

**APPENDIX 4.1**

**SAMPLE OUS RETAINER CONTRACT SUPPLEMENT  
PURSUANT TO RETAINER CONTRACT FOR  
PROFESSIONAL CONSULTING SERVICES**

Supplement No.: \_\_\_\_\_

Project Name: PSU Student Recreation Space Planning and Feasibility Study

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

the "Consultant": \_\_\_\_\_

and "Owner": The State of Oregon, acting by and through  
the State Board of Higher Education, on behalf of  
Portland State University  
Contracting and Procurement Services  
PO Box 751, Mailcode FAST-CAPS  
Portland, OR 97207

(collectively, the "**Parties**") pursuant to that certain Retainer Contract entered into between the Parties on \_\_\_\_\_ (the "**Retainer Contract**"). All defined terms not defined herein shall be defined per the terms of the Retainer Contract. For good and valuable consideration, the Parties agree as follows:

**1. DESCRIPTION OF THE PROJECT:** The project to which this Supplement pertains is described as follows: Architectural Services for the Space Planning and Feasibility Study at the Academic and Student Recreation Center located at 1800 SW Sixth Avenue, Portland, Oregon (the "**Project**").

**2. SERVICES TO BE PERFORMED:** The Consultant hereby agrees to perform the following services on the Project:

At minimum, the scope of services are to include a kick-off meeting, review of existing conditions, needs assessment and programming plan, conceptual design studies, refinement of a preferred recommendation, and submittal of the final study (the "**Services**").

The Consultant agrees to perform the Services according to the terms and conditions of this Supplement and the Retainer Contract, and the Parties agree that the Retainer Contract is incorporated into this Supplement, as if fully set forth herein.

The Project description, scope of the Services, and the fee breakdown are outlined in the proposal dated \_\_\_\_\_, signed by \_\_\_\_\_ (the "**Proposal**"). The Proposal is attached to this Supplement as **Exhibit A** and is incorporated herein by this reference.

The Consultant agrees to perform the Services according to the schedule developed in cooperation with the Owner in order to meet Project needs.

**3. SCHEDULE.** Consultant shall perform its Services according to the schedule developed in cooperation with the Owner in order to meet Project needs: The final completion date shall be **December 20, 2013** (the "Schedule").

**4. INCORPORATED DOCUMENTS.** The Supplement, the Retainer Contract, the Request for Proposals and the Proposal 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 the Proposal; 2) the Request for Proposals; 3) the Proposal; and 4) the Retainer Contract.

**5. COMPENSATION.** The Owner will compensate the Consultant for Services and reimburse the Consultant for direct expenses incurred by the Consultant in the performance of the Services (the "Reimbursable Expenses") on a "time and materials" basis in accordance with the Retainer Contract and Exhibit A to this Supplement which is attached hereto and incorporated herein by reference and in accordance with the provisions below:

Reimbursable expenses for the project include actual expenditures made by the Consultant and Consultant's consultants, and will be reimbursed at cost, except travel expenses. Charges for travel expenses will be reimbursed at cost, but not in excess of the rate allowed State of Oregon employees. Travel expenses are only reimbursable when services are rendered in excess of 25 miles from Consultant's office. As of the date of this agreement, these rates are as follows:

Air fare (coach class only) and car rental	At cost
Personal car mileage	\$ 0.565 per mile
Lodging	\$111.00 per night plus tax
Meals (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$13.00
Lunch	\$13.00
Dinner	\$26.00
Printing, photography, long distance telephone charges and other direct expenses	At cost

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures. Consultant will be responsible for any parking expenses.

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

Total Maximum Compensation, including the cost of any Additional Services that 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 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 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. TAX COMPLIANCE CERTIFICATION.** The Consultant hereby affirms, under penalty of perjury as provided in ORS 305.385(6), that, to the best of the Consultant's knowledge, the Consultant is not in violation of any of the tax laws described in ORS 305.380(4). For purposes of this certification, "tax laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 321 and 323; the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Oregon Department of Revenue under ORS 305.620.

**8. INSURANCE REQUIREMENTS.**

- 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 \$1000000.00 per occurrence and \$2000000.00 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 \$1000000.00 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 \$1000000.00 per occurrence and \$2000000.00 in aggregate (may not be less than \$500,000 per occurrence and \$1,000,000 in aggregate).

**All insurance shall be maintained in full force and effect during the term of the Supplement.**

**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.

**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, December 31, 1969, which can be downloaded at the following web address:

[[http://www.boli.state.or.us/BOLI/WHDPWR/pwr\\_book.shtml](http://www.boli.state.or.us/BOLI/WHDPWR/pwr_book.shtml)]

The work will take place in Multnomah County, Oregon.

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

**13. KEY PERSONS.** 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.

**The 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

STATE OF OREGON ACTING BY AND  
THROUGH THE STATE BOARD OF HIGHER  
EDUCATION, on behalf of Portland State  
University

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**SCHEDULE OF CHARGES**

**Key Personnel**

Principal: \_\_\_\_\_ \$ \_\_/hr  
Senior Architectural Designer: \_\_\_\_\_ \$ \_\_/hr  
Architectural Designer \_\_\_\_\_ \$ \_\_/hr  
Urban Designer: \_\_\_\_\_ \$ \_\_/hr  
Sr. Project Manager: \_\_\_\_\_ \$ \_\_/hr  
Project Manager: \_\_\_\_\_ \$ \_\_/hr  
Production Personnel/Project Architect: \_\_\_\_\_ \$ \_\_/hr  
Senior Interior Designer: \_\_\_\_\_ \$ \_\_/hr  
Interior Designer: \_\_\_\_\_ \$ \_\_/hr  
Clerical: \_\_\_\_\_ \$ \_\_/hr

**CONSULTANTS:**

\_\_\_\_\_ CONSULTANT #1  
\_\_\_\_\_ \$ \_\_/hr  
\_\_\_\_\_ \$ \_\_/hr  
\_\_\_\_\_ CONSULTANT #2, #3, ETC.  
\_\_\_\_\_ \$ \_\_/hr  
\_\_\_\_\_ \$ \_\_/hr