



**OREGON STATE LANDSCAPE ARCHITECT BOARD  
issues the following**

**REQUEST FOR QUALIFICATIONS**

**FOR**

**REGISTERED LANDSCAPE ARCHITECT  
PROFESSIONAL REVIEWERS AND EXPERT WITNESSES**

Date of issuance: May 15, 2013

Closing Date: Not Applicable

Contact person: Christine Valentine,  
Board Administrator

**OSLAB**

707 13<sup>th</sup> Street SE, Suite 114

Salem, OR 97301

Phone: (503) 589-0993

Fax: (503) 485-2947

E-mail: [oslab.info@state.or.us](mailto:oslab.info@state.or.us)

## **SECTION 1 – BACKGROUND/PURPOSE**

### **1.1 BACKGROUND**

The Oregon State Landscape Architect Board (“OSLAB” or “Board”) is the Oregon state agency responsible for examining, licensing, and disciplining Landscape Architects and Landscape Architects in Training. In addition, OSLAB has authority to sanction persons who, without first becoming licensed, engage in the practice of Landscape Architecture. OSLAB’s regulatory authority is set forth at ORS 671.310 to 671.459, and ORS 671.995.

### **1.2 CONTRACT AUTHORITY**

As a semi-independent state agency, OSLAB has authority to enter into contracts. ORS 182.466(2).

### **1.3 PURPOSE**

In fulfilling its statutory duties, under ORS 671.445, OSLAB desires to contract with qualified Providers (hereinafter referred to as “Providers”) for the purpose of providing a professional review and expert opinion on selected complaint cases handled by OSLAB. The Providers will assist the Board in determining whether, and in what respects, identified persons have violated the laws and rules administered by OSLAB. In particular, they will provide expert review and opinions on issues such as professional practices, negligence, gross negligence or incompetence in the practices of Landscape Architecture. In addition, qualified Providers will be available to provide expert witness testimony in administrative proceedings, or other forums, as needed by OSLAB. OSLAB intends, through this Request for Qualifications (RFQ), to identify a list of Providers who will be prequalified and available to provide the services outlined (hereinafter the “Services”) if and when OSLAB has need for such assistance.

### **1.4 CONTRACT AND CONTRACT DATES**

If, and when, a Provider is selected from the list by OSLAB, a personal services contract will be executed between OSLAB and the Contractor. A sample form personal services contract (hereinafter referred to as the “Contract”) is attached hereto as RFQ Exhibit 1. The dates of the Contract will be selected based upon the Services sought and the anticipated duration for providing those Services.

## **SECTION 2 – SCOPE OF WORK**

### **2.1 SCOPE OF WORK**

The Scope of Work shall be incorporated into the resulting Contract as a Statement of Work. An example is found as Contract Exhibit A.

2.1.1 Contractor will review all documentation provided by the Board in accordance with a given case or cases. Contractor may be required to visit a project site as part of the review process. Contractor may analyze, in particular, the quality of the work performed in accordance with generally accepted standards for Landscape Architecture. Contractor may also analyze whether the work performed was Landscape Architecture work and whether completed by a registered Landscape Architect (RLA).

2.1.2 Contractor will provide a written report to the OSLAB Compliance Committee describing, in Contractor's professional opinion, whether any of the activities reported indicate negligence, gross negligence, incompetence or any deficiency in standards governing RLAs, as the case may be.

2.1.3 When requested, Contractor will meet with the Committee, individual Committee members, Board staff, or assigned Assistant Attorneys General with the Oregon Department of Justice.

2.1.4 When requested, Contractor will testify on behalf of OSLAB and give any proper opinion if such opinion is allowed by the Administrative Law Judge, OSLAB or Court, as the case may be.

2.1.5 When requested, Contractor shall provide professional assistance to OSLAB staff and the Board's attorneys.

## **2.2 KEY PERSON**

OSLAB will require that there be one or more named "Key Persons" who will provide the Services subject to the Contract. The term "Provider" and "Contractor," as used in this RFQ, includes Key Persons.

## **SECTION 3 – MINIMUM QUALIFICATIONS**

### **3.1 INDEPENDENT CONTRACTOR REQUIREMENTS**

All Providers must be independent contractors. Although OSLAB reserves the right (a) to determine (and modify) the delivery schedule for the Services and (b) to evaluate the quality of the completed performance, OSLAB cannot and will not control the means or manner of Provider's performance. A list of further criteria for independent contractor status is provided in the Contract (RFQ Exhibit 1) as Contract Exhibit B.

### **3.2 MANDATORY QUALIFICATIONS**

The following are mandatory qualifications:

3.2.1 Drivers License: All Providers will have an active driver's license, not restricted or subject to suspension. Providers will provide a copy of their license in their response to this RFQ.

3.2.2 Licensed Vehicle: All Providers will have a licensed vehicle and will carry automobile liability insurance in an amount of at least that required under the Oregon Financial Responsibility Law.

3.2.3 Place of Business: All Providers will have a place of business, academic offices, or similar other office, from which they conduct business, and will not be provided office space or conduct business at the OSLAB' office.

3.2.4 Personal Computer: All Providers will have a personal computer with (a) CD-ROM, (b) Internet capabilities, and (c) software that is compatible with Microsoft WORD 97, or newer, software, and Microsoft Excel 97, or newer, software.

3.2.5 Printer/Copier/Fax: All Providers will have a printer, copier, and fax machine. Providers will provide supplies, including but not limited to paper, toner, and ink for such equipment.

3.2.6 Telephone: All Providers will have a cellular telephone or a business telephone line, with voice mail capabilities.

3.2.7 Mailing Address: All Providers will have a physical mailing address.

3.2.8 Email Address: All Providers will have an email address.

3.2.9 Active Oregon RLA: All Providers seeking to provide professional review services related to Landscape Architecture will hold an active registration as a registered Landscape Architect (RLA), issued in Oregon by OSLAB.

3.2.10 Continuing Education: All Providers will be current (not delinquent) in their continuing education hours, as required by OSLAB statutes and rules.

3.2.11 No Open Complaints: All Providers must not be subject to current investigation of conduct by the OSLAB, at the time of submitting a proposal or entering into a Contract.

3.2.12 No Disciplinary Record: To qualify, a Provider shall not have any record of a disciplinary action imposed by OSLAB against the Provider within the five years previous to entry of the Contract where such discipline involves any action against the Provider's license (denial, refusal to renew, suspension, or revocation) or any civil penalty.

### **3.3 DESIRABLE QUALIFICATIONS**

Preference will be given to Providers who have the following desirable qualifications:

3.3.1 Experience: Providers that have engaged in the professional practice of Landscape Architecture or academic research and instruction, for a period of at least 10 years.

3.3.2 Service: Providers that have been active in Landscape Architecture professional organizations or who have served previously as members of OSLAB.

3.3.3 Recognition: Providers that are recognized by other professionals in the field as having exemplary credentials in their area of expertise.

3.3.4 Area of Expertise: Providers that can demonstrate special expertise in an area of Landscape Architecture that is relevant to the particular case(s) subject to review by the Board.

3.3.5 Expert Witness: Providers that have had experience appearing as experts in trials and other similar proceedings.

3.3.6 Communication Skills: Providers that have strong communication skills as may be demonstrated by teaching classes, delivering speeches, making presentations to planning councils, or other similar activities.

3.3.7 Writing Skills: Providers that have strong written communication skills as may be demonstrated by past professional or volunteer service work.

3.3.8 Appearance: Providers that have and maintain a professional appearance.

## **SECTION 4 – COMPENSATION**

4.1.1 If selected for a Contract, Payment will be on a time and expense basis to a fixed maximum fee. Hourly rate and allowable reimbursable expenses will be identified in any contracts. Provider should expect that compensation per Contract will generally not exceed \$7,500 and may be much less depending on the actual work required to complete the assignment.

4.1.2 If selected for a Contract, Provider shall submit invoices for Services performed on a monthly basis. Each invoice must clearly describe all Services, the dates of performance, and by whom the Services were performed. Payment will be made on a monthly basis for Services that are completed and conform to the specifications in the Contract.

## **SECTION 5 – APPLICATION AND REVIEW PROCESS**

### **5.1 GENERAL INFORMATION**

5.1.1 Persons interested in becoming professional reviewers and expert witnesses for OSLAB shall submit a Statement of Qualifications (“SOQ”) using 8-½” by 11” paper. There is no set form or format required. SOQs shall be typed and not contain extensive art work, unusual printing or other materials not essential to the utility and clarity of the SOQ.

5.1.2 The SOQ must include the following:

- 5.1.2(1) Name, address, telephone number, fax number, e-mail address of Provider.
- 5.1.2(2) OSLAB registration number and any other pertinent state registration numbers.
- 5.1.2(3) Copy of Provider’s driver’s license.
- 5.1.2(4) Copy of Provider’s automobile insurance.
- 5.1.2(5) Description of how Provider satisfies the Independent Contractor Requirements outlined in section 3.1 and detailed in Contract Exhibit B.
- 5.1.2(6) Description of how Provider satisfies the Mandatory Qualifications outlined in section 3.2.
- 5.1.2(7) Description of Provider’s desirable qualifications, as outlined in section 3.3.

- 5.1.2(8) A current curriculum vitae (CV) or resume, providing, at a minimum, information about the Provider's education, academic background, experience, publications, presentations, awards, honors, affiliations and other similar information.
- 5.1.2(9) A sample of Provider's writing of at least 1,000 words. Names of clients, other identifying material, and trade secrets may be redacted.
- 5.1.2(10) At least three names, addresses, telephone numbers and e-mail addresses of professional references for Provider, based on services provided or work performed by Provider.

5.1.3 Regarding Provider's availability and requested compensation, the SOQ should provide the following information:

- 5.1.3(1) A statement of Provider's customary and usual hourly fees and the hourly payment requested to provide Services to OSLAB.
- 5.1.3(2) Provider's availability to perform Services over the next 12 to 24 months. Indicate if there are any specific periods of time during which Provider would be unavailable or unable to provide Services. Also indicate expected notification time needed prior to availability.
- 5.1.3(3) Geographic area(s) where Provider offers and conducts its business or currently provides services.
- 5.1.4 Providers will submit two hard copies by mail and one electronic copy by email, to the person and at the addresses listed on page 1 of this RFQ.

## **5.2. REVIEW PROCESS**

5.2.1 OSLAB will review any SOQs received on an ongoing basis, to compile its list of qualified reviewers and expert witnesses.

5.2.2 OSLAB will review each submission to determine that it meets the independent contractor qualifications and the minimum qualifications of this RFQ.

5.2.3 In addition, OSLAB will review the CV or resume, references and desirable qualifications to determine if the Provider, at the time of the review, should be selected to be placed upon the list. OSLAB may limit the number of reviewers, for example, in the same specialty area, or by geographical area. Evaluation criteria, to be considered of equal value, are:

- 5.2.3(1) Demonstration of how Provider meets the independent contractor, mandatory, and desirable qualifications.
- 5.2.3(2) Professional knowledge and experience as demonstrated by SOQ and CV or resume.
- 5.2.3(3) Clarity and readability of writing, as demonstrated by writing sample.
- 5.2.3(4) Provider's quality of work as demonstrated by references or other professional recognition.

**5.2.4 BEING PLACED UPON THE LIST OF QUALIFIED PROFESSIONAL REVIEWERS AND EXPERT WITNESSES IS NOT A GUARANTEE OF RECEIVING A PERSONAL SERVICES CONTRACT OR BEING PROVIDED WORK.**

5.2.5 OSLAB will notify each Provider submitting an SOQ of those selected for the list formulated by OSLAB for professional reviewers and expert witnesses. Notification will be by email or regular mail (each Provider will be deemed to have received such notice two business days after the date of mailing).

**SECTION 6 – RESERVATION OF OSLAB RIGHTS**

**6.1 SELECTION FOR PLACEMENT UPON LIST**

OSLAB may, overall or for any area of expertise or geographic area of practice, select only one or more reviewers with exceptional credentials. OSLAB may decide not to list any reviewer, for an area of expertise or geographic area of practice if no reviewer satisfies the evaluation criteria to an adequate degree.

**6.2 ADDITIONAL RESERVATIONS**

OSLAB reserves all rights regarding this RFQ including, without limitation, the right to:

- 6.2.1 Amend or cancel this RFQ. Any addenda will be sent to every person who requests a copy of, or who received, the RFQ.
- 6.2.2 Reject any SOQ that fails to substantially comply with all prescribed procedures and requirements.
- 6.2.3 Waive any minor irregularity or non-conformance with the provisions or procedures of this RFQ.
- 6.2.4 Seek a clarification from any Provider.
- 6.2.5 Negotiate any term of Contract within a Statement of Work.

**SECTION 7 – PUBLIC RECORDS**

This RFQ and all responding SOQs are public records subject to disclosure, unless exempt under the Oregon Public Records Law. See ORS 192.410 through ORS 192.505.

**SECTION 8 – COSTS OF PREPARING AND SUBMITTING SOQ**

All costs incurred in preparing and submitting an SOQ shall be the responsibility of the Proposer and will not be reimbursed by OSLAB.

**RFQ EXHIBIT 1**

**REGISTERED LANDSCAPE ARCHITECT  
PROFESSIONAL REVIEWERS & EXPERT WITNESSES**

**EXAMPLE CONTRACT**

**REGISTERED LANDSCAPE ARCHITECT  
REVIEWER/EXPERT WITNESS CONTRACT**

This Expert Reviewer Contract is between the State of Oregon (the “State”), acting by and through its Oregon State Landscape Architect Board (“Agency”) and \_\_\_\_\_ (“Contractor”). Agency desires to contract for services with Contractor for the benefit of the State of Oregon.

Agency’s Contract Administrator for this Contract is identified in Section 20.

**1. Contract Term.** This Contract is effective \_\_\_\_\_ and unless earlier terminated, continues until \_\_\_\_\_. Contract termination does not extinguish or prejudice Agency’s right to enforce this Contract with respect to any default by Contractor that has not been cured.

**2. Statement of Work; Key Person.**

**2.1 Statement of Work.** Contractor shall provide the services (the “Services”) including any associated work product (“Work Product”) described in the Statement of Work, attached hereto as Exhibit A.

**2.2 Key Person.** Contractor acknowledges and agrees that a significant reason Agency selected Contractor and is entering into this Contract is because of the special qualifications of \_\_\_\_\_, (“Key Person.”) Under this Contract, Agency is engaging the expertise, experience, judgment and personal attention of the Key Person. Neither Contractor nor the Key Person shall delegate performance of the Services such Key Person is required to provide under this Contract to any other entity or individual, or to any other employee or agent of Contractor unless Agency provides prior written consent to such delegation. Contractor shall not delegate, reassign, transfer or replace the Key Person to other duties or positions such that the Key Person is no longer available to provide Agency with the Key Person’s Services unless Agency provides prior written consent to such delegation, reassignment, transfer or replacement. In the event Contractor requests Agency to consent to a delegation, reassignment, transfer or other replacement of the Key Person, Agency may interview and review the qualifications of the proposed substitute personnel before providing its consent or rejecting such replacement. Any such replacement shall have substantially equivalent or better qualifications than the Key Person being replaced. Any replacement personnel approved by Agency will thereafter be deemed a Key Person for purposes of this Contract.

**3. Consideration.**

**3.1** As payment in full for Services and any Work Product, Agency shall pay Contractor pursuant to the rates set forth in Exhibit A.

**3.2** Agency will reimburse Contractor for reasonable and necessary travel and other expenses only to the extent permitted in the OSLAB Reimbursement of Expenses Policy and, as applicable, the Oregon Accounting Manual. These documents are available from OSLAB.

**3.3** The maximum, not-to-exceed compensation payable to Contractor under this Contract, including all payments pursuant to Section 3.1 and any allowable expenses pursuant to Section 3.2, is \$7,500. Contractor shall not submit invoices for, and Agency is not obligated to pay, any amount in excess of the foregoing amount.

**3.4** Agency is not obligated to pay Contractor for any Services unless such Services are complete, conform to the specifications in the Statement of Work, and otherwise conform to the warranties and other terms of this Contract.

**3.5** Contractor shall submit monthly invoices for Services performed to Agency's Contract Administrator. Each invoice must describe all Services performed with particularity, itemize and explain all expenses for which Contractor claims reimbursement, the dates of performance, and by whom such Services were performed. Invoices must be mailed to Agency at the address set forth in Section 20. After Agency's Contract Administrator reviews the invoice and approves any undisputed amount for payment the invoice will be forwarded for payment.

**4. Contract Documents.** This Contract consists of the following documents, which are listed in descending order of precedence: this Contract less all exhibits, attached Exhibit A (the Statement of Work), Exhibit B (Independent Contractor Certification), and Exhibit C (Required Insurance).

#### **5. Independent Contractor; Responsibility for Taxes and Withholding**

**5.1.** Contractor performs all Services as an independent contractor, as Contractor shall certify in Exhibit B, attached hereto. Contractor is not an "officer", "employee", or "agent" of the State, as those terms are used in ORS 30.265. Contractor is responsible for determining the appropriate means and manner of performing the Services.

**5.2** If Contractor is currently performing work for the State or the federal government, Contractor by signature to this Contract, represents and warrants that: Contractor's performance of Services under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no statutes, rules or regulations of the state or federal agency for which Contractor currently performs work would prohibit Contractor's performance of Services under this Contract.

**5.3** Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, Agency will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation or payments paid to Contractor under this Contract, except as a self-employed individual.

**6. Subcontracts, Successors, and Assignments.** Contractor shall not enter into any subcontracts for any of the Services required by this Contract without Agency's prior written consent. Agency's consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract. The provisions of this Contract shall be binding upon and inure to the benefit of the

parties, their respective successors, and permitted assigns, if any. Contractor shall not assign, delegate or transfer any of its rights or obligations under this Contract without Agency's prior written consent.

**7. No Third Party Beneficiaries.** Agency and Contractor are the only parties to this Contract and are the only parties entitled to enforce the terms of this Contract. Nothing in this Contract gives, is intended to give, or is construed to give or provide any benefit or right not held by or made generally available to the public, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

**8. Funds Available and Authorized; Payments.** Contractor will not be compensated by any other agency or department of the State for Services performed under this Contract. Agency certifies that it has sufficient funds currently authorized for expenditure to finance the costs of this Contract within the Agency's current budget biennial budget. Contractor understands and agrees that Agency's payment of amounts under this Contract is contingent on Agency receiving funds appropriations, limitations, allotments or other expenditure authority sufficient to allow Agency, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract. In the event the Agency no longer receives sufficient funds to continue to make payments under this Contract, Agency may terminate this Contract and make payments for only Contractor services completed as of the date Agency's funding ceased to be sufficient, without penalty or liability to Agency. In the event the Oregon Legislative Assembly determines to discontinue Agency's semi-independent status and fails to appropriate sufficient appropriations, limitations, allotments, or other expenditure authority to Agency, Agency may terminate this Contract without penalty or liability to Agency.

## **9. Representations and Warranties.**

**9.1 Contractor's Representations and Warranties.** Contractor represents and warrants to Agency that (i) Contractor has the power and authority to enter into and perform this Contract, (ii) this Contract, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms, (iii) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Services in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession, (iv) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Services.

**9.2 Warranties cumulative.** The warranties set forth in this Section are in addition to, and not in lieu of, any other warranties provided.

## **10. Ownership of Work Product; Confidentiality.**

**10.1 Ownership of Work Product.** All Work Product is the exclusive property of Agency. Contractor hereby irrevocably assigns to Agency all of its rights, title, and interest in and to

any and all of such Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. Contractor forever waives any and all rights relating to such 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.

**10.2 Confidentiality.** Contractor will be creating Work Product and providing information to assist Agency to potentially both prepare for and conduct litigation. Contractor acknowledges that Contractor and its employees or agents may, in the course of performing responsibilities under this Contract, be exposed to or acquire communication which is confidential, privileged communication not intended to be disclosed to third parties.

Contractor agrees that any Work Product created by Contractor pursuant to this Contract and all information of any form obtained by Contractor or its employees or agents in the performance of this Contract is deemed “Confidential Information” of Agency. “Confidential Information” does not include information which is or becomes (other than by disclosure by Contractor) publicly known.

Contractor agrees to hold such Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such information for any purposes whatsoever other than the provision of Services to Agency. Contractor agrees to advise each of its employees and agents of their obligations to keep such information confidential.

## **11. Indemnity.**

**11.1 INDEMNITY.** CONTRACTOR SHALL DEFEND, SAVE, HOLD HARMLESS, AND INDEMNIFY THE STATE OF OREGON, AND AGENCY AND ITS OFFICERS, EMPLOYEES AND AGENTS FROM AND AGAINST ALL CLAIMS, SUITS, ACTIONS, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING ATTORNEYS FEES, RESULTING FROM, ARISING OUT OF, OR RELATING TO THE ALLEGED NEGLIGENT OR WILLFUL ACTS, OMISSIONS, OR ANY BREACH OF THIS CONTRACT BY THE CONTRACTOR OR ITS OFFICERS, EMPLOYEES, SUBCONTRACTORS, OR AGENTS UNDER THIS CONTRACT.

**11.2 CONTROL OF DEFENSE AND SETTLEMENT.** CONTRACTOR SHALL HAVE CONTROL OF THE DEFENSE AND SETTLEMENT OF ANY CLAIM THAT IS SUBJECT TO SECTION 11.1; HOWEVER, NEITHER CONTRACTOR NOR ANY ATTORNEY ENGAGED BY CONTRACTOR SHALL DEFEND THE 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 FIRST RECEIVING FROM THE OREGON ATTORNEY GENERAL, IN A FORM AND MANNER DETERMINED APPROPRIATE BY THE ATTORNEY GENERAL, AUTHORITY TO ACT AS LEGAL COUNSEL FOR THE STATE OF OREGON, NOR SHALL CONTRACTOR SETTLE

ANY CLAIM ON BEHALF OF THE STATE OF OREGON WITHOUT THE APPROVAL OF THE ATTORNEY GENERAL. THE STATE OF OREGON MAY, AT ITS ELECTION AND EXPENSE, ASSUME ITS OWN DEFENSE AND SETTLEMENT IN THE EVENT THAT THE STATE OF OREGON DETERMINES THAT CONTRACTOR IS PROHIBITED FROM DEFENDING THE STATE OF OREGON, OR IS NOT ADEQUATELY DEFENDING THE STATE OF OREGON'S INTERESTS, OR THAT AN IMPORTANT GOVERNMENTAL PRINCIPLE IS AT ISSUE AND THE STATE OF OREGON DESIRES TO ASSUME ITS OWN DEFENSE.

**12. Insurance.** Contractor shall maintain insurance as set forth in Exhibit C, which is attached hereto.

**13. Termination.**

**13.1 Termination by Agency for Convenience.** At its sole discretion, Agency may terminate this Contract for its convenience upon fifteen (15) days written notice to Contractor.

**13.2 Termination by Agency for Cause.** In addition to any other rights and remedies Agency may have under this Contract, Agency may terminate this Contract, in whole or in part, immediately upon written notice to Contractor, or at such later date as Agency may establish in such notice, upon the occurrence of any of the following events:

**13.2.1** Funding from federal, state, or other sources is not obtained and continued at levels sufficient to pay for Contractor's Services;

**13.2.2** Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the performance of the Services under this Contract is prohibited or Agency is prohibited from paying for such Services from the planned funding source;

**13.2.3** Contractor no longer holds a license or certificate that is required for it to perform the Services; or

**13.2.4** Contractor commits any material breach or default of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the requirements and warranties provided herein, or so fails to pursue the Services as to endanger Contractor's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within ten (10) business days after delivery of Agency's notice or such longer period as Agency may specify in such notice.

**13.3 Termination by Contractor.** Contractor may terminate this Contract if Agency fails to pay Contractor any amount pursuant to the terms of this Contract, and Agency fails to cure such failure within thirty (30) days after Contractor's notice or such longer period as Contractor may specify in such notice.

**13.4** Termination of this Contract pursuant to this Section 13 shall be without prejudice to any obligation or liabilities of either party already accrued prior to such termination. However, upon receiving a notice of termination under this Section 13, Contractor shall immediately cease all activities under this Contract, unless expressly directed otherwise by Agency in the notice of termination. Further, upon termination, Contractor shall deliver to Agency all documents, information, works-in-progress, Work Product, and other property that are or would be deliverables had this Contract been completed.

**14. Records Maintenance; Access.** Contractor shall maintain all financial records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance. Contractor acknowledges and agrees that Agency and the Oregon Secretary of State's Office and the federal government and their duly authorized representatives shall have access to such financial records and other books, documents, papers, plans, records of shipments and payments and writings of Contractor that are pertinent to this Contract, whether in paper, electronic or other form, to perform examinations and audits and make excerpts and transcripts. Contractor shall retain and keep accessible all such financial records, books, documents, papers, plans, records of shipments and payments and writings for a minimum of six (6) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

**15. Compliance with Applicable Law.** Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Contract.

**16. Limitation of Liabilities.** AGENCY AND CONTRACTOR ARE NOT LIABLE FOR (i) ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES UNDER THIS CONTRACT OR (ii) ANY DAMAGE OF ANY SORT ARISING SOLELY FROM THE TERMINATION OF THIS CONTRACT IN ACCORDANCE WITH ITS TERMS.

**17. Force Majeure.** State and Contractor are not liable for delay or default caused by fire, riot, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of the State or Contractor, respectively. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

**18. Survival.** All rights and obligations shall cease upon termination of this Contract, except for the rights and obligations set forth in Sections 1, 7, 8, 9, 10, 11, 13, 14, 18, 20, 23, 24, and 25.

**19. Time is of the Essence.** Contractor agrees that time is of the essence under this Contract.

**20. Notice.** Except as otherwise expressly provided in this Contract, any notices between the parties hereunder shall be given in writing, personal delivery, express courier, facsimile, or United States Postal Service, postage prepaid, to Contractor or the Agency Contract Administrator at the address or number set forth below, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed is effective five (5)

days after mailing. Any notice delivered by facsimile is effective on the day the transmitting machine generates a receipt of a successful transmission, if transmission was during normal business hours, or on the next business day, if transmission was outside normal business hours of the recipient. To be effective against Agency, any notice transmitted by facsimile must be confirmed by telephone notice to Agency's Contract Administrator. Any notice given by personal delivery is effective immediately provided such delivery is made to the person indicated below.

If to Agency:	If to Contractor:
Christine Valentine	Name
Contract Administrator	Title
OSLAB	Business Name
707 13 <sup>th</sup> Street SE, Suite 114	Address1
Salem, OR 97301	Address2
Phone:(503) 589-0993	Phone:
Fax: (503) 485-2947	Fax:
Email: <a href="mailto:oslab.info@state.or.us">oslab.info@state.or.us</a>	Email:

**21. 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 this Contract did not contain the particular term or provision held to be invalid.

**22. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed constitutes an original.

**23. Governing Law; Venue; Consent to Jurisdiction.** This Contract is 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 (or any other agency or department of the State) and Contractor 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. In no event is this Section to be construed as a waiver by the State of Oregon 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.

**CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

**24. Merger Clause; Waiver.** This Contract and attached exhibits constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract. No modification or change of terms of this Contract is effective unless it is in writing and signed by both parties and all necessary State approvals have been obtained. Such modification or change, if made, is effective

only in the specific instance and for the specific purpose given. No waiver or consent is effective unless it is in writing and signed by the party against whom it is asserted. The failure of Agency to enforce any provision of this Contract does not constitute a waiver by Agency of that or any other provision.

**25. Contractor Data and Certification.**

**25.1 Contractor Tax Identification Information.** Contractor shall provide Contractor's federal tax ID number and the additional information set forth below. This information is requested pursuant to ORS 305.385. Social Security Numbers provided pursuant to this Section will be used for the administration of state, federal and local tax laws.

Name (tax filing):

Address:

Citizenship, if applicable: Non-resident alien  Yes  No

Business Designation (check one):

- Corporation  Partnership  Limited Partnership  Limited Liability Company
- Limited Liability Partnership  Sole Proprietorship  Other

Federal Tax ID#: \_\_\_\_\_ - \_\_\_\_\_ or SSN#: \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Oregon State Tax ID# \_\_\_\_\_

Agency may report the information set forth above to the Internal Revenue Service (IRS) under the name and social security number or taxpayer identification number provided.

**25.2 Certification:** The individual signing on behalf of Contractor hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that: (a) the number shown on Contract is Contractor's correct taxpayer identification; (b) Contractor is not subject to backup withholding because (i) Contractor is exempt from backup withholding, (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified contractor that Contractor is no longer subject to backup withholding; and (c) the undersigned has authority and knowledge regarding Contractor's payment of taxes, and to the best of the undersigned's knowledge, Contractor is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 403.200 to 403.250 (Tax For Emergency Communications), 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), 320.005 to 320.150 (Amusement Device Taxes), 321 (Timber and Forestland Tax), 323 (Cigarettes and Tobacco Products Tax), and 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; and (d) the supplied Contractor data is true and accurate.

**25.3** To the best of the undersigned’s knowledge, Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 in obtaining any required subcontracts

**25.4** Contractor and Contractor’s employees and agents are not included on the list titled “Specially Designated Nationals and Blocked Persons” maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>;

**25.5** Contractor is bound by and will comply with all requirements, terms and conditions contained in this Contract; and Contractor  is /  is not a resident alien as defined in 26 USC § 7701 (b)(1)(check one).

CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY ACKNOWLEDGES THAT CONTRACTOR HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

**CONTRACTOR**

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**STATE OF OREGON acting by and through the OREGON STATE LANDSCAPE ARCHITECTS BOARD**

By: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**CONTRACT EXHIBIT A**  
**STATEMENT OF WORK**  
**EXPERT REVIEWER CONTRACT**  
CONTRACT # \_\_\_\_\_

**Part I. Services.**

(a) Contractor will review materials and information provided by Agency, or independently obtained or prepared by Contractor, to assist Agency in evaluating a complaint case or cases. Contract may be evaluating whether one or more persons have engaged in negligence, gross negligence, incompetence, or violations of applicable standards of practice that Agency is charged with regulating. Contractor may be evaluating whether an individual engaged in offering to provide or providing Landscape Architecture services. Contractor will utilize Contractor's expertise in the fields of Landscape Architecture, to evaluate matters referred by the Agency. Contractor will provide expert review and opinions on these matters.

(b) Contractor shall set forth in writing all findings and opinions as requested by Agency.

(c) Contractor will consult with and assist Agency with preparation for any settlement discussions.

(d) Contractor will be available to provide expert witness testimony in administrative proceedings, or other forums, as needed by OSLAB.

(e) Contractor shall be personally available to Agency at reasonable hours, upon sufficient notice, to consult upon any and all matters, which are the subject of this Contract, as requested by Agency.

**Part II. Payment**

(a) Contractor's fees will be based upon Contractor's customary and reasonable fees which must not exceed the following **hourly** billing rates:

[\$\_\_\_\_ per hour.]

(b) No fees will be paid separately for secretarial or clerical services.

**Part III. Travel and Other Expenses.**

(a) Agency will reimburse Contractor, within the not-to-exceed amount of this Contract, for travel only when the travel is essential to the normal discharge of Agency's responsibilities. Contractor shall conduct all travel in the most efficient and cost-effective manner resulting in the best value to the Agency. The travel must comply with all the requirements set forth in this section and must be for official Agency business only. Contractor shall provide Agency with receipts for all travel expenses except meals. All Contractor representatives will fly "coach

class,” unless Contractor personally pays the difference. All Contractor representatives will be limited to economy or compact sized rental vehicles, unless Contractor personally pays the difference.

(b) All travel to and from the State of Oregon (“Out-of-State Travel”) must be approved in advance, and in writing, by the Agency. In addition to meals and lodging, Out-of-State Travel expenses will be reimbursed for airfare and rental vehicles only if Contractor is acting within the course and scope of its duties under this Contract, and in furtherance of the Services.

(c) Reimbursement for meals and lodging shall be limited to the amounts authorized by the OSLAB Reimbursement of Expenses Policy and, where applicable, the Oregon Accounting Manual. These documents are available from OSLAB.

**CONTRACT EXHIBIT B**

**INDEPENDENT CONTRACTOR CERTIFICATION  
EXPERT REVIEWER CONTRACT**

CONTRACT # \_\_\_\_\_

(If the Contractor signs Part A, the remainder of this Certification Statement does not need to be completed. The Contractor shall return this form, regardless of which Parts are completed to the Agency. Contractor shall complete either Part A or Part B).

**Part A. CONTRACTOR IS A CORPORATION.**

The Contractor is a corporation authorized to do business in the State of Oregon.

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Part B. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.**

*(Used when the Contractor is an Independent Contractor or is a professional corporation and meets the following standards)*

1. I am responsible for obtaining other licenses or certificates necessary to provide the services.

2. I am customarily engaged in an independently established business by meeting at least three of the following requirements (please circle):

*(For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met)*

(a) I maintain a business location:

(A) That is separate from the business or work location of the person for whom the services are provided; or

(B) That is in a portion of my residence and that portion is used primarily for the business.

(b) I bear the risk of loss related to the business or the provision of services as shown by factors such as:

(A) I enter into fixed-price contracts;

(B) I am required to correct defective work;

(C) I warrant the services provided; or

(D) I negotiate indemnification agreements or purchase liability insurance, performance bonds or errors and omissions insurance.

(c) I provide services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) I make a significant investment in my business, through means such as:  
(A) Purchasing tools or equipment necessary to provide the services;  
(B) Paying for the premises or facilities where services are provided; or  
(C) Paying for licenses, certificates or specialized training required to provide the services.

(e) I have the authority to hire other persons.

3. I have filed federal and state income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year or I have established my business this year and expect to file federal and state income tax return, for labor or services performed as an independent contractor this year.

4. My labor or services are performed only pursuant to written contracts.

Contractor Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**(Agency completes Part C when Independent Contractor completes Part B.)**

**Part C. AGENCY APPROVAL.**

ORS 670.600. Independent Contractor Standards. As used in various provisions of ORS chapters 316, 656, 657 and 701, an individual or business entity that performs labor or services for remuneration shall be considered to perform the labor or services as an "independent contractor" if the standards of this section are met. State agency certifies the contracted work meets the following standards:

1. The Contractor is free from direction and control over the means and manner of providing the labor or services, subject only to the specifications of the desired results.
2. The Contractor is responsible for obtaining all assumed business registrations or professional occupation licenses required by state law or local ordinances.
3. The Contractor furnishes the tools or equipment necessary for the contracted labor or services.
4. The Contractor has the authority to hire and fire employees to perform the labor or services.
5. Payment to the Contractor is made upon completion of the performance or is made on the basis of periodic progress payments as outlined in Exhibit A.

Agency Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Contracts Manager, or Authorized Designee

(Agency's certification is solely for the State's benefit and internal use.)

## CONTRACT EXHIBIT C

### INSURANCE REQUIREMENTS EXPERT REVIEWER CONTRACT CONTRACT # \_\_\_\_\_

During the term of this Contract, Contractor must maintain in force at its own expense, each insurance noted below:

1.  **Required by Agency of contractors with one or more workers, as defined by ORS 656.027.**

**Workers' Compensation:** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements.

**Employers' Liability:** If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage.

2.  **Required by Agency**  **Not required by Agency**

**Professional Liability** 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 is to cover damages caused by error, omission or negligent acts related to the professional Services to be provided under this Contract.

3.  **Required by Agency**  **Not required by Agency.**

**General Liability** 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 occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract. It shall provide that the State of Oregon, DOJ and their divisions, officers and employees are Additional Insureds but only with respect to the Contractor's Services to be provided under this Contract;

4.  **Required by Agency**  **Not required by Agency.**

**Automobile Liability** insurance with a combined single limit, or the equivalent, of not less than  Oregon Financial Responsibility Law (ORS 806.060),  \$200,000,  \$500,000, or  \$1,000,000 each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.

5. **Certificates of insurance.** As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates to OSLAB prior to commencing the work. The certificate will specify all of the parties who are Additional Insureds. 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 Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions or self-insurance. The Contractor shall immediately notify OSLAB of any change in insurance coverage.