



# Oregon State University

## OSU-CASCADES MASTER ARCHITECT

### RFP #2023-009996

### ADDENDUM NO. 2

ISSUE DATE: December 8, 2022

#### CONTRACT ADMINISTRATOR:

Brooke Davison, Construction Contracts Officer

**Construction Contracts Administration**

**Email:** [ConstructionContracts@oregonstate.edu](mailto:ConstructionContracts@oregonstate.edu)

This Addendum is hereby issued to inform you of the following revisions and or clarifications to the above-referenced RFP and/or the Contract Documents for the Project, to the extent they have been modified herein. Any conflict or inconsistency between this Addendum and the Solicitation Document or any previous addenda will be resolved in favor of this Addendum. Proposals shall conform to this Addendum. Unless specifically changed by this Addendum, all other requirements, terms and conditions of the Solicitation Document and or Contract Documents, and any previous addenda, remain unchanged and can be modified only in writing by OSU. The following changes are hereby made:

#### MODIFICATIONS:

- Item 1 Section 9.0 EXHIBITS – Exhibit 1 Sample Master Architect Agreement is hereby attached.
- Item 2 Section 7.8.5 Workforce and Project Diversity Plan – REVISE section number to “7.8.6”. In addition, REVISE subparagraph numbering accordingly.

#### QUESTIONS:

- Item 2 **Q:** Is the section titled "7.10.2 compensation proposal" to be included in the proposers response? Or is this only required by those firms that are shortlisted?  
**A:** The Compensation Proposals required in Section 7.10.2 are to be submitted by the finalists only.
- Item 3 **Q:** Please clarify if the "Compensation Proposal" is the same as the "Schedule of Charges" noted within section "7.10.2 COMPENSATION PROPOSAL". Are proposers to included anticipated roles and hourly rates in our response? Or is this only to be provided from short listed firms in step 2 of the selection process?  
**A:** For the purposes of this RFP, the terms “Compensation Proposal” and “Schedule of Charges” are synonymous with one another. The Schedule of Charges, i.e. Compensation Proposals are to be submitted by the finalists only.

- Item 4 **Q:** In section titled “1.4 Summary of Work” it states “OSU is seeking the MA at this time and expects the selected team to find suitable sub-consultants pursuant to each of the individual scopes of work.” Please clarify if sub-consultants are to be suggested or included in proposals.  
**A:** Confirmed, no sub-consultants are to be suggested or included in the RFP Response.
- Item 5 **Q:** Per section “7.10.3 Reference Checks”, are all proposers to include 3 references as part of our proposal response? And is this counted towards the 20 page max?  
**A:** **ALL PROPOSERS**, not just finalists, are required to submit references required by Section 7.10.3. The references will not be counted toward the page count.
- Item 6 **Q:** It appears that in section titled “7.8.5 Workforce and Project Diversity Plan” OSU-C is asking for a plan for subcontracting and suppliers as if this is a construction project. As this is a 5-10 year master architect agreement for a range of services, could you please clarify what kind of plan and schedule of events you are asking for on this particular effort?  
**A:** OSU is requesting information regarding your firms’ typical outreach goals, firm make up, certifications, if any, other actions your firm take to promote diversity in both your workforce and sub-consultant community. In addition, OSU is asking you to provide your current program or plan for promoting diversity in your sub-consultant selections for this project.

END OF ADDENDUM NO. 2

**DESIGN PROFESSIONAL'S AGREEMENT  
OSU-CASCADES MASTER ARCHITECT  
CONTRACT NUMBER  
OREGON STATE UNIVERSITY**

This DESIGN PROFESSIONAL'S AGREEMENT (the "Agreement") is made between

the "Design Professional": Design Professional Name  
Design Professional Address  
Design Professional Address

and the "Owner": Oregon State University  
Construction Contracts Administration  
644 SW 13<sup>th</sup> St.  
Corvallis OR 97333

(The **Design Professional** and the **Owner** are referred to collectively as the "**Parties**" and individually as a "**Party**")

**WHEREAS**, the **Owner** desires to have the assistance of the **Design Professional** to provide Master Architect Services for Oregon State University Cascades at Bend, Oregon; and

**WHEREAS**, the **Design Professional**, with the aid of certain consultants (the "**Consultants**"), is willing and able to perform such **Services** in connection with the **Project**;

**NOW, THEREFORE**, the **Owner** and the **Design Professional**, for the considerations hereinafter named, agree as follows:

**I. RELATIONSHIP BETWEEN THE PARTIES**

**A. Project Background.** The **Design Professional** will support the OSU-Cascades (OSU-C) campus in a number of short term and long-term efforts that will help shape the campus character, look, and feel. Periodically, scopes of work will require bringing on subconsultants with specific knowledge (i.e. Mechanical, Electrical, Plumbing, Landscape, Civil etc.).

**B. Scope of the Project.** The scope of this **Agreement** could generally include the following: Support OSU-C with efforts including but not limited to:

1. Campus Standards document that largely references the OSU (Corvallis) Design and Construction Standards with deviations specific to OSU-C for items such as:
  - a. Mechanical connections to our campus heating and cooling systems.
  - b. Landscape guidance that develops the high desert campus along the sustainable net-zero water plan.
  - c. Standard storm water management and erosion control details.
  - d. Guidance and documentation of elements that affect the campus character such as lighting approaches, interior and exterior material guidance, and color pallets recommended for different types of buildings.
2. Periodic review of select design packages for compliance with the developed standards.

3. Long Range Development Plan (LRDP) updates and on-going maintenance including diagrams and content.
4. City of Bend Master Plan update and re-submission, as it may relate to OSU-Cascades.
5. Periodic development of campus and building renderings and documentation to support internal planning and external outreach.
6. Periodic support of site programming and space management including but not limited to workshops and programming sessions with building occupants, faculty, staff, and students.
7. Periodic development of bridging documents in support of future design build solicitations for future OSU-C projects. In the event the Design Professional chooses to pursue any project for which they have developed the bridging documents, the Owner requires the Design Professional to have all work product(s) for the given project completed and delivered to the Owner prior to the opening date of the relevant Solicitation.

**C. Services.** Owner may request **Services** of the Design Professional for specific services (each, a "**Project**") throughout the **Term** (as defined below) of the **Agreement**. Upon receipt of such a request (each such request, a "**Project Request**"), **Design Professional** may respond to the **Project Request** for specific **Services**, as defined in the **Project Request**. For every response to a **Project Request**, **Design Professional** shall coordinate with the **Owner**, attend site visit (if required by **Owner**), and provide a maximum non-to-exceed compensation (in accordance with the **Project Request** and this **Agreement**) proposal for the **Project** within a timeframe indicated by the **Owner**. All **Project Request** responses provided under this **Agreement** must contain a narrative identifying scope of work, cost, and contain a detailed cost breakdown using the Schedule of Charges described in **Section III**, showing cost per design phase (if applicable), reimbursable expenses and **Consultant** costs. In addition, **Design Professional** shall provide **Owner** with **Consultant** proposals when applicable.

Upon **Owner's** election to award a **Project** to **Design Professional**, the scope and cost of the **Services** will be specified in an **Owner** issued written **Agreement** amendment (each, a "**Modification**"). The form of such amendments will be substantially similar to the **Modification** form attached as **Exhibit 1**. Each **Modification** when signed by the **Owner** and **Design Professional**, creates a binding obligation between the **Parties** and a notice to proceed may be issued. Each such **Modification** will be incorporated into the **Agreement** upon full execution thereof. From time to time, **Owner** and **Design Professional** may elect to amend an **Modification**, related to the **Services** of the **Modification** (each such amendment to a **Modification**, a "**Modification Amendment**").

**D. No Guarantee Services Will be Requested.** **Design Professional** acknowledges and agrees that, until execution of a **Modification** requiring specific **Services**, **Owner** does not warrant or guarantee that any **Services** will be requested or authorized under this **Agreement**. **Design Professional** shall not undertake any **Services** pursuant to this **Agreement** without a fully executed **Modification**, detailing the specific **Services**. In addition and in its sole discretion, the **Owner** reserves the right to award or not award any **Project** to the **Design Professional**.

**E. Term and Effective Date.** This **Agreement** is effective on the date it has been signed by every **Party** hereto (the "**Effective Date**"). No **Services** shall be performed or payment made prior to the **Effective Date**. The term of this **Agreement** (the "**Term**") commences on the **Effective Date**, and expires five (5) years after the **Effective Date**. The **Owner** has the option, but not the obligation to extend the **Term** of this **Agreement** for an additional five (5) years (in any increment of time) based on

the terms and conditions. In addition to **Owner's** rights provided in **Section XIX** below, **Owner** may terminate this **Agreement** upon **Design Professional's** default under this **Agreement**, any amendment or **Modification** issued hereunder.

1. Each **Modification** may be terminated in accordance with its terms.

**F. Defined Terms.** In addition to any terms defined elsewhere in the body of this **Agreement**, certain terms that are capitalized or set forth in bold letters throughout the **Agreement** are defined as follows:

**"Additional Services"** means additional **Services** performed by the **Design Professional** that are beyond the scope of the **Basic Services** described in **Section VII**, based on hourly rates for **Design Professional** personnel or **Consultants**, plus **Reimbursable Expenses**, in accordance with an agreed-upon schedule of charges, and performed by the **Design Professional** after the **Owner** has given prior written authorization to proceed with performance of the **Services** and the **Parties** have executed an amendment or supplement to this **Agreement**, as more particularly described in **Section VIII** of this **Agreement**.

**"Basic Services"** are those **Services** more particularly described in **Subsections A., B., C., D. and E. of Section VII.** of this **Agreement**.

**"Construction Budget"** means the **Construction Contract** amount, inclusive of **Direct Construction Cost**, general conditions costs and **CM/GC/Contractor** fee.

**"Construction Contract"** is defined as the contract entered into between the **Owner** and the **Contractor** to provide all **Work** necessary to construct the **Project**, including the original base contract for construction of the **Project**, and all exhibits to the contract for construction, any amendments to the **Construction Contract** and all approved change orders.

**"Construction Documents"** means drawings, specifications and other documents setting forth in detail the requirements for construction of the **Project**, as well as the documents pertaining to bidding and contracting for the construction of the **Project**.

**"Contractor"** is defined as the general contractor/construction manager ("**CM/GC**") or the person or entity that is awarded the contract to construct the **Project**.

**"Design and Construction Standards"** means the OSU Construction Standards in effect at the time of the **Effective Date** of this **Agreement**. Current OSU Construction Standards can be found here: <http://fa.oregonstate.edu/cpd-standards>.

**"Direct Construction Cost"** means the cost to the **Owner** of all divisions of construction, including portable equipment only if designed or specified by the **Design Professional** for inclusion in the construction specifications.

**"Diverse Business"** shall include minority business enterprises (MBE), women owned business enterprises (WBE), emerging small businesses (ESB), and service disabled veteran owned

businesses (SDVOB) as described by the State of Oregon ([www.oregon.gov/das/OPM/Pages/cobid.aspx](http://www.oregon.gov/das/OPM/Pages/cobid.aspx)).

**“Diverse Business Report”** means an accurate report by the **Design Professional** to the **Owner** describing Diverse Business participation. The Diverse Business Report shall include the total number of contracts and subcontracts awarded to state certified or self-certified diverse business enterprises with specific diversity category identified and the dollar value of their respective contracts and subcontracts during the course of the **Project**.

**“Punch List”** means a document prepared near the end of the **Construction Administration** phase **Services** listing **Work** not conforming to the **Construction Documents** that the **Contractor** or **CM/GC** must complete prior to final completion under the **Construction Contract**.

**“Reimbursable Expenses”** are those expenses described in **Sub-section B. of Section III** of this **Agreement**.

**“Services”** are all those services to be performed by the **Design Professional** under the terms of this **Agreement**.

**“Work”** is defined as the furnishing of all materials, labor, equipment, transportation, services, and incidentals for the construction of the **Project** by the **Contractor** that is eventually awarded the **Construction Contract** for the **Project**.

**G. Directives for Performance of the Services.**

1. The **Design Professional** may be required to provide, with the assistance of the **Consultants**, the professional **Services** more particularly described in **Section VII** below for any **Project**.
2. The **Design Professional** shall provide a schedule for the performance of the **Services** upon execution of each **Modification**. **Time is of the essence in the performance of this Agreement and all executed Modifications.**
3. Reserved.
4. For all executed Modifications, the **Design Professional** shall fully cooperate with **Owner** to meet all **Project** budgets. **Owner** understands that **Design Professional**, in providing opinions of probable construction cost, has no control over the cost or availability of labor, equipment, or materials, or over market conditions or **Contractor's** method of pricing, and that **Design Professional's** opinions of probable construction costs are made on the basis of **Design Professional's** professional judgment and experience. **Design Professional** makes no warranty, express or implied, that the bids or the negotiated cost of the **Work** will not vary from **Design Professional's** opinion of probable construction cost. In the event the **Design Professional's** opinion of probable construction cost exceeds the budget for the **Project** listed in **Sub-section 3** above by any amount during the design phase, or in the event the bids or negotiated cost of

the **Work** exceed the budget for the **Project** listed earlier in this Section by more than 10 percent, **Design Professional**, upon notice from **Owner** and prior to the award of the **Construction Contract**, agrees to modify, at **Design Professional's** sole expense, **Design Professional's** schematic design documents, design development documents or construction documents (or with **Owners** approval those portions of those documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage). This redesign effort shall constitute **Design Professional's** sole responsibility with respect to its opinions of probable construction cost, and **Design Professional** agrees to cooperate with **Owner** in revising the **Project** scope and quality in order to reduce the opinion of probable construction cost, or the bids or negotiated price, so that they do not exceed the **Project** budget.

5. The **Design Professional** shall provide all **Services** for any **Project** in accordance with the terms and conditions of this **Agreement**. The **Design Professional's** performance of **Services** shall be as a professional Design Professional to the **Owner** to perform the professional services necessary for the **Project**, and to provide the technical documents and supervision required to achieve the **Owner's Project** objectives.

6. In administering this **Agreement**, the **Owner** may employ the services of an independent project manager and other consultants as needed to fulfill the **Owner's** objectives.

7. For every **Modification**, if required by the **Owner**, the **Design Professional** shall designate a project manager, who shall represent the **Design Professional** throughout all phases of the **Project**, and to whom all communication pertaining to the **Project** shall be addressed. The designated project manager shall be experienced and capable in effectively coordinating a multi-disciplined **Consultant** team.

8. The **Design Professional** shall utilize the key personnel identified on the attached **Exhibit 2** in the performance of the **Services** for a **Project**. The key personnel must include the project manager required in paragraph 7 above, if applicable. In addition to the full names, titles/positions and a summary of the duties and **Services** to be performed by the key personnel that are included in the attached **Exhibit 2**, the **Design Professional** agrees to promptly provide such additional information on the professional background of each of the assigned key personnel as may be requested by the **Owner**. The **Design Professional** acknowledges that the **Owner's** award of this **Agreement** (and subsequent **Modifications**) to the **Design Professional** was made on the basis of the unique background and abilities of the **Design Professional's** key personnel originally identified in the **Design Professional's** solicitation response and **Project Request** response, as applicable. Therefore, the **Design Professional** specifically understands and agrees that any attempted substitution or replacement of a key person by the **Design Professional**, without the written consent of the **Owner**, shall constitute a material breach of this **Agreement** or **Modification**, as applicable. In the event that key personnel become unavailable to the **Design Professional** at any time, **Design Professional** shall replace the key personnel with personnel having substantially equivalent or better qualifications (including applicable professional licensing) than the key personnel being replaced, as confirmed and approved by **Owner**. Likewise, the **Design Professional** shall remove any individual from a **Project** if so directed by **Owner** in writing following discussion with the **Design Professional**,



provided that **Design Professional** shall have a reasonable time period within which to find a suitable replacement. **The Design Professional represents and warrants that the key personnel that are considered professional-in-charge (stamping architect(s) or engineer(s)) in their respective discipline and identified on the attached Exhibit 2 are fully licensed to perform the particular Services assigned to them on a Project.**

9. **Design Professional** shall make no news release, press release or statement to a member of the news media regarding this **Agreement** or any **Project** without prior written authorization from **Owner**.

## II. **DESIGN PROFESSIONAL'S STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES**

By execution of this Agreement, the Design Professional agrees that:

**A. Standard of Care.** The **Design Professional** shall perform the **Services** in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions; and will perform such **Services** pursuant to the standard of care set forth in this **Section II**.

**B.** When applicable law requires that **Services** be performed by licensed professionals, the **Design Professional** shall or shall require its **Consultants** to provide those **Services** through qualified professionals licensed in Oregon. Wherever a deliverable is identified as "Engineered" or "Stamped", or any item is described as "Engineered", the deliverable shall have been at a minimum reviewed, agreed to, signed and stamped by a professional engineer ("PE") licensed in the state of Oregon. In addition, and when required by Oregon Structural Specialty Code, a Structural Engineer ("SE") licensed in the state of Oregon shall stamp applicable deliverables. The PE or SE, as applicable, signing a document shall be licensed and experienced in the appropriate branch of engineering for the deliverable. Where the PE or SE, as applicable, experience is not directly relatable, a subject matter expert may review and sign the delivery in addition to the PE or SE, as applicable sign off. Upon request from the **Owner**, the **Design Professional** shall provide full Curriculum Vitae's (showing their experience/expertise in the area) for all PE's and SE's, as applicable, and subject matter experts who sign off on deliverables. The **Owner** understands and agrees that the services of the **Design Professional**, and **Consultants** are performed for the benefit of the **Owner**.

**C. Performance Requirements.** In addition to performing the **Services** in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions, the **Design Professional** shall perform the **Services** in accordance with the following requirements:

1. All plans, drawings, specifications, and other documents prepared by the **Design Professional** shall be prepared in accordance with its standard of care set forth in this Agreement in an effort to accurately reflect, incorporate, and comply with all applicable laws, rules, and regulations and shall be complete and functional for the purposes intended (except as to any deficiencies which are due to causes beyond the control of **Design Professional**);

2. All plans, drawings, specifications, and other documents prepared by the **Design Professional** pursuant to this **Agreement** and any **Modifications** thereof shall accurately reflect existing conditions for the scope of the **Services** to be performed;



3. A **Project**, if constructed in accordance with the intent established by such plans, drawings, specifications, and other documents, shall be structurally sound and a complete and properly functioning facility suitable for the purposes for which it is intended;

4. The **Design Professional** shall be responsible for any negligent inconsistencies or omissions in the plans, drawings, specifications, and other documents prepared by the **Design Professional** and its **Consultants**. While **Design Professional** cannot guarantee that the various documents required under this **Agreement** or any **Modification** thereof, are completely free of all minor human errors and omissions, it shall be the responsibility of **Design Professional** throughout the period of performance under this **Agreement** and any **Modifications** to use due care and perform with professional competence. **Design Professional** will, at no additional cost to **Owner**, and regardless of the time of discovery of errors and omissions, correct any and all errors and omissions in the plans, drawings, specifications, and other documents prepared by **Design Professional** and its **Consultants**. Except as provided in **Section VIII** of this **Agreement** and at no additional cost, **Design Professional** further agrees to render assistance to **Owner** in resolving other problems relating to the design of, or specified materials used in a **Project**;

5. Any review or acceptance by the **Owner** of **Services**, plans, drawings, specifications and other documents prepared by the **Design Professional** will not relieve the **Design Professional** of any responsibility for complying with the standard of care set forth herein. The **Design Professional** is responsible for all **Services** to be performed under this **Agreement** and all **Modifications**, and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the **Services**.

6. The representations and warranties set forth in this Section are in addition to, and not in lieu of, any other representations or warranties provided.

7. The **Design Professional** shall ensure that a **Project** complies with (1) all applicable codes; (2) the most current as of the date of permit submittal ADA Standards for Accessible Design, employing universal design principles as described in the **Design and Construction Standards**; (3) Requirements for Sustainable Development ("**RSD**"), as described in the **Design and Construction Standards**; and (4) applicable OSU Standards and policies. In addition, the **Design Professional** shall ensure that a **Project** allow for access to programs, activities, and services in the most integrated setting possible;

**D. Design Professional's Representations and Warranties.** **Design Professional** represents and warrants to **Owner** that:

1. **Design Professional** has the power and authority to enter into and perform this **Agreement**;

2. When executed and delivered, this **Agreement** shall be a valid and binding obligation of the **Design Professional** enforceable in accordance with its terms;

3. **Design Professional** shall, at all times during the term of this **Agreement** and all **Modifications** issued hereunder, be duly licensed to perform the **Services**, and if there is no licensing requirement for the profession or **Services**, be duly qualified and competent;
4. The **Design Professional** is an experienced Design Professional firm having the skill, legal capacity, and professional ability necessary to perform all the **Services** required under this **Agreement** and to design or administer a project having this scope and complexity;
5. The **Design Professional** has the capabilities and resources necessary to perform the obligations of this **Agreement** and all **Modifications**;
6. The **Design Professional** either is, or in a manner consistent with the Standard of Care set forth in this **Agreement** will become, familiar with all current OSU Standards and policies, laws, rules, and regulations which are applicable to the design and construction of the **Project**.

### III. COMPENSATION

The Owner agrees to compensate **Design Professional** in accordance with an executed **Modification**.

**A. Services.** **Services** will be compensated on a time and materials basis with a not-to-exceed maximum, unless otherwise stated by the **Owner** in the **Project Request**. **Design Professional** shall provide **Owner** with a detail cost breakdown using the Schedule of Charges indicated in **Exhibit 3** in **Design Professional** response to the **Project Request**.

1. **Design Professional's** Schedule of Charges are identified in **Exhibit 3** and each line is inclusive of all labor costs and overhead and profit to perform the **Services** described in this **Agreement** and all subsequent **Modifications** hereunder. **Consultant** work, materials and equipment provided in the course of work shall be provided at cost without mark up.
2. The Schedule of Charges, as identified in **Exhibit 3** will remain unchanged for the **Term** of this **Agreement**, unless otherwise agreed to by the **Parties** in the form of a written amendment to this **Agreement**. Notwithstanding the above, any escalation of the hourly rates identified in **Exhibit 3** will be reviewed and may be approved by the **Owner** upon written request by the **Design Professional** if the **Agreement** has been extended beyond the expiration date indicated in **Section I.E** of this **Agreement**.

**B. Reimbursable Expenses.** The **Owner** shall reimburse **Design Professional** and its **Consultants** for actual, reasonable, and necessary **Reimbursable Expenses** incurred in the performance of **Services** at cost with no mark up.

1. Pre-approved travel expenses incurred shall be reimbursed at cost with no mark-up, and shall not exceed the rates set forth in **Exhibit 4**. **Design Professional** shall ensure that all travel expenses submitted for reimbursement conform to the requirements of **Exhibit 4**. Unless stated otherwise in a **Modification**, travel expenses must be pre-approved by **Owner**. Travel expenses will not be reimbursed for **Services** rendered within 25 miles of the **Design Professional's** office.

2. Notwithstanding the requirements of **Exhibit 4**, **Design Professional's** requests for reimbursement of **Reimbursable Expenses** specifically authorized in the **Modification** must include documentation of actual expenditures.

3. **Reimbursable Expenses** for printing, photography, long distance telephone charges and other direct expenses will be reimbursed at cost without mark up.

**C. Fees for Consultant's Services.** Unless otherwise provided in a **Modification**, **Owner** shall only reimburse **Design Professional** for the actual, direct costs of **Services** performed by its **Consultants**, and shall not reimburse **Design Professional** for any overhead or mark-up of costs added to the direct cost of a **Consultant's Services**.

**D. Fees for Additional Services.** Upon execution of any **Modification Amendment**, **Owner** agrees to compensate **Design Professional** for **Additional Services** (and **Reimbursable Expenses**) performed by the **Design Professional** (or its **Consultants**) according to the terms of this **Section III**.

**E. Maximum Compensation.** The maximum compensation paid to **Design Professional** pursuant to any **Modification** will not exceed the maximum allowable under the applicable sub-section of OSU Standards (the "**Maximum Compensation**").

**F. Fees for Termination.** Compensation to be paid to the **Design Professional** in the event a **Modification** is terminated as provided in **Section XIX** of this **Agreement** shall be determined in accordance with this **Section III**. **Owner** agrees to pay **Reimbursable Expenses** incurred before notice of termination is delivered to **Design Professional**.

**G.** Pursuant to **Section XXII** and as a condition precedent to **Owner's** obligation to make any payment due **Design Professional** under this **Agreement**, **Design Professional** shall provide **Owner** with its Social Security or federal employer identification number, as applicable.

#### IV. PAYMENTS

For each **Modification**, monthly progress payments shall be made following **Owner's** review and approval of the invoices and required documentation, acceptance of the **Services** performed, and approval of **Reimbursable Expenses** incurred during the preceding month to the following address:

University Financial Services  
OREGON STATE UNIVERSITY  
850 SW 35<sup>th</sup> St.  
Corvallis, OR 97333  
[FacServContracts@oregonstate.edu](mailto:FacServContracts@oregonstate.edu)

Invoices shall be submitted to the **Owner** no later than the 20<sup>th</sup> of the month for the work completed in the previous month. Payment may not be made for **Reimbursable Expenses** incurred in excess of 90 Days after actual charged incurred.

Payment requests shall be submitted in the form and format stipulated by the **Owner**.

Per OSU Standards, overdue claims are those that have not been paid within forty-five (45) days on the later of the date of receipt of an accurate invoice and required supporting documentation or the date the claim is made certain by agreement of the parties or by operation of law. However, overdue account charges will not accrue during time of civil emergency or in the event of a natural disaster that prevents the timely payment of accounts. In such instances, accounts will be paid in as timely a manner as possible. The maximum overdue charge will be at a rate of two-thirds of one percent per month, but not more than eight percent per annum.

No deduction shall be made from the **Design Professional's** fee on account of penalty, liquidated damages, or other sums withheld from payment to the **Contractor**.

Upon completion of all Services under any **Modification** and precedent to **Owner's** obligation to make final payment or any **Project**, **Design Professional** shall certify, in writing, that the **Design Professional** has completed **Design Professional's** obligations under the **Modification** by indicating "Final Billing" on final invoice to **Owner**.

**F. Diverse Business Report Requirement.** **Design Professional** shall deliver to **Owner** the **Diverse Business Report** described in **Section I.F.** Timely receipt of **Diverse Business Report** shall be a condition precedent to **Owner's** obligation to pay any final payments otherwise due.

1. **Design Professional** shall submit a **Diverse Business Report** as a condition of final payment for each **Modification**. The **Diverse Business Report** shall include the total number of contracts and subcontracts awarded to **Diverse Business** enterprises as **Consultants** and the dollar value of their respective contracts and subcontracts during the course of a **Project**.

## **V. SERVICES OF DESIGN PROFESSIONAL'S CONSULTANTS**

The **Consultants** shall be paid by the **Design Professional** out of the **Maximum Compensation** as indicated in each **Modification**, and the **Parties** understand and agree that the **Owner** has no direct or indirect contractual obligation or other legal duty to pay the **Consultants** or ensure that the **Design Professional** makes full and timely payment to the **Consultants** for **Consultant** services rendered on a **Project**. **Services** performed by the **Design Professional** through the **Consultants** shall be included on **Design Professional** invoices at the **Design Professional's** cost, without markup. The **Design Professional** shall provide to the **Owner** copies of the **Consultant's** invoices submitted to the **Design Professional**, along with the **Design Professional's** requests for payment that are submitted to the **Owner** under any **Modification**.

## **VI. RESERVED**

## **VII. DESIGN PROFESSIONAL'S SERVICES**

**A. Design Professional** shall provide **Owner** with professional consulting **Services** more particularly described in an executed **Modification**. In addition, **Design Professional** shall perform **Services** in accordance with the terms of this Agreement, and **Consultant** hereby agrees to the following:

1. **Design Professional** shall perform **Services** at all times in compliance with the standard of care set forth in **Section II** of this **Agreement**.
2. **Services** may include creation of Project Documents required to achieve identified **Project** objectives. **Design Professional** shall complete all Project Documents in accordance with **Section II** of this **Agreement** and as may be more particularly defined in a **Modification**.
3. **Design Professional** shall perform, at no additional cost to **Owner**, all Services necessitated in whole or in part by errors and omissions of, or breach of this **Agreement** by **Design Professional** or any persons or entities for whom **Design Professional** is responsible.

**B. Design Professional** shall fully cooperate with **Owner** to meet all **Project** budgets.

1. In the event the Design Professional's opinion of probable construction costs exceeds the budget for any **Project** identified in a **Modification** 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, **Design Professional**, upon notice from **Owner**, agrees to modify, at **Design Professional's** sole expense, **Design Professional's** Project Documents (or, with **Owner's** approval, those portions of Project Documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage, hereafter, "**Project Documents Modification**").
2. The **Project Documents Modification** shall constitute **Design Professional's** sole responsibility with respect to its opinions of probable construction costs, and **Design Professional** 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. **Design Professional** agrees that any **Project Documents Modification** may be in addition to obligations that may be imposed by **Section II** of this **Agreement**.

## VIII. ADDITIONAL SERVICES

**A. Copies of Construction Documents.** The **Design Professional** shall furnish hard copies of all **Construction Documents** upon the written request of the **Owner**. The **Owner** shall reimburse the **Design Professional** at the actual cost of reproduction.

**B. Conditions Required to Support Additional Compensation.** The **Design Professional** shall be paid, subject to executed amendments, for extra expenses and services involved if:

1. substantial changes are ordered by the **Owner** after the **Owner** has acknowledged the acceptance of one or more of the planning phases described above (except changes which are ordered for the purpose of maintaining the **Construction Budget** of the **Project** within the allowance specified in **Section I**);
2. damage occurs as a result of fire or other casualty to the structure;

3. the **Contractor** becomes delinquent or insolvent and the delinquency or insolvency creates additional work for the **Design Professional**;
4. the **Design Professional's** attendance is required at **AHJ** public and planning board presentations;
5. the **Owner** requests detailed demolition drawings of existing structure(s) or if documentation must be made for salvage of existing materials, except as may be required to ensure that new construction may be fit to existing construction;
6. the **Owner** requests the selection, specification, coordination, and or installation of new or existing furniture, fixtures or equipment (“**FFE**”) outside the scope of a **Project**;
7. the **Owner** requests **Additional Services** not identified under the **Services** provision of this **Agreement**, such as study models, renderings, etc.;
8. the **Owner** requests that the **Design Professional** perform **Services** related to:
  - a. preparation of other **Owner** requested agency forms;
  - b. preparation of way finding or donor signage.

#### **IX. SURVEY, BORINGS AND TESTS**

The **Owner** shall, so far as the **Services** under a **Modification** may require, furnish the **Design Professional** the following information:

- A. Survey.** A complete and accurate survey of a **Project** site, giving the grades and lines of streets, pavements, and adjoining properties and/or scale drawings reasonably representing existing conditions;
- B. Project Site Conditions; Utilities.** The rights, restrictions, easements, boundaries, and contours of a **Project** site and full information as to sewer, water, gas and electrical service, existing utility tunnels, lines, etc. on site;
- C. Geotechnical Reports.** Geotechnical investigation reports with recommendations for soil bearing capacities.

The **Owner** will pay for chemical, mechanical or other tests when required. The **Owner** does not warrant the accuracy of any of the information so provided. The **Design Professional** will not be held responsible for errors due to inaccuracy of any of the information so provided.



## **X. DESIGN PROFESSIONAL'S RESPONSIBILITIES IN REGARD TO ASBESTOS AND OTHER HAZARDOUS SUBSTANCES**

The **Owner** anticipates that the **Services** under any **Modification** will not involve the removal of and destruction of asbestos, asbestos-related materials, hazardous substances or other hazardous materials (collectively the "**Hazardous Substances**"). The **Owner** shall contract separately for the identification and removal of any **Hazardous Substances**, either prior to the commencement of this **Project** or at such time as such **Hazardous Substances** are detected. The **Design Professional** shall 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**, consultant hired by the **Owner**, the contractor, or subcontractor which the **Owner** selects relating to the abatement of such **Hazardous Substances**.

## **XI. INSURANCE PROVISIONS**

During the term of this **Agreement**, **Design Professional** shall maintain in full force and at its own expense each insurance coverage or policy noted below, from insurance companies or entities with an A.M. Best rating of A-VII or better that are authorized to transact the business of insurance and issue coverage in the State of Oregon. **Design Professional** shall ensure that each of its **Consultants** and subcontractors complies with the requirements of this **Section XI**:

- A. Workers' Compensation** - All employers, including **Design Professional**, that employ subject workers who work under this **Agreement** in the State of Oregon shall comply with ORS 656.017 and provide the required Oregon workers' compensation coverage, unless such employers are exempt under ORS 656.126. All employers, including **Design Professional**, that employ workers who work under this **Agreement** outside of Oregon shall provide Worker's Compensation coverage under the laws applicable to such workers.
- B. Commercial General Liability** - **Design Professional** shall secure Commercial General Liability insurance with a limit of not less than \$2,000,000 each occurrence and \$4,000,000 aggregate for bodily injury, up to and including death, property damage liability, personal/advertising injury, products and completed operations coverage and contractual liability coverage for the indemnity provided under this **Agreement**. The policy shall include a waiver of subrogation clause and a separation of insureds clause (cross liability). **Design Professional** shall ensure that each of its **Consultants** and subcontractors secures and maintains Commercial General Liability insurance with a limit not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- C. Automobile Liability** - **Design Professional** shall secure Automobile Liability insurance with a combined single limit of not less than \$1,000,000 per accident, for bodily injury and property damage, including coverage for all owned, hired, or non-owned vehicles, as applicable. This coverage may be written in combination with the Commercial General Liability Insurance.
- D. Professional Liability/Errors & Omissions** - **Design Professional** shall provide the **Owner** with proof of coverage for Professional Liability/Errors & Omissions insurance covering any damages caused by any negligent error, omission, or any act for the **Project**, its plans, drawings, specifications or project manual, and all related work product of the **Design Professional**. The policy may be either a practice based policy or a policy pertaining to the specific **Project**. Professional Liability insurance to be



provided shall have limits of not less than \$3,000,000 each claim, incident or occurrence and \$3,000,000 annual aggregate. **Design Professional** shall ensure that each of its major **Consultants** and subcontractors (including structural, civil, mechanical, plumbing, electrical engineering, survey, geotechnical and materials testing) secures and maintains Professional Liability/Errors & Omissions with limits not less than \$2,000,000 each claim, incident or occurrence and \$2,000,000 annual aggregate. All other **Consultants** and subcontractors not listed above shall have limits not less than \$1,000,000 each claim, incident or occurrence and \$1,000,000 annual aggregate.

**E. "Tail" Coverage.** If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the **Agreement** for a duration of thirty-six (36) months or the maximum time period available in the marketplace if less than thirty-six (36) months. **Design Professional** will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following **Owner's** acceptance of and final payment for the **Design Professional's Services**. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this **Agreement**. This will be a condition of the final acceptance of **Work** or **Services** and related warranty, if any.

**F. Certificate of Insurance.** Prior to the signature by the **Owner** to this **Agreement**, **Design Professional** shall furnish to the appropriate university official Certificates of Insurance and required endorsements as evidence of the insurance coverages required under this **Agreement**. The insurance policies will be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if the applicable policy is suspended, voided, canceled or materially changed, or if the aggregate limits have been reduced, except when cancellation is for non-payment, then a ten (10) days' notice may be given, to the **Owner's** Representative set forth in **Section XXX** below. The certificate(s) should state specifically that the insurance is provided for this **Agreement**. Policies will be endorsed to show required cancellation provisions, and copies of the endorsement will be attached to the certificate of insurance. Insuring companies are subject to acceptance by the **Owner**.

**G. Additional Insureds.** All policies, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall be endorsed so that the **Owner**, and its officers, trustees, agents, and employees are Additional Insureds with respect to the **Design Professional's Services** to be provided under this **Agreement**.

**H. Waiver of Subrogation.** Except as respects to Professional Liability/Errors and Omissions, the **Design Professional** agrees to waive all rights of subrogation against the **Owner** and its trustees, officers, employees and agents for losses arising from the work performed under this **Agreement**.

## **XII. INDEMNITY**

**A. Indemnification.** **Design Professional** shall indemnify, hold harmless and defend the **Owner** and its trustees, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and costs, of whatsoever nature (Claims) resulting in any way from, arising out of, or relating to the activities, including professional services, of the **Design Professional** or the **Design Professional's Consultants**, partners,

joint venturers, subcontractors, officers, agents or employees, or caused by any willful or negligent error, omission, or act of the **Design Professional**, or any person employed by it, or anyone for whose acts the **Design Professional** is legally liable while acting under or pursuant to this **Agreement** or any **Modification** or amendment hereto. The **Design Professional's** obligation to indemnify and hold harmless the **Owner** and its trustees, officers, employees and agents does not include a duty to defend for Claims arising from professional services.

**B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the **Design Professional**, neither the **Design Professional** nor any attorney engaged by the **Design Professional** shall defend any claim in the name of the **Owner**, nor purport to act as legal representative of the **Owner**, without the prior written consent of the **Owner's** General Counsel. The **Owner** may, at any time at its election assume its own defense and settlement in the event that it determines that the **Design Professional** is prohibited from defending the **Owner**, that **Design Professional** 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 **Design Professional** if the **Owner** elects to assume its own defense.

**C. Consultants Agreements.** Each agreement with **Consultants** at every tier shall provide that the **Owner** is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the **Owner** shall have the right, but not the obligation, to assert claims directly against **Consultants** for breach of contract, breach of express warranties, breach of implied warranties, including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the work or the **Project**. The **Owner** and **Design Professional** acknowledge and agree that the purpose of this **Section** is to enable the **Owner**, at its discretion, and in addition to the **Design Professional**, to assert claims for damages and indemnification directly against **Consultants** that are or may be responsible for breach of the contract, defects in the work, and other damages incurred by the **Owner** arising out of or related to the work or a **Project**.

### **XIII. LIMITATION OF LIABILITIES**

Except for any liability of the **Design Professional** arising under or related to the **Design Professional's** failure to perform according to the standard of care or any other liability arising under or related to the **Design Professional's** representations and warranties under **Section II** of this **Agreement**, or as otherwise provided by this **Agreement**, neither **Party** shall be liable for any indirect, incidental, consequential or special damages under this **Agreement** or any damages of any sort arising solely from the termination of this **Agreement** in accordance with its terms.

### **XIV. RESERVED**

## **XV. OWNERSHIP AND USE OF WORK PRODUCT OF DESIGN PROFESSIONAL**

**A. Work Product.** Copies of plans, specifications, reports, or other materials required to be delivered under this **Agreement** and all **Modifications** ("**Work Product**") shall be the exclusive property of **Owner**. The **Owner** and the **Design Professional** intend that such **Work Product** is "Work made for Hire", of which the **Owner** shall be deemed the author. The **Design Professional** hereby irrevocably assigns to the **Owner** all of its right, title and interest in and to any and all of such **Work Products**, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine. The **Design Professional** shall execute such further documents and instruments as the **Owner** may reasonably request in order to fully vest such rights in the **Owner**. The **Design Professional** forever waives any and all rights relating to such **Work Product**, including without limitation, any and all rights arising under 17 USC 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use of subsequent modifications.

**B. Design Professional's Use of Work Product.** The **Design Professional**, despite other conditions of this Section, shall have the right to utilize such **Work Product** on its brochures or other literature that it may utilize for its sales and in addition, unless specifically otherwise exempted, the **Design Professional** may use standard line drawings, specifications and calculations on other unrelated projects.

**C. Owner Reuse or Modification of Work Product.** If the **Owner** reuses or modifies the **Work Product** without the **Design Professional's** involvement or prior written consent, the **Owner** shall indemnify, in an amount up to two times the **Maximum Compensation** to be paid under the relevant **Modification**, the **Design Professional** against liability for damage to life or property arising from the **Owner's** reuse or modification of the **Work Product**, provided the **Owner** shall not be required to indemnify the **Design Professional** for any such liability arising out of the wrongful acts of the **Design Professional** or the **Design Professional's** officers, employees, **Consultants**, subcontractors, or agents.

## **XVI. SUCCESSORS AND ASSIGNS**

The provisions of this **Agreement** shall be binding upon and shall inure to the benefit of the **Parties** and their respective successors and assigns. After the original **Agreement** or any **Modification** is executed, **Design Professional** shall not enter into any new design professional agreements for any of the **Services** scheduled under this **Agreement** or any **Modifications** or assign or transfer any of its interest in or rights or obligations under this **Agreement** or a **Modification**, without **Owner's** prior written consent. In addition to any additional provisions **Owner** may require, **Design Professional** shall include in any permitted **Consultant** agreement under this **Agreement** or any **Modification** a requirement that the **Consultant** be bound by **Sections XI-INSURANCE, XII-INDEMNITY, XIII-LIMITATION OF LIABILITIES, XV-OWNERSHIP AND USE OF WORK PRODUCT OF DESIGN PROFESSIONAL, XVIII-MEDIATION, XIX-TERMINATION OF AGREEMENT, XX-SUSPENSION OF AGREEMENT, XXII-FOREIGN CONTRACTOR, XXIII-COMPLIANCE WITH APPLICABLE LAWS, XXIV-GOVERNING LAW; VENUE; CONSENT TO JURISDICTION, XXV-INDEPENDENT CONTRACTOR STATUS OF DESIGN PROFESSIONAL, XXVI-ACCESS TO RECORDS and XXIX-NO WAIVER** of this **Agreement**.

## XVII. NO THIRD PARTY BENEFICIARIES

**Owner** and **Design Professional** are the only **Parties** to this **Agreement** and all **Modifications** and are the only **Parties** entitled to enforce its terms. Nothing in this **Agreement** or all **Modifications** gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this **Agreement** and all **Modifications**.

## XVIII. MEDIATION

**Design Professional** and **Owner**, in an effort to resolve any conflicts that may arise during the design or construction of the **Project** or following the completion of the **Project**, agree that all disputes between them arising out of or relating to this **Agreement** or any supplements hereto, shall be submitted to non-binding mediation unless the **Parties** mutually agree otherwise. **Design Professional** further agrees to include a similar provision in all agreements with **Consultants** retained for the **Project**, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. All **Parties** agree to exercise their best effort in good faith to resolve all disputes in mediation.

Each **Party** will pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be shared equally by all **Parties** to the dispute.

## XIX. TERMINATION OF AGREEMENT;

**A. Mutual Agreement.** The **Owner** and the **Design Professional**, by mutual written agreement, may terminate this **Agreement**, any or all **Modifications**, or both, at any time.

**B. Termination by Owner for Convenience.** **Owner** may terminate this **Agreement**, any or all **Modifications**, or both, in whole or in part whenever **Owner** determines that termination of the **Agreement**, any or all **Modifications**, or both is in the best interest of the **Owner** or the public. The **Owner** shall provide the **Design Professional** with seven (7) Days prior written notice of a termination for **Owner's** convenience or when in the public's interest.

**C. Termination by Owner for Cause.** **Owner** may terminate this **Agreement**, any or all **Modifications**, or both, in whole or in part, immediately upon notice to **Design Professional**, or at such later date as **Owner** may establish in such notice, upon the occurrence of any of the following events:

1. **Owner** fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the **Design Professional's Services**;
2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the **Services** performed under this **Agreement** are prohibited or **Owner** is prohibited from paying for such **Services** from the planned funding source;

3. **Design Professional** no longer holds any license or certificate that is required to perform the **Services**;

4. **Design Professional** commits any material breach or default of any covenant, warranty, obligation or agreement under this **Agreement** or any or all **Modifications**, or both, fails to perform the **Services** under this **Agreement**, or any or all **Modifications**, or both within the time specified herein or any extension thereof, or fails to perform the **Services** so as to endanger **Design Professional's** performance under this **Agreement**, or any or all **Modifications**, or both in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of **Owner's** notice, or such longer period of cure as **Owner** may specify in such notice.

**D. Effect of Termination.** In the event of termination of this **Agreement**:

1. Pursuant to **Sub-sections A, B, C.1 or C.2** above, the **Owner**, using the schedule of hourly rates set forth in **Exhibit 4**, shall compensate the **Design Professional** for all **Services** performed prior to the termination date, together with reimbursable expenses then due, and such amounts shall immediately become due and payable.

2. Pursuant to **Sub-sections C.3 or C.4** above, the **Owner** shall have any remedy available to it under this **Agreement**, or any or all **Modifications**, or both or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.

3. For any reason, the **Design Professional** shall immediately cease performance of **Services** under this **Agreement**, or any or all **Modifications**, or both, unless **Owner** expressly directs otherwise in the notice of termination, and shall provide to the **Owner** all plans, specifications, CAD drawings in electronic format and all documents, information, works-in-progress or other property that are or would be deliverables had this **Agreement**, or any or all **Modifications**, or both been completed.

4. For any reason, the **Design Professional** shall be responsible to the **Owner** for the quality of its **Services** and work product through the date of termination.

**XX. SUSPENSION OF AGREEMENT**

**A. Suspension of Agreement by Owner.** The **Owner** may suspend the **Parties'** performance of this **Agreement**, or any or all **Modifications**, or both in the event any of the following circumstances arise:

1. **Owner** fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient, as contemplated by OSU's budget and OSU determination, in its assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the **Design Professional's Services**;

2. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the **Services** performed under this **Agreement**, or any or all **Modifications**, or both

are prohibited or **Owner** is prohibited from paying for such **Services** from the planned funding source;

3. **Design Professional**, or one of **Design Professional's Consultants** currently performing **Services**, no longer holds any license or certificate that is required to perform the **Services**; or

4. The public interest otherwise requires suspension of performance of the **Agreement**, or any or all **Modifications**, or both, as reasonably determined by the **Owner**.

**B. Suspension is not Termination.** Any suspension of performance under this provision constitutes a temporary stoppage of performance of the **Agreement** or any **Modification**, as applicable, and does **not** constitute a termination of the **Agreement**, or any **Modification**, as applicable pursuant to **Section XIX** of this **Agreement**. In the event that the condition(s) causing the suspension have been rectified and suspension is no longer required, the **Parties** will take all actions necessary to reactivate performance of the **Agreement**, or any or all **Modifications**, or both, as applicable. In the event that the **Owner** determines that the conditions causing suspension of the **Agreement**, or any or all **Modifications**, or both are not likely to be rectified in a reasonable amount of time, the **Owner** retains the right to terminate this **Agreement**, or any or all **Modifications**, or both, pursuant to **Section XIX**. In the event of a suspension of performance pursuant to this Section of the **Agreement**, or any or all **Modifications**, or both, the **Design Professional** agrees to remain contractually obligated to perform the **Services** under this **Agreement**, or any or all **Modifications**, or both for the same hourly rates set forth in **Exhibit 4** of this **Agreement** for a period of three years after the **Effective Date** of the **Agreement**. If the **Agreement**, or any or all **Modifications**, or both is reactivated and the **Design Professional** is required to perform **Services** beyond this date or such other time period agreed to by the **Parties**, the **Parties** may negotiate updated hourly rates for the **Design Professional** and any **Consultants** and amend this **Agreement**, or any or all **Modifications**, or both accordingly.

**C. Payments at the time of Suspension.** If any **Services** performed by the **Design Professional** are suspended, the **Design Professional** shall be paid for the **Services** rendered, under the provisions and limitations of **Section I.G** and **Section IV**, in proportion to the amount of **Services** performed at the time of suspension if the suspension does not result from a design error of the **Design Professional**, a bid overrun, or other breach or default by the **Design Professional**.

## **XXI. SMOKE FREE CAMPUS; SEXUAL HARRASSMENT; FIREARMS**

**A. Smoke and Tobacco Free Campus.** **Design Professional** acknowledges and agrees **Owner's** grounds and premises are smoke and tobacco free. **Design Professional** and **Design Professional's** employees, agents, **Consultants**, if any, agree not to smoke or use tobacco products while on **Owner** property.

**B. Sexual Misconduct Policy.** The **Owner** has policies that prohibit sexual misconduct against members of the university community and in keeping with those policies **Design Professional** and **Design Professional's** employees, agents, and **Consultants** are prohibited from engaging in sexual misconduct against members of the university community.



**C. Firearms Policy.** The **Design Professional** acknowledges **Owner** has adopted a policy that prohibits the possession of firearms on Owner's Property and agrees that **Design Professional's** employees, agents and **Consultants** will comply with such policy.

## **XXII. DISCLOSURE OF SOCIAL SECURITY NUMBER**

**Design Professional** must provide **Design Professional's** Social Security number unless **Design Professional** provides a federal tax ID number. This number is requested pursuant to ORS 305.385 and OAR 150-305.0010. Social Security numbers provided pursuant to this authority will be used for the administration of state, federal and local tax laws.

## **XXIII. FOREIGN CONTRACTOR**

If **Design Professional** is not domiciled in or registered to do business in the State of Oregon, **Design Professional** shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this **Agreement**. **Design Professional** shall demonstrate its legal capacity to perform the **Services** under this **Agreement**, any or all **Modifications**, or both in the State of Oregon prior to entering into this **Agreement**.

## **XXIV. COMPLIANCE WITH APPLICABLE LAW**

**Design Professional** shall comply with all OSU Standards and policies, and federal, state, county, and local laws, ordinances, and regulations applicable to the **Services** to be provided under this **Agreement**, any or all **Modifications**, or both. **Design Professional** specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. **Design Professional** also shall comply with the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659a.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of **Design Professional** to comply with any or all such laws, ordinances, rules, and regulations shall not relieve **Design Professional** of these obligations nor of the requirements of this **Agreement**, any or all **Modifications**, or both. **Design Professional** further agrees to make payments promptly when due, to all persons supplying to such **Design Professional** labor or materials for the performance of the **Services** to be provided under this **Agreement**, any or all **Modifications**, or both; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this **Agreement**, any or all **Modifications**, or both; not permit any lien or claim to be filed or prosecuted against **Owner** on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If **Design Professional** fails or refuses to make any such payments required herein, the **Owner** may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve the **Design Professional** or **Design Professional's** surety from obligation with respect to any unpaid claims. Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be accessible to people with physical limitations. **Owner** requires that all spaces in designs for new facilities and in remodel projects will be accessible to people with physical limitations.



## XXV. GOVERNING LAW; VENUE; CONSENT TO JURISDICTION

This **Agreement**, any or all **Modifications**, or both is to be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "**Claim**") between **Owner** and **Design Professional** that arises from or relates to this **Agreement**, any or all **Modifications**, or both shall be brought and conducted solely and exclusively within the Circuit Court of Benton County for the State of Oregon; provided, however, if a **Claim** must be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by **Owner** of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. **DESIGN PROFESSIONAL, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.**

## XXVI. INDEPENDENT CONTRACTOR STATUS OF DESIGN PROFESSIONAL

**A. Design Professional as Independent Contractor.** **Design Professional** shall perform all required **Services** as an independent contractor. Although **Owner** reserves the right (i) to determine (and modify) the delivery schedule for the **Services** to be performed and (ii) to evaluate the quality of the completed performance, **Owner** cannot and will not control the means or manner of **Design Professional's** performance. **Design Professional** is responsible for determining the appropriate means and manner of performing the **Services**.

**B. Agency Status.** **Design Professional** is not an officer, employee, or agent of the State or **Owner** as those terms are used in ORS 30.265.

**C. Benefits; Payment of Taxes.** **Design Professional** is not a contributing member of the Public Employee's Retirement System and will be responsible for any federal or state taxes applicable to any compensation or payments paid to **Design Professional** under this **Agreement**, any or all **Modifications**, or both. **Design Professional** will not be eligible for any benefits from these **Agreement**, any or all **Modifications**, or both payments of federal Social Security, unemployment insurance or worker's compensation, except as a self-employed individual. If this payment is to be charged against federal funds, the **Design Professional** certifies that it is not currently employed by the federal government.

## XXVII. ACCESS TO RECORDS

For not less than three (3) years after the termination or full performance of this **Agreement**, any or all **Modifications**, or both, whichever is later, the **Owner**, and its duly authorized representatives shall have access to the books, documents, papers, and records of the **Design Professional** and the **Consultants** which are directly pertinent to this **Agreement**, any or all **Modifications**, or both for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this **Agreement**, any or all **Modifications**, or both, or any resulting construction contract(s) is involved in litigation, **Design Professional** shall retain all pertinent records for not less than three years or until all litigation is resolved, whichever is longer. The **Design Professional** will provide full access to such documents in preparation for and during any such litigation.



1500 SW Chandler Ave  
Bend, OR 9772

**With a Copy to:**

**Jarrod Penttila, Associate Director of Capital Planning & Construction**  
Oregon State University - Cascades  
1500 SW Chandler Ave  
Bend, OR 9772

**And a Copy to:**

**Construction Contracts Administration**  
Oregon State University  
644 SW 13<sup>th</sup> Ave.  
Corvallis, OR 97333

**XXXII. CONFIDENTIALITY**

**Design Professional** shall maintain the confidentiality of information of **Owner**, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent **Design Professional** from establishing a claim or defense in an adjudicatory proceeding. **Design Professional** shall require the **Consultants** to execute similar agreements to maintain the confidentiality of information of **Owner**.

**XXXIII. CONFLICT OF INTEREST**

Except with **Owner's** prior written consent, **Design Professional** shall not engage in any activity or accept any employment, interest or contribution that would or would reasonably appear to compromise **Design Professional's** professional judgment with respect to the **Services** in any **Modification**, including without limitation, concurrent employment on any project in direct competition with the **Services** in any **Modification** and will provide copies of any such agreements within ten (10) days of the full execution of such agreements.

**XXXIV. SURVIVAL**

All rights and obligations shall cease upon termination or full performance of this **Agreement**, any or all **Modifications** or both, except for the rights and obligations set forth in **Sections II** Design Professional's Standard of Care; Representations and Warranties, **XII** Indemnity, **XIII** Limitation of Liabilities, **XV** Ownership and Use of Work Product of Design Professional, **XIX** Termination of Agreement, **XXV** Governing Law; Venue; Consent to Jurisdiction, **XXVII** Access to Records, **XXXII** Confidentiality, and **XXXIV** Survival and as otherwise explicitly set forth in this **Agreement**.

**XXXI. COUNTERPARTS**

This **Agreement**, any or all **Modifications** or both may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all **Parties**, notwithstanding that all **Parties** are not signatories to the same counterpart. Each copy of the **Agreement**, any or all **Modifications** or both so executed shall constitute an original.

**XXXVI. MERGER CLAUSE**

THIS **AGREEMENT** AND ANY ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE **PARTIES** ON THE SUBJECT MATTER HEREOF. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS **AGREEMENT**. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS **AGREEMENT** SHALL BIND EITHER **PARTY** UNLESS IN WRITING AND SIGNED BY THE **PARTY** TO BE BOUND. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. **DESIGN PROFESSIONAL**, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS **AGREEMENT** AND THE **DESIGN PROFESSIONAL** AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the **Parties** have duly executed this **Agreement** as of the **Effective Date**.

**Design Professional Name, Design Professional**

Oregon State University, **Owner**

By \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Andrew Ketsdever

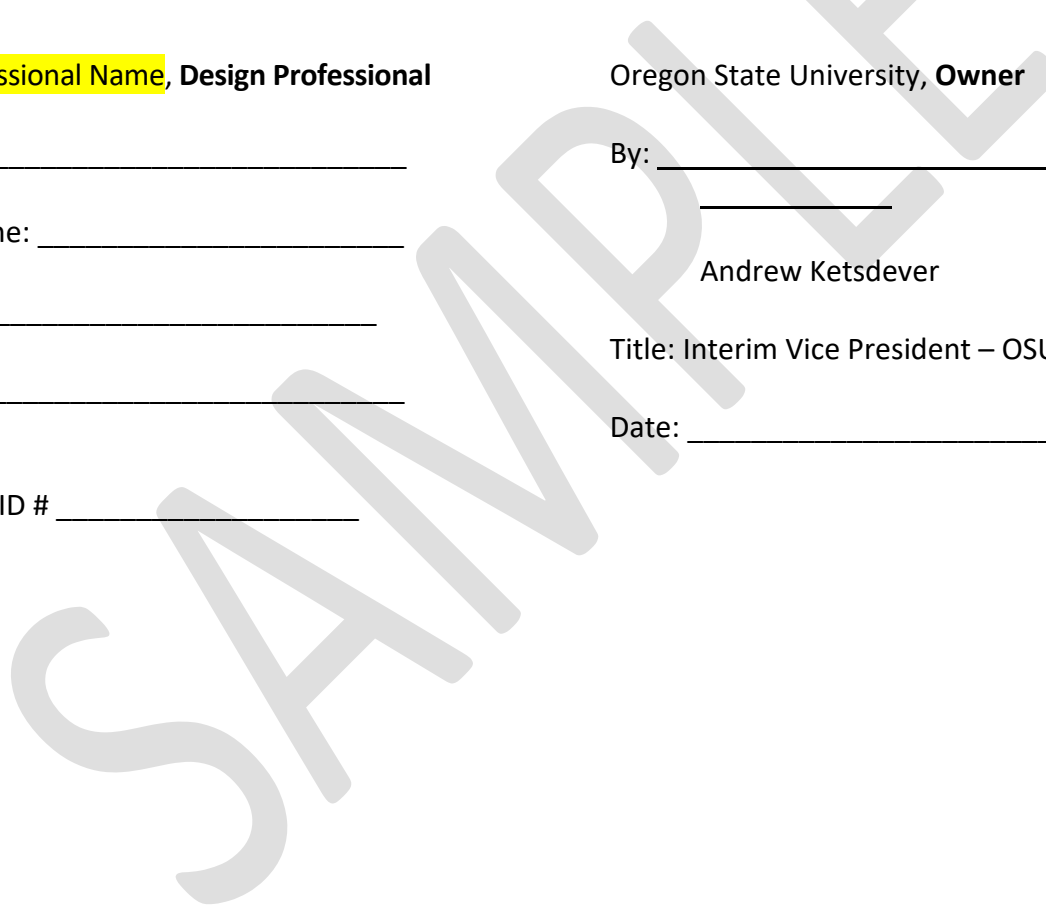
Title: \_\_\_\_\_

Title: Interim Vice President – OSU Cascades

Date \_\_\_\_\_

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

Federal Tax ID # \_\_\_\_\_



**EXHIBIT 1**

**MODIFICATION FORM**

**MODIFICATION NO. \_\_**  
**TO DESIGN PROFESSIONAL'S AGREEMENT – OSU-CASCADES MASTER ARCHITECT**  
**PROJECT NAME**  
**OREGON STATE UNIVERSITY**

This Modification No. \_\_ to Design Professional's Agreement between Owner and Design Professional (the "Modification") is entered into by and between

**Design Professional:** Design Professional Name  
Design Professional Address  
Design Professional Address

and the **Owner:** Oregon State University  
Construction Contracts Administration  
644 SW 13<sup>th</sup> Ave.  
Corvallis OR 97333

(each a "**Party**" and collectively the "**Parties**") pursuant to that certain Design Professional Agreement entered into between the Parties (the "Design Professional Agreement"). Capitalized terms have the meaning defined in the Design Professional Agreement unless further defined in this Modification.

- 1. DESCRIPTION OF THE PROJECT:** The project to which this Modification pertains is described as follows: (the "Project").
- 2. SERVICES TO BE PERFORMED:** The Design Professional shall perform the following services on the Project: (the "Services"). Design Professional shall perform its Services according to the terms and conditions of this Modification and the Design Professional Agreement, which is 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 Modification.

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.** Design Professional 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 Modification, the Design Professional Agreement 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 Modification excluding the Design Professional Agreement and Exhibit 1, 2) the Design Professional Agreement excluding this Modification and Exhibit 1, and 3) Exhibit 1 excluding this Modification and Design Professional Agreement.

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

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

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

**[B]** Owner shall compensate Design Professional for Services and Reimbursable Expenses incurred by the Design Professional in the performance of the Services on a Fixed Price basis in accordance with the Design Professional Agreement and the provisions of this Modification.

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

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

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

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

**7. INSURANCE REQUIREMENTS.** Design Professional shall comply with the requirements stated in the Design Professional Agreement.

**8. OTHER TERMS.** Except as specifically modified by the Modification, all terms of the Design Professional Agreement remain unchanged and apply to the Project and the Services.

**9. EXECUTION AND COUNTERPARTS.** The Modification 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] 10. KEY PERSON(S).** Design Professional's personnel identified below will be considered Key Person(s) and will not be replaced during the Project to which this Modification pertains without the written permission of Owner:

\_\_\_\_\_

Further, Design Professional agrees to the following:

- A. Upon Owner request, Design Professional 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 Design Professional, without the written consent of Owner (which shall not be unreasonably withheld), will constitute a material breach of this Modification. If Design Professional 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, Design Professional 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 Design Professional at any time, Design Professional shall replace the Key Person with personnel or Sub-Design Professionals having substantially equivalent or better qualifications than the Key Person being replaced, as reasonably approved by Owner.
- D. Design Professional shall remove any Key Person from the Project at the written, reasonable request of Owner. Such request shall provide Design Professional a reasonable period of time to find a suitable replacement.

**Design Professional hereby confirms and certifies that the representations, warranties and certifications contained in the Design Professional Agreement remain true and correct as of this Modification Effective Date.**

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

\_\_\_\_\_, Design Professional

OREGON STATE UNIVERSITY, Owner

By: \_\_\_\_\_

By: Andrew Ketsdever

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

Title: Interim Vice President – OSU  
Cascades

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

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



**EXHIBIT 2**

**DESIGN PROFESSIONAL'S KEY PERSONNEL**

**Key Personnel**

Principal: \_\_\_\_\_

Senior Architectural Designer: \_\_\_\_\_

Architectural Designer: \_\_\_\_\_

Urban Designer: \_\_\_\_\_

Sr. Project Manager: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Production Personnel/Project Architect: \_\_\_\_\_

Senior Interior Designer: \_\_\_\_\_

Interior Designer: \_\_\_\_\_

Clerical: \_\_\_\_\_

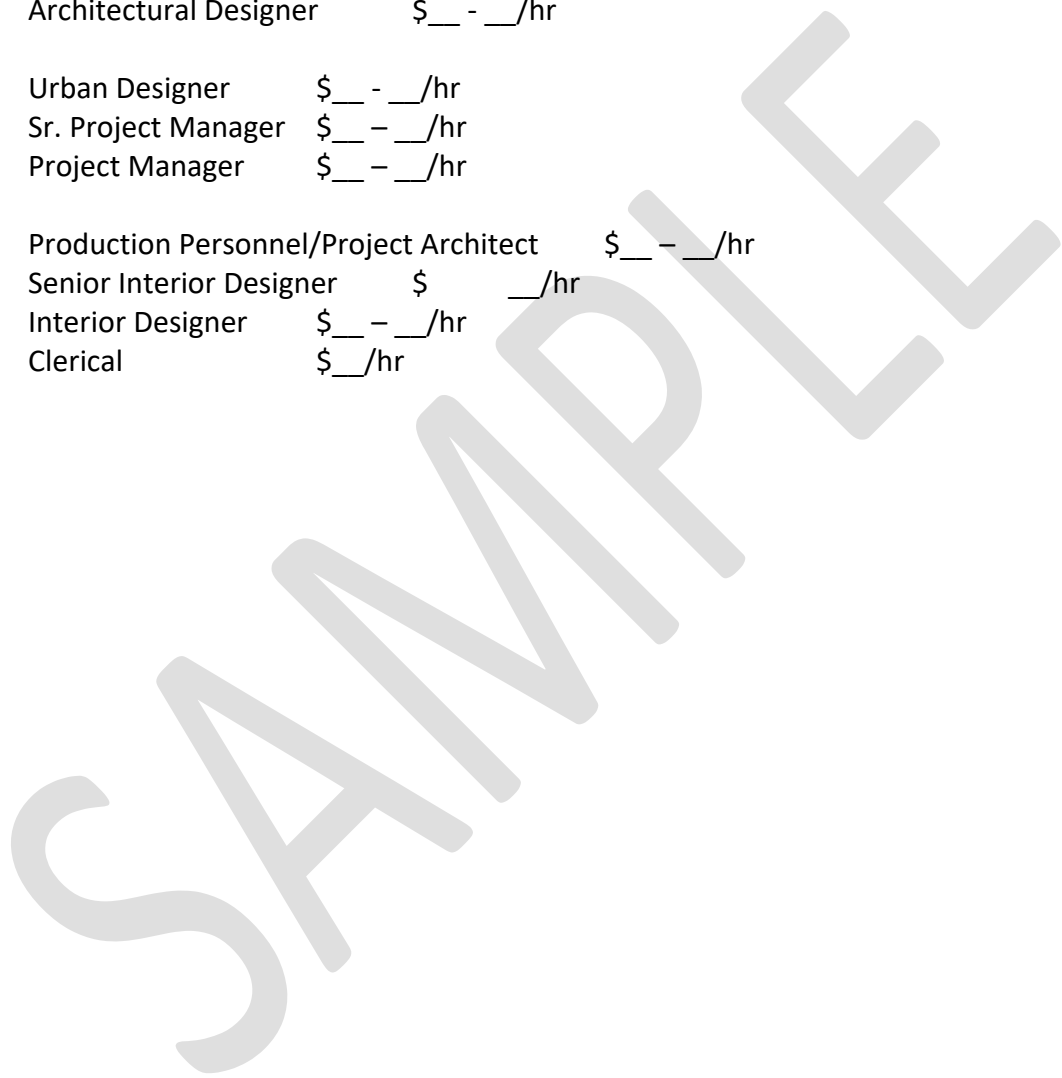


**EXHIBIT 3**

**SCHEDULE OF CHARGES**

**DESIGN PROFESSIONAL:**

Principals \$ \_\_\_/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



## **EXHIBIT 4**

### **TRAVEL POLICY**

#### **LODGING**

Design Professional is expected to use economical and reasonable lodging within the following guidelines:

1. Commercial lodging will be reimbursed at cost.
2. Non-commercial lodging (e.g. staying with family members or friends) will be reimbursed a daily payment of \$25.00, regardless of duration or location.

#### **MEALS**

Meals and incidental expenses are reimbursed at a per diem rate based on GSA Rates without the necessity for actual receipts or at costs with receipts required if over \$25.00. The per diem rates are inclusive of tip. No additional reimbursement for gratuities/tips will be approved.

#### **GROUND TRANSPORTATION**

1. Private vehicle mileage reimbursement rate is \$0.585 per mile. Gas costs are included in this rate.
2. Taxis, Uber, Lyft, or other ride share options will be reimbursed at actual cost plus reasonable tip, with itemized receipt if over \$25.00.
3. Rental cars are reimbursed at cost. It is expected Design Professional will select compact or economy vehicles, unless there is a specific business need for a different class vehicle, in which case an explanation and approval by OSU must be provided. Gas receipts for rental cars are reimbursable at actual cost.