

Oregon State University
PERSONAL/PROFESSIONAL SERVICES CONTRACT

Department Contract # 07-AC13

This agreement is entered into by and between the State of Oregon acting by and through its Board of Higher Education on behalf of Oregon State University (OSU) and Chemistry (**Department**) and Sam Vong (**Contractor**).

Whereas OSU has need of the services which Contractor is competent to provide; now therefore, in consideration of the sum not to exceed \$**1,600** to be paid at the rate of \$**34**/ hour to Contractor by OSU, Contractor agrees to perform between date of last signature and **6/30/07**, inclusive, **the following personal and/or professional services:**

Contractor shall provide note-taking services for the Chemistry 101, Chemistry 202, and BioChemistry 332. Appropriate and readable lecture notes shall be submitted to the Chemistry Office on a weekly basis on CD-ROM and Contractor shall be paid monthly for the number of lecture hours for which the notes were taken for that month.

This contract and any amendments to this contract will not be effective and no work shall begin until approved by the Contract Officer of OSU and by the appropriate persons as listed below.

The following attachments are incorporated by this reference and made a part of this contract: Attachment A, OUS Standard Contract Provisions and Attachment B; Attachment C; Other Attachments _____, _____, _____.

INSURANCE: the minimum limit is \$ **N/A**

Type required: CGL AUTO Professional

OSU AND OTHER SIGNATURES

CONTRACTOR

OSU Department Head **Date**
(Typed Name): Dr. Chemistry

Signature **Date**
Typed Name: Sam Vong
Address: 1234 SW College Street
 Corvallis, OR 97330

 OSU Contract Officer Date
(Last signature)
Aaron D. Howell, C.P.M., CPPO
Associate Director of Business Services, Contracts Officer

Phone: 541-753-1598
U.S. Social Security No.:

 Department of Justice Date
 (Only for contracts over \$75,000)

U.S. Tax Identification No.:
Contractor is a: (Check One)
 Resident U.S. citizen
 Resident non-U.S. citizen (Green Card Holder)
 Non-U.S. citizen
 Partnership
 Corporation
 Contractor is also a minority group member

PERSONAL SERVICE INVOICE

OSU VENDOR NO.	FORM PREPARED BY Debbie Lauer	PREPARER'S ADDRESS Kidder 303	DATE 1/11/07
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INDEX CODE NRA123	ACCOUNT CODE 98765	ACTIVITY CODE 12345	PAYMENT AMOUNT 1,600.00

The Department certifies that the above services have been rendered and that payment therefore is authorized.

Place Bar Code Label Here	All payments and reimbursements made on this contract will be 1099-misc. reportable. Rev 1/07
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ATTACHMENT A
DEPARTMENT OF HIGHER EDUCATION STANDARD PERSONAL/PROFESSIONAL SERVICES CONTRACT PROVISIONS

ACCESS TO RECORDS. Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this contract. The Oregon Board of Higher Education, Oregon Secretary of State, Federal Government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for three years from the date of contract expiration unless a shorter period is authorized in writing. Contractor is responsible for any audit discrepancies involving deviation from the terms of this contract and for any commitments or expenditures in excess of amounts authorized by Institution.

ASSIGNMENT. Contractor shall not assign or transfer its interest nor delegate its obligation in this contract without the express written consent of the Institution.

AVAILABILITY OF FUNDS. Institution certifies that sufficient funds are available and authorized for expenditure to finance costs of this contract within its current biennial appropriation or expenditure limitation, provided, however, that continuation of the contract, or any extension, after the end of the fiscal period in which it is written, is contingent upon a new appropriation or limitation for each succeeding fiscal period for the purpose of this contract.

CAPTIONS. The captions or headings in this contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this contract.

COMPLIANCE WITH APPLICABLE LAW. Contractor agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the work to be done under this contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of Contractor to comply with any or all such laws, ordinances, rules, and regulations shall not relieve Contractor of these obligations nor of the requirements of this contract. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the work provided in this contract; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this contract; not permit any lien or claim to be filed or prosecuted against the state on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim to such payment. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to any unpaid claims.

CONFLICT OF INTEREST. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this contract no person having any such interest shall be employed.

DUAL PAYMENT. Contractor shall not be compensated for work performed under this contract from any other entity of the State of Oregon.

EXECUTION AND COUNTERPARTS. This contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

GOVERNING LAW. This contract shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, or suit between Institution and Contractor that arises out of or relates to performance of this contract shall be brought and conducted solely and exclusively within the Circuit Court for Marion County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought only in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

HAZARD COMMUNICATION. Contractor shall notify Institution prior to using products containing hazardous chemicals to which Institution employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon Institution's request, Contractor shall immediately provide Material Safety Data Sheets, as required by OAR 437-155-025, for the products subject to this provision.

INDEMNITY, RESPONSIBILITY FOR DAMAGES. Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of work under this contract, or from any act, omission, or neglect of Contractor, its subcontractors, or employees. Contractor shall save, defend, indemnify, and hold harmless the State of Oregon, the State Institution of Higher Education, the Institution, and their officers, agents, employees, and members from all claims, suits, and actions of any nature resulting from or arising out of the activities or omissions of Contractor or its subcontractors, officers, agents, or employees acting under this contract.

INDEPENDENT CONTRACTOR STATUS. The service(s) to be rendered under this contract are those of an independent contractor. Contractor is not to be considered an agent or employee of Institution for any purpose, and neither Contractor nor any of Contractor's agents or employees are entitled to any of the benefits that Institution provides for its employees. Contractor will be solely and entirely responsible for its acts and for the acts of its agents or employees during the performance of this contract. If Contractor is providing personal services as an individual, (a) Contractor: (1) Is engaged as an independent contractor and will be responsible for any Federal or State taxes applicable to this payment; (2) Will not be eligible for any Federal Social Security, State Workers' Compensation, unemployment insurance, or Public Employees Retirement System benefits from this contract payment; (3) Is not an officer, employee, or agent of the State as these terms are used in ORS 30.265 and will not be under the direction and control of Institution; (4) Is not currently employed by the Federal Government and the amount charged does not exceed his normal charge for the type of service provided if payment is to be charged against Federal funds; (5) Is not a member of the Oregon Public Employees Retirement System; or (6) if a contributing member of the Oregon Public Employees Retirement System for which contributions to the retirement system must be withheld, Contractor's contribution to the retirement system will be withheld and a corresponding Institution contribution made; and (7) Must furnish Form IRS Form 8233 in duplicate with this contract if Contractor is a non-resident alien and claims exemption from Federal Withholding tax. (b) The Oregon State Board of Higher Education, acting on behalf of Institution, will report the total amount of all payments to Contractor, including any expenses, in accordance with Federal Internal Revenue Service and State of Oregon Department of Revenue regulations.

INSURANCE. Contractor shall secure at its own expense and keep in effect during the term of this contract general liability insurance. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon. The State of Oregon, acting by and through the State Board of Higher Education on behalf of the Institution and their officers and employees shall be included as an additional insured in said insurance policy. If any of the liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this contract for a duration of 24 months.

NOTICES AND REPRESENTATIVES. All notices, certificates, or communications shall be delivered or mailed postage prepaid to the parties at their respective places of business as identified in the signature block of this contract, unless otherwise designated in writing. Copies of such correspondence shall also be sent all other contract signatories.

OVERDUE PAYMENTS. Any charges claimed by the Contractor for payment of an overdue amount shall be in accordance with the provisions of ORS 293.462.

OWNERSHIP OF WORK PRODUCT. All work products or any form of property originated or prepared by Contractor which result from this contract are the exclusive property of Institution.

SEVERABILITY. If any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

SUBCONTRACTS AND ASSIGNMENTS. Contractor shall not enter into any subcontracts for any of the work scheduled under this contract, or assign or transfer any of its interest in this contract, without obtaining prior written approval from the Institution.

SUCCESSORS IN INTEREST. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns.

TAX COMPLIANCE CERTIFICATION. Contractor hereby affirms, under penalty of perjury, as provided in ORS 305.385(1), that to the best of Contractor's knowledge Contractor is not in violation of any Oregon tax laws named in ORS 305.380(4), including without limitation the state inheritance tax, gift tax, personal income tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue, including the Multnomah County Business Income Tax, Lane Transit District Tax, Tri-Metropolitan Transit District Employer Payroll Tax, and the Tri-Metropolitan District Self-Employment Tax.

TERMINATIONS. This contract may be terminated at any time by mutual consent of both parties, or by either party upon thirty (30) days' notice in writing and delivered by certified mail or in person to the other party. In addition, the Institution may terminate this contract effective upon delivery of written notice to Contractor, or at such later date as may be established by the Institution, if (a) Federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract; or (b) Any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this contract is for any reason denied, revoked, or not renewed. This contract may also be terminated by Institution for default (including breach of contract) if (a) Contractor fails to provide services or materials called for by this contract within the time specified; or (b) Contractor fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms, and after receipt of written notice from Institution, fails to correct such failures within ten days. The rights and remedies of Institution provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

TERMINATION DUE TO NONAPPROPRIATION OF FUNDS. If sufficient funds are not provided in future legislatively approved budgets of Institution (or from applicable Federal, state, or other sources) to permit Institution in the exercise of its reasonable administrative discretion to continue this contract, or if Institution or program for which this contract was executed is abolished, the Institution may terminate this contract without further liability by giving Contractor not less than thirty (30) days notice. In determining the availability of funds from the Oregon Legislature for this contract, Institution may use the budget adopted for it by the Joint Ways and Means Committee of the Oregon Legislative Assembly.

FOREIGN CONTRACTOR. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to this contract. Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

FORCE MAJEURE. Neither Institution nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, Institution's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

WAIVER. The failure of Institution to enforce any provision of this contract shall not constitute a waiver by Institution of that or any other provision.

APPROVALS. In some instances, another state agency may be required to approve this contract before any work may commence under this contract.

RECYCLING. In the performance of this contract the Contractor shall use, to the maximum extent economically feasible, recycled paper.

WORKERS' COMPENSATION. All employers, including contractor, that employ subject workers who work under this contract 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. Contractor shall ensure that each of its subcontractors complies with these requirements.

MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THE CONTRACT AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Employee vs. Independent Contractor Determination

Name of Contractor: Sam Vong

Prior to entering into any contract for services, it is incumbent upon OSU to ensure that the relationship and scope of services do not represent an employer-employee situation. Each time a department contemplates a contract for services, the following information must be reviewed and the checklist completed. For Personal Services Invoices, the document must be retained in the department’s files; for Personal/Professional Services Contracts, the document must be submitted with the contract to the Contracts Office for review and approval.

When contemplating a contract for services, an independent contractor is a person or business entity which:

- is free from OSU’s right to direct and control
• is responsible to OSU only for the contracted result of the work, not the manner or method used to accomplish the work
• controls how the service is provided, who provides it, and the means of accomplishing it
• sets his/her own prices for goods and fees for service
• can terminate contract while not terminating his/her business
• can terminate contract while not creating an unemployment situation
• has customers and prospective customers as a result of advertising and being known by the public as a going business
• provides goods and/or services to a public of their own choosing

Below is a table comparing employee considerations with those of an independent contractor. Check each item in the appropriate column.

EMPLOYEE

- ___ Directed and controlled by OSU
___ Does tasks in the manner OSU requests
___ Does not have a financial investment in the work they are providing for OSU
___ OSU provides tools, equipment, and skills training
___X The individual works under OSU’s business license
___ Often receives benefits beyond payment for service (retirement and health plans)
___ Receives a net check. OSU withholds income tax and FICA taxes.
___X Works at OSU’s place of business
___X Works the hours set by OSU
___ Works only for OSU
___X Does not advertise
___ Eligible for workers’ compensation benefits
___ Has some rights prior to termination
___ Covered by minimum wage and overtime rules
___ Protected by safety and anti-discrimination rules
___ May join or form a union

INDEPENDENT CONTRACTOR

- ___X Independent
___X Does tasks in his/her own way
___X Assumes the costs associated with doing the work for OSU
___X Comes to the job with all necessary tools, equipment, and skills
___ The individual obtains his or her own business license
___X Receives only payment for service
___X Receives a gross amount check. Pays his/her own taxes.
___ Works at his/her own office or home
___ Sets his/her own hours
___X Provides services to multiple entities
___ Has customers as a result of being known by the public as a business
___X Not covered by workers’ compensation
___X No termination rights unless contracted
___X Paid as contracted; no overtime
___X No such protection
___X No right to union representation

As you consider the guidance in the bulleted list, and then complete the checklist in the columns above, if you find that the relationship being considered falls more into the Employer/Employee category, you should make contact with the Human Resources group first in order for them to consult with you on the most appropriate mechanism for hiring the individual.

Once the contract and this form is submitted to the Contracts Office, a final review will be made. If the contract appears to be a potential Employer/Employee relationship, the Contracts Office will hold the contract for consultation between Human Resources and the department.

I certify that this form was prepared accurate to the anticipated scope and performance of the Contractor listed above:

Form Prepared By: Debbie Lauer Date: 1/11/07

Form Reviewed By (Contracts Officer): Date: