following table. All services relate to the building or buildings named on Page 1 of this Contract. Additional information regarding SEED Program requirements that apply to the services to be provided under this Contract is available from the Department of Energy and on the Internet as follows:

SEED Guidelines: <http://oregon.gov/ENERGY/CONS/SEED/Guidelines.shtml>

SEED Toolbox: <http://oregon.gov/ENERGY/CONS/SEED/Toolbox.shtml>

SEED Program Web page: <http://oregon.gov/ENERGY/CONS/SEED/index.shtml>

SEED Administrative Rules: http://www.sos.state.or.us/archives/rules/OARs_300/OAR_330/330_130.html

Based upon the timetable above and the rates in Exhibit B, the maximum not-to-exceed total amount payable under this Contract is \$_____. Should either the time or amounts required to complete the Project change during the course of the Project, the Parties may amend the Contract according to its terms, however, in no event or circumstance shall the total amount paid under this Contract exceed \$150,000.

**Oregon Department of Energy (DOE)
SEED Project Assignment for Technical Staff Support**

Date Assigned:	PCA #:	Contract #:
Assigned To:	Assigned By:	
Project Name:	Project Owner:	
	This assignment will include all of the work listed below.	
	This assignment will include only the work identified by a Yes (Y) below.	
Y/N	Assigned Work	Date Completed
	<p>1. Initial Meeting. Consultant shall meet with DOE, the Owner and the Design Team to:</p> <ul style="list-style-type: none"> A. Discuss the scope of the construction project. B. Present SEED program requirements and explain Owner responsibilities. C. Discuss coordination and scheduling of contracting with Energy Analyst, Commissioning Agent or other sub-consultants of the Owner. 	
	<p>2. Energy Planning Session. Consultant shall meet with DOE, the Owner, the Design Team and the Energy Analyst to further define the scope of the construction project, energy goals of the project, design criteria, integrated design approach, modeling approach, Commission Plan, Metering Plan and construction schedule. Consultant shall:</p> <ul style="list-style-type: none"> A. Review Early Planning Session Programming and Design Intent documents prepared by the Energy Analyst and provide DOE with comments. B. Discuss and develop concepts for ECMs early in the Schematic Design Phase to facilitate decision making. 	
	<p>3. ECM Scoping Process. Consultant shall meet with DOE, the Owner, the Design Team and the Energy Analyst meet to develop a suggested ECM list to capture significant energy saving opportunities. Consultant shall:</p> <ul style="list-style-type: none"> A. Review the proposed ECM list, project programming documents and design drawings developed to date. B. Independently develop a list of ECMs appropriate for the project. C. Recommend to DOE the ECMs that should be used as a baseline and the ECMs that require further analysis. 	
	<p>4. Preliminary Energy Analysis Report. Consultant shall:</p> <ul style="list-style-type: none"> A. Review the Preliminary SEED study for completeness and accuracy. B. Review all energy models and advise DOE whether the energy models are sound and follow SEED guidelines. C. Analyze the cost estimates against SEED requirements for ECM cost effectiveness. D. Provide analyses to DOE, the Owner, the Design Team and the Energy Analyst in accepted DOE format. E. Review revised Report and Models to ensure changes have been made. F. Verify that the Metering Plan is submitted with the Preliminary SEED Report. 	

Y/N	Assigned Work	Date Completed
	5. ECM Review Meeting. Consultant shall attend the ECM Review Meeting with DOE, the Owner, the Design Team and the Energy Analyst to discuss and formalize the recommended ECM package.	
	6. Design Review. Consultant shall review the construction documents, usually at 90—95 percent completion, to advise DOE whether the ECMs are included and fully documented and ensure that the Metering Plan and the Performance Verification Plan are specified in the documents. Consultant shall create a punch-list for DOE, the Owner and Design Team of items not adequately captured in the drawings and specs. The Consultant shall review the final construction documents and advise all parties in writing whether the punch-list items are addressed.	
	7. Final Report. Consultant shall review the final report for completeness in order to confirm that issues identified in the Preliminary SEED Study review were addressed and rectified. Consultant shall document findings from the review and recommend to DOE whether or not the final report should be approved.	
	8. Commissioning Plan Review. Consultant shall review the Commissioning Plan against SEED requirements and advise DOE whether it satisfies the requirements and is clearly documented in the construction documents.	
	9. Job Site Inspections. Consultant shall make walk-through site inspections during construction to verify installation of ECMs and monitor execution of the Commissioning Plan. Consultant shall document and report findings to DOE.	
	10. Post Occupancy Inspections. Consultant shall perform a final walk-through in order to verify that ECMs are installed and fully operational. Consultant shall document and report findings to DOE.	
	11. Monitoring. DOE will monitor energy use during the first 18 months of occupancy. If the energy use in the building is not in compliance with projected energy use or if ECMs are not operational, Consultant shall make an additional site visit to assist the Owner in identifying action items to rectify problems.	
	12. Other technical services to support Department of Energy staff as requested. (Elaborate)	

Services under this assignment shall not exceed \$ _____.

With the exception of the work assigned by DOE, Consultant certifies it has no financial interest in the project as a consultant or contractor to the Owner or other parties involved in the design, energy analysis, construction, commissioning or any other work relating to the project.

Consultant

Authorized Signature:

Date:

Department of Energy

Authorized Signature:

Date:

NOTE: Transmit copy of completed and signed form to Lorena Wise, DOE Contracts Coordinator.

STATE OF OREGON
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT B
RATE SCHEDULE

Key Personnel	Hourly Rate

STATE OF OREGON
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT C
ASSUMPTIONS AND EXCLUSIONS

STATE OF OREGON
STANDARD PROFESSIONAL SERVICES CONTRACT

EXHIBIT D
INSURANCE PROVISIONS

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

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

Workers' Compensation insurance All employers, including the Consultant, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. The Consultant shall ensure that each of its Sub-consultants and subcontractors complies with these requirements.

C.1.02 Required by the Agency Not required by the Agency

Professional Liability/Errors & Omissions insurance with a combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; or \$2,000,000 each claim, incident or occurrence. This insurance must cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. Any deductible shall not exceed \$50,000 each claim, incident, or occurrence.

C.1.03 Required by the Agency Not required by the Agency

General Liability insurance with a combined single limit, or the equivalent, of not less than: \$200,000; \$500,000; \$1,000,000; \$2,000,000 each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. The policy, or an endorsement or amendment to the policy, must provide that the State of Oregon, the State Department of Energy and its divisions, officers and employees are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

C.1.04 Required by the Agency Not required by the Agency

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than: Minimum amounts required by the Oregon Financial Responsibility Law (ORS 806.060 and 806.070); \$200,000; \$500,000; \$1,000,000; per occurrence, for Bodily Injury and Property Damage, including coverage for all owned, hired or non-owned vehicles, as applicable. The policy, or an endorsement or amendment to the policy, must provide that the State of Oregon, the State Department of Energy and its divisions, officers and employees are "additional insureds", but only with respect to the Consultant's Services to be provided under this Contract.

C.1.05 "Tail" Coverage

If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 24 months, or the maximum time period available to the Consultant in the marketplace if less than 24 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Contract expiration. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. Evidence of suitable coverage will be a condition of final acceptance and payment under the Contract.

C.1.06 Notice of Cancellation or Change

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

C.1.07 Certificates of Insurance

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