

**OSU RESERVE CONTRACT
FOR PROFESSIONAL CONSULTING SERVICES**

This Reserve Contract for Professional Consulting Services (hereafter, "Reserve Contract" and further defined in Article I), is between:

"Consultant": [Consultant Name]
[Consultant Street]
[Consultant City], [Consultant State] [Consultant ZIP]
[Consultant Authorized Signer Email]

and **"Owner":** Oregon State University ("OSU")
644 SW 13th Street
Corvallis, OR 97333
ConstructionContracts@oregonstate.edu

(each a "Party" and collectively, the "Parties").

This Reserve Contract is effective as of the date it has been signed by the Owner (the "Effective Date").

RECITALS

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

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

WHEREAS, Consultant desires to provide Services to Owner;

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

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

AGREEMENT

Article I. DEFINED TERMS

Unless otherwise specifically defined in this Reserve Contract, words which have well-known technical meanings or construction industry meanings are used in the Reserve Contract documents in accordance with such recognized meanings. Capitalized terms used, but not

defined herein shall have the definition set forth in OSU Standards.

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

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

“Affiliate” shall mean any subsidiary of Consultant, and any other entity in which Consultant has a financial interest or which has a financial interest in Consultant (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control, or which controls Consultant).

“Applicable Laws” means federal, state, and local laws, codes, rules, regulations, ordinances, and OSU Standards and Policies applicable to the Work, applicable to the Services, and this Reserve Contract.

“Attachment 1” refers to Consultant’s Response submitted in response to Owner’s Solicitation Documents, including the Required Information Form (RIF) and the Signed Offeror Signature Page.

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

“Construction Contract” means any contract, entered into between Owner and a Contractor, to provide any or all Work necessary to construct a Project identified in a Supplement, including the original base contract for construction of the Project, the Oregon State University General Conditions, any supplemental general conditions to the Construction Contract, any amendments to the Construction Contract, the Contractor’s performance bond and payment bond, the plans, specifications, approved shop drawings, all approved change orders, any solicitation documents, and any response by a successful bidder or proposer to any such solicitation documents.

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

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

“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).

“Diverse Business Report” means an accurate report by the Consultant 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.

“Force Majeure” means any reasonably unanticipated circumstance not within a Party’s reasonable control, which prevents a Party from performing its obligations under this Reserve Contract where such cause is beyond the Party’s reasonable control and the nonperforming party has been unable to avoid or overcome the act by the exercise of due diligence. Such acts or events include without limitation, acts of God, flood, earthquake, fire, maritime or aviation disaster, pandemic, epidemic, civil disturbance, embargo, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, or nuclear, chemical or biological contamination. The nonperforming Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations.

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

“Key Person” or “Key Personnel” means a person(s) identified by the Parties in a Supplement and employed by the Consultant or one of the Consultant’s Sub-Consultants, whose expertise will be relied upon for the performance of Consultant’s Services.

“Project” means the total design, development and construction of which the Work performed under Construction Contract(s) may be the whole or a part identified in a Supplement.

“Project Documents” means all plans, designs, drawings, specifications, construction specifications, schematics, technical documents, calculations, studies, planning efforts, and any other documents or work product (including those in electronic format) applicable to the Project and prepared by the Consultant for the Owner.

“Reimbursable Expenses” are those actual direct expenditures (without overhead, fee, markup or profit) made by the Consultant and its Sub-Consultants in the interest of the

Project (unless otherwise defined in a Supplement) such as: long-distance communication charges; reproductions (when approved in advance by the Owner), postage and handling of plans, drawings, Project Documents, and other documents (excluding reproductions for the use by the Consultant and its Sub-Consultants); photographic production techniques; renderings, models, and mock-ups requested by the Owner; and mileage and travel expenses more particularly described in Exhibit 1.

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

“Schedule of Charges” means the hourly rate of compensation set forth in Exhibit 2 of this Reserve Contract (incorporated herein by this reference). The Schedule of Charges includes the hourly rate to be paid to each position within Consultant’s organization that may perform Services and shall remain fixed for the first two years of the Term (as defined in Article III) of this Reserve Contract. Any escalation of the proposed rates as stated on the Schedule of Charges shall be reviewed and may be approved by OSU upon written request by the Consultant after two full years on the Reserve Contract Program. An additional escalation of the rates on the Schedule of Charges shall be reviewed and may be approved by OSU upon written request by the Consultant after four full years on the Reserve Contract Program. The Owner, in its sole discretion, may initiate negotiation of the rates set forth in the Schedule of Charges for a particular Supplement.

“Scope” means a specific scope of Work, as detailed in a particular Construction Contract.

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

“Sub-Consultant” means any consultant hired by Consultant to assist Consultant in the performance of the Services described in the Supplement.

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

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

“Supplement Effective Date” means the date any given Supplement has been fully signed by the Parties. No Services shall be performed, or payment made pursuant to a

Supplement prior to the Supplement Effective Date.

“Time and Material” refers to a method by which Consultant may be compensated for actual time spent and materials utilized to complete the Services. If the Parties agree Consultant shall be paid for its Services on a Time and Materials basis the Consultant shall be paid as set forth in Article IX of this Reserve Contract.

“Work” means the furnishing of all materials, labor, equipment, transportation, services, and incidentals necessary to successfully complete all or part of any Project and the carrying out of duties and obligations imposed by the Project Documents for a Contractor that is eventually awarded a Construction Contract for the identified Project.

Article II. INCORPORATION AND INTERPRETATION OF DOCUMENTS

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

Article III. TERM

The term of this Reserve Contract will begin on the Effective Date and shall expire on November 30, 2030 (the “Term”). However, Supplements and Supplement Amendments awarded pursuant to this Reserve Contract shall remain effective until completion of Consultant’s Services on a Project, even if such completion occurs after expiration of the Term. In such a case, Owner and Consultant hereby agree that the terms of this Reserve Contract, including the applicable Supplement and Supplement Amendments, shall remain in effect until such time as Owner approves the final performance and delivery of Consultant’s Services.

Article IV. SERVICE REQUEST; SUPPLEMENT AWARD

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

Upon Owner’s election to award a Project to Consultant, the scope and cost of the Services with regard to each such specific Project will be specified in a Supplement. The terms and

conditions specified in this Reserve Contract shall be incorporated in any Supplement issued.

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

Article V. SUPPLEMENT AWARD NOT GUARANTEED

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

Article VI. SERVICES

Consultant shall provide Owner with professional consulting Services more particularly described in an executed Supplement. Consultant shall perform Services in accordance with the terms of this Reserve Contract, and Consultant hereby agrees to the following:

- A. Consultant shall perform Services at all times in compliance with the standard of care set forth in this Reserve Contract.
- B. Services may include the creation of Project Documents required to achieve identified Project objectives. Consultant shall complete all Project Documents in accordance with Article VIII of this Reserve Contract and as may be more particularly defined in a Supplement.
- C. Consultant shall perform, at no additional cost to Owner, all Services necessitated in whole or in part by errors and omissions of, or breach of this Reserve Contract by Consultant or any persons or entities for whom Consultant is responsible.
- D. Consultant shall fully cooperate with Owner to meet all Project budgets.
 - i. In the event the Consultant's opinion of probable construction costs exceeds the budget for any Project identified in a Supplement by any amount during the design or construction phases, or in the event the bids or negotiated cost of the Work exceed the budget for any such Project by more than 10 percent (unless otherwise provided in the Supplement), Consultant, upon notice from Owner, agrees to modify, at Consultant's sole expense, Consultant's Project Documents (or, with Owner's approval, those portions of Project Documents where opinions of probable construction costs or bids exceeded the budget or stipulated percentage, hereafter, "Project Documents Modification").
 - ii. The Project Documents Modification shall constitute Consultant's sole responsibility with respect to its opinions of probable construction costs, and Consultant agrees to cooperate with Owner in revising the Project scope and quality in order to reduce the probable construction costs so that they do not exceed the applicable Project budget. Consultant agrees that any Project Documents Modification may be in

addition to obligations that may be imposed by Article VIII of this Reserve Contract.

Article VII. SCHEDULE

Consultant acknowledges that time is of the essence in the performance of all Services. Upon Owner's request, either prior to execution of a Supplement or at any time thereafter, Consultant shall submit a written schedule for performance of Consultant's Services ("Schedule"). The Schedule shall be in form and level of detail as required by Owner. Consultant shall periodically reevaluate the Schedule and promptly notify Owner in writing of any actual or anticipated deviations from the Schedule. Any adjustments to the Schedule shall be allowed only with prior written approval of Owner.

Article VIII. STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES

By execution of this Reserve Contract, the Consultant agrees that:

- A. **Standard of Care.** The Consultant shall perform the Services under any given Supplement, in accordance with the professional skill, care and standards of other professionals performing similar services under similar conditions; and will meet all other requirements listed in this Article VIII in the performance of Services.
- B. **Professional License.** When applicable law requires that Services executed by any given Supplement be performed by licensed professionals, the Consultant shall or shall require its Sub-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 or when required by Oregon Structural Specialty Code, a Structural Engineer ("SE") licensed in the state of Oregon, as applicable. 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 Consultant shall provide full Curriculum Vitae (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.
- C. The Consultant understands and agrees that the services of the Consultant, and Sub-Consultants are performed for the benefit of the Owner.
- D. **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 Consultant shall perform the Services in accordance with the following requirements:

- i. All plans, drawings, specifications, and other documents prepared by the Consultant shall 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 Consultant);
 - ii. All plans, drawings, specifications, and other documents prepared by the Consultant shall accurately reflect existing conditions for the scope of the Services to be performed;
 - iii. The 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;
 - iv. The Consultant is responsible for any inconsistencies or omissions in the plans, drawings, specifications, and other documents prepared by the Consultant and its Sub-Consultants. While Consultant cannot guarantee that the various documents required under any given Supplement are completely free of all minor human errors and omissions, it is the responsibility of the Consultant throughout the period of performance under this Reserve Contract and any given Supplement to use due care and perform with professional competence. Consultant 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 the Consultant and its Sub-Consultants. Consultant further agrees to render assistance to Owner, at no additional cost unless otherwise agreed to through a Supplement Amendment, in resolving other problems relating to the design of, or specified materials used in, the Project;
 - v. The Consultant shall ensure that the 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.
 - vi. The Consultant shall ensure that the Project allows for access to programs, activities, and services in the most integrated setting possible.
- E. Owner Review.** Any review or acceptance by the Owner of Services, plans, drawings, specifications and other documents prepared by the Consultant will not relieve the Consultant of any responsibility for complying with the standard of care set forth herein. The Consultant is responsible for all Services to be performed under this Reserve Contract and any given Supplement and agrees that it will be liable for all its negligent acts, errors, or omissions, if any, relative to the Services.
- F. Representations and Warranties.**

- i. Consultant has the power and authority to enter into, and perform the Services in accordance with terms of this Reserve Contract.
- ii. When executed and delivered, this Reserve Contract is a valid and binding obligation enforceable with its terms.
- iii. Consultant is responsible for all Services performed under any given Supplement and accepts liability for its Services as further described in the Reserve Contract.
- iv. All information provided by Consultant in Attachment 1 is true and accurate.
- v. Consultant is and shall remain duly licensed to perform the Services at all times during the Term, and if there is not licensing requirement to perform the Services, Consultant shall remain qualified and competent to perform Services at all times during the Term of this Reserve Contract.
- vi. Consultant is experienced, having the skill, legal capacity, and professional ability necessary to perform the Services required for Projects contemplated in this Reserve Contract and all Supplements in a manner consistent with the standard of care set forth in this Reserve Contract.
- vii. Consultant has the capabilities and resources necessary to perform the obligation of this Reserve Contract.
- viii. Consultant either is or warrants that it will become in a manner consistent with the standard of care set forth above, familiar with all applicable current OSU Standards and policies, and all Applicable Laws, pertaining to the Services set forth in any Supplement to this Reserve Contract.
- ix. The representations and warranties set forth in this Article VIII are in addition to, and not in lieu of, any other representations and/or warranties provided by Consultant herein.

Article IX. COMPENSATION

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

- A. Fees for Services and Direct Expenses.** Each Supplement will indicate whether Consultant will be compensated for Services and related direct expenses on a Time and Materials basis or on a Fixed Price basis.
- i. If the Parties agree Consultant is to be paid on a Time and Materials basis, Consultant will be compensated for its Services as follows: 1) at the specified fixed hourly rates set forth in the Schedule of Charges for direct labor hours, plus 2) actual materials costs, including, if appropriate, material handling costs. Each Supplement for which Consultant is to be paid on a Time and Materials basis will also include a clearly defined not-to-exceed amount. Consultant will not be paid more than the not-to-exceed amount without an executed Supplement Amendment.
 - ii. At Owner's sole discretion, the Schedule of Charges may be negotiated for a particular Supplement, in which case the Consultant will be compensated for its direct labor hours according to the Schedule of Charges set forth in that Supplement. Modification to the Schedule of Charges will apply only to that particular Supplement and will not apply to any other Supplements issued to Consultant.
 - iii. If Consultant is to be paid on a Fixed Price basis, Owner reserves the right to request from Consultant a breakdown of anticipated costs included in the Fixed Price prior to execution of the Supplement.
- B. Reimbursable Expenses.** The Owner shall reimburse Consultant and its Sub-Consultants for Reimbursable Expenses incurred in the performance of Services at cost, except for travel expenses.
- i. Pre-approved travel expenses incurred shall be reimbursed at rates indicated in Exhibit 1. Unless stated otherwise in a Supplement, travel expenses must be pre-approved by Owner. Travel expenses will not be reimbursed for Services rendered within 25 miles of the Consultant's office.
 - ii. Fees for Sub-Consultant's Services. Unless otherwise provided in a Supplement, Owner shall only reimburse Consultant for the actual, direct costs of Services performed by its Sub-Consultants, and shall not reimburse Consultant for any overhead or mark-up of costs added to the direct cost of a Sub-Consultant's Services at any tier.
- C. Fees for Additional Services.** Upon execution of any Supplement Amendment, Owner agrees to compensate Consultant for Additional Services (and Reimbursable Expenses, if applicable) performed by the Consultant (or its Sub-Consultants) according to the terms of this Article IX.

D. Maximum Compensation. The maximum compensation paid to Consultants pursuant to any Supplement may not exceed the maximum allowable under the applicable sub-section of OSU Procurement Standards (the “Maximum Compensation”).

E. Fees Upon Termination. Compensation to be paid to the Consultant in the event a Supplement is terminated as provided in Article XX of this Reserve Contract shall be determined in accordance with this Article IX. Owner agrees to pay Reimbursable Expenses incurred before notice of termination is delivered to Consultant.

Article X. PAYMENTS

Owner’s payments to Consultant for any given Supplement shall be consistent with the following:

- A.** 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 address listed below, unless otherwise stated by the Owner in a Supplement Transmittal letter.
- B.** Invoices shall be submitted to the Owner no later than the 20th of the month for the work completed in the previous month. Reimbursable Expenses must be invoiced within 90 Days of when they are actually incurred, otherwise, the Reimbursable Expenses will not be paid.
- C.** Invoices shall be submitted in the form and format stipulated by the Owner.
 - a.** Submit to:
University Financial Services
OREGON STATE UNIVERSITY
850 SW 35th St., Corvallis, OR 97333
FacServContracts@oregonstate.edu
- D.** Payments to the Consultant for Services performed and invoiced (including Reimbursable Expenses) may be made for each phase of the Consultant’s Services in percentages if set forth in the Supplement. The total of all payments for Services may not exceed the Maximum Compensation set forth in any Supplement and if completed on a Time and Materials basis, the hourly rates invoiced may not exceed the hourly rates set forth in Exhibit 2.
- E.** Payments to the Consultant for such Services performed and invoiced may be made for each phase subject to the not to exceed limits set forth in any given Supplement, with final payment for each phase subject to written acceptance of the phase by the Owner. The total of all payments for Services shall not exceed the maximum amount set forth in the Supplement for Services, and the total of all payments for Reimbursable Expenses shall not exceed the maximum amount set forth in the Supplement for Reimbursable Expenses. The total of all such payments, for Services and Reimbursable Expenses, shall not exceed the Maximum Compensation provided in the Supplement. Notwithstanding

“not to exceed” limits established for each phase of Services, should an individual phase of design, beginning with the phase of design indicated in the Supplement, be completed without reaching the not-to-exceed limit for that phase, the balance remaining will be transferred to the next phase of work in succession through Project completion through a fully executed amendment. At the completion of the Project, any remaining balance will revert to the Owner through a fully executed amendment.

- F. Owner reserves the right, but is not obligated, to retain up to five percent (5%) of the Maximum Compensation, in total or by each phase of Services, for payment, subject to Owner’s acceptance of the Services and any deliverables.
- G. 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 a Force Majeure event 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.
- H. Owner shall have the right to withhold payment from Consultant for any unsatisfactory Service until such Service is performed satisfactorily.
- I. No deductions shall be made from Consultant's fee on account of penalty, liquidated damages, or other sums withheld from payment to the Contractor.
- J. Upon completion of all Services under a Supplement, and precedent to Owner’s obligation to make final payment, Consultant shall certify, in writing, that the Consultant has completed Consultants obligations under the Supplement by indicating “Final Billing” on final invoice to Owner.
- K. Consultant shall submit a Diverse Business Report as a condition of final payment for every Supplement. The Diverse Business Report shall include the total number of contracts and subcontracts awarded to Diverse Business enterprises as Sub-Consultants and the dollar value of their respective contracts and subcontracts during the course of the Supplement.

Article XI. KEY PERSONS and OTHER PROJECT PERSONNEL

The Parties may agree in a Supplement that the Consultant’s Services must be performed by one or more Key Person(s). In such a case, the Parties shall identify each of Consultant’s employees and Sub-Consultants (if applicable) that shall be considered Key Person(s) for that Project in the Supplement. Each Supplement will also set forth the conditions applicable to Consultant’s Services performed by the Key Person(s). In the event that Key Personnel become unavailable to the Consultant at any time, Consultant 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 Consultant shall remove any individual from the Project if so directed by Owner in writing following discussion with the Consultant, provided that Consultant shall have a reasonable time period within which to find a suitable replacement.

Article XII. RESERVE CONTRACT ADMINISTRATION

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

Article XIII. PROJECT COORDINATION

Consultant shall cooperate with other consultants and Contractors with whom Owner may employ from time to time to provide goods and services in connection with a Project. Consultant's cooperation will include all steps reasonably necessary to achieve Owner's Project objectives and shall include, but not be limited to the following:

- A. Consultant's cooperation with the Contractor to ensure the Project is constructed in accordance with the Project schedule. The Project schedule shall be provided by the Owner or Contractor, if Owner makes an express delegation of that responsibility.
- B. Consultant shall interpret matters concerning the requirements of Construction Contracts only when Owner makes an express written delegation of that responsibility to Consultant, and such interpretation shall be limited to scope of the delegation. If delegated to Consultant, responses to requests for interpretation of a Construction Contract will be made in writing within any time limits agreed upon or with reasonable promptness. Delegated interpretations and decisions of the Consultant must be consistent with the intent of and reasonably inferable from the Construction Contract.
- C. Consultant shall timely review all submittals, shop drawings, product data and samples (collectively, "Submittals") made by the Contractor. Owner, or Contractor, if so delegated, shall provide Consultant with a copy of Contractor's Submittal schedule, which should: 1) be coordinated to Contractor's Work schedule, and 2) allow Consultant reasonable time to review Submittals. Consultant's approval of Submittals shall not be unreasonably delayed or withheld. Submittals upon which the Consultant is not expected to take responsive action will be identified by the Owner. Only Submittals which Owner indicates will not require Consultant's responsive action may be returned by Consultant without action.

- D. If requested, Consultant shall timely review Contractor's applications for progress payments, and certify to Owner the amounts due Contractor through certificates of payment for such amounts in such form specified or acceptable to Owner in Owner's reasonable discretion.
- E. If a Contractor proposes a requested deviation from the Project Documents, Consultant agrees to timely review the requested deviation and provide Owner and Contractor with written recommendations, which are subject to Owner's approval in Owner's sole and absolute discretion.
- F. The Parties further agree that Consultant may be responsible for the inspection of Contractor's Scope if set forth in a Supplement. In such a case, Consultant shall complete requested inspections within a reasonable time, including after substantial completion of Contractor's Scope. If corrections to Contractor's Scope are required, Consultant shall inform Owner and Contractor of the necessary correction.
- G. Except as otherwise provided in a Supplement, the Owner's Authorized Representative is the Contractor's primary point of contact regarding a Project. Consultant's communications with the Contractor must include the Authorized Representative at all times, unless directed otherwise in writing.
- H. When Project coordination tasks increase Consultant's duties beyond those reasonably anticipated by the Parties in the Supplement, the Parties shall execute a Supplement Amendment setting forth the terms and payment for any Additional Services. The full execution of a Supplement Amendment is a condition precedent to Owner's obligation to pay Consultant for Additional Services.
- I. Consultant shall be responsible for completing its Services in a manner that facilitates timely Project completion.

Article XIV. SERVICES OF CONSULTANT'S SUB-CONSULTANTS

Consultant may include in their proposal in response to a Request, to employ Sub-Consultants in the performance of its Services. Consultant shall be responsible for any Service performed by a Sub-Consultant. All Consultant/Sub-Consultant agreement(s) must include the following provisions, modified to apply to Sub-Consultant as appropriate: VIII-STANDARD OF CARE; REPRESENTATIONS AND WARRANTIES, XVI-INSURANCE PROVISIONS, XVII-INDEMNITY, RESPONSIBILITY FOR DAMAGES, XX-TERMINATION, XXI-SUSPENSION OF SERVICES, XXIII-COMPLIANCE WITH APPLICABLE LAW; XXIV-CHOICE OF LAW; JURISDICTION AND VENUE, XXV-MEDIATION, XXVI-THE CONSULTANT AS INDEPENDENT CONTRACTOR, XXVII-ACCESS TO RECORDS, XXVIII-OWNERSHIP OF WORK PRODUCT, XXIX-MINIMUM WAGE RATES FOR PUBLIC WORKS, XXXII-NO WAIVER, XXXVII-FOREIGN CONTRACTOR, and XXXIX-MEDIA CONTACTS.

Consultant shall pay any Sub-Consultants out of the Maximum Compensation. The Owner has no contractual obligation or legal duty to pay any Sub-Consultants or ensure that the Consultant makes full and timely payment to the Sub-Consultants for Services rendered on the Project.

Services performed by Consultant through its Sub-Consultants must be included in Consultant's invoices at the cost incurred by the Consultant without mark-up, unless otherwise agreed by the Parties in writing. Consultant shall provide to the Owner: 1) copies of Sub-Consultant's invoices submitted to the Consultant, and 2) Consultant's requests for payment to the Owner under this Reserve Contract.

In the event that a Sub-Consultant is replaced or substituted for by the Consultant, the Consultant shall disclose such an event in writing to the Owner. The Owner may, in its sole discretion, accept the substitute Sub-Consultant or may request a different substitute Sub-Consultant. The substitution may not disrupt or alter the terms of the Supplement or Project, and the Consultant shall take all actions reasonably necessary to ensure the cooperation of former and current Sub-Consultants in the complete and timely performance of the Services.

In the event any Sub-Consultant is an Affiliate of Consultant, Consultant must notify the Owner in writing of the Affiliate relationship.

Article XV. SUCCESSORS AND ASSIGNS.

The provisions of this Reserve Contract are binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Upon execution of this Reserve Contract or any Supplements, Consultant shall not enter into any new Sub-Consultant agreements for Services set forth in an executed Supplement or assign, delegate, or otherwise transfer any of its interest in, rights to, duties, or obligations under this Reserve Contract or a Supplement hereto without Owner's prior written consent. In addition to any additional provisions, Owner may require, Consultant shall include in any permitted Sub-Consultant agreement under any given Supplement a requirement that the Sub-Consultant be bound by Articles XVI-INSURANCE PROVISIONS, XVII-INDEMNITY; RESPONSIBILITY FOR DAMAGES, XX-TERMINATION, XXI-SUSPENSION OF SERVICES, XXIII-COMPLIANCE WITH APPLICABLE LAWS, XXIV- CHOICE OF LAW; JURISDICTION AND VENUE, XXIV-MEDIATION, XXVI- THE CONSULTANT AS INDEPENDENT CONTRACTOR, XXVII-ACCESS TO RECORDS XXVIII-OWNERSHIP OF WORK PRODUCT, XXXII-NO WAIVER, and XXXVIII-FOREIGN CONTRACTOR.

Article XVI. INSURANCE PROVISIONS

As a condition precedent to the execution of this Reserve Contract, Consultant shall maintain in full force, at its own expense, and for the duration of the Reserve Contractor longer as specified below, any and all insurance coverage or policy required by Owner and set forth below from insurance companies or entities with A.M. Best rating of A-VII or better that are authorized to transact business of insurance and issue coverage in the State of Oregon.

- A. Commercial General Liability ("CGL"). Consultant shall obtain and keep in effect at Consultant's expense for the term of the Contract, CGL insurance covering bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. This insurance shall include bodily injury liability, products and completed

operations, and contractual liability coverage for the indemnities provided under the Reserve Contract and or any given Supplement (to the extent contractual liability coverage for the indemnity is available in the marketplace).

- i. CGL insurance shall be written on current ISO occurrence for CG 00 01 or its equivalent if Owner approves and shall cover liability arising from premises, operations, independent contractors, products-completed operations, death, bodily injury, property damage, personal injury and advertising injury and liability assumed under an insured contract.
 - ii. The additional insured coverage under the CGL shall be on current ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage if Owner approves. Such insurance shall apply as primary insurance to the additional insureds.
- B. Business Automobile Liability.** Consultant shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Business Automobile Liability Insurance with "symbol 1" coverage (owned, hired and non-owned vehicles) with a minimum combined single limit of \$1,000,000. The coverage may be written in combination with the Commercial General Liability Insurance.
- i. Business auto coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or its equivalent if Owner approves.
- C. Professional Liability.** Consultant shall obtain, at Consultant's expense, Professional Liability/Errors & Omissions insurance covering damages caused by any negligent error, omission, or professional misconduct of the Consultant with minimum limits of \$2,000,000 each claim and a \$2,000,000 aggregate. Consultant shall require that each of Sub-Consultants and subcontractors secures and maintains Professional Liability/Errors & Omissions coverage with minimum limits of \$1,000,000 each claim and a \$1,000,000 aggregate.
- D. In addition, the Consultant agrees to the following:**
- i. Insuring companies are subject to acceptance by the Owner.
 - ii. Insurance carried by the Consultant shall be primary and non-contributory.
 - iii. Except with respect to Professional Liability/Errors and Omissions, the Consultant agrees to waive all rights of subrogation against the Owner and its officers, trustees, agents, and employees for losses arising from the work performed under any given Supplement.
 - iv. If any insurance required is arranged on a "claims made" basis, "tail" coverage will be required at the completion of the Reserve Contract for a duration of thirty-six (36) months or the maximum time period available to the Consultant in the marketplace if less than thirty-six (36) months. Consultant will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for thirty-six (36) months following the Owner's acceptance and final payment for Consultant's Services. Continuous "claims made" coverage will be

- acceptable in lieu of “tail” coverage provided its retroactive date is on or before the Reserve Contract. This will be a condition of the final acceptance of Work or Services and related warranty, if any.
- v. The Consultant shall furnish Certificates of Insurance and applicable endorsements to the appropriate university official as evidence of the insurance coverage required by this Reserve Contract (each a “Certificate” and collectively the “Certificates”). The Certificate(s) should state specifically that the insurance is provided for this Reserve Contract.
 - vi. The insurance policies shall be endorsed/amended so that the insurance company or companies shall give a thirty (30) calendar day notice (without reservation) if a policy is suspended, voided, canceled or materially changed, or if an aggregate limit has been reduced by 50% or more, except when cancellation is for non-payment, then a ten (10) calendar day notice may be given to the Owner’s Representative.
 - a. In the event any policy is suspended, voided, cancelled or materially changed, Owner may provide notice to Consultant to suspend Services pursuant to any Supplement, until and unless all required insurance remain in effect or a new Certificate of Insurance is provided to Owner evidencing the replacement coverage.
 - b. Consultant expressly agrees that Owner reserves the right to withhold payment to Consultant until evidence of reinstated or replacement coverage is provided to Owner.
 - c. Any failure to comply with the reporting provisions of this Article shall not affect the obligations of the Consultant.
 - vii. If Consultant changes an insurance carrier during the term of this Reserve Contract, Consultant shall provide Owner with Certificate(s) from the new carrier(s) in accordance with the terms of this Reserve Contract.
 - viii. Consultant is financially responsible for all deductibles, self-insured retentions, and self-insurance.
 - ix. All policies, except for Workers' Compensation and Professional Liability/Errors & Omissions, shall be endorsed so that the Owner, and its trustees, officers, employees, and agents are Additional Insureds with respect to the Consultant’s Services to be provided under this Reserve Contract.
 - x. If Consultant enters into subcontracts for any services to be provided to Owner in fulfillment of a Supplement, Consultant shall require that all subcontractors maintain insurance meeting all the requirements stated in this Reserve Contract and the Supplement.

Article XVII. INDEMNITY, RESPONSIBILITY FOR DAMAGES

Owner and Consultant hereby agree to the following:

- A. Indemnification. To the fullest extent permitted by law, Consultant 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, experts' fees and costs, of whatsoever nature resulting in any way from, arising out of, or relating to the activities of the Services and the Work, including professional services, of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees, but only to the extent caused by the negligence or other wrongful conduct of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees; provided, however, to the extent Consultant provides architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services (as that term is defined under ORS 279C.100), Consultant has no duty to defend Owner against a claim for professional negligence and relating to the professional services provided by the Consultant, except to the extent that Consultant's liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of the Consultant or the Consultant's Sub-Consultants, partners, joint venturers, subcontractors, officers, agents or employees.

- B. Owner Defense Requirements.** Notwithstanding the foregoing defense obligations of the Consultant, neither the Consultant nor any attorney engaged by the Consultant shall defend any claim in the name of the Owner, 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 Consultant is prohibited from defending the Owner, that Consultant is not adequately defending the Owner's interests, or that an important governmental principle is at issue or that it is in the best interests of the Owner to do so. The Owner reserves all rights to pursue any claims it may have against the Consultant if the Owner elects to assume its own defense.

Article XVIII. LIMITATION OF LIABILITIES

Except for any liability of the Consultant arising under or related to the Consultant's failure to perform according to the standard of care or any other liability arising under or related to the Consultant's representations and warranties under Article VIII of this Reserve Contract, or as otherwise provided by this Reserve Contract and or any given Supplement, neither Party shall be liable for any indirect, incidental, consequential or special damages under this Reserve Contract and or any given Supplement or any damages of any sort arising solely from the termination of this Reserve Contract and or any given Supplement in accordance with its terms.

Article XIX. AMENDMENTS TO THE RESERVE CONTRACT

Any changes to the provisions of this Reserve Contract require the written execution of an amendment hereto, that is explicitly identified as an amendment to this Reserve Contract. The Services of the Consultant with regard to any specific Project shall be specified in a Supplement,

which must be executed by the Parties prior to commencement of any Services.

Article XX. TERMINATION

- A. Mutual Agreement. The Owner and Consultant, by mutual written agreement, may terminate this Reserve Contract, and any or all Supplements or both at any time.
- B. By Owner for Convenience. Owner may terminate this Reserve Contract, any or all Supplements or both, in whole or in part whenever the Owner determines that termination of this Reserve Contract, any or all Supplements, or both is in the best interest of the Owner or the public. The Owner shall provide the Consultant with at least seven (7) Days prior written notice of termination for convenience.
- C. Termination by Owner for Cause. Owner may terminate this Reserve Contract, any or all Supplements, or both, in whole or in part, immediately upon notice to Consultant, or at such later date as Owner may establish in such notice, upon occurrence of any of the following events:
 - i. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Consultant's Services.
 - ii. 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;
 - iii. Consultant no longer holds any licenses or certificates that are required to perform the Services.
 - iv. Consultant is listed on the Bureau of Labor and Industry's ("BOLI") list of contractors ineligible to receive public works contracts, or any other list maintained by the state of Oregon, OSU, or federal government, as updated from time to time (collectively the "Debarment Lists"). Consultant as well as any firm, corporation, partnership, or association in which the Consultant has a financial interest appearing on the Debarment Lists shall be ineligible to provide Services to Owner.
 - v. Consultant commits a material default of any covenant, representation, warranty, obligation or agreement pursuant to this Reserve Contract or any Supplement hereto, fails to perform the Services called for in a Supplement within the time specified or allowed in the Supplement, or fails to perform the Services so as to endanger performance of a Supplement in accordance with its terms, and after receipt of written notice from Owner, does not correct such failures in such time as Owner specifies (which shall not be less than 10 calendar days, except in the case of emergency).
 - a. Should Consultant commit a material default of any Supplement executed pursuant to this Reserve Contract, Owner shall, in its sole discretion, have the right to terminate all other Supplements issued to Consultant pursuant to this Reserve Contractor regardless of whether such default has occurred as to any other Supplement.

- D.** By Consultant. If Owner fails to pay Consultant per the terms of this Reserve Contract or a Supplement, provided that Owner has failed to make payment within 15 Days after receiving written notice from Consultant of such failure to make payment.
- E.** Effect of Termination. In the event of termination of this Reserve Contract, any or all Supplements or both:
- i. Pursuant to paragraphs A, B, C.1 or C.2 above, the Owner, using the schedule of hourly rates set forth in Exhibit 2, and within the limitations specified in Article IX shall compensate the Consultant for all Services performed prior to the termination date, together with Reimbursable Expenses then due, and such amounts shall immediately become due and payable.
 - ii. Pursuant to Sub-paragraphs C.3 or C.4 above, the Owner shall have any remedy available to it under this Reserve Contract, any or all Supplements, or both or at law or in equity. Such remedies are cumulative and may be pursued separately, collectively and in any order.
 - iii. For any reason, the Consultant shall immediately cease performance of Services under the Supplement(s), 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 the Supplement(s) been completed.
 - iv. For any reason, the Consultant shall be responsible to the Owner for the quality of its Services and work product through the date of termination.
- F.** The rights and remedies of Owner provided in this Article are not exclusive and are in addition to any other rights and remedies provided by law or under this Reserve Contract. Such remedies may be pursued separately, collectively and in any order whatsoever.

Article XXI. SUSPENSION OF SERVICES

- A.** Suspension by Owner. The Owner may suspend the Parties' performance of any or all Supplements in the event of any of the following circumstances:
- i. Owner fails to receive funding, or appropriations, limitations, or other expenditure authority at levels sufficient, in OSU's determination, as based on the assessment and ranking of the policy objectives explicit or implicit in OSU's budget, to pay for the Consultant's Services;
 - ii. Consultant, or any Sub-Consultant performing Services on any given Supplement, no longer holds any license or certificate that is required to perform the Services; or
 - iii. The public interest otherwise requires suspension of performance of the Agreement, 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 Supplement and does not constitute a termination of this Reserve Contract, any or all Supplements, or both. 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 Services. In the event that the Owner determines that the conditions causing suspension of the Services are not likely to be rectified in a reasonable amount of time, the Owner retains the right to terminate this Agreement, pursuant to Article XX. In the event of a suspension of performance pursuant to this Article of the Agreement, the Consultant agrees to remain contractually obligated to perform the Services under the Supplement for the same hourly rates set forth in the Supplement for a period of three years after the Effective Date of the Supplement. If the Supplement is reactivated and the Consultant 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 Consultant and any Sub-Consultants and amend the Supplement accordingly.

- C. Payments at the time of Suspension. If any Services performed by the Consultant are suspended, the Consultant shall be paid for the Services rendered, under the provisions and limitations of this Reserve Contract, 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 Consultant, a bid overrun, or other breach or default by the Consultant.

Article XXII. ASBESTOS AND OTHER HAZARDOUS SUBSTANCES

The Owner does not anticipate that the Services under any given Supplement will involve the removal, destruction or other remediation of asbestos, asbestos-related materials, hazardous wastes, hazardous substances, or other hazardous materials (collectively, the "Hazardous Substances"). It is understood and agreed that the Owner will contract with other parties for the removal of any Hazardous Substances prior to the commencement of any Project or at such time as Hazardous Substances are detected. It is understood and agreed that the Consultant may not and does not prescribe any safety measure or abatement procedure and is not responsible for any act or omission relating to the acts of the Owner, another professional consultant not employed by Consultant, contractor, or subcontractor providing Services relating to the abatement of such Hazardous Substances.

Article XXIII. COMPLIANCE WITH APPLICABLE LAW

- A. The Consultant shall comply with all Applicable Laws.
- B. The Consultant specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
- C. Consultant 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.
- D. Failure or neglect on the part of the Consultant to comply with all Applicable Laws shall not relieve the Consultant of its obligations or any other requirements of this Reserve Contract.

- E. Consultant further agrees to make payments promptly when due, to all persons supplying to such Consultant labor or materials for the performance of the Services to be provided under any given Supplement; pay all contributions or amounts due the Industrial Accident Fund from such Consultant incurred in the performance of any given Supplement; 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.
 - i. If Consultant 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 Article shall not relieve the Consultant or Consultant's surety from obligation with respect to any unpaid claims.
- F. Article 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.

Article XXIV. CHOICE OF LAW; JURISDICTION AND VENUE

This Reserve Contract and any Supplement will be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action or suit, between Owner and Consultant that arises out of or relates to performance of this Reserve Contract or any Supplement will be brought and conducted solely and exclusively within the Circuit Court for Benton County, in the State of Oregon, provided however, if a claim must be brought in a federal forum, it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Article be construed as a waiver by the 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. CONSULTANT, BY EXECUTION OF THIS RESERVE CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

Article XXV. MEDIATION

The Parties, in an effort to resolve any conflicts that may arise during the design or construction of a Project or following the completion of the Project, agree that all disputes arising out of or relating to this Reserve Contract or any Supplement shall be submitted to non-binding mediation, unless the Parties mutually agree otherwise. Each Party shall be responsible for its own mediation costs, with the exception of the costs for the mediator, which will be split equally between the Parties.

The Consultant further agrees to include a similar mediation provision in all agreements with Sub-Consultants Services under this Reserve Contract. All participating parties must exercise good faith efforts to resolve disputes in mediation.

Article XXVI. THE CONSULTANT AS INDEPENDENT CONTRACTOR

Consultant shall perform all Services as an independent contractor. The Consultant agrees to the following:

- A. The Consultant is solely responsible for determining the appropriate means, method, and manner of performing Services. However, Owner reserves the right to: (1) determine and modify the delivery schedule for Services to be performed under a Supplement, and (2) evaluate the quality of the completed performance.
- B. The Consultant is not an officer, employee, or agent of Owner, as those terms are used in ORS 30.265.
- C. The Consultant is not a contributing member of the Public Employee's Retirement System and is responsible for any federal or state taxes applicable to compensation or payments paid to the Consultant under any given Supplement. The Consultant will not be eligible for any benefits from these payments for federal Social Security, unemployment insurance, or workers' compensation, except as a self-employed individual. If any payment is to be charged against federal funds, the Consultant certifies that it is not currently employed by the federal government.

Article XXVII. ACCESS TO RECORDS

For not less than ten (10) years after the expiration of this Reserve Contract Consultant will retain, and Owner, and its duly authorized representatives shall have access to, the books, documents, papers, and records of the Consultant which are directly pertinent to Services performed under any given Supplement for the purpose of making audit, examination, excerpts, and transcripts. If any part of this Reserve Contract, any given Supplement, or any resulting Construction Contract(s) is involved in litigation, the Consultant shall retain all pertinent records until all litigation is resolved. The Consultant shall provide Owner and the other entities referenced above with full access to these records in preparation for and during litigation.

Article XXVIII. OWNERSHIP AND USE OF WORK PRODUCT

- A. **Work Product.** Copies of plans, specifications, reports, or other materials required to be delivered under any given Supplement ("Work Product") shall be the exclusive property of Owner. The Owner and the Consultant intend that such Work Product is "Work made for Hire", of which the Owner shall be deemed the author. The Consultant 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 Consultant shall execute such further documents and instruments as the Owner may reasonably request in order to fully vest such rights in the Owner. The Consultant 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. Consultant's Use of Work Product.** The Consultant 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 Consultant 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 Consultant's involvement or prior written consent, the Owner shall indemnify, in an amount up to two times the Maximum Compensation to be paid under this Agreement, the Consultant 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 Consultant for any such liability arising out of the wrongful or negligent acts of the Consultant or the Consultant's officers, employees, Sub-Consultants, subcontractors, or agents.

Article XXIX. MINIMUM WAGE RATES FOR PUBLIC WORKS

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

- A.** Consultant shall comply with the requirements of ORS 279C.800 to 279C.870 as they relate to the payment of prevailing wages.
- B.** Consultant shall pay workers not less than the specified minimum hourly rate of wage set forth in the applicable BOLI schedule of Prevailing Wage Rates for Public Works Contracts in Oregon, as indicated herein. Consultant shall include the preceding requirement in any subcontract with a Sub-Consultant.
 - i. April 5, 2024 Prevailing Wage Rates ("PWR") Apprenticeship Rates
 - ii. January 5, 2024 PWR for Public Works Contracts in Oregon
 - iii. April 5, 2024 PWR Amendments
 - iv. July 1, 2018 Definitions of Covered Occupations for Public Works Contracts in Oregon
 - v. These PWR are available online at:
http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml
- C.** If Consultant's Services are subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Consultant shall pay the higher of the applicable state or federal prevailing rate of wage.
- D.** Consultant, and any Sub-Consultant(s) retained by Consultant, must have a public works

bond filed the Construction Contractors Board before starting work on the Project, unless exempt.

- E. In every agreement with Sub-Consultants providing services on the Project, Consultant shall require its Sub-Consultant(s) to provide a public works bond filed with the Construction Contractor's Board before starting work on the Project, unless exempt.

Article XXX. SEVERABILITY

If any term or provision of this Reserve Contract and or any given Supplement is declared by a court of competent jurisdiction to be illegal or in conflict with Applicable Laws, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Reserve Contract and or Supplement(s) did not contain the particular term or provision held to be invalid.

Article XXXI. FORCE MAJEURE

A Party to any given Supplement shall not be held responsible for delay or default caused by Force Majeure acts, events or occurrences that are beyond the reasonable control of the Party and which could not have been avoided by the exercise of care, prudence, foresight and diligence by such party. Each Party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and will, upon the cessation of the cause, diligently pursue performance of its obligations under this Reserve Contract.

Article XXXII. NO WAIVER

The failure of Owner to enforce any provision of this Reserve Contract or any Supplement shall not constitute a waiver by Owner of that or any other provision.

Article XXXIII. RECYCLING

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

Article XXXIV. NOTICES

Except as otherwise expressly provided in this Reserve Contract or any Supplement, any notices to be given hereunder shall be given in writing by personal delivery, or mailing the same, postage prepaid, to Consultant or Owner at the address set forth below, or to such other addresses or numbers as either Party may hereafter indicate pursuant to this Article. Any notice so addressed and mailed shall be deemed to be given seven (7) calendar days after the date of mailing. Any notice by personal delivery shall be deemed to be given when actually delivered. Regular, day-to-day communications between the Parties may be transmitted through one of the methods set forth above, in person, by telephone, by e-mail, or by other similar electronic transmission.

Representatives for the Consultant and the Owner for purposes of notice and for other specific purposes provided for under this Agreement are:

Consultant: [Consultant Authorized Signer Name], [Consultant Authorized Signer Title]

[Consultant Name]

Address: [Consultant Street]
[Consultant City], [Consultant State] [Consultant Zip]

Owner: Brooke Davison, Construction Contracts Manager
Construction Contracts Administration
Oregon State University
644 SW 13th Ave.
Corvallis, OR 97333

Article XXXV. RESERVED

Article XXXVI. NO THIRD-PARTY BENEFICIARIES

The Owner and the Consultant are the only Parties to this Reserve Contract and or any given Supplement and are the only Parties entitled to enforce its terms. Nothing contained in this Reserve Contract or any Supplement 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 Reserve Contract or any given Supplement.

Article XXXVII. DISCLOSURE OF SOCIAL SECURITY NUMBER

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

Article XXXVIII. FOREIGN CONTRACTOR

If the Consultant is not domiciled in or registered to do business in the State of Oregon, Consultant will promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporation Division, all information required by those agencies relative to any given Supplement. The Consultant shall demonstrate its legal capacity to provide Services in the State of Oregon before entering into any Supplement.

Article XXXIX. MEDIA CONTACTS

The Consultant shall provide no news release, press release, or any other statement to a

member of the news media regarding a Project without Owner's prior written authorization.

Article XL. CONFLICT OF INTEREST

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

Article XLI. SURVIVAL

All rights and obligations shall cease upon termination or full performance of this Reserve Contract and any given Supplements, except for the rights and obligations set forth in Articles VIII Standard of Care; Representations and Warranties, XVII Indemnity; Responsibility for Damages, XVIII Limitation of Liabilities, XXVIII Ownership of Work Product, XX Termination, XXIV Choice of Law; Jurisdiction and Venue, XXVII Access to Records, and XLI Survival and as otherwise explicitly set forth in this Reserve Contract and any given Supplement.

Article XLII. EXECUTION AND COUNTERPARTS

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

Article XLIII. MERGER CLAUSE

THIS RESERVE CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS RESERVE CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS RESERVE CONTRACT WILL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY THE PARTY OR PARTIES TO BE BOUND. ANY SUCH AMENDMENT, CONSENT OR WAIVER OF TERMS MUST CLEARLY BE IDENTIFIED AS SUCH. ANY SUCH AMENDMENT, CONSENT, OR WAIVER WILL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS RESERVE CONTRACT AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

IN WITNESS HEREOF, the Parties have duly executed this Reserve Contract on the same date as the Effective Date.

[Consultant Name], Consultant

Oregon State University, Owner

By _____

By: _____

Bruce Daley

Printed Name: _____

Title: Associate Vice President for Capital
Planning and Facilities Services

Title: _____

Date _____

Date: _____

SAMPLE

Exhibit 1
Travel Reimbursement Rates

LODGING

Consultant 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

1. Meals and incidental expenses are reimbursed at a per diem rate based on GSA Rates (at the time of the execution of the Supplement) 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 is reimbursed at the GSA Rates at the time of the execution of the Supplement. 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 Consultant will select compact or economy vehicles, unless there is a specific business need for a different class vehicle, in which case an explanation must be provided, and prior approval obtained from Owner. Gas receipts for rental cars are reimbursable at actual cost.