# CONSULTANT TERMS AND CONDITIONS

**July 1, 2014**

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PORTLAND STATE UNIVERSITY
CONSULTANT TERMS AND CONDITIONS FOR PUBLIC IMPROVEMENT AGREEMENTS

A. GENERAL TERMS

A.1 DEFINITION OF TERMS
Unless otherwise specifically defined in the Agreement, words which have well-known technical meanings or construction industry meanings are used in the Agreement Documents in accordance with such recognized meanings. Capitalized terms used, but not defined herein shall have the definition set forth in Oregon Administrative Rules ("OAR") Chapter 580, Divisions 61 and 63.

In the Agreement Documents the following terms shall be as defined below:

ADDITIONAL SERVICES, means those services, set forth in an executed Change Order, that are to be performed by the Consultant and are in addition to the scope of the Services described in the Agreement.

AGREEMENT, means the written agreement between the Owner and the Contractor comprised of the Agreement Documents which describe the Work to be done and the obligations between the parties.

AGREEMENT DOCUMENTS, means the Solicitation Document and addenda thereto, Agreement, Consultant Terms and Conditions, the accepted Proposal, Amendments, and Change Orders.

AMENDMENT, means a written amendment, mutually agreed to and executed by the Parties, to an executed Agreement which may alter the terms of the Agreement.

APPLICABLE LAWS, means federal, state and local laws, codes, rules, regulations and ordinances applicable to the Services and to the Agreement.

AUTHORIZED REPRESENTATIVE, means Owner's employee, whom may be identified in an Agreement to act on behalf of Owner with respect to a Project.

CHANGE ORDER, means a written order which, when fully executed by the Parties to this Agreement, constitutes a change to the Services or Term of Agreement to be provided by the Consultant.

CONSTRUCTION CONTRACT, means any contract, entered into between Owner and a Contractor, to provide any or all Work necessary to construct a Project identified in the Agreement.

CONSULTANT INTELLECTUAL PROPERTY, means any intellectual property owned by the Consultant and developed independently from the Agreement and any Change Orders and/or Amendments.

CONTRACTOR, means any contractor awarded a Construction Contract by Owner to construct all or part of any Project identified in an Agreement.

DAYS, are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

DESIGN CRITERIA, means the Owner's criteria, guidelines, and/or standards applicable to the Project.

EFFECTIVE DATE, means the date on which all Parties have signed the Agreement.

FIXED FEE, refers to a method by which Consultant may be paid for its Services based on a set price, as agreed to by the Parties and set forth in an Agreement, that is not subject to any adjustment unless through an executed Change Order.

FORCE MAJEURE, means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes of any other act, event or occurrence that is beyond the reasonable control of the party and which could not have been avoided by the exercise of care, prudence, foresight and diligence by such party

KEY PERSON, means a person identified by the Parties in an Agreement, and employed by the Consultant or one of the Consultant’s Sub-Consultants, whose expertise will be relied upon for the performance of Consultant's Services.

MAXIMUM COMPENSATION, means the maximum fee paid to Consultants pursuant to any Agreement, as increased or decreased by the price of executed Change Orders.

MWESB REPORT, means an accurate report by the Consultant to the Owner identifying all Minority, Women and Emerging Small Business ("MWESB") enterprises, as those terms are defined in ORS 200.005, receiving sub-contracts throughout the course of Consultant's Services. Each MWESB Report shall include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable.

OWNER, means Portland State University and its officers, agents, employees, and trustees

PROJECT, means the specific project for which Consultant provides Services, as set forth in an Agreement.

PROJECT DOCUMENTS, means all plans, designs, drawings, specifications, construction specifications, schematics, technical documents, calculations, studies, planning efforts, and any other documents or work product (including those in electronic format) applicable to the Project and prepared by the Consultant for the Owner.
REIMBURSABLE EXPENSES, are those expenses incurred by the Consultant in the performance of Services set forth in an Agreement and may include the following (unless otherwise defined in an Agreement): long-distance communication charges; reproductions, postage and handling of plans, drawings, Project Documents, and other documents (excluding reproductions for the use by the Consultant and its Sub-Consultants); photographic production techniques; renderings, models, and mock-ups requested by the Owner; and travel expenses.

SCHEDULE, means a written plan that the Consultant submits to Owner giving intended events and dates for performing Consultant’s Services.

SERVICES, means all services (as further defined herein) to be performed by Consultant and set forth in the Agreement executed by the Parties to this Agreement.

SOLICITATION DOCUMENT, means Request for Proposal or a Request for Quotes.

SUB-CONSULTANT, means any consultant hired by Consultant, after receipt of Owner’s written consent, to assist Consultant in the performance of the Services described in the Agreement.

TERM, means the fixed period of time during which the Services shall be performed.

THIRD PARTY INTELLECTUAL PROPERTY, means any intellectual property owned by parties other than Owner or Consultant.

TIME AND MATERIALS, refers to a method by which Consultant may be paid for its Services based on hours spent and materials used.

WORK, means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Agreement and the carrying out of duties and obligations imposed by the Agreement Documents.

WORK PRODUCT, means every invention, discovery, work of authorship, Project Drawing, trade secret, or other tangible or intangible item, whether completed, partially completed, or in draft form and all intellectual property rights therein, that the Consultant is required to deliver to Owner pursuant to the Agreement and any Change Orders and/or Amendments.

A.2 CONSULTANT’S REPRESENTATIONS AND WARRANTIES
Consultant represents and warrants to Owner that:

a. Consultant has the power and authority to enter into, and perform Services in accordance with, the terms of this Agreement.

b. Upon execution and delivery, this Agreement is a valid and binding obligation enforceable in accordance with its terms.

c. Consultant is responsible for all Services performed under this Agreement and accepts liability for its Services as further described in this Agreement.

d. Consultant shall remain duly licensed to perform the Services at all times during the Term and, if there is no licensing requirement to perform the Services, Consultant shall remain qualified and competent to perform Services at all times during the Term of this Agreement.

e. Consultant is experienced, having the skill, legal capacity, and professional ability necessary to perform the Services required for Projects contemplated in this Agreement and all Change Orders and/or Amendments in “a manner consistent with the standard of care set forth in this Agreement.

f. Consultant has the capabilities and resources necessary to perform the obligations of this Agreement.

g. Consultant either is, or warrants that it will become in a manner consistent with the standard of care set forth in this Agreement, familiar with all Applicable Laws pertaining to the Services set forth in this Agreement and all Change Orders and/or Amendments.

A.3 SUCCESSORS AND ASSIGNS
The Owner and the Consultant, each binds itself and themselves, their partners, successors, executors, administrators and assigns to the other party to this Agreement, and the successors, executors, administrators and assigns of such other party in respect of all covenants of this Agreement. Unless otherwise agreed by the Parties in writing, neither the Owner nor the Consultant shall assign, sublet or transfer its or their interest in this Agreement without the written consent of the other.

A.4 COMPLIANCE WITH APPLICABLE LAW
The Consultant agrees to comply with all Applicable Laws. The Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statues, rules and regulations including the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), title VI of the civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of the Consultant to comply with all Applicable Laws shall not relieve the Consultant of its obligations or any other requirements of this Agreement.

A.5 TAX COMPLIANCE CERTIFICATION
By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned’s knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, “Oregon tax laws” means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

A.6 THE CONSULTANT AS INDEPENDENT CONTRACTOR
A.6.1 Consultant shall perform all Services as an independent contractor as defined in ORS 670.600. The Consultant agrees to the following:

a. The Consultant is solely responsible for determining the appropriate means, method, and manner of performing Services. However, Owner reserves the right to:

1. determine and modify the delivery Schedule for Services to be performed under an Agreement, and
2. evaluate the quality of the completed performance.

b. The Consultant is not an officer, employee, or agent of the Owner, as those terms are used in ORS 30.265.

c. The Consultant is not a contributing member of the Public Employee’s Retirement System and is responsible for any federal or state taxes applicable to compensation or payments paid to the Consultant under an Agreement. The Consultant will not be eligible for any benefits from these payments for federal Social Security, unemployment insurance, or workers’ compensation, except as a self-employed individual. If any payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.
A.7  **CHOICE OF LAW; JURISDICTION AND VENUE**

This Agreement and any Change Orders and/or Amendments will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between Owner and Consultant that arises out of or relates to performance of this Agreement or any Change Orders and/or Amendments will be brought and conducted solely and exclusively within the Circuit Court for Multnomah County, in the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no way will this Section be construed as a waiver by Owner of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. The Consultant, by execution of this Agreement, hereby consents to the in personam jurisdiction of the above courts.

A.8  **MEDIATION**

The Parties, in an effort to resolve any conflicts that may arise during the design or construction of a Project or following the completion of the Project, agree that all disputes between them arising out of or relating to this Agreement or any Change Orders and/or Amendments shall be submitted to nonbinding mediation, unless the Parties mutually agree otherwise. Each Party shall be responsible for its own costs related to the mediation. The Parties shall share the cost of retaining a mediator equally. The Consultant further agrees to include a similar mediation provision in all agreements with Sub-Consultants under this Agreement. All participating parties shall exercise good faith efforts to resolve all disputes in mediation.

A.9  **ACCESS TO RECORDS**

For not less than six (6) years after expiration of this Agreement, Owner, the Secretary of State's Office of the State of Oregon, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Consultant which are directly pertinent to Services performed under an Agreement for the purpose of making audit, examination, excerpts, and transcripts. If any part of this Agreement and any Change Orders and/or Amendments, is involved in litigation, the Consultant shall retain all pertinent records for not less than six (6) years or until all litigation is resolved, whichever is longer. The Consultant shall provide Owner and the other entities referenced above with full access to these records in preparation for and during litigation.

A.10  **OWNER'S CONFIDENTIAL INFORMATION**

Consultant acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to Owner. Any and all information of any form obtained by Consultant or its employees or agents in the performance of this Agreement shall be deemed confidential information of Owner ("Confidential Information"). 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 in the performance of the Agreement, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Consultant agrees that Consultant will not at any time during or after the Term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement, or at Owner's request, Consultant will turn over to Owner all documents, papers and other material in Consultant's possession which contain Confidential Information.

A.11  **SEVERABILITY**

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

A.12  **DISCLOSURE OF SOCIAL SECURITY NUMBER**

Consultant shall provide its Social Security number or federal tax ID number to Owner, pursuant to ORS 305.385 and OAR 150-305.100. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

A.13  **FORCE MAJEURE**

Neither Party shall be held responsible for delay or default caused by Force Majeure. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement.

A.14  **NO WAIVER**

The failure of Owner to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by Owner of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.

A.15  **NOTICES**

Except as expressly provided otherwise in this Agreement, any notices to be given hereunder will be given in writing by personal delivery, email, or mail (postage prepaid) to the Consultant or Owner at the address or number set forth on page 1 of this Agreement, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed (postage prepaid) will be deemed to be given five (5) calendar days after the date of mailing. To be effective against Owner, email transmission must be confirmed by telephone notice to Owner and will be deemed to be given upon such confirmation. Any notice by personal delivery will 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. Notices specific to a Project will be given as set forth in the Agreement pertaining to that Project.

A.16  **FUNDS AVAILABLE AND AUTHORIZED**

Owner reasonably believes at the time of entering into this Agreement that sufficient funds are available and authorized for expenditure to finance the cost of this Agreement within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Agreement, Owner's payment of amounts under this Agreement attributable to Services performed after the last day of the current biennium is contingent on Owner receiving from the Oregon Legislative Assembly appropriations, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.
A.17 NO THIRD PARTY BENEFICIARIES
Nothing contained in this Agreement and any Change Orders and/or Amendments shall create a contractual relationship with, or a cause of action in favor of, a third party against Owner or the Consultant. Consultant’s Services shall be performed solely for the Owner’s benefit and no other entity or person shall have any claim against Consultant because of this Agreement for the performance or nonperformance of Services.

A.18 FOREIGN CONTRACTOR
Consultant shall be licensed to do business and provide Services in the State of Oregon by all necessary authorities having jurisdiction over this Agreement, the Project or the Services during the Term of the Agreement. If Consultant is not domiciled or registered to do business in the State of Oregon, Consultant will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies prior to performing any Services. The Consultant shall demonstrate its legal capacity to provide Services in the State of Oregon before entering into any Agreement.

A.19 MEDIA CONTACTS
The Consultant shall provide no news release, press release, or any other statement to a member of the news media regarding a Project without Owner’s prior written authorization.

A.20 CONFLICT OF INTEREST
The 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 Services performed under an Agreement without Owner’s prior consent, which may be withheld in Owner’s sole and absolute discretion.

A.21 ASBESTOS AND OTHER HAZARDOUS SUBSTANCES
It is the Owner’s intention that the Services will not involve the removal, destruction or other remediation of asbestos, asbestos-related materials, hazardous wastes, hazardous substances, or other hazardous materials (collectively, the “Hazardous Substances”). It is understood and agreed that the Owner will contract with other parties for the removal of any Hazardous Substances prior to the commencement of any Project or at such time as Hazardous Substances are detected. It is understood and agreed that the Consultant may not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner, another professional consultant not employed by Consultant, contractor, or subcontractor providing Services relating to the abatement of such Hazardous Substances.

A.22 RECYCLED PRODUCTS
Consultant shall use recyclable products to the maximum extent economically feasible in the performance of this Agreement work set forth in this document.

B.1 CONSULTANT’S SERVICES

B.1.1 Consultant shall provide Owner with professional consulting Services more particularly described in the executed Agreement. Consultant shall perform Services in accordance with the terms of this Agreement, and Consultant hereby agrees to the following:

a. Consultant shall perform Services at all times in compliance with the standard of care set forth in this Agreement.

b. Services may include creation of Project Documents required to achieve Owner’s identified Project objectives. Consultant shall complete all Project Documents in accordance with Section C.1 of this Agreement.

c. Consultant shall perform, at no additional cost to Owner, all Services necessitated in whole or in part by errors and omissions of, or breach of this Agreement by Consultant or any persons or entities for whom Consultant is responsible.

d. Consultant shall fully cooperate with Owner to meet all Project budgets. Owner understands that Consultant, in providing opinions of probable construction costs, has no control over the cost or availability of labor, equipment, or materials, or other market conditions, and that Consultant’s opinions of probable construction costs are made on the basis of Consultant’s professional judgment and experience. Consultant makes no warranty, express or implied, that the bids or the negotiated cost of the Work for any Projects will not vary from Consultant’s opinion of probable construction costs.

1. In the event the Consultant’s opinion of probable construction costs exceeds the budget for any Project identified in an Agreement by any amount during the design or construction phases, or in the event the bids or negotiated cost of the Work exceed the budget for any such Project by more that 10 percent, Consultant, upon notice from Owner, agrees to modify, at Consultant’s sole expense, Consultant’s Project Documents (or, with Owner’s approval, those portions of Project Documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage, hereafter, “Project Documents Modification”).

2. The Project Documents Modification shall constitute Consultant’s sole responsibility with respect to its opinions of probable construction costs, and Consultant agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the probable construction costs so that they do not exceed the applicable Project budget. Consultant agrees that any Project Documents Modification may be in addition to obligations that may be imposed by Section C.1 of this Agreement.

B.2 STANDARD OF CARE
Consultant agrees that Consultant and any other persons or entities for whom Consultant is responsible shall exercise a high degree of care, diligence, skill, and judgment in the rendition of all Services, which shall be no less than that exercised by consultants of similar reputation performing work or providing services for projects of a size, scope, and complexity similar to the Services for which Consultant is retained.

B.3 SCHEDULE
Consultant acknowledges that time is of the essence in the performance of all Services. Upon Owner’s request, either prior to execution of an Agreement or at any time thereafter, Consultant shall submit to owner a Schedule. The Schedule shall be in form and level of detail as required by Owner. Consultant shall periodically reevaluate the Schedule and promptly notify Owner in writing of any actual or anticipated deviations from the Schedule. Any adjustments to the Schedule shall be allowed only with prior written approval of Owner.

B.4 SERVICES OF CONSULTANT’S SUB-CONSULTANTS
Upon receiving prior written approval of Owner, which shall not be unreasonably withheld, Consultant may employ Sub-Consultants in the performance of its Services. Consultant shall be responsible for any Service performed by a Sub-Consultant. All Sub-Consultant agreement(s) must require the Sub-Consultant to be bound by the following terms of the Agreement: F.1 INDEMNITY, F.2 INSURANCE, G.1 SUSPENSION OF SERVICES, G.2 TERMINATION, A.4 COMPLIANCE WITH...
Consultant shall pay any Sub-Consultants out of the Maximum Compensation. The Owner has no contractual obligation or legal duty to pay any Sub-Consultants or ensure that the Consultant makes full and timely payment to the Sub-Consultants for Services rendered on the Project.

Services performed by Consultant through its Sub-Consultants must be included in Consultant’s invoices at the cost incurred by the Consultant without mark-up, unless otherwise agreed by the Parties in writing. Consultant shall provide to the Owner:

a. copies of Sub-Consultant’s invoices submitted to the Consultant, and

b. Consultant’s requests for payment to the Owner under this Agreement.

In the event that a Sub-Consultant is replaced or substituted for by the Consultant, the Consultant shall disclose such an event in writing to the Owner. The Owner may, in its sole discretion, accept the substitute Sub-Consultant or may request a different substitute Sub-Consultant. The substitution may not disrupt or alter the terms of the Project, and the Consultant shall take all actions reasonably necessary to ensure the cooperation of former and current Sub-Consultants in the complete and timely performance of the Services.

C. PROJECT

C.1 PROJECT DOCUMENTS

Project Documents prepared by the Consultant as part of its Services shall comply with all Applicable Laws and be complete and functional for the purposes intended. Consultant further agrees to the following:

a. All Project Documents prepared by Consultant shall accurately and completely describe existing conditions for the scope of the Services to be performed.

b. Projects constructed in substantial conformance with Consultant’s Project Documents shall be structurally sound, complete, properly functioning, and suitable for the purposes for which they are intended.

c. Consultant is responsible for any negligent inconsistencies, errors, or omissions in the Project Documents. While the Consultant cannot guarantee that the Project Documents are completely free of all minor human errors and omissions, it is Consultant’s responsibility to conform to the standard of care set forth in this Agreement throughout the performance of the Services. The Consultant shall, at no additional cost to Owner, correct any and all errors and omissions in the Project Documents prepared by the Consultant. Consultant agrees costs incurred by Owner as a result of any errors and omissions in the Project Documents furnished by Consultant shall be compensable to Owner. Further, Consultant shall assist Owner, at no additional cost, to resolve other problems arising from Consultant’s errors or omissions, including, but not limited to, correcting design of the Project, or materials specified for use.

d. Owner’s review or acceptance of Project Documents, authorization to continue to the next phase of design, bidding process participation, or construction administration, shall not be deemed approval of the adequacy of the Project Documents. Any review or acceptance by Owner will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein.

e. Consultant’s Project Documents for all new facilities or, if applicable, renovated facilities, shall be consistent with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (Pub L No. 101-336), and Oregon Building Codes to ensure Owner’s facilities are accessible to people with physical limitations.

f. The terms included in this Section are in addition to, and not in lieu of, any representations or warranties provided by Consultant herein.

C.2 PROJECT COORDINATION

Consultant shall cooperate with other consultants and Contractors Owner may employ from time to time to provide goods and services in connection with a Project. Consultant’s cooperation will include all steps reasonably necessary to achieve Owner’s Project objectives. Consultant shall be responsible for completing its Services in a manner that facilitates timely Project completion. When the Parties agree that Consultant is responsible for coordinating with a Contractor, such coordination shall include, unless indicated otherwise, the following:

a. Consultant’s cooperation with the Contractor to ensure the Project is constructed in accordance with the Project schedule. The Project schedule shall be provided by the Owner or Contractor, if Owner makes an express delegation of that responsibility.

b. Consultant shall interpret matters concerning the requirements of Construction Contracts only when Owner makes an express written delegation of that responsibility to Consultant, and such interpretation shall be limited to scope of the delegation. If delegated to Consultant, responses to requests for interpretation of a Construction Contract shall be in writing within any time limits agreed upon or with reasonable promptness. Delegated interpretations and decisions of the Consultant will be consistent with the intent of and reasonably inferable from the Construction Contract.

c. Consultant shall timely review all submittals, shop drawings, product data and samples (collectively, “Submittals”) made by the Contractor. Owner, or Contractor, if so delegated, shall provide Consultant with a copy of Contractor’s Submittal schedule, which should: 1) be coordinated to Contractor’s Work schedule, and 2) allow Consultant reasonable time to review Submittals. Consultant’s approval of Submittals shall not be unreasonably delayed or withheld. Submittals upon which the Consultant is not expected to take responsive action may be identified by the Owner. Only Submittals which Owner indicates will not require Consultant’s responsive action may be returned by Consultant without action.

d. If requested, Consultant shall timely review Contractor’s applications for progress payments, and certify to Owner the amounts due Contractor through certificates of payment for such amounts in such form specified or acceptable to Owner in Owner’s reasonable discretion.

e. If a Contractor proposes a requested deviation from the Project Documents, Consultant agrees to timely review the requested deviation and provide Owner and Contractor with written recommendations, which are subject to Owner’s approval in Owner’s sole and absolute discretion.

f. The Parties further agree that Consultant may be responsible for the inspection of Contractor’s Work if set forth in an Agreement. In such a case, Consultant shall complete requested inspections within a reasonable time, including after substantial completion of Contractor’s Work. If corrections to Contractor’s Work are required, Consultant shall inform Owner and Contractor of the necessary correction.

g. Except as otherwise provided in an Agreement, the Owner’s Authorized Representative is the Contractor’s primary point of contact regarding a Project. Consultant’s communications with the Contractor must include the Authorized Representative at all times, unless directed otherwise in writing.
h. When Project coordination tasks increase Consultant’s duties beyond those reasonably anticipated by the Parties in the Agreement, the Parties shall execute a Change Order setting forth the terms and payment for any Additional Services. The full execution of a Change Order is a condition precedent to Owner’s obligation to pay Consultant for Additional Services.

C.3 MWESB REPORT REQUIREMENT
For each Project, Consultant shall deliver to Owner each MWESB Report described in this Section. Timely receipt of MWESB Reports shall be a condition precedent to Owner’s obligation to pay any progress payments or final payments.

C.3.1 Consultant shall submit an initial MWESB Report in the format provided by Owner within ten (10) Days of Consultant’s execution of any Agreement (“Initial MWESB Report”). The Initial MWESB Report must include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts.

C.3.2 Consultant shall submit annual MWESB Reports on June 30 of each year an Agreement is active (“Annual MWESB Report”). Agreements first executed within ninety days before June 30 of the year of execution by Consultant, may at the discretion of Owner, be exempt from submitting the Annual MWESB Report otherwise due on June 30. The Annual MWESB Reports must include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months.

C.3.3 Consultant shall submit a final MWESB Report as a condition of final payment (“Final MWESB Report”). The Final MWESB Report must include the total number of contracts and subcontracts awarded to MWESB enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Project.

D. OWNERSHIP OF WORK PRODUCT

D.1 WORK PRODUCT
All Work Product created by the Consultant, including derivative works and compilations, and whether or not such Work Product is considered a “work made for hire,” is the exclusive property of Owner. Owner and the Consultant agree that Work Product that constitutes original works of authorship (the “Original Work Product”) is “work made for hire,” and Owner is the author within the meaning of the United States Copyright Act. If for any reason Original Work Product is not “work made for hire,” the Consultant hereby irrevocably assigns to Owner any and all of its rights, title, and interest in all Original Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Upon Owner’s reasonable request, the Consultant shall execute such further documents and instruments necessary to fully vest rights to Original Work Product in Owner. The Consultant forever waives any and all rights relating to Original Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction, or limitation on use or subsequent modifications. However, see Sections D.2., D.3., D.4, and D.5. immediately below, for provisions applicable to Consultant Intellectual Property, Third Party Intellectual Property, Consultant Intellectual Property derivative works, and Third Party Intellectual Property derivative works.

D.2 CONSULTANT INTELLECTUAL PROPERTY
In the event that portion of the Work Product is Consultant Intellectual Property or is necessary for Owner to reasonably enjoy and use Work Product, the Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display Consultant Intellectual Property, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf. At the request of the Consultant, Owner shall take reasonable steps to protect the confidentiality and proprietary interests of the Consultant in any Consultant Intellectual Property licensed under this Section within the limits of the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).

D.3 THIRD PARTY INTELLECTUAL PROPERTY
In the event that any portion of the Work Product is Third Party Intellectual Property, or in the event any Third Party Intellectual Property is needed by Owner to reasonably enjoy and use Work Product, the Consultant shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, including the right of Owner to authorize contractors, consultants, and others to do the same on Owner’s behalf.

D.4 CONSULTANT INTELLECTUAL PROPERTY-DERIVATIVE WORK
If all or any portion of the Work Product is a derivative work based on Consultant Intellectual Property, or is a compilation that includes Consultant Intellectual Property, the Consultant hereby grants to Owner an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of Consultant Intellectual Property employed in the Work Product, including the right of Owner to authorize others to do the same on Owner’s behalf.

D.5 THIRD PARTY INTELLECTUAL PROPERTY-DERIVATIVE WORK
If all or any portion of the Work Product is a derivative work based on Third Party Intellectual Property or is a compilation that includes Third Party Intellectual Property, the Consultant shall secure on Owner’s behalf, and in the name of Owner, an irrevocable, non-exclusive, non-transferable, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display the pre-existing elements of the Third Party Intellectual Property employed in the Work Product, including the right to authorize others to do the same on Owner’s behalf.

D.6 LIMITED OWNER INDEMNITY
To the extent permitted by the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400, Owner shall indemnify and hold the Consultant harmless from liability arising out of Owner’s re-use or alteration of the Work Product, within the limits set forth in the Oregon Constitution, Article XI, Section 7, and by the Oregon Tort Claims Act, ORS 30.260 through 30.400.

D.7 CONSULTANT USE OF WORK PRODUCT
Notwithstanding anything to the contrary in this Section, the Consultant may refer to the Work Product in its marketing materials and, unless specified otherwise, Owner hereby grants to the Consultant a non-exclusive, non-transferable, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform, and display Work Product on other unrelated projects for this limited use. This provision explicitly excludes any "Confidential Information" protected from disclosure under the provisions of this Section and Section D.8 below. Consultant may use the Work Product for other uses only with Owner’s prior written approval.
D.8 **CONFIDENTIAL WORK PRODUCT INFORMATION**

Any and all information that Owner designates as confidential (either on the document itself or through related correspondence) and any other documents or materials (including software) that result from the Consultant’s use of such information and any other Work Product that Owner designates as confidential, is deemed to be confidential information of Owner ("Confidential Information"). Confidential Information does not include information that (i) is or becomes (other than by disclosure by the Consultant) publicly known; (ii) is furnished by Owner to others without restrictions similar to those imposed by this Agreement; (iii) is rightfully in the Consultant’s possession without the obligation of nondisclosure prior to the time of Owner's Confidential Information disclosure; (iv) is obtained from a source other than Owner without the obligation of confidentiality; (v) is disclosed with the written consent of Owner; or (vi) is independently developed by employees, Sub-Consultants, or agents of the Consultant who can be shown to have had no access to the Confidential Information.

D.9 **NON-DISCLOSURE**

The Consultant shall hold Confidential Information in strict confidence, using at least the same degree of care that the Consultant uses in maintaining the confidentiality of its own confidential information, and shall not, without Owner’s prior written consent, copy, reproduce, sell, assign, license, market, transfer, dispose of, give, disclose, or otherwise use Confidential Information for any purpose whatsoever outside of the scope of Services of this Agreement and any Change Orders and/or Amendments. The Consultant shall advise each of its employees, Sub-Consultants, and agents of their obligations to keep Confidential Information confidential. The Consultant shall use reasonable efforts to assist Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. The Consultant shall advise Owner immediately if the 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 Section, and the Consultant shall, at its expense, cooperate with Owner in seeking injunctive or other equitable relief in the name of Owner against any such person. Upon termination of this Agreement and any Change Orders and/or Amendments, or at Owner’s request, the Consultant shall turn over to Owner all documents, papers, and other materials in the Consultant’s possession that contain Confidential Information. In the event Consultant is required to disclose Confidential Information pursuant to a subpoena or other legal process, the Consultant shall immediately notify Owner of such subpoena or other legal process, provide Owner with copies of all related documentation, including the subpoena or other request for disclosure, and otherwise cooperate with Owner. In the event Owner decides not to oppose such subpoena or other legal process or Owner’s decision to oppose the subpoena or legal process has not been successful, the Consultant shall be excused from the requirements of this provision to the extent necessary to meet the demands of the subpoena or other legal process requesting disclosure of Confidential Information.

E. **COMPENSATION**

E.1 **PAYMENTS**

Owner’s payments to Consultant shall be consistent with the following:

a. All monthly payments for Services performed will be made by the Owner based upon invoices submitted by the Consultant for Services rendered and Reimbursable Expenses incurred during the preceding month. Payment requests, invoices, and required documentation must be submitted as indicated in the Agreement.

b. Payments to the Consultant will be made following Owner’s review and approval of the invoices and required documentation, acceptance of the Services performed, and approval of the Reimbursable Expenses incurred. Payments to the Consultant for Services performed and invoiced (including Reimbursable Expenses) may be made for each phase of Consultant’s Services in percentages if set forth in the Agreement. The total of all payments for Services may not exceed the Maximum Compensation set forth in any Agreement and if completed on a Time and Materials basis, at the agreed upon hourly rates and fees. The total of all payments for Reimbursable Expenses may not exceed the Maximum Compensation set forth in any Agreement.

c. Owner reserves the right to retain up to five percent (5%) of the Maximum Compensation, in total or by each phase of Services, for payment, subject to Owner’s acceptance of the Services and any deliverables.

d. Owner shall have the right to withhold payment from Consultant for any unsatisfactory Service until such Service is performed satisfactorily.

E.2 **REIMBURSABLE EXPENSES**

If specified in the Agreement, Owner shall reimburse Consultant and its Sub-Consultants for actual, reasonable, and necessary Reimbursable Expenses incurred in the performance of Services at cost without mark-up, unless otherwise agreed to by the Parties in writing.

a. Unless stated otherwise in an Agreement, travel expenses must be pre-approved by Owner. Pre-approved travel expenses incurred shall be reimbursed at cost without mark-up, unless otherwise agreed to by the Parties in writing. Travel expenses will not be reimbursed for Services rendered within 25 miles of the Consultant’s office.

b. Consultant’s requests for reimbursement of Reimbursable Expenses specifically authorized in the Agreement must include documentation of actual expenditures.

E.3 **FEES FOR SUB-CONSULTANT’S SERVICES**

Unless otherwise provided in the Agreement, Owner shall only reimburse Consultant for the actual, direct costs of Services performed by its Sub-Consultants, and shall not reimburse Consultant for any overhead or mark-up of costs added to the direct cost of a Sub-Consultant’s Services.

E.4 **FEES FOR ADDITIONAL SERVICES**

Upon execution of any Change Order, Owner agrees to compensate Consultant for Additional Services (and Reimbursable Expenses) performed by the Consultant (or its Sub-Consultants) according to the terms of this Section.

E.5 **MAXIMUM COMPENSATION**

The maximum compensation paid to Consultants pursuant to any Agreement will not exceed the maximum allowable under OAR 580-063-0025, including professional fees, Sub-Consultant fees, and Reimbursable Expenses.

E.6 **FEES FOR TERMINATION**

Compensation to be paid to the Consultant in the event an Agreement is terminated as provided in Section G.2 of this Agreement shall be determined in accordance with this Section. Owner agrees to pay Reimbursable Expenses incurred before notice of termination is delivered to Consultant.

E.7 **MINIMUM WAGE RATES FOR PUBLIC WORKS**

Certain Services performed pursuant to this Agreement may be interpreted by the Commissioner of the Bureau of Labor and Industries (BOLI) as subject to Prevailing Wage Rate laws (ORS 279C.800 to 279C.870, and hereinafter, "PWR Law"). Consultant shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by BOLI, are included as attachments to or are incorporated by reference in the Agreement Documents. Pursuant to ORS 279C.830(1)(d), Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Contractor shall pay the higher of the applicable state
or federal prevailing rate of wage. Contractor shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

E.8 PAYMENTS TO SUPPLIERS, LIENS
Consultant further agrees to make payments promptly when due to all persons supplying the Consultant labor or materials for performance of any Services. Consultant shall pay all contributions or amounts due the Industrial Accident Fund as incurred in the performance of the Services by Consultant and its Sub-Consultants. Consultant shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished under this Agreement and any Change Orders and shall pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Consultant fails or refuses to make any such payments required herein, Owner may pay such claim. Any such payment shall not relieve Consultant or Consultant’s surety from obligations with respect to any unpaid claims.

F. INDEMNITY AND INSURANCE

F.1 INDEMNITY, RESPONSIBILITY FOR DAMAGES

F.1.1 Claims Other than Professional Liability: Consultant shall indemnify, save, defend, and hold harmless the Owner, its officers, agents, employees, and trustees from and against all claims, suits, or actions of any nature, including intentional acts, resulting from or arising out of the activities or omissions of the Consultant and its Sub-Consultants, partners, joint venturers, agents, or employees acting under this Agreement and any Change Orders and/or Amendments entered into pursuant to this Agreement.

F.1.2 Claims for Professional Liability: Consultant shall indemnify, save, defend, and hold harmless Owner, its officers, agents, employees, and trustees from and against all claims, suits, or actions, resulting from, or arising out of, the professionally negligent acts, errors, or omissions of Consultant and its Sub-Consultants, partners, joint venturers, agents or employees acting under this this Agreement and any Change Orders and/or Amendment entered into pursuant to this Agreement.

F.1.3 Owner Defense Requirements: Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, or purport to act as legal representative of the Owner, without the prior written consent of the Owner. The Owner may at any time elect to assume its own defense and settlement in the event that it determines that the Consultant is prohibited from defending the Owner, that Consultant is not adequately defending the Owner’s interests, that an important governmental principle is at issue, or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Consultant if the Owner elects to assume its own defense.

F.1.4 Owner’s Actions: F.1.1 and F.1.2 above do not include indemnification by the Consultant of the Owner for the Owner’s activities, whether related to this Agreement, or otherwise.

F.2 INSURANCE
Insurance carried by Consultant under this Agreement shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Agreement Documents. Owner may adjust the insurance amounts required in this Section based upon specific risk assessments. The coverages and minimum limits required herein are a reflection of the perceived risk potential that the activities of the Consultant impose onto Owner but in no way limits the liability of Consultant.

F.2.1 Workers’ Compensation: All employers, including Consultant, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers’ Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer’s Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Consultants who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Consultant certifies so in writing. Consultant shall ensure that each of its Sub-Consultants complies with these requirements. The Consultant shall require proof of such Workers’ Compensation coverage by receiving and keeping on file a certificate of insurance from each Sub-Consultant or anyone else directly employed by either the Consultant or its Sub-Consultants.

F.2.2 Commercial General Liability: Upon execution of this Agreement, Consultant shall obtain, and keep in effect at Consultant’s expense for the Term of this Agreement, Commercial General Liability Insurance covering bodily injury and property damage in a form satisfactory to Owner. This insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnities provided under this Agreement (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis.
   a. For Agreement amounts under $1,000,000: $1,000,000 per claim and $2,000,000 annual aggregate
   b. For Agreement amounts $1,000,000 and over: $5,000,000 per claim and $5,000,000 annual aggregate

F.2.3 Automobile Liability: Consultant shall obtain, at Consultant’s expense, and keep in effect during the Term of this Agreement, Automobile Liability Insurance covering owned, and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Consultant and its Sub-Consultants shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on site.
   a. For Agreement amounts under $25,000: Statutory Limits
   b. For Agreement amounts $25,000 and over: $1,000,000 Combined Single Limit

F.2.4 Professional Liability/Errors & Omissions: Consultant shall obtain, at Consultant’s expense, and keep in effect during the Term of this Agreement, Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the Project, its drawings and project manual, and all related work products of the Consultant. The policy may be either a practice based policy or a policy pertaining to the specific project.
   a. For Agreement amounts under $1,000,000: $1,000,000 per claim and $2,000,000 annual aggregate
   b. For Agreement amounts $1,000,000 and over: $5,000,000 per claim and $5,000,000 annual aggregate

F.2.5 Umbrella Liability: Consultant’s primary and umbrella liability limits may be added together to meet the minimum required limits for an individual line of coverage.
F.2.6 "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 Agreement for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Consultant shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of this Agreement. Owner’s receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner’s obligation to make final payment and to Owner’s final acceptance of Work or services and related warranty (if any).

F.2.7 Additional Insured: The general liability insurance coverage and umbrella shall include the Owner as additional insureds but only with respect to the Consultant’s activities to be performed under this Agreement. Consultant must provide Owner with an Additional Insured Endorsement naming Portland State University and its officers, agents, employees, and trustees as additional insureds.

If Consultant cannot obtain an insurer to name the Owner as additional insureds, Consultant shall obtain at Consultant’s expense, and keep in effect during the Term of this Agreement, Owners and Consultants Protective Liability Insurance, naming the Owner as additional insureds with not less than a $2,000,000 limit per occurrence. This policy must be kept in effect for 36 months following Final Completion. As evidence of coverage, Consultant shall furnish the actual policy to Owner prior to execution of the Agreement.

F.2.8 Notice of Cancellation or Change: If the Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant agrees to notify Owner within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Consultant agrees to stop Work pursuant to this Agreement, unless all required insurance remains in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its officers, agents, employees, and trustees.

Owner shall have the right, but not the obligation, of prohibiting Consultant from entering the Work site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Consultant acknowledges and agrees that Owner reserves the right to withhold payment to Consultant until evidence of reinstated or replacement coverage is provided to Owner.

F.2.9 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Agreement, the Consultant shall furnish certificate(s) of insurance to the Owner prior to execution of the Agreement. The certificate(s) will specify all of the parties who are additional insureds or loss payees for this agreement. Insurance coverage required under this Agreement shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such insurance under Oregon law. The Consultant shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of $50,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of this Agreement.

G. SUSPENSION AND/OR TERMINATION OF THE WORK

G.1 SUSPENSION OF SERVICES
Owner, at its sole discretion, may suspend Consultant’s Services. To suspend Services, Owner shall deliver written notice to Consultant stating the effective date and length of the suspension. Owner shall provide Consultant written notice of the time and date, determined at Owner’s sole discretion, when Consultant’s Services may resume. Owner shall not be obligated to pay Consultant for Services performed during any suspension of Services as set forth in this Section. Consultant shall not resume Services until written notice is provided by Owner. Length of suspension shall be determined at Owner’s sole discretion but shall not exceed 180 days. If notice to resume Services is not received within 180 days from date of suspension, the Agreement is considered terminated.

G.2 TERMINATION
This Agreement and any Change Orders and/or Amendments may be terminated as follows:

a. At any time by mutual consent of the Parties.
b. By Owner, upon written notice to the Consultant specifying the termination date.
c. Termination for the following events shall be effective immediately and considered a "Termination for Cause":
   1. Consultant no longer holds the required licenses or certificates to perform the Services.
   2. Consultant is listed on the Bureau of Labor and Industry’s ("BOLI") list of contractors ineligible to receive public works contracts, or any other list maintained by the State of Oregon or federal government, as updated from time to time (collectively the "Debarment Lists"). Consultant as well as any firm, corporation, partnership, or association in which the Consultant has a financial interest appearing on the Debarment Lists shall be ineligible to provide Services to Owner.
   3. Should Consultant commit a material default of any Agreement, Owner shall, in its sole discretion, have the right to terminate all other Agreement issued to Consultant pursuant to this Agreement regardless of whether such default has occurred as to any other Agreement.
   4. Consultant commits a material default of any covenant, representation, warranty, obligation or agreement pursuant to this this Agreement and any Change Orders and/or Amendments hereto, fails to perform the Services called for in an Agreement within the time specified or allowed in the Agreement, or fails to perform the Services as to endanger performance of an Agreement in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures in such time as Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency).
d. Upon receiving a notice of termination, Consultant shall immediately cease all Services related to the Project, except as otherwise directed in writing by the Owner.
e. Consultant may terminate this Agreement if Owner fails to pay Consultant per the terms of this Agreement and any Change Orders and/or Amendments, provided that Owner has failed to make payment within 15 calendar days after receiving written notice from Consultant of such failure to make payment.
f. Upon termination, Consultant shall deliver to Owner all existing Project Documents and other property that, if the Agreement had been completed, would be required to be furnished to Owner. All existing Project Documents delivered to Owner shall be subject to the ownership provisions of Section D. The rights and remedies of Owner provided in this Section are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
g. In the event of termination Consultant’s sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by Owner plus Consultant’s reasonable close-out costs less previous amounts paid and any claim(s) which Owner has against Consultant. Within 30 days of the termination date, Consultant shall submit an itemized invoice for all Services completed
before termination and all close-out costs actually incurred. Owner shall not be obligated to pay invoices received by Owner later than 30 days after termination. If previous amounts paid to Consultant exceed the amount due to Consultant under this subsection, Consultant shall remit excess to Owner upon demand.

h. In the event of a Termination for Cause, Owner shall retain any remedy available in law or equity. Such remedies may be pursued separately, collectively, and in any order whatsoever. Consultant will not be compensated for any Services performed after notice Termination for Cause, including any close-out costs. If it is determined that Consultant was not in default under this Section, the rights and obligations of the Parties shall be the same as if the Agreement and any Change Orders and/or Amendments was terminated pursuant to subsection (b) of this Section.