

OREGON STATE UNIVERSITY

REQUEST FOR PROPOSALS
Professional Consultant Retainer Contract

ISSUE DATE: January 15, 2015

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Oregon State University

Section I – RETAINER CONTRACT INTRODUCTION

INTRODUCTION

Oregon State University (“OSU”), is seeking proposals (“Proposals”) from qualified professional consultants (“Proposers”) to enter into Retainer Contracts with OSU to provide professional consulting services to OSU and other state of Oregon agencies and institutions (each such agency or institution, a “Participating Agency”; collectively, “Participating Agencies”) who may wish to utilize OSU’s Retainer Program for Professional Consulting Services (“Retainer Program”). Successful Proposers (each a “Consultant”) must be qualified to perform at least one of the professional consulting services set forth in Appendix A (“Services”) of this Request For Proposals (“RFP”).

Consultants will be eligible to bid on Services contracted through the OSU Retainer Program for Professional Consulting Services (“Retainer Program”). Retainer Contracts will be maintained electronically (in the Retainer Program database) for the duration of the Retainer Contract term and will remain available for use by OSU and Participating Agencies in accordance with the terms of this RFP. Certain contracting opportunities for professional consulting services are only available to Consultants in the Retainer Program.

For any Services valued at \$1,000,000 or less, OSU may contact Consultants from the Retainer Contract database to execute a supplementary agreement to the Retainer Contract stating the scope of Services and price term (“Supplement”). Methods of contact will vary in accord with the value of Services sought. Prior to the execution of any Supplement, Consultants will be asked to demonstrate that they have complied with the insurance requirements of the Retainer Contract, as they may be modified by a Supplement. Each Supplement may contain additional terms specific to the Services to be provided, and each Supplement may be altered, from time to time, through execution of an amendment (“Amendment”). Consultants may be awarded multiple Supplements during the Contract term. **However, Consultants are not guaranteed work as participants in the Retainer Program and may not be issued a Supplement during the term of the Retainer Contract.**

Capitalized terms used, but not defined, in this RFP or the OSU Retainer Contract for Professional Consulting Services, have the meanings set forth in OSU Standards 580, Divisions 61 and 63.

SERVICES SOUGHT

Service categories sought are listed in Appendix A. Proposals will be accepted online as set forth in Section III of this RFP. Proposers must check only those Service categories in the online Required Information Form that the Proposer is able to directly perform. Sub-contracting of Services performed pursuant to a Retainer Contract will only be allowed with prior written approval from OSU or, as applicable, the Participating Agency. At the sole discretion of OSU, Consultants may be removed from Service categories that they do not directly perform.

Section II –RETAINER CONTRACT INFORMATION

CONTRACT TERM

Successful Proposers will be eligible to enter into a Retainer Contract stating the terms and conditions between OSU and Consultant. Retainer Contracts will become effective on the date which OSU provides electronic notification to Consultant that it has been accepted to the Retainer Contract Program (the “Effective Date”), and shall remain effective through October 31, 2017 (the “Termination Date”). The period of time between the Effective Date and the Termination Date constitutes the term of the Retainer Contract (the “Term”).

SELECTION TO PROVIDE SERVICES

Consultants in the Retainer Program will be selected to perform Services in accordance with OSU rules. Criteria for selection include: price, experience, past performance, insurance capacity, Consultant’s personnel assigned to the project, availability, and ability to meet the schedule for completion of Services. The following procedures will be utilized to select Consultants for Services based on the total anticipated project price, which includes all contemplated Supplements and Amendments:

- a) **Projects \$100,000 or less** – OSU may contact and negotiate directly with Consultants who have executed Retainer Contracts.
- b) **Projects \$100,000.01 to \$250,000** – OSU will invite a minimum of three Consultants who have executed Retainer Contracts to submit a proposal for their Services. OSU may also post a solicitation document on the OSU Business Opportunities website (<http://bid.oregonstate.edu>). Consultant selection will be based on the invited Consultants’ responses to criteria set forth in the solicitation document.
- c) **Projects \$250,000.01 - \$1,000,000** – OSU will post a solicitation document on the OSU Business Opportunities website (<http://bid.oregonstate.edu>). All Consultants with valid Retainer Contracts are welcome to submit a proposal for their Services. Selection shall be based on the criteria set forth in the solicitation document.

At its discretion, OSU may solicit proposals from more Consultants than indicated above or at a lower dollar threshold than stated above.

PROOF OF INSURANCE REQUIRED PRIOR TO SUPPLEMENT EXECUTION

Consultants will not be required to furnish proof of insurance upon execution of Retainer Contracts. However, Consultants shall be required to provide proof of insurance in accordance with the terms of the Supplement prior to performing and Services under the Supplement. Insurance requirements pertaining to any specific Supplement may be adjusted at OSU’s sole discretion, but any such adjustments pertain only to that Supplement and do not modify the requirements of the Retainer Contract with regard to any other Supplement.

LICENSING REQUIREMENTS

Consultants must be licensed with any and all required licensing bodies at the time of Proposal submission and at all times during the Term of the Retainer Contract. If Consultant’s license becomes inactive during the Term of the Retainer Contract, OSU may suspend Services according to the terms of the Retainer Contract. Further, Consultants with inactive licenses cannot be awarded a Supplement until

the active status of the license is restored.

LEGAL REQUIREMENTS

Consultants must be registered to transact business in the State of Oregon and hold a valid State of Oregon Business Registry Number at the time of Proposal submission and at all times during the Term of the Retainer Contract. Consultants shall perform Services in conformance with all federal, state, county, and local laws, statutes, rules, regulations, ordinances and any other laws imposed by authorities having jurisdiction over Consultant's Services and this Retainer Contract. When applicable, all Services will require appropriate plan reviews and permits from local permitting authorities having jurisdiction over the Services.

PREVAILING WAGE RATES FOR PUBLIC WORKS

The Oregon Bureau of Labor and Industry ("BOLI") has determined that certain Services performed by Consultants are subject to the prevailing wage rate law ORS 279C.800 to 279C.870 ("PWR Law"). If Consultant Services are determined to be subject to PWR Law by BOLI or at the election of OSU, Consultant shall be responsible for complying with all applicable requirements of PWR Law. Because BOLI adjusts prevailing wage rates a from time to time, Consultant shall be compensated for Services that are subject to PWR Law according to a formula set forth on the Supplement.

COLLABORATIVE SERVICES

Consultants may be asked to provide Services in conjunction with other consultants or contractors retained by OSU or a Participating Agency. In such cases Consultant shall be prepared to adhere to strict timelines on such Projects.

PARTICIPATING AGENCIES

Participating Agencies may enter into an agreement with OSU to utilize OSU Retainer Contracts. Consultants must indicate whether they are willing to provide Professional Consulting Services to Participating Agencies on the Required Information Form. The same terms and conditions of the Retainer Contract will apply when used by Participating Agencies, except as detailed in Section 46 of the Retainer Contract (attached to this RFP as Exhibit A).

MWESB

OSU encourages Proposals from Minority, Women and Emerging Small Business ("MWESB") enterprises, as such terms are defined in ORS 200.005 and certified pursuant to ORS 200.055. Any Consultant certified by the State of Oregon as MWESB that includes its valid certification number in the Required Information Form will be designated as such within the Retainer Program database. Under certain circumstances, OSU policies require outreach specifically targeted to MWESB firms.

Section III – PROPOSAL CONTENT AND SUBMISSION

INSTRUCTIONS

By submitting a Proposal in response to this RFP, Proposer acknowledges that it has read, understands and agrees to comply with all the provisions of this RFP, including the accompanying documents attached in Section VI. After reading the RFP, Proposers must complete the online Required Information Form here: <http://retainer.cpd.oregonstate.edu/ConsultantRIF>

SCHEDULE OF CHARGES

In the Required Information Form, Consultants shall provide hourly rates for their Services that will remain effective for the Retainer Contract Term (hereafter referred to as the “Schedule of Charges”). Consultant’s Schedule of Charges must include an hourly rate for each position/title that may provide Services to OSU (no ranges will be accepted). The Schedule of Charges may be negotiated at the OSU’s sole discretion during the Term of the Retainer Contract and modifications will be reflected in a Project Supplement. Modifications to the Schedule of Charges will only be effective for Projects for which they are specifically negotiated.

DISCIPLINE PACKET REQUIREMENTS

In connection with submitting the Required Information Form, Consultants shall upload a separate “Discipline Packet” for each Service category they propose to provide. Each Discipline Packet’s filename should clearly correspond with the Service category for which it was uploaded. **Discipline Packets may not include artwork, drawings, or any other promotional materials, except as requested below.** Discipline Packets including prohibited promotional materials may be rejected at OSU’s sole discretion.

Each Discipline Packet shall be prepared so that it addresses each of the following sections in the order set forth below:

- a) Licensing and Certifications
A copy of all licenses and/or certifications (in electronic format) required to perform the Services in the Service category for which the Discipline Packet is being submitted. If no license and/or certification is required to perform the Service, the Discipline Packet must clearly indicate as such.
- b) Additional Requirement if submitting Discipline Packet for “Other” Service Category
If a Proposer submits a Discipline Packet under the “Other” Service category, the Discipline Packet shall include a summary of no more than 500 words describing the Services sought to be performed. Discipline Packets submitted under the “Other” Service category without such a summary may be rejected.

PROPOSER SIGNATURE PAGE AND PROPOSAL SUBMISSION

At the conclusion of the Required Information Form, Proposers will be presented with the option to electronically sign the Proposer Signature Page. Proposals are not complete until the Proposer Signature Page has been electronically signed. No hard-copy Proposals or promotional materials will be accepted. Incomplete proposals will be rejected.

PROPOSAL DUE DATE

OSU will accept Proposals online until approximately one month prior to the Termination Date. Any

Proposal received will be evaluated, and if accepted, OSU will issue a Retainer Contract. Consultants are not qualified to submit a bid or provide Services pursuant to a Retainer Contract prior to the Effective Date of a Retainer Contract.

QUESTIONS AND INQUIRIES

OSU Capital Projects Contract Administration will be the sole point of contact during this RFP process. Responses to inquiries are for clarification purposes only and in no way alter or amend this RFP. All correspondence pertaining to this RFP should be appropriately addressed to OSU per the contact information below:

Debera Massahos, OSU Capital Projects Contract Administration
Email: RetainerProgram@oregonstate.edu *Email preferred

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Section IV – EVALUATION CRITERIA

Proposals will be evaluated for completeness, clarity, and compliance with this RFP. Complete Proposals will be evaluated to determine if they comply with the administrative, contractual, and technical requirements of the RFP. If the Proposal is unclear, Proposers may be asked to provide written clarification. **Proposers will be awarded Retainer Contracts if their Proposals meet the below requirements of this RFP.**

- a) Complete Proposal. Proposers must comply fully with the instructions provided in this RFP. Proposers must provide complete and accurate information on the Required Information Form and Discipline Packet(s), and electronically sign the Proposer Signature Page at the conclusion of the Required Information Form.
- b) Insurance Coverage Statement. Proposers must answer all insurance questions on the Required Information Form and agree that, upon issuance of a Supplement, they shall maintain the insurance required by OSU or, as applicable, the Participating Agency. Proof of insurance coverage is not required until a Supplement is awarded, but shall be required before any Services are performed under a Supplement.
- c) Discipline Packets. Proposers must submit complete and accurate Discipline Packets(s) that conform to the requirements set forth in Section III of this RFP. Submission of Discipline Packet(s) that do not comply with Section III may lead to rejection of Consultant's Proposal. One Discipline Packet must be submitted for each Service category Consultant proposes to provide. Discipline Packet(s) submitted for the "Other" Service category must include the information requested in Section (e) on page 7 of this RFP.
- d) Licensing and Legal Compliance.
Each successful Proposal must furnish the following:
 - (1) A valid Oregon Business Registry Number demonstrating Proposer is registered to transact business in the State of Oregon; and
 - (2) A valid Federal Tax Identification Number; and
 - (3) Copies of all licenses and/or certifications required to provide any Services indicated in the Discipline Packet.

Additionally, each successful Proposer must agree to:

 - (4) Comply with PWR Law, when applicable or required by a Supplement; and
 - (5) Adhere to all federal, state, county, and local laws, statutes, rules, regulations, ordinances and any other laws imposed by authorities having jurisdiction over Consultant's Services and this Retainer Contract.
- e) Consultant Experience. Proposer's completed Required Information Form must indicate that Proposer has been in business for a minimum of five consecutive years prior to Proposal submission, or demonstrate that the principals/owners of Proposer's company have a minimum of five consecutive years of experience providing services in the service categories indicated in Proposer's completed Required Information Form. .
- f) Ability to respond. Proposers must verify their willingness to respond to a request for Services within a reasonable time (generally one to two weeks).

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Section V – RETAINER CONTRACT AWARD AND PROPOSAL REJECTION

PROPOSAL EVALUATION

An OSU representative will evaluate each Proposal to determine whether it is responsive to the criteria set forth in this RFP.

CONTRACT AWARD

OSU intends to notify successful Proposers via email sent to successful Proposers.

ACCEPTANCE OF CONTRACTUAL REQUIREMENTS

The terms of the Retainer Contract are not negotiable. Proposers shall electronically sign the Retainer Contract with no modifications.

REJECTION OF PROPOSALS

OSU reserves the right to reject any Proposal that does not comply with the administrative, contractual, or technical requirements of this RFP. If a Proposal is unclear, Proposers may be asked to provide written clarification or the Proposal may be rejected. Proposals that do not include all required Proposal content may be rejected. OSU reserves the right to reject any or all Proposals, if such rejection would be in the public interest as determined by OSU.

REJECTION; APPEAL

Rejected Proposers shall be notified in a “Rejection of Proposal” letter emailed to Proposer and shall be given seven calendar days from the date on the “Rejection of Proposal” letter to file a written protest of award, pursuant to OSU Standard 580-061-0145. Any protest must be emailed to the Capital Projects Contract Administration at: RetainerProgram@oregonstate.edu. A decision will be issued by OSU within a reasonable time from the date of receipt. The decision of OSU shall be final.

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Section VI – GENERAL RFP PROVISIONS

OSU Standard 580, Divisions 61 and 63 govern the OSU capital construction procurement processes.

1. Modification or Withdrawal of Proposal: Any Proposal may be modified or withdrawn at any time, provided that a written request is received by the OSU Department of Contracting and Purchasing prior to the Closing Date. The withdrawal of a Proposal will not prejudice the right of a Proposer to submit a new proposal.

2. Protests of Specifications: Protests or requests for changes to RFP terms must be received in writing via email to RetainerProgram@oregonstate.edu by February 1, 2015. Protests or requests for changes may not be faxed. Protests or requests for changes to RFP terms shall include the reason for the protest or request for change and any proposed changes to the terms. The purpose of this requirement is to permit OSU to correct, prior to Proposers' submission of Proposals, RFP terms or technical requirements that may be unlawful or improvident or which might unjustifiably restrict competition. OSU will consider all requested changes and, if appropriate, amend this RFP.

3. Addenda: If any part of this RFP is amended, addenda will be provided on the OSU Current Business and Bidding Opportunities website (<http://bid.oregonstate.edu>). Proposers are exclusively responsible for checking the OSU Current Business and Bidding Opportunities website to determine whether any addenda have been issued. **By submitting a Proposal, each Proposer thereby agrees that it accepts all risks and waives all claims associated with or related to its failure to obtain any addendum or addendum information.** Responses to inquiries are for clarification purposes only and in no way alter or amend this RFP. Only addenda issued by OSU shall modify this RFP.

4. Public Records: If a Proposal contains any information that is specifically identified to be a trade secret by the Proposer, as defined under ORS 192.501(2), each element of such information must be marked with the following (bold) legend: **"This information constitutes a trade secret under ORS 192.501(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."** The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemptions from disclosure apply "unless the public interest requires disclosure in the particular instance." However, non-disclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determination made pursuant to Oregon Public Records Law.

5. Investigation of References: OSU reserves the right to investigate all references in addition to supplied references and investigate past performance of any Proposer with respect to its successful performance of similar services, compliance with specifications and contractual obligations, completion or delivery of a project on schedule, and lawful payment of subcontractors and employees.

Despite its right to investigate all Proposer references, OSU is not obligated to utilize references as part of its evaluation criteria and may decline to investigate or consider references. Any decision made by OSU regarding the use of references, will not be considered grounds for protest.

6. RFP Preparation Costs: OSU will not be liable for costs incurred by Proposers in preparation of their Proposals.

7. Clarification and Clarity: OSU reserves the right to seek clarification of each Proposal or to make an award without further discussion of Proposals received. Therefore, it is important that each Proposal be submitted in a manner responsive to this RFP.

8. Cancellation: OSU reserves the right to cancel or postpone this RFP at any time or to award no Retainer Contract.

9. Clerical Errors in Awards. OSU reserves the right to correct inaccurate awards resulting from its clerical errors.

10. Rejection of Qualified Proposals. Proposals may be rejected in whole or in part if they limit or modify any of the terms and conditions and/or specifications of the RFP. Any terms contained in Proposals that conflict with or modify the terms of this RFP or the OSU Retainer Contract For Professional Consulting Services are expressly rejected.

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Section VII – ADDITIONAL CONTRACT DOCUMENTS AND TERMS

ATTACHMENT 1

The Professional Consultant Required Information Form including the Proposer Signature Page (Attachment 1) are available online here: <http://retainer.cpd.oregonstate.edu/ConsultantRIF>

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Appendix A

Consultants must be able to provide Services in one of the following categories:

<ul style="list-style-type: none"> • Acoustical Engineer • Aerial Photographer • Arborist • Archeologist • Architect • Architectural Programmer • CADD Technician • Cartographer • Chemical Engineer • Civil Engineer • Commercial Appraiser • Commissioning Agent • Communications Engineer • Construction Inspector • Construction Manager • Corrosion Engineer • Cost Engineer/Estimator • Ecologist • Electrical Engineer • Electronics Engineer • Energy Analyst • Environmental Engineer • Environmental Scientist • Fire Protection Engineer • Forensic Engineer • Foundation/Geotechnical Engineer • Geodetic Surveyor • Geographic Information System Specialist • Geologist • Health Facility Planner 	<ul style="list-style-type: none"> • Hydraulic Engineer • Hydrographic Surveyor • Hydrologist • Industrial Engineer • Industrial Hygienist • Interior Designer • Land Surveyor • Landscape Architect • Materials Engineer • Materials Handling Engineer • Mechanical Engineer • Planner: Urban/Regional/Land Use • Project Manager • Project Site Cultural Monitor • Remote Sensing Specialist • Risk Assessor • Safety/Occupational Health Engineer • Sanitary Engineer • Scheduler • Security Specialist • Soils Engineer • Special Inspections & Testing (includes Testing and Balancing “TAB” Services) • Specifications Writer • Structural Engineer • Transportation Engineer • Water Resources Engineer • Other
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[Exhibit A on next page.]

EXHIBIT A

OSU RETAINER CONTRACT FOR PROFESSIONAL CONSULTING SERVICES

This Retainer Contract for Professional Consulting Services (hereafter, “Retainer Contract” and further defined in Section 1), effective upon the date of the last signature to it, is between:

“Consultant”:

and “Owner”: **Oregon State University (“OSU”)**

3015 SW Western Blvd
Corvallis, OR 97333

RetainerProgram@OSU.edu

(each a “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, Owner issued certain Solicitation Documents inviting professional consulting firms to provide Services (as hereinafter defined) to Owner Participating Agencies, and

WHEREAS, Owner, having received and evaluated the responses to the Solicitation Documents, now desires to award a Retainer Contract to Consultant; and

WHEREAS, Consultant is willing and able to perform Services for Owner as stated in Consultant’s response to the Solicitation Documents;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

AGREEMENT

1. DEFINED TERMS.

Unless otherwise specifically defined in this Retainer Contract, words which have well-known technical meanings or construction industry meanings are used in the Retainer Contract documents in accordance with such recognized meanings. Capitalized terms used, but not defined herein shall have the definition set forth in OSU Standards, 580, Divisions 61 and 63.

The following terms used in this Retainer Contract are defined as follows:

“**Additional Services**” means those services, set forth in an executed Supplement Amendment, that are to be performed by the Consultant and are in addition to the scope of the Services described in a Supplement.

“**Applicable Laws**” means all federal, state, county, and local laws, statutes, rules, regulations, ordinances and any other laws imposed by authorities having jurisdiction over Consultant’s Services or applicable to the Services and this Retainer Contract.

“**Attachment 1**” refers to Consultant’s Proposal submitted in response to Owner’s Solicitation Documents, including the Required Information Form, the Discipline Packet(s) submitted by Consultant, and the signed Proposer Signature Page.

“**Authorized Representative**” means Owner’s employee, whom may be identified in a particular Supplement to act on behalf of Owner with respect to a Project.

“**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 a Supplement.

“**Contractor**” means any contractor awarded a Construction Contract by Owner to construct all or part of any Project identified in a Supplement.

“**Design Criteria**” means the Owner’s criteria, guidelines, and/or standards applicable to the Project.

“**Effective Date**” means the date OSU provides electronic notice to Consultant that it has been accepted into the Retainer Contract Program.

“**Fixed Price**” means the set price for Consultant’s Services, agreed to by the Parties and set forth in a Supplement, that is not subject to any adjustment unless through an executed Supplement Amendment. If the Parties agree Consultant shall be paid for its Services on a Fixed Price basis the Consultant shall be paid as set forth in Section 11 of this Retainer Contract.

“**Key Person**” means a person identified by the Parties in a Supplement, 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.

“**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.

“**Project**” means the specific project for which Consultant provides Services, as set forth in a Supplement.

“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 a Supplement and may include the following (unless otherwise defined in a Supplement): 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 more particularly described in the Travel Policy.

“Retainer Contract” refers to this Retainer Contract and any associated Supplement or Supplement Amendment, and Owner’s Solicitation Documents, Attachment 1, and all associated addendums, attachments, and exhibits to each.

“Services” means all services (as further defined herein) to be performed by Consultant and set forth in a Supplement executed by the Parties to this Retainer Contract.

“Schedule of Charges” means the hourly rate of compensation set forth in Addendum A of this Retainer Contract (incorporated herein by this reference). The Schedule of Charges includes the hourly rate to be paid to each position within Consultant’s organization that may perform Services, and shall remain fixed for the Term (as defined in Section 3) of this Retainer Contract unless Owner, in its sole discretion, initiates negotiation of the rates set forth in the Schedule of Charges for a particular Supplement.

“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 Supplement.

“Supplement” means a written, fully executed, supplementary agreement to this Retainer Contract between the Owner and the Consultant describing the Services to be performed by Consultant, the price for the Services, insurance requirements, and other obligations of the Parties.

“Supplement Amendment” means a written amendment, mutually agreed to and executed by the Parties, to an executed Supplement which may alter a Supplement or contemplate Additional Services to be provided by the Consultant.

“Time and Material” refers to a method which Consultant may be paid for its Services. If the Parties agree Consultant shall be paid for its Services on a Time and Materials basis the Consultant shall be paid as set forth in Section 11 of this Retainer Contract.

“Travel Policy” means the most recent OSUContractor Travel Reimbursement Policy promulgated by Owner. The current Travel Policy is set forth in Addendum B,

incorporated by this reference. Owner may update the Travel Policy and Travel Policy rates from time to time and updates will be posted on Owner's website.. The Travel Policy rates in effect on the effective date of Supplement shall apply to all pre-approved travel expenses incurred by Consultant for that Supplement. Any reference in Addendum B to "Contractor" means "Consultant" for purposes of this Retainer Contract or any Supplement.

"Work" means the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of all or part of any Project identified in a Supplement by a Contractor that is eventually awarded a Construction Contract for the identified Project.

2. INCORPORATION AND INTERPRETATION OF DOCUMENTS

Consultant agrees to provide Services in accordance with this Retainer Contract. The Retainer Contract documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Retainer Contract documents, interpretation will be based on the order of precedence set forth in the Supplement. The terms of any one Supplement awarded to Consultant shall pertain only to that Supplement and shall not modify any other Supplement awarded to Consultant.

3. TERM

The term of this Retainer Contract will begin on the Effective Date and shall expire on October 31, 2017 (the "Term"). However, Supplements and Supplement Amendments awarded pursuant to this Retainer Contract shall remain effective until completion of Consultant's Services on a Project, even if such completion occurs after expiration of the Term. In such a case, Owner and Consultant hereby agree that the terms of this Retainer Contract shall remain in effect until such time as Owner approves the final performance and delivery of Consultant's Services.

4. SERVICE REQUEST; SUPPLEMENT AWARD

Owner may request (each such request, a "Request") Consultant's Services for a specific Project. Consultant may respond to a Request for Services as defined in the Request. However, Consultant's response must clearly state the maximum not-to-exceed price if completed on a Time and Materials basis or the Fixed Price for the Services, in accordance with the Request, this Retainer Contract, the Schedule of Charges (if applicable), and the conditions of the Project.

Upon Owner's election to award a Project to Consultant, the scope and cost of the Services with regard to each such specific Project will be specified in a Supplement. The terms and conditions specified in this Retainer Contract shall be incorporated in any Supplement issued.

From time to time, Owner and Consultant may elect to modify a Supplement by way of a Supplement Amendment.

5. SUPPLEMENT AWARD NOT GUARANTEED

Owner does not warrant or guarantee that any Services will be Requested or authorized through a Supplement to this Retainer Contract during the Term. Owner and the Consultant agree that no Services shall be performed without full execution of a Supplement. Further, full execution of a Supplement is a condition precedent to Owner's obligation to pay Consultant for Services.

6. SERVICES

Consultant shall provide Owner with professional consulting Services more particularly described in an executed Supplement. Consultant shall perform Services in accordance with the terms of this Retainer Contract, 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 Retainer Contract.
- B. Services may include creation of Project Documents required to achieve identified Project objectives. Consultant shall complete all Project Documents in accordance with Section 10 of this Retainer Contract and as may be more particularly defined in a Supplement.
- 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 Retainer Contract by Consultant or any persons or entities for whom Consultant is responsible.
- D. Consultant shall fully cooperate with Owner to meet all Project budgets.
 - i. In the event the Consultant's opinion of probable construction costs exceeds the budget for any Project identified in a Supplement 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 than 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").
 - ii. 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 10 of this Retainer Contract.

7. SCHEDULE

Consultant acknowledges that time is of the essence in the performance of all Services. Upon Owner's request, either prior to execution of a Supplement or at any time thereafter, Consultant shall submit a written schedule for performance of Consultant's Services ("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.

8. STANDARD OF CARE

By execution of this Retainer Contract, 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 the reasonable standard of care exercised by consultants performing work or providing services for projects of a size, scope, and complexity similar to the Services for which Consultant is retained.

9. 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 Retainer Contract.
- B. Upon execution and delivery, this Retainer Contract is a valid and binding obligation enforceable in accordance with its terms.
- C. Consultant is responsible for all Services performed under this Retainer Contract and accepts liability for its Services as further described in this Retainer Contract.
- D. All information provided by Consultant in Attachment 1 is true and accurate.
- E. 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 Retainer Contract.
- F. Consultant is experienced, having the skill, legal capacity, and professional ability necessary to perform the Services required for Projects contemplated in this Retainer Contract and all Supplements in a manner consistent with the standard of care set forth in this Retainer Contract.
- G. Consultant has the capabilities and resources necessary to perform the obligations of this Retainer Contract.

- H. Consultant either is, or warrants that it will become in a manner consistent with the standard of care set forth in this Retainer Contract, familiar with all Applicable Laws pertaining to the Services set forth in any Supplements to this Retainer Contract.

10. 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 Retainer Contract 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 as 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 10 are in addition to, and not in lieu of, any representations or warranties provided by Consultant herein.

11. COMPENSATION

Consultant will be compensated for all Services performed in accordance with an executed Supplement. The conditions for payment shall be clearly set forth in the Supplement and consistent with the following:

- A. Fees for Services and Direct Expenses.** Each Supplement will indicate whether Consultant will be compensated for Services and related direct expenses on a Time and Materials basis or on a Fixed Price basis.
- i. If the Parties agree Consultant is to be paid on a Time and Materials basis, Consultant will be compensated for its Services as follows: 1) at the specified fixed hourly rates set forth in the Schedule of Charges for direct labor hours, plus 2) actual materials costs, including, if appropriate, material handling costs. Each Supplement for which Consultant is to be paid on a Time and Materials basis will also include a clearly defined not-to-exceed amount. Consultant will not be paid more than the not-to-exceed amount without an executed Supplement Amendment.
 - a) At Owner's sole discretion, the Schedule of Charges may be negotiated for a particular Supplement, in which case the Consultant will be compensated for its direct labor hours according to the Schedule of Charges set forth in that Supplement. Modification to the Schedule of Charges will apply only to that particular Supplement and will not apply to any other Supplements issued to Consultant.
 - ii. If Consultant is to be paid on a Fixed Price basis, Owner reserves the right to request from Consultant a breakdown of anticipated costs included in the Fixed Price prior to execution of the Supplement.
- B. Reimbursable Expenses.** The Owner shall reimburse Consultant and its Sub-Consultants for actual, reasonable, and necessary Reimbursable Expenses incurred in the performance of Services at cost with no mark up.
- i. Pre-approved travel expenses incurred shall be reimbursed at cost with no mark-up, and shall not exceed the rates set forth in the Travel Policy in effect on the effective date of the Supplement. Consultant shall ensure that all travel expenses submitted for reimbursement conform to the Travel Policy in effect on the effective date of the Supplement. Unless stated otherwise in a Supplement, travel expenses must be pre-approved by Owner. Travel expenses will not be reimbursed for Services rendered within 25 miles of the Consultant's office.
 - ii. Consultant's requests for reimbursement of Reimbursable Expenses specifically authorized in the Supplement must include documentation of actual expenditures.
- C. Fees for Sub-Consultant's Services.** Unless otherwise provided in a Supplement, 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.
- D. Fees for Additional Services.** Upon execution of any Supplement Amendment, 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 11.

- E. **Maximum Compensation.** The maximum compensation paid to Consultants pursuant to any Supplement will not exceed the maximum allowable under OSU Standard 580-063-0025, including professional fees, Sub-Consultant fees, and Reimbursable Expenses (the “Maximum Compensation”).
- F. **Fees for Termination.** Compensation to be paid to the Consultant in the event a Supplement is terminated as provided in Section 22 of this Retainer Contract shall be determined in accordance with this Section 11. Owner agrees to pay Reimbursable Expenses incurred before notice of termination is delivered to Consultant.

12. 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 to Owner’s Authorized Representative indicated in the Supplement. One copy of each invoice, with required documentation, must be delivered to the Owner’s address set forth in the Supplement.
- 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 Supplement. The total of all payments for Services may not exceed the Maximum Compensation set forth in any Supplement and if completed on a Time and Materials basis, the hourly rates set forth in the Schedule of Charges. The total of all payments for Reimbursable Expenses may not exceed the Maximum Compensation set forth in any Supplement or the rates set forth in the Travel Policy.
- 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. No deductions will be made from Consultant's compensation or Reimbursable Expenses for penalties or liquidated damages.

13. KEY PERSONS

The Parties may agree in a Supplement that Consultant's Services must be performed by one or more Key Person(s). In such a case, the Parties shall identify each of Consultant's employees that shall be considered Key Person(s) for that Project in the Supplement. Each Supplement will also set forth the conditions applicable to Consultant's Services performed by the Key Person(s).

14. RETAINER CONTRACT ADMINISTRATION

Owner may designate an Authorized Representative in each Supplement who shall act on behalf of Owner with respect to the Project. Unless directed otherwise, Consultant shall: 1) include the Authorized Representative in all communications arising out of or relating to the Project, and 2) accept directives only from Owner's Authorized Representative and not from Owner's other employees or consultants. Owner may replace Authorized Representative at its sole option. If such a replacement is made, Owner shall notify Consultant in writing. Consultant acknowledges that the Authorized Representative may not have the authority to execute Supplements or Supplement Amendments, and hereby agrees that only Supplements and Supplement Amendments executed by Owner's staff with delegated authority to do so shall be binding.

15. PROJECT COORDINATION

Consultant shall cooperate with other consultants and Contractors with whom 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 will be made 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 a Supplement. 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 a Supplement, 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 Supplement, the Parties shall execute a Supplement Amendment setting forth the terms and payment for any Additional Services. The full execution of a Supplement Amendment is a condition precedent to Owner's obligation to pay Consultant for Additional Services.

16. 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.

- A. Consultant shall submit annual MWESB Reports on June 30 of each year a Supplement is active ("Annual MWESB Report"). Supplements 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.

- B. 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.

17. 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 Sections of this Retainer Contract: 19-INSURANCE, 20-INDEMNITY, 22-TERMINATION, 23-SUSPENSION OF SERVICES, 25-TAX COMPLIANCE CERTIFICATION, 26-COMPLIANCE WITH APPLICABLE LAW; 28-CHOICE OF LAW; JURISDICTION AND VENUE, 29-MEDIATION, 31-CONSULTANT AS INDEPENDENT CONTRACTOR, 32-ACCESS TO RECORDS, 33-OWNERSHIP OF WORK PRODUCT, 34-MINIMUM WAGE RATES FOR PUBLIC WORKS, 38-NO WAIVER, 42-FOREIGN CONTRACTOR, and 43-MEDIA CONTACTS.

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: 1) copies of Sub-Consultant's invoices submitted to the Consultant, and 2) Consultant's requests for payment to the Owner under this Retainer Contract.

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.

18. SUCCESSORS AND ASSIGNS

The provisions of this Retainer Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Upon execution of this Retainer Contract, Consultant shall not enter into any new Sub-Consultant agreements for Services set forth in an executed Supplement or assign, delegate, or otherwise transfer any of its interest in, rights to, duties, or obligations under this Retainer Contract or a Supplement hereto without Owner's prior written consent, which shall not be unreasonably withheld.

19. INSURANCE PROVISIONS

For each Supplement executed pursuant to this Retainer Contract, Consultant shall maintain in full force, at its own expense, and for the duration of the Project, any and all insurance required by Owner and set forth in the Supplement pertaining to that Project. In addition, the Consultant agrees to the following:

- A. If any insurance required in a Supplement is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Project for a duration of 24 months or the maximum time period available to the Consultant in the marketplace if less than 24 months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following completion of the Project. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided its retroactive date is on or before the effective date of the Supplement. Evidence of suitable coverage will be a condition of final acceptance and payment under a Supplement.
- B. Prior to the execution of a Supplement by Owner, the Consultant shall furnish certificates of insurance to Owner as evidence of the insurance coverage required by the Supplement (each a "Certificate" and collectively the "Certificates"). Complete copies of insurance policies, trust agreements, or other related documentation must be provided to Owner upon request. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and self-insurance.
- C. All Certificates, except for Workers' Compensation, must include the following language: "Oregon State University and its officers, board members, employees, and agents, and, if applicable, Participating Agencies and their officers, board members, employees, and agents, are named an additional insured with respect to their interests." Consultant shall provide an endorsement from the insurance company to this effect.
- D. The Certificates required to be provided by the insurance company or companies must give a 30-calendar day notice (without reservation) to Owner if the insurance is canceled. If Consultant receives a non-renewal or cancellation notice from an insurance carrier regarding coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Consultant shall notify Owner within ten (10) 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, Consultant shall stop Services pursuant to any Supplement, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this Section, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to Owner and its officers, board members, employees, and agents. Owner may suspend Consultant's Services until a new Certificate of insurance is provided to Owner evidencing the replacement coverage. Consultant expressly agrees that Owner reserves the right to withhold payment to Consultant until evidence of reinstated or replacement coverage is provided to Owner.
- E. Consultant shall obtain insurance coverage required for each Supplement from insurance companies or entities acceptable to the Owner and that are eligible to provide such

insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner.

- F. If Consultant changes any insurance carrier during the term of a Supplement, Consultant shall provide Owner with Certificate(s) from the new carrier(s) in accordance with the terms of this Retainer Contract and the Supplement.

20. INDEMNITY, RESPONSIBILITY FOR DAMAGES

Owner and Consultant hereby agree to the following:

- A. **Claims Other than Professional Liability.** Consultant shall indemnify, save, defend, and hold harmless Owner and its officers, board members, employees, and agents from and against all claims, suits, or actions of any nature, 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 Retainer Contract or any Supplement entered into pursuant to this Retainer Contract.
- B. **Claims for Professional Liability.** Consultant shall indemnify, save, defend, and hold harmless Owner its officers, board members, employees, and agents 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 Retainer Contract or any Supplement entered into pursuant to this Retainer Contract.
- C. **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.
- D. **Owner's Actions.** Sub-sections A and B above do not include indemnification by the Consultant of the Owner for the Owner's activities, whether related to this Retainer Contract, a Supplement entered into pursuant to this Retainer Contract, or otherwise.

21. AMENDMENTS TO THE RETAINER CONTRACT

Any changes to the provisions of this Retainer Contract require the written execution of an amendment hereto, that is explicitly identified as an amendment to this Retainer Contract. The

Services of the Consultant with regard to any specific Project shall be specified in a Supplement, which must be executed by the Parties prior to commencement of any Services.

22. TERMINATION

This Retainer Contract, any or all Supplements, or both, 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":
 - i. Consultant no longer holds the required licenses or certificates to perform the Services.
 - ii. 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, OSU, 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.
 - iii. Should Consultant commit a material default of any Supplement executed pursuant to this Retainer Contract, Owner shall, in its sole discretion, have the right to terminate all other Supplements issued to Consultant pursuant to this Retainer Contractor regardless of whether such default has occurred as to any other Supplement.
 - iv. Consultant commits a material default of any covenant, representation, warranty, obligation or agreement pursuant to this Retainer Contract or any Supplement hereto, fails to perform the Services called for in a Supplement within the time specified or allowed in the Supplement, or so fails to perform the Services as to endanger performance of a Supplement 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 Retainer Contract if Owner fails to pay Consultant per the terms of this Retainer Contract or a Supplement, 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 Supplement 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 33. 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 Retainer Contract.
- 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 22, the rights and obligations of the Parties shall be the same as if the Retainer Contract or Supplement was terminated pursuant to subsection (B) of this Section 22.

23. 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 Supplement is considered terminated.

24. 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.

25. 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 statutes, 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 Retainer Contract.

26. 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 State or Owner on account of any labor or material furnished under this Retainer Contract and any Supplement 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.

27. CHOICE OF LAW; JURISDICTION AND VENUE

This Retainer Contract and any Supplement 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 Retainer Contract or any Supplement will be brought and conducted solely and exclusively within the Circuit Court for Benton 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 Retainer Contract, hereby consents to the in personam jurisdiction of the above courts.

28. 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 arising out of or relating to this Retainer Contract or any Supplement 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 Services under this Retainer Contract. All participating parties shall exercise good faith efforts to resolve disputes in mediation.

29. FUNDS AVAILABLE AND AUTHORIZED

The Consultant agrees that the Consultant's receipt of payment under any Supplement after the last day of the current biennium is contingent upon 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 pay the Consultant pursuant to a Supplement.

30. THE CONSULTANT AS INDEPENDENT CONTRACTOR

Consultant shall perform all Services as an independent contractor. 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 a Supplement, and (2) evaluate the quality of the completed performance.
- B. The Consultant is not an officer, employee, or agent of the State of Oregon or 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 a Supplement. 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.

31. ACCESS TO RECORDS

For not less than six (6) years after expiration of this Retainer Contract, Owner, 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 a Supplement for the purpose of making audit, examination, excerpts, and transcripts. If any part of this Retainer Contract, Supplement, or any resulting Construction Contract(s) 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.

32. OWNERSHIP OF WORK PRODUCT

Owner and Consultant hereby agree to the following:

- A. **Definitions.** The following terms used in this Section 33 have the meanings set forth below:
- i. “Consultant Intellectual Property” means any intellectual property owned by the Consultant and developed independently from the Retainer Contract and any Supplement.
 - ii. “Third Party Intellectual Property” means any intellectual property owned by parties other than Owner or Consultant.
 - iii. “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 Retainer Contract and any Supplement.
- B. **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. 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 33.C., 33.D., 33.E. and 33.F. 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.
- C. **Consultant Intellectual Property.** In the event that any portion of the Work Product is Consultant Intellectual Property or in the event any Consultant Intellectual Property 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 Public Records Law (ORS 192.410 through 192.505) and the Oregon Uniform Trade Secrets Act (ORS 646.461 to 646.475).
- D. **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 necessary for 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.

- E. **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.
- F. **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.
- G. **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.
- H. **Consultant Use of Work Product.** Notwithstanding anything to the contrary in this Section 33, 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 33(I) and 33(J) below. Consultant may use the Work Product for other uses only with Owner's prior written approval.
- I. **Confidential 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 Retainer Contract; (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.

- J. **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 purposes whatsoever outside of the scope of Services of this Retainer Contract and any Supplements. 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 this Section 33(J), 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 Retainer Contract and any Supplement, 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.

33. MINIMUM WAGE RATES FOR PUBLIC WORKS

Certain Services performed pursuant to this Retainer Contract may be interpreted by BOLI as subject to Prevailing Wage Rate laws (ORS 279C.800 to 279C.870, and hereinafter, "PWR Law"), or Owner may elect to require Consultant to comply with PWR Law, regardless of applicability, with regard to Services performed pursuant to a Supplement. To the extent Consultant's Services are subject to PWR Law or upon the election of Owner, the following terms shall apply:

- A. Consultant shall pay workers not less than the specified minimum hourly rate of wage set forth in the applicable BOLI schedule of Prevailing Wage Rates for Public Works Contracts in Oregon, as indicated in the Supplement. Consultant shall include the preceding requirement in any subcontract with a Sub-Consultant.

- B. If Consultant's Services are subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Consultant shall pay the higher of the applicable state or federal prevailing rate of wage.
- C. Consultant, and any Sub-Consultant(s) retained by Consultant, must have a public works bond filed the Construction Contractors Board before starting work on the Project, unless exempt.
- D. If the Consultant fails to make timely payment for labor or services, Owner may pay any amounts due and withhold those amounts from payments to the Consultant.
- E. As a condition to Owner's performance hereunder, no person may be employed to Work under this Retainer Contract for more than ten hours in any one day or forty hours in any one week, except in cases of necessity, emergency or where required by public policy. In such instances, Consultant shall pay the employee at time and a half pay:
 - i. For all overtime in excess of eight hours a day or forty hours in one week when the work week is five consecutive days, Monday through Friday; or
 - ii. For all overtime in excess of ten hours a day or forty hours in one week when the work week is four consecutive days, Monday through Friday; and
 - iii. For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.
 - iv. This Section does not apply to Consultant's Services under this Retainer Contract to the extent Consultant is currently a party to a collective bargaining agreement with any labor organization.
 - v. No restrictions of pay scales included in this Section excuses Consultant from compliance with Schedules for completion of Services in a Supplement.
- F. Consultant shall provide written notice to workers of the number of hours per week and days per week they may be required to work.
- G. Consultant shall make prompt payment for all medical services for which Consultant has agreed to pay, and for all amounts for which the Consultant collects or deducts from the worker's wages.
- H. In every agreement with Sub-Consultants providing services on the Project, Consultant shall require its Sub-Consultant(s) to provide a public works bond filed with the Construction Contractor's Board before starting work on the Project, unless exempt.

34. SEVERABILITY

The Parties agree that if any term or provision of this Retainer Contract 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 Retainer Contract did not contain the particular term or provision held to be invalid.

35. 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.

36. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by Force Majeure. "Force Majeure" means 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. 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 Retainer Contract.

37. NO WAIVER

The failure of Owner to enforce any provision of this Retainer Contract 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 Retainer Contract.

38. RECYCLING

Consultant shall use recycled products to the maximum extent economically feasible in the performance of the Services.

39. NOTICES

Except as expressly provided otherwise in this Retainer Contract, 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 Retainer Contract and on the Supplement, 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 Supplement pertaining to that Project.

40. THIRD PARTY BENEFICIARIES

Nothing contained in this Retainer Contract or any Supplement 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 Retainer Contract for the performance or nonperformance of Services.

41. 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 Retainer Contract, the Project or the Services during the Term of the Retainer Contract. 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 Supplement.

42. 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.

43. 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 a Supplement without Owner's prior consent, which may be withheld in Owner's sole and absolute discretion.

44. EXECUTION AND COUNTERPARTS

This Retainer Contract and any Supplements may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

45. PARTICIPATING AGENCIES

Pursuant to ORS 190.110, other state of Oregon agencies and institutions (each such agency or institution, a "Participating Agency" ("Participating Agencies")) may enter into an agreement with Owner to utilize its Retainer Contracts. If Consultant agreed to perform Services for Participating Agencies in Attachment 1, the same terms and conditions of this Retainer Contract apply when used by Participating Agencies except for the following:

- A. The Participating Agency shall be solely liable to Consultant for payment for Services performed;

- B. In the event a dispute arises between the Participating Agency and Consultant, the Participating Agency and Consultant agree that Owner is not a party to the dispute and will not be named as a party unless required by law.
- C. Owner is not liable in the event that Participating Agencies fail to follow applicable procurement procedures.
- D. Participating Agencies shall issue “Participating Agency Retainer Contract Supplements” and “Participating Agency Retainer Contract Supplement Amendments” using forms provided by Owner and in compliance with terms of this Retainer Contract. The term “Supplement” in this Retainer Contract also refers to any Participating Agency Retainer Contract Supplement. The term “Supplement Amendment” in this Retainer Contract also refers to any Participating Agency Retainer Contract Supplement Amendment.
- E. When this Retainer Contract identifies an OSU Standard or Policy, each Participating Agency may substitute its own standard or policy, as permitted by law, rule, or policy.
- F. The Participating Agencies may require additional terms and conditions. Any additional terms and conditions proposed by the Participating Agency must be included in the Participating Agency Retainer Contract Supplement, and are subject to approval by Owner, in Owner’s sole and absolute discretion.

46. MERGER CLAUSE

THIS RETAINER CONTRACT, TOGETHER WITH ANY OTHER RETAINER CONTRACT DOCUMENTS ATTACHED OR INCORPORATED BY REFERENCE INTO THIS RETAINER CONTRACT, CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS RETAINER CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS RETAINER CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES, AND CLEARLY IDENTIFIED AS AN AMENDMENT. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS RETAINER CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

SIGNATURES

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Retainer Contract as of the dates written below.

**RETAINER CONTRACT
FOR PROFESSIONAL CONSULTING SERVICES
FEBRUARY 1, 2015 THROUGH OCTOBER 31, 2017
OREGON STATE UNIVERSITY**

ADDENDUM A – SCHEDULE OF CHARGES

The Consultant agrees to the following hourly compensation for the positions within its organization:

\$ Per Hour

SAMPLE

**RETAINER CONTRACT
FOR PROFESSIONAL CONSULTING SERVICES
FEBRUARY 1, 2015 THROUGH OCTOBER 31, 2017
OREGON STATE UNIVERSITY**

ADDENDUM B –Travel Reimbursement Policy

Oregon State University Contractor Travel Reimbursement Policy

The Travel Policy set forth below may be modified from time to time and posted on Owner’s website.

Category	Rate Summary	Policy
Instate Travel: Meal per diem \$52 B = \$13.00 L = \$13.00 D = \$26.00	All Oregon Cities Meals \$52.00 Lodging \$118.00	<ul style="list-style-type: none"> • The per diem equals the federal rate using the <i>IRS’s High-Low Substantiation Method</i>. All Oregon cities are currently Low Cost Cities. • No receipts are required for lodging, meals and incidental expenses (these are reimbursed on a per diem basis). • If meals are provided at the meeting or event, no meal per diem is allowed. • No meal per diem is allowed on one day trips. • Lodging tax is reimbursed as a miscellaneous expense.
Out-of-State, and Continental US Travel: High meal per diem \$65 B = \$16.25 L = \$16.25 D = \$32.50 Low meal per diem \$52 B = \$13.00 L = \$13.00 D = \$26.00	High: See list of High Cost Cities Meals \$65.00 Lodging \$186.00 Low: All other cities, Continental US Meals \$52.00 Lodging \$118.00	<ul style="list-style-type: none"> • The per diem equals the federal rate using the <i>IRS’s High-Low Substantiation Method</i>. • No receipts are required for lodging, meals and incidental expenses (these are reimbursed on a per diem basis). • If meals are provided at the meeting or event, no meal per diem is allowed. • No meal per diem is allowed on one day trips. • Lodging tax is reimbursed as a miscellaneous expense.
Foreign & Non-Continental US and Overseas Non-Foreign Areas (Alaska, Hawaii, Guam, etc.)	Contractor travel to these locations is minimal and the federal tables are complicated. Call for per diem rates.	<ul style="list-style-type: none"> • Contact Oregon State University Business Affairs for current per diem rates for these locations. • If meals are provided at the meeting or event, no meal per diem is allowed. • Lodging tax is reimbursed as a miscellaneous expense for Alaska, Hawaii, Puerto Rico, and US possessions. Lodging tax is included in the per diem for foreign travel. • No receipts are required for lodging, meals and incidental expenses.

Mileage for Private Vehicle:	57.5 cents per mile.	<ul style="list-style-type: none"> • Mileage can be calculated one of 3 ways: <ul style="list-style-type: none"> ○ Mileage Chart in the Excel file (see Excel file) ○ Actual mileage (from the odometer) ○ Mapping software (e.g., mapquest.com) • Mileage cannot be claimed in addition to fees for rented vehicles and fuel expenses for a rented vehicle. • Mileage is not reimbursable unless one way trip exceeds 25 miles from origin to destination. 			
Pro-ration of meals for partial days involving an overnight stay:	INITIAL Day of Travel – Leave:	Prior to 7:00 am	7:00 am to 12:59 pm	1:00 pm and after	
	Meal Allowance	Breakfast, lunch, dinner	Lunch, dinner	Dinner	
	FINAL Day of Travel – Return:	Prior to Noon	12:00 noon to 5:59 pm	6:00 pm and after	
	Meal Allowance	Breakfast	Breakfast, lunch	Breakfast, lunch, dinner	
Rented Vehicles: OSU will only reimburse vehicle rental rates for compact and economy cars and their equivalent green class. OSU will reimburse for liability insurance issued through the vehicle rental company. Other classes of vehicles may be rented for circumstances that are approved in advance by the OSU representative for reasons that include space requirements or inclement weather conditions. Receipts are required.					
Airfare: OSU will only reimburse actual economy rate airfare, plus mandatory taxes and fees. Receipts are required.					
Ground Transportation: Taxicab, train (coach or business class only), and airport shuttle fees will be reimbursed. Receipts are required if over \$75 per item.					
Incidental Expenses: <i>Incidental expenses are combined with the meal per diem rate and will not be separately reimbursed.</i> Incidental expenses include, but are not limited to, expenses for laundry, cleaning and pressing of clothing, and fees and gratuities for services, such as for waiters, taxi drivers, and baggage handlers.					
Miscellaneous Expenses: The miscellaneous expenses that can be reimbursed include: fuel expenses for a rented vehicle, parking, tolls, lodging taxes, and checked baggage for up to 2 standard-weight bags. Other miscellaneous expenses can be reimbursed only if approved in advance by the OSU representative. All miscellaneous expenses must be itemized. Receipts are required if over \$25 per item.					
Unallowed Expenses: Expenses for laundry, cleaning and pressing of clothing, and fees and gratuities for services (e.g. waiters, taxi drivers, and baggage handlers) are not reimbursable.					
Hosting Expenses: If the Statement of work in your contract authorizes reimbursement for hosting expenses, all expenses must be authorized prior to incurring costs. Contact OSU Business Affairs for allowable expenses.					

EXHIBIT B

RETAINER CONTRACT SUPPLEMENT OSU RETAINER CONTRACT FOR PROFESSIONAL CONSULTANTS

Supplement No.
Project Name
Owner's Authorized
Representative

This Retainer Contract Supplement dated (the "Supplement") is entered into between:

"Consultant":

Federal Tax ID No.

and "Owner":

OREGON STATE UNIVERSITY

(each a "Party" and collectively, the "Parties") pursuant to that certain Retainer Contract entered into between the Parties terminating on October 31, 2017 (the "Retainer Contract"). Capitalized terms have the meaning defined in the Retainer Contract unless further defined in this Supplement.

1. DESCRIPTION OF THE PROJECT: The project to which this Supplement pertains is described as follows: (the "Project").

2. SERVICES TO BE PERFORMED: The Consultant shall perform the following services on the Project: (the "Services"). Contractor shall perform its Services according to the terms and conditions of this Supplement, the Retainer Contract, and Attachment 1, which are each incorporated herein by this reference.

All design Services will be performed in compliance with the Owner's Design Criteria in effect as of the date of this Supplement.

The Project description, scope of Services, and the fee breakdown are outlined in the proposal dated , and signed by (attached hereto and incorporated by this reference as "Exhibit 1").

3. SCHEDULE. Consultant shall perform its Services according to the schedule developed in cooperation with the Owner in order to meet Project needs: (the "Schedule").

4. INCORPORATED DOCUMENTS. This Supplement, the Retainer Contract and Exhibit 1 are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the

following descending order of precedence: 1) this Supplement excluding the Retainer Contract and Exhibit 1, 2) the Retainer Contract excluding this Supplement and Exhibit 1, and 3) Exhibit 1 excluding this Supplement and Retainer Contract.

5. COMPENSATION [Owner will choose A/B].

[A] Owner shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a Time and Materials basis in accordance with the Schedule of Charges and the provisions of this Supplement.

The Maximum Compensation for the Consultant's Services including the Reimbursable Expenses is \$. This amount includes \$ for Services and \$ for Reimbursable Expenses.

[B] Owner shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a Fixed Price basis in accordance with the Retainer Contract and the provisions of this Supplement.

The Maximum Compensation for the Consultant's Services including the Reimbursable Expenses is \$. This amount includes \$ for Services and \$ for Reimbursable Expenses.

Total Maximum Compensation, including the cost of any Additional Services that may the Parties may agree to through subsequent execution of a Supplement Amendment, shall not exceed the greater of \$1,000,000 or the maximum allowable under OSU Standard 580-063-0025.

6. TERM. This Supplement is effective on the date it has been signed by every Party hereto and all required approvals have been obtained (the "Effective Date"). No Services shall be performed, or payment made, prior to the Effective Date.

Unless earlier terminated or suspended, Consultant shall perform its obligations according to this Supplement until Consultant's Services are completed and accepted by Owner. Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Consultant's Services, including completion of all warranty work. The Parties expressly agree that they may execute a Supplement Amendment and extend the date which Consultant's Services may be completed, which may include a date beyond the Term of the Retainer Contract.

Termination or suspension does not extinguish or prejudice Owner's right to enforce the Supplement with respect to any breach by the Consultant that has not been cured.

7. RESERVED.

8. INSURANCE REQUIREMENTS.

Prior to the effectiveness of this Supplement, Consultant shall provide Owner with Certificates of insurance maintained in full force and effect at Consultant's expense. Further, each insurance for which a Certificate is required shall be maintained for the duration of the Term of this Supplement

including any extensions or Supplement Amendments that may extend the Term of this Supplement. Insurance purchased by Consultant must be consistent with the following:

A. **Workers' Compensation** – The Consultant, its Sub-consultants, if any, and any other employers providing work, labor or materials under the Supplement are subject employers under the Oregon Workers' Compensation Law and shall either comply with ORS 656.017, which requires such employers to provide Oregon Workers' Compensation coverage for all their subject workers working in Oregon or shall comply with the exemption in ORS 656.126.

B. **Commercial General Liability** – The Consultant shall obtain, at the Consultant's expense, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Owner. This insurance shall include personal injury, products and completed operations, contractual liability, premises liability, and coverage for the indemnity provided under the Retainer Contract and is made on an occurrence basis. Consultant shall provide proof of insurance of not less than the amounts indicated by the checked box below:

- \$1,000,000 per occurrence and \$2,000,000 in aggregate
 \$ per occurrence and \$ in aggregate (may not be less than \$500,000 per occurrence and \$1,000,000 in aggregate).

C. **Automobile Liability** – The Consultant shall obtain, at the Consultant's expense, Automobile Liability Insurance covering all owned, leased, or hired vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall provide proof of insurance of not less than \$1,000,000 combined single limit.

D. **Professional Liability/Errors & Omissions** – The Consultant shall provide Owner with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by negligent error, omission, or any act in regard to the Project, its plans, drawings, specifications 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. The Consultant shall provide proof of insurance of not less than the amounts indicated by the checked box below:

- \$1,000,000 per occurrence and \$2,000,000 in aggregate
 \$ per occurrence and \$ in aggregate (may not be less than \$500,000 per occurrence and \$1,000,000 in aggregate).

9. NOTICE. Notices specific to the Services described on this Supplement will be given in writing by personal delivery, email, or mail (postage prepaid) to the Consultant or Owner at the address or email set forth above. 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.

10. OTHER TERMS. Except as specifically modified by the Supplement, all terms of the Retainer Contract remain unchanged and apply to the Project and the Services.

11. EXECUTION AND COUNTERPARTS. The Supplement may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

[Owner may Choose to omit]12. PREVAILING WAGE RATES. Consultant will be compensated for Services subject to prevailing wage rate law (“PWR Law”) according to the following formula: the hourly rate specified in the Consultant's Schedule of Charges for that specific Service, plus the difference between the prevailing wage rate for that Service at the time this Supplement is executed and the prevailing wage rate for that Service at the time that all Proposals to perform the Services set forth on this Supplement were due.

All prevailing wage rates used to calculate Consultant’s compensation in this Section 11 will use the BOLI wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, _____, 20____, as amended _____, 20____ **[delete “as amended _____, 20____” if there have been no amendments since last rate change]**, which can be downloaded at the following web address:

[http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_book.shtml]

The Work will take place in _____ County, Oregon.

All other Services under this Supplement will be compensated at rates specified in the Schedule of Charges.

[Owner may Choose to omit]13. KEY PERSON(S). Consultant’s personnel identified below will be considered Key Person(s) and will not be replaced during the Project to which this Supplement pertains without the written permission of Owner:

Further, Consultant agrees to the following:

- A. Upon Owner request, Consultant shall timely provide such additional information as Owner may reasonably request or require on the professional qualifications and experience of any Key Person.
- B. Any attempted substitution or replacement of a Key Person by the Consultant, without the written consent of Owner (which shall not be unreasonably withheld), will constitute a material breach of this Supplement. If Consultant intends to substitute personnel, a request must be given to Owner at least 30 days prior to the intended time of substitution. When replacements have been approved by Owner, Consultant shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the Project concurrently.
- C. Should the Key Person(s) become unavailable to the Consultant at any time, Consultant shall replace the Key Person with personnel or Sub-Consultants having substantially

equivalent or better qualifications than the Key Person being replaced, as reasonably approved by Owner.

- D. Consultant shall remove any Key Person from the Project at the written, reasonable request of Owner. Such request shall provide Consultant a reasonable period of time to find a suitable replacement.

Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Supplement.

IN WITNESS HEREOF, the Parties have duly executed this Supplement on the dates indicated below.

		OREGON STATE UNIVERSITY, Owner
, Consultant		
By _____	By _____	
Title _____	Title _____	
Date _____	Date _____	

EXHIBIT C

RETAINER CONTRACT SUPPLEMENT AMENDMENT OSU RETAINER CONTRACT FOR PROFESSIONAL CONSULTANTS

Supplement No.
Amendment No.
Project Name

This Supplement Amendment, dated (‘‘Supplement Amendment’’) is entered into between:

‘‘Consultant’’:

Federal Tax ID No.

‘‘Owner’’:

OREGON STATE UNIVERSITY

(each a ‘‘Party’’ and collectively, the ‘‘Parties’’) and amends the Retainer Contract Supplement dated between the Parties (the ‘‘Supplement’’). This Supplement Amendment incorporates the terms and conditions of the Retainer Contract between the Parties ending on October 31, 2017 (the ‘‘Retainer Contract’’). Capitalized terms have the meaning defined in the Retainer Contract or the Supplement unless further defined herein. The Parties agree as follows:

1. ADDITIONAL SERVICES: The Consultant shall perform the following services for Owner, in addition to the Services set forth in the Supplement: (‘‘Additional Services’’). Consultant shall perform its Additional Services according to the terms and conditions of this Supplement Amendment, the Supplement, the Retainer Contract, and Attachment 1, which are each incorporated herein by this reference.

Except as expressly altered in this Supplement Amendment, all other terms and conditions of the Retainer Contract and Supplement remain in full force and effect.

2. SCHEDULE. The Consultant shall perform the Additional Services according to the following schedule: (the ‘‘Schedule’’).

3. COMPENSATION. Owner shall compensate Consultant for Additional Services in accordance with the Retainer Contract and the Supplement on a Time and Materials basis or Fixed Price basis.

The Maximum Compensation for the Consultant’s performance of the Additional Services is \$ which includes \$ for Services and \$ for Reimbursable Expenses. This Amendment

increases the Maximum Compensation under the Supplement from \$ to \$. The cost of the Services under this Supplement, even if this Supplement is later amended, must not exceed the greater of \$1,000,000 or the maximum allowable under OSU Standard 580-063-0030.

4. INCORPORATED DOCUMENTS. The Retainer Contract and its associated documents are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement Amendment excluding the Supplement, Retainer Contract, and Exhibit 1, 2) the Supplement excluding this Supplement Amendment, the Retainer Contract, and Exhibit 1, and finally, 3) the Retainer Contract excluding this Supplement Amendment, the Supplement, and Exhibit 1, and 4) Exhibit 1, excluding this Supplement Amendment, the Supplement and the Retainer Contract.

5. TERM. The Supplement Amendment is effective on the date it has been signed by every Party hereto and all required approvals have been obtained (the “Effective Date”). No Services may be performed, or payment made, prior to the Effective Date.

Unless earlier terminated or extended, Consultant shall perform its obligations according to this Supplement Amendment until Consultant’s Services and Additional Services are completed and accepted by Owner. Further, Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Services, including completion of all warranty work. The Parties expressly agree that they may amend this Supplement Amendment through execution of another Supplement Amendment and extend the termination date of this Supplement Amendment.

Termination or suspension does not extinguish or prejudice Owner’s right to enforce this Supplement Amendment with respect to any breach by the Consultant that has not been cured.

6. EXECUTION AND COUNTERPARTS. This Supplement Amendment may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

The Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract and the Supplement remain true and correct as of the Effective Date of this Amendment.

IN WITNESS HEREOF, the Parties have duly executed this Amendment on the dates indicated below.

_____, Consultant

OREGON STATE UNIVERSITY, Owner

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT D

PARTICIPATING AGENCY RETAINER CONTRACT SUPPLEMENT AMENDMENT OSU RETAINER CONTRACT FOR PROFESSIONAL CONSULTANTS

Supplement No.
Supplement
Amendment No.
Project Name

This Supplement Amendment, dated (‘‘Supplement Amendment’’) is entered into between:

‘‘Consultant’’:

Federal Tax ID No.

‘‘Participating Agency’’:

(each a ‘‘Party’’ and collectively, the ‘‘Parties’’) and amends the Retainer Contract Supplement dated between the Parties (the ‘‘Supplement’’). This Supplement Amendment incorporates the terms and conditions of the Retainer Contract between the Parties ending on October 31, 2015 (the ‘‘Retainer Contract’’). Capitalized terms have the meaning defined in the Retainer Contract or the Supplement unless further defined herein. The Parties agree as follows:

1. ADDITIONAL SERVICES: The Consultant shall perform the following services for Participating Agency, in addition to the Services set forth in the Supplement: (‘‘Additional Services’’). Consultant shall perform its Additional Services according to the terms and conditions of this Supplement Amendment, the Supplement, the Retainer Contract, and Attachment 1, which are each incorporated herein by this reference.

Except as expressly altered in this Supplement Amendment, all other terms and conditions of the Retainer Contract and Supplement remain in full force and effect.

2. SCHEDULE. The Consultant shall perform the Additional Services according to the following schedule: (the ‘‘Schedule’’).

3. COMPENSATION. Participating Agency shall compensate Consultant for Additional Services in accordance with the Retainer Contract and the Supplement on a Time and

Materials basis or Fixed Price basis.

The Maximum Compensation for the Consultant's performance of the Additional Services is \$ _____ which includes \$ _____ for Services and \$ _____ for Reimbursable Expenses. This Amendment increases the Maximum Compensation under the Supplement from \$ _____ to \$ _____. The cost of the Services under this Supplement, even if this Supplement is later amended, must not exceed the greater of \$1,000,000 or the maximum allowable under OSU Standard 580-063-0030.

4. PARTICIPATING AGENCY PAYMENT. The Participating Agency shall be solely responsible for payment to Consultant for Services performed as set forth in this Supplement Amendment. In the event a dispute arises between the Participating Agency and the Consultant, the Participating Agency and Consultant agree that Oregon State University is not a party to the dispute and will not be included in the dispute in any way, unless required by law. Participating Agency and Consultant further agree that Oregon State University is not a party to this Supplement Amendment and will not be responsible for ensuring that the Participating Agency follows applicable procurement procedures.

5. INCORPORATED DOCUMENTS. The Retainer Contract and its associated documents are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement Amendment excluding the Supplement, Retainer Contract, and Exhibit 1, 2) the Supplement excluding this Supplement Amendment, the Retainer Contract, and Exhibit 1, and finally, 3) the Retainer Contract excluding this Supplement Amendment, the Supplement, and Exhibit 1, and 4) Exhibit 1, excluding this Supplement Amendment, the Supplement and the Retainer Contract.

6. TERM. The Supplement Amendment is effective on the date it has been signed by every Party hereto and all required approvals have been obtained (the "Effective Date"). No Services may be performed, or payment made, prior to the Effective Date.

Unless earlier terminated or extended, Consultant shall perform its obligations according to this Supplement Amendment until Consultant's Services and Additional Services are completed and accepted by Participating Agency. Further, Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Services, including completion of all warranty work. The Parties expressly agree that they may amend this Supplement Amendment through execution of another Supplement Amendment and extend the termination date of this Supplement Amendment.

Termination or suspension does not extinguish or prejudice Participating Agency's right to enforce this Supplement Amendment with respect to any breach by the Consultant that has not been cured.

7. EXECUTION AND COUNTERPARTS. This Supplement Amendment may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

The Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract and the Supplement remain true and correct as of the Effective Date of this Amendment.

IN WITNESS HEREOF, the Parties have duly executed this Amendment on the dates indicated below.

, Consultant

_____, Participating
Agency

By: Sample _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

SAMPLE

EXHIBIT E

PARTICIPATING AGENCY RETAINER CONTRACT SUPPLEMENT OSU RETAINER CONTRACT FOR PROFESSIONAL CONSULTANTS

Supplement No.
Project Name
Participating Agency's
Project Manager

This Retainer Contract Supplement dated (the "Supplement") is entered into between:
"Consultant":

Federal Tax ID No.

and "Participating
Agency":

(each a "Party" and collectively, the "Parties") pursuant to that certain Retainer Contract entered into between the Parties terminating on October 31, 2017 (the "Retainer Contract"). Capitalized terms have the meaning defined in the Retainer Contract unless further defined in this Supplement.

1. DESCRIPTION OF THE PROJECT: The project to which this Supplement pertains is described as follows: (the "Project").

2. SERVICES TO BE PERFORMED: The Consultant shall perform the following services on the Project: (the "Services"). Contractor shall perform its Services according to the terms and conditions of this Supplement, the Retainer Contract, and Attachment 1, which are each incorporated herein by this reference.

All design Services will be performed in compliance with the Participating Agency's Design Criteria in effect as of the date of this Supplement.

The Project description, scope of Services, and the fee breakdown are outlined in the proposal dated , and signed by (attached hereto and incorporated by this reference as "Exhibit 1").

3. SCHEDULE. Consultant shall perform its Services according to the schedule developed in cooperation with the Participating Agency in order to meet Project needs: (the "Schedule").

4. INCORPORATED DOCUMENTS. This Supplement, the Retainer Contract and Exhibit 1 are all intended to be complementary. However, any conflicts or discrepancies will be resolved utilizing the following descending order of precedence: 1) this Supplement excluding the Retainer Contract and Exhibit 1, 2) the Retainer Contract excluding this Supplement and Exhibit 1, and 3) Exhibit 1 excluding the Retainer Contract and this Supplement.

5. COMPENSATION [PA will choose A/B].

[A] Participating Agency shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a Time and Materials basis in accordance with the Schedule of Charges and the provisions of this Supplement.

The Maximum Compensation for the Consultant's Services including the Reimbursable Expenses is \$. This amount includes \$ for Services and \$ for Reimbursable Expenses.

[B] Participating Agency shall compensate Consultant for Services and Reimbursable Expenses incurred by the Consultant in the performance of the Services on a Fixed Price basis in accordance with the Retainer Contract and the provisions of this Supplement.

The Maximum Compensation for the Consultant's Services including the Reimbursable Expenses is \$. This amount includes \$ for Services and \$ for Reimbursable Expenses.

Total Maximum Compensation, including the cost of any Additional Services that may the Parties may agree to through subsequent execution of a Supplement Amendment, may not exceed the greater of \$1,000,000 or the maximum allowable under OAR 580-063-0025.

6. TERM. This Supplement is effective on the date it has been signed by every Party hereto and all required approvals have been obtained (the "Effective Date"). No Services shall be performed, or payment made, prior to the Effective Date.

Unless earlier terminated or suspended, Consultant shall perform its obligations according to this Supplement until Consultant's Services are completed and accepted by Participating Agency. Consultant hereby agrees that the Services set forth in this Supplement may continue beyond the Term of the Retainer Contract and will be performed through final completion of Consultant's Services, including completion of all warranty work. The Parties expressly agree that they may execute a Supplement Amendment and extend the date which Consultant's Services may be completed, which may include a date beyond the Term of the Retainer Contract.

Termination or suspension does not extinguish or prejudice Participating Agency's right to enforce the Supplement with respect to any breach by the Consultant that has not been cured.

7. PARTICIPATING AGENCY PAYMENT. The Participating Agency shall be solely responsible for payment to Consultant for Services performed as set forth in this Supplement. In the event a dispute arises between the Participating Agency and the Consultant, the Participating Agency and Consultant agree that Oregon State University is not a party to the dispute and will not be included in the dispute in any way, unless required by law. Participating Agency and Consultant further agree that Oregon State University is not a party to this Supplement and shall

not be responsible for ensuring that the Participating Agency follows applicable procurement procedures.

8. INSURANCE REQUIREMENTS.

Prior to the effectiveness of this Supplement, Consultant shall provide Participating Agency with Certificates of insurance maintained in full force and effect at Consultant's expense. Further, each insurance for which a Certificate is required shall be maintained for the duration of the Term of this Supplement including any extensions or Supplement Amendments that may extend the Term of this Supplement. Insurance purchased by Consultant must be consistent with the following:

- E. **Workers' Compensation** – The Consultant, its Sub-consultants, if any, and any other employers providing work, labor or materials under the Supplement are subject employers under the Oregon Workers' Compensation Law and shall either comply with ORS 656.017, which requires such employers to provide Oregon Workers' Compensation coverage for all their subject workers working in Oregon or shall comply with the exemption in ORS 656.126.
- F. **Commercial General Liability** – The Consultant shall obtain, at the Consultant's expense, Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to Participating Agency. This insurance shall include personal injury, products and completed operations, contractual liability, premises liability, and coverage for the indemnity provided under the Retainer Contract and is made on an occurrence basis. Consultant shall provide proof of insurance of not less than the amounts indicated by the checked box below:
- \$1,000,000 per occurrence and \$2,000,000 in aggregate
 - \$ per occurrence and \$ in aggregate (may not be less than \$500,000 per occurrence and \$1,000,000 in aggregate).
- G. **Automobile Liability** – The Consultant shall obtain, at the Consultant's expense, Automobile Liability Insurance covering all owned, leased, or hired vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance. Consultant shall provide proof of insurance of not less than \$1,000,000 combined single limit.
- H. **Professional Liability/Errors & Omissions** – The Consultant shall provide Participating Agency with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by negligent error, omission, or any act in regard to the Project, its plans, drawings, specifications 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. The Consultant shall provide proof of insurance of not less than the amounts indicated by the checked box below:
- \$1,000,000 per occurrence and \$2,000,000 in aggregate
 - \$ per occurrence and \$ in aggregate (may not be less than \$500,000 per occurrence and \$1,000,000 in aggregate).

10. NOTICE. Notices specific to the Services described on this Supplement will be given in writing by personal delivery, email, or mail (postage prepaid) to the Consultant or Participating Agency at the address or email set forth above. 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 Participating Agency, email transmission must be confirmed by telephone notice to Participating Agency and will be deemed to be given upon such confirmation. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

11. OTHER TERMS. Except as specifically modified by the Supplement, all terms of the Retainer Contract remain unchanged and apply to the Project and the Services.

12. EXECUTION AND COUNTERPARTS. The Supplement may be executed in several counterparts, each of which will be an original, all of which will constitute the same instrument.

[PA may Choose to omit]13. PREVAILING WAGE RATES. Consultant will be compensated for Services subject to prevailing wage rate law (“PWR Law”) according to the following formula: the hourly rate specified in the Consultant’s Schedule of Charges for that specific Service, plus the difference between the prevailing wage rate for that Service at the time this Supplement is executed and the prevailing wage rate for that Service at the time that all Proposals to perform the Services set forth on this Supplement were due.

All prevailing wage rates used to calculate Consultant’s compensation in this Section 11 will use the BOLI wage rates and requirements set forth in the following BOLI booklet (and any listed amendments to that booklet), which are incorporated herein by reference:

PREVAILING WAGE RATES for Public Works Contracts in Oregon, _____, 20____, as amended _____, 20____ **[delete “as amended _____, 20____” if there have been no amendments since last rate change]**, which can be downloaded at the following web address:

[http://www.boli.state.or.us/BOLI/WHDPWR/pwr_book.shtml]

The Work will take place in _____ County, Oregon.

All other Services under this Supplement will be compensated at rates specified in the Schedule of Charges.

[PA may Choose to omit]14. KEY PERSON(S). Consultant’s personnel identified below will be considered Key Person(s) and will not be replaced during the Project to which this Supplement pertains without the written permission of Participating Agency:

Further, Consultant agrees to the following:

- E. Upon Participating Agency request, Consultant shall timely provide such additional information as Participating Agency may reasonably request or require on the professional qualifications and experience of any Key Person.

- F. Any attempted substitution or replacement of a Key Person by the Consultant, without the written consent of Participating Agency (which shall not be unreasonably withheld), will constitute a material breach of this Supplement. If Consultant intends to substitute personnel, a request must be given to Participating Agency at least 30 days prior to the intended time of substitution. When replacements have been approved by Participating Agency, Consultant shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the Project concurrently.
- G. Should the Key Person(s) become unavailable to the Consultant at any time, Consultant shall replace the Key Person with personnel or Sub-Consultants having substantially equivalent or better qualifications than the Key Person being replaced, as reasonably approved by Participating Agency.
- H. Consultant shall remove any Key Person from the Project at the written, reasonable request of Participating Agency. Such request shall provide Consultant a reasonable period of time to find a suitable replacement.

Consultant hereby confirms and certifies that the representations, warranties and certifications contained in the Retainer Contract remain true and correct as of the Effective Date of this Supplement.

IN WITNESS HEREOF, the Parties have duly executed this Supplement on the dates indicated below.

_____, Consultant _____, Participating Agency

By _____	By _____
Title _____	Title _____
Date _____	Date _____