

DESIGN PROFESSIONAL'S AGREEMENT

PROJECT NAME

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 [redacted] Services for the Project identified as [redacted] for Oregon State University at [redacted] City, Oregon (the "Project"); 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.

[redacted]

B. Scope of the Project. The scope of the Project includes the following:

[redacted]

C. Scope of Services. The scope of Services to be performed under this Agreement includes the following: Provide programming, schematic design, design development, construction documents, bidding/permitting, and construction administration which includes record documentation and project closeout services in support of the Project.

The scope is further described in the **Design Professional's** proposal dated XXXX, signed by XXXX attached hereto and incorporated herein by this reference as "**Exhibit 1**".

**D. Critical Date Schedule.** The **Design Professional** shall perform the **Services** according to the following critical date schedule:


**E. 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**.

**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** shall provide, with the assistance of the **Consultants**, the professional **Services** more particularly described in **Section VII** below for this **Project**.
2. The **Design Professional** shall provide a schedule for the performance of the **Services** upon execution of this **Agreement**. **Time is of the essence in the performance of this Agreement.**

3. The **Construction Budget** for the **Project** is currently estimated at \$ \_\_\_\_\_.  
**Design Professional shall design Project to \_\_\_% of Construction Budget.**

4. 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 the **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. 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 and **Consultants** identified on the attached **Exhibit 2** in the performance of the **Services** for the **Project**. **The key personnel must include the project manager required in paragraph 7 above.** In addition to the full names, titles/positions and a summary of the duties and Services to be performed by the key personnel and **Consultants** 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 and **Consultants** as may be requested by the **Owner**. The **Design**

**Professional** acknowledges that the **Owner's** award of this **Agreement** to the **Design Professional** was made on the basis of the unique background and abilities of the **Design Professional's** key personnel and **Consultants** originally identified in the **Design Professional's** solicitation response. Therefore, the **Design Professional** specifically understands and agrees that any attempted substitution or replacement of a key person or **Consultant** by the **Design Professional**, without the written consent of the **Owner**, shall constitute a material breach of this **Agreement**. In the event that key personnel or **Consultants** become unavailable to the **Design Professional** at any time, **Design Professional** shall replace the key personnel and **Consultants** with personnel or **Consultants** having substantially equivalent or better qualifications (including applicable professional licensing) than the key personnel or **Consultants** being replaced, as confirmed and approved by **Owner**. Likewise, the **Design Professional** shall remove any individual or **Consultant** from the **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 and Consultants 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 the Project.**

9. **Design Professional** shall make no news release, press release or statement to a member of the news media regarding this **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** shall accurately reflect existing conditions for the scope of the **Services** to be performed;
3. 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;
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** 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** 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, the **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 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 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. In addition the



Design Professional shall ensure that the Project allows 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 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;
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 maximum, not-to-exceed, total amount payable under this Agreement is \$ [REDACTED] (the "Maximum Compensation"), for the combination of Basic Services and Reimbursable Expenses. The Maximum Compensation cannot be increased without a fully executed amendment to this Agreement. Design Professional progress payments shall be made according to the provisions and schedule set forth in Section IV of this Agreement. The Maximum Compensation is more particularly described as follows:

- A. **Basic Services:** The Design Professional shall perform the Basic Services, directly or through the Consultants, on a time and materials basis not to exceed \$ [REDACTED].
  1. **Fee for Consultants Services:** 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 Consultants Services at any tier.
- B. **Reimbursable Expenses:** The Owner shall reimburse the Design Professional for any allowable Reimbursable Expenses, up to a maximum amount of \$ [REDACTED].

**1. Reimbursable Expenses** for the **Project** mean actual direct expenditures (without overhead, fee, markup or profit) made by the **Design Professional** and its **Consultants** in the interest of the **Project** for the following items: long-distance communications; reproductions (when approved in advance by the **Owner**), postage and handling of plans, drawings, specifications and other documents (excluding reproductions for the office use of the **Design Professional** and its **Consultants**); mileage and travel expenses more particularly described in **Exhibit 3**; data processing and photographic production techniques; and renderings, models and mock-ups requested by the **Owner**. The **Reimbursable Expenses** will be reimbursed at cost, except travel expenses. Charges for travel expenses will be reimbursed at cost, but not in excess of the rate allowed Oregon State University employees. Travel expenses are only reimbursable when **Services** are rendered in excess of 25 miles from **Design Professional's** or **Consultant's** office. Reimbursement for reproductions must be pre-approved by the **Owner**.

**C. Additional Services:** The **Owner** will compensate the **Design Professional** for **Additional Services** performed by the **Design Professional**, whether directly or through its **Consultants**, 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 the hourly rates identified in **Exhibit 4** for the duration of this **Agreement** (except in the case of a suspension and reactivation of performance beyond the date agreed to by the **Parties**, as more particularly described in **Section XX**, but only when the **Owner** has given prior written authorization and the **Parties** have executed an amendment to this **Agreement**).

- 1. Fee for Consultants Services:** **Owner** shall only reimburse **Design Professional** for the actual, direct costs of **Additional 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 **Consultants Additional Services** at any tier.
- 2.** The hourly rates contained in **Exhibit 4** shall also be used to determine amounts owed the **Design Professional** in the event this **Agreement** is terminated as provided in **Section XIX, D.1**, or suspended pursuant to **Section XX**. Any amounts so derived may not exceed the limitations for each phase as specified by **Section IV** hereof.

#### **IV. PAYMENTS**

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.

Payments to the **Design Professional** for such **Services** performed and invoiced will be made for each phase as follows, with final payment for each phase subject to written acceptance of the phase by the **Owner**. The total of all payments for **Basic Services** shall not exceed the maximum amount set forth in **Section III.A.** for **Basic Services**, and the total of all payments for **Reimbursable Expenses** shall not exceed the maximum amount set forth in **Section III.B.** for **Reimbursable Expenses**. The total of all such payments, for **Services** and **Reimbursable Expenses**, shall not exceed the **Maximum Compensation**. **Owner** reserves the right to retain up to five percent (5%) of the compensation limit set forth below for each phase, subject to **Owner's** acceptance of the **Services** and any deliverables for each phase. Notwithstanding "not to exceed" limits established below for each phase of **Services**, should an individual phase of design, beginning with **pre-design/schematic design**, 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.

A. **Pre-Design/Schematic Design Phase:** not to exceed \$\_\_\_\_\_.

B. **Design Development Phase:** not to exceed \$\_\_\_\_\_.

C. **Construction Documents Phase:** not to exceed \$\_\_\_\_\_.

D. **Bidding Phase:** not to exceed \$\_\_\_\_\_.

E. **Construction Administration Phase:** not to exceed \$\_\_\_\_\_.

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 this **Agreement** and precedent to **Owner's** obligation to make final payment, **Design Professional** shall certify, in writing, that the **Design Professional** has completed **Design Professional's** obligations under the **Agreement** 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. 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 the **Project**.

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

The **Consultants** shall be paid by the **Design Professional** out of the **Maximum Compensation**, 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 the **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 this **Agreement**.

## **VI. TIME OF PERFORMANCE**

This **Agreement** shall take effect on the **Effective Date** and **Design Professional** shall perform its obligations according to this **Agreement**, unless terminated or suspended, through final completion of Project construction and completion of all warranty work.

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

### **A. Pre-Design/Schematic Design Phase**

In consultation with the **Owner**, and in compliance with the **Design and Construction Standards**, the **Design Professional** shall:

1. identify applicable building codes, administrative, and permit processing requirements as relevant;
2. verify, by on-site inspection unless specifically stated otherwise by the **Owner**, existing conditions and systems, including but not necessarily limited to architectural, structural, mechanical and electrical systems, to confirm that these conditions and systems are of adequate condition and capacity to support the **Work** to be executed on the **Project**;
3. in consultation with **Consultant** team, **Owner** representatives, and other designated persons, use all available information to evaluate the program requirements, and with appropriate data and graphics propose a series of improvements deemed necessary and desirable to satisfy the program requirements, including; space needs, budget, availability of

utilities, effect of codes and ordinances, safety and energy requirements, access to all spaces for all people, historical character of the building, and any other factors and design criteria identified by Owner, Consultant team or Design Professional.;

4. based on the most recent Owner approved program requirements, develop schematic design studies consisting of drawings, and other documents for the **Owner's** approval;
5. provide documents suitable for submission to the City of **Corvallis** for the Oregon State University Pre-Development Plan Review, as required the Owner;
6. provide to the **Owner** the required documents for the approval of various governmental agencies having jurisdiction over the **Project**; **Owner** shall pay for all required appeals and plan review fees;
7. submit to the **Owner** an estimate, consistent with the requirements of **Section I.G.4** above and prepared by an **independent cost estimator**, of the probable **Construction Budget** of the **Project** based upon current area, volume or other appropriate unit costs, and compare and reconcile this **independent** cost estimate with a separate, **independent** cost estimate obtained by the **Owner**;
8. if the **Contractor** for the **Project** is a **CM/GC**, the **Design Professional** shall perform the following **Services** associated with preparation of the probable **Construction Budget** of the **Project**:

a. In lieu of performing the **Construction Budget** estimating **Services** described in **Section VII.A.7** above, provide cost verification **Services** related to the probable **Construction Budget** estimates that will be prepared by the **CM/GC**, including but not limited to the following:

- 1) Review and verify the **Construction Budget** estimates provided by the **CM/GC** during, or at the end of, the schematic design phase of the **Project**; and
- 2) Coordinate these cost verification **Services** with the **Construction Budget** estimating services to be provided by the **CM/GC**, in order to provide timely and accurate cost information to the **Owner**, in the most efficient manner reasonable under the circumstances.

b. Otherwise fully cooperate with the **CM/GC** for alignment of the scope of **Work** with the **Construction Budget**, constructability reviews, and otherwise during the design phase(s) and the construction phase(s) of the **Project**; and

c. In the event the **Construction Budget** estimates prepared by the **CM/GC** exceed the **Owner's Construction Budget**, revise the **Project** design to allow construction of the **Project** within **Owner's** budget.

**OR**

a. In performing the **Construction Budget** cost estimate described in **Section VII.A.7** above, coordinate the **Design Professional's** performance of those **Services** with the **CM/GC** that will be performing **Construction Budget** cost estimate verification services under the **CM/GC's** contract with the **Owner**; and

b. Otherwise collaborate fully with the **CM/GC** to reconcile the scope of Work and estimated cost to the **Construction Budget** during the Schematic Design phase of the **Project**.

9. submit to the **Owner** the following documents, information and other data:
- a. preliminary fire life safety review document and associated plans;
  - b. general exterior materials and interior finishes recommendations, if applicable;
  - c. a **Project** schedule delineating the estimated time required for the **Design Professional** to complete the design development, construction documents, permitting and construction administration phases of the **Project**;
  - d. recommendations by the **Consultants** (structural, mechanical, electrical) of the technical requirements necessary to implement the program requirements;
  - e. provide documentation indicating how **Design Professional** intends to meet **Owner RSD** on **Owner** provided form; and
  - f. preliminary plans, elevations, and other drawings necessary to describe the entire scope of the **Project**. These drawings may be used for local municipal review and campus review. The types of documents may include but are not limited to:
    - 1) Site Plan including civil and landscape design
    - 2) Floor plans with room names and room square footage
    - 3) Roof Plan
    - 4) Primary exterior elevations
    - 5) Primary building section(s)
    - 6) Concept furniture plan
    - 7) Outline specifications
    - 8) For Renovations only – Path of travel accessibility scoping recommendations.
  - g. provide narrative for systems descriptions as necessary to describe and identify all systems associated within Project scope, including, but not limited to (and as applicable):
    - 1) MEP
    - 2) Preliminary energy analysis
    - 3) Fire detection and protection systems required for intended occupancy of the building
    - 4) Structural
    - 5) Proposed building materials
    - 6) Scope of finishes
    - 7) Furnishings and equipment (“**FFE**”)

- 8) Scope of communication systems and Audio/Visual equipment
- 9) Scope of access and security
- 10) Site work issues including exterior utility connections.

10. verify, by on-site inspection unless specifically stated otherwise by the **Owner**, prior to completion of the schematic design phase, existing conditions as required to address significant constructability issues;

11. prepare **up to xxx** schematic design options illustrating the scale and relationship of **Project** components for approval by the **Owner**;

12. perform those design **Services**, in consultation with Consultant(s), during this phase of the design, as necessary for "**Works of Art**" to be identified and incorporated into the **Project**, pursuant to the State of Oregon "**1% For Art Program**", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of **Works of Art** to be part of the **Project** and consisting of consultations with the **Owner** on selection of artwork, commissioning and completion of the artwork and integration with the overall design of the **Project**;

13. perform those design **Services** as they relate to various governmental agency requirements and or provide relevant information during this phase of the design and or attend meetings with **Owner**, various governmental agencies and others as required in support of the **Project**; and

14. provide meeting agenda and presentations (to be pre-approved by Owner's Authorized Representative), and meeting minutes for review within 5 business days of the meeting (to be approved by the Owner's Authorized Representative prior to distribution) for all meetings with the **Owner**.

## **B. Design Development Phase**

Upon notification of the **Owner's** approval of the **Services** performed by the **Design Professional** under the pre-design/schematic design phase, and upon written authorization from the **Owner** to proceed, the **Design Professional**, in consultation with the **Owner** and in compliance with the **Design and Construction Standards**, shall:

1. prepare drawings and other documents to fix and describe the size and character of the entire **Project** as to architectural, site development, structural, mechanical, acoustical and electrical systems, materials and appearances, and such other essentials as may be appropriate and in accordance with governing codes and ordinances;
2. verify, by on-site inspection unless specifically stated otherwise by the **Owner**, prior to completion of the design development phase, existing conditions as required to address significant constructability issues;
3. submit to the **Owner**, for approval, one independent cost estimate of probable **Construction Budget** of the **Project** consistent with the requirements of **Section I.G.4** above and

based upon the current unit costs referred to above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the **Owner**;

4. if the **Contractor** for the **Project** is a **CM/GC**, the **Design Professional** shall perform the following **Services** associated with preparation of the probable **Construction Budget** of the **Project**:

a. Review and verify any adjustments made by the **CM/GC** to the previous estimates of probable **Construction Budget** for the **Work** based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the **Design Professional's** findings to the **Owner**.

**OR**

a. Fully cooperate and coordinate with the **CM/GC** in the **Design Professional's** preparation of the **Construction Budget** estimates provided for in Sub-section 4 above.

5. assist the **Owner** to file the required documents for the approval of various governmental agencies having jurisdiction over the **Project** and at the **Design Professional's** expense revise such documents if required for approval of the Plan by the Authorities Having Jurisdiction ("**AHJ**") (**Owner** shall pay for all required appeals and plan review fees);

6. submit to the **Owner** the following documents, information and other data:

a. preliminary recommendations for interior colors, finishes, and materials;

b. building finishes package;

c. **Project** furniture package;

d. color boards as may be required by Project scope;

e. mechanical systems design(s) including, but not limited to:

- 1) mechanical plans;
- 2) mechanical room layouts;
- 3) mechanical equipment schedule;
- 4) plumbing plans;
- 5) plumbing isometrics for water, sanitary and gas piping;
- 6) plumbing fixture schedule;
- 7) cutsheets;
- 8) building control systems

f. electrical systems design(s) including, but not limited to:

- 1) electrical plans;
- 2) lighting schedule;
- 3) cutsheets;



- 4) low voltage.
  - g. project manual including draft technical specifications;
  - h. recommendations for additive alternates equivalent to approximately 10% of the **Construction Budget**;
  - i. updated project schedule including identification of long lead time items, and recommendations for construction phasing to ensure continued operation of **Owner's** activities;
  - j. equipment layouts showing location, size, and configuration of all equipment in the **Project**. Develop the following to a degree that illustrates the building systems, materials, final appearances and nature of the structure of the building:
    - 1) structural;
    - 2) mechanical;
    - 3) plumbing;
    - 4) electrical;
    - 5) communication systems;
    - 6) audio/visual equipment;
    - 7) access/security;
  - k. completed code analysis including, but not limited to reference of applicable codes and editions. Note occupancy, construction type, egress conditions and other information required by code and or the **AHJ**. Prepare initial fire life safety sheet(s) with code review to **Owner** for issuance to the AHJ. Issue to AHJ upon request by **Owner**;
  - l. verification of compliance with **Design and Construction Standards**, guidelines and codes;
  - m. arc flash analysis report;
  - n. energy analysis including modeling and report;
  - o. fire protection and detection drawings; and
  - p. structural drawings including design loads.
7. perform those design **Services**, in consultation with Consultant(s), during this phase of the design, as necessary for **Works of Art** to be identified and incorporated into the **Project**, pursuant to the State of Oregon "**1% For Art Program**", set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of **Works of Art** to be part of the **Project** and consisting of consultations with the **Owner** on selection of artwork, commissioning and completion of the artwork and integration with the overall design of the **Project**;
8. perform those design **Services** as they relate to various governmental agency requirements and or provide relevant information during this phase of the design and or attend

meetings with **Owner**, various governmental agencies and others as required in support of the **Project**;

9. provide meeting agenda and presentations (to be pre-approved by Owner's Authorized Representative), and meeting minutes for review within 5 business days of the meeting (to be approved by the Owner's Authorized Representative prior to distribution) for all meetings with the **Owner**.

### C. Construction Documents Phase

Upon notification of the **Owner's** approval of the **Services** performed by the **Design Professional** under the design development phase and upon written authorization from the **Owner** to proceed, the **Design Professional**, in consultation with the **Owner** and in compliance with the **Design and Construction Standards**, shall:

1. prepare working drawings and specifications, setting forth all necessary plans, elevations, and construction details, descriptions of materials and equipment, methods of installation, and standards of workmanship;
  - a. all revisions to drawings and specifications identified during design development and subsequent intermediate reviews shall be completed and incorporated prior to issuing construction documents for bidding purposes.
2. prepare **Construction Documents** as may be required to expedite the **Work** in phases so as to take maximum advantage of weather and availability of facilities for demolition and reconstruction;
3. prepare specifications setting forth descriptions of materials and equipment, methods of installation, and standards of workmanship, and a complete listing of all warranties required under the technical portions of the specifications;
4. develop all required bidding information, except for Division 00;
  - a. if the **Contractor** for the Project is a **CM/GC**, the **Contractor** will provide Division 00
  - b. The **Owner** may elect to provide Division 01 in any delivery method;
5. provide the **Owner** an electronic set of the 100% complete **Construction Documents** for completion review and approval prior to advertising the **Project** for bid;
6. in addition to the electronic set of 100% complete **Construction Documents** required in 5 above, provide **Owner** a separate electronic set specifically for bid and permit (plan check) submittal. Drawings, in .pdf format, shall be separated into sets by discipline as required by the **AHJ** for submission of a permit;
7. submit to the **Owner**, for approval, a second independent cost estimate of probable **Construction Budget** of the **Project**, consistent with the requirements of **Section I.G.4** above, as applied to the final design, and compare and reconcile this independent cost estimate with a separate, independent cost estimate obtained by the **Owner**;

8. if the **Contractor** for the Project is a **CM/GC**, the **Design Professional** shall perform the following **Services** associated with preparation of the probable **Construction Budget** of the **Project**:
  - a. Review and verify any adjustments made by the **CM/GC** to the previous estimates of probable **Construction Budget** for the **Work** based upon unit costs referred to above, which might be indicated by changes in requirements or general market conditions, and report the **Design Professional's** findings to the **Owner**.

**OR**

  - a. Fully cooperate and coordinate with the **CM/GC** in the preparation of the **Construction Budget** estimates provided for in Sub-section 7 above.
9. assist **Owner** to file the required documents for the approval of various governmental agencies having jurisdiction over the **Project** (**Owner** shall pay for all required plan review fees);
10. prepare bidding documents with approximately 10% additive alternates, in addition provide deductive alternates as required based on **Design Professional's** understanding of current bid climate;
11. submit to the **Owner** the following documents, information and other data:
  - a. final recommendations for interior colors, materials, and finishes;
  - b. structural calculations;
  - c. heat gain/loss and HVAC system design calculations;
  - d. electrical system design load calculations;
  - e. if the **Contractor** for the Project is not a **CM/GC**, provide updated project schedule; otherwise, coordinate with **CM/GC** to provide updated project schedule;
  - f. final updates to **RSD** spreadsheet; and
  - g. color boards and material samples;
  - h. written confirmation to Owner that **Construction Documents** are in compliance with **OSU Design and Construction Standards**;
12. perform those design **Services** during this phase of the design for **Works of Art** to be identified and incorporated into the Project, pursuant to the **1% For Art Program**, set forth in ORS 276.073 to 276.090, as amended, relating to acquisition of **Works of Art** to be part of the **Project** and consisting of consultations with the **Owner** on selection of artwork, commissioning and/or completion of the artwork and integration with the overall design of the **Project**;

13. perform those design **Services** as they relate to various governmental agency requirements and or provide relevant information during this phase of the design and or attend meetings with **Owner**, various governmental agencies and others as required in support of the **Project**; and

14. provide meeting agenda and presentations (to be pre-approved by Owner's Authorized Representative), and meeting minutes for review within 5 business days of the meeting (to be approved by the Owner's Authorized Representative prior to distribution) for all meetings with the **Owner**.

#### **D. Bidding Phase**

Upon notification of the **Owner's** approval of the **Services** performed by the **Design Professional** under the construction documents phase, and upon written authorization from the **Owner** to proceed, the **Design Professional** shall:

1. assist the **Owner/CM/CG** in the bidding and award process;
2. if requested by the **Owner**, review the bids and assist in recommending the award of **Construction Contract(s)** for the **Work**;
3. coordinate with the **Owner** to ensure that all plan review/building permit criteria are reflected in the final bid documents including completion of forms required by **AHJ**;
4. attend the pre-bid conference and site visits, as applicable, at the **Project** site; and
5. If the **Contractor** for the **Project** is not a **CM/GC**, and if the lowest acceptable bid exceeds the **Construction Budget** authorized by the **Owner** by 10%, then at the **Owner's** request, and at no additional cost to the **Owner**, the **Design Professional** shall modify the drawings and specifications in order that new bids may be solicited and a **Construction Contract** award may be made within the **Construction Budget**, consistent with the requirements of **Section I.G.4** above.
6. If the **Contractor** for the **Project** is a **CM/GC**, the **Design Professional** shall perform the following **Services** associated with this bidding phase and preparation of the probable **Construction Budget** of the **Project**:
  - a. Assist the **Owner** and the **CM/GC** in soliciting subcontractor bids; and
  - b. In the event the **CM/GC's** subcontractor bids exceed the **Owner's Construction Budget** by 10%, the **Design Professional** shall, upon request of the **Owner**, and at no additional cost to the **Owner**:
    - i. revise the **Project** design to allow construction of the **Project** within **Owner's** budget;
    - ii. cooperate with and participate as necessary for the **CM/GC** to rebid or negotiate with subcontractors;

- iii. revise **Project** program, scope or quality as required to reduce construction costs;  
or
  - vi. work with **Owner** to find another mutually acceptable alternative.
7. perform those design **Services** as they relate to various governmental agency requirements and or provide relevant information during this phase of the design and or attend meetings with **Owner**, various governmental agencies and others as required in support of the **Project**;
8. provide conformed set of **Construction Documents** updated to include all addenda, incorporation of all **AHJ** plan check comments and selected alternates;
9. from the conformed set of **Construction Documents**, provide a 2-dimensional CAD drawing (internally referred to as "bookplan drawing") in a simple format for each floor (and roof) – in coordination with **Owner** Space Management Office and as further detailed in the **Design and Construction Standards**.

#### **E. Construction Administration Phase**

Commencing with the **Owner's** issuance of a notice-to-proceed for construction of the **Project**, the **Design Professional** shall:

1. attend the pre-construction conference at the **Project** site, or virtually, as applicable;
2. provide general administration of the **Work** as contemplated by the provisions of the **Construction Contract** including assisting the **Owner** with evaluation of the feasibility of the **Contractor**-provided **Project** time schedule;
3. make periodic visits to the **Project** site with such frequency as to ascertain the progress and quality of the **Work**, attend progress meetings with the **Contractor**, determine in general if the **Work** is proceeding in accordance with the **Construction Documents**, and submit a written report to the **Owner** within five (5) business days after each visit, with copies of each report to the **Contractor**;
4. arrange for periodic visits of **Consultants** to make similar determinations with respect to mechanical and other **Work**, as applicable;
5. review and approve or take appropriate action regarding shop drawings and samples submitted by the **Contractor** with reasonable promptness as to not cause delay in the **Work**;;
6. prepare any responses to requests for information, architectural supplemental information, supplemental drawings, or large-scale details needed to clarify the **Construction Documents**;
7. respond promptly to requests from the **Contractor** for assistance with unforeseen problems so as to minimize the **Owner's** exposure to claims for delay;

8. check proposed costs of any modifications to the **Construction Contract** and recommend acceptance or rejection to the **Owner** (**Owner** will prepare written change orders);
9. endeavor to guard the **Owner** against defects and deficiencies in the **Work** of the **Contractor**;
10. notify the **Owner** of any **Work** which does not conform to the **Construction Documents** and recommend to the **Owner** that the **Contractor** stop the **Work** whenever, in the **Design Professional's** opinion, it may be necessary for the proper performance of the **Construction Contract**.
11. provide confirmation to the **Owner** in writing when the final **Punch List** has been fulfilled to the **Design Professional's** satisfaction;
12. conduct on-site observations to assist the **Owner** in determining the date of final completion;
13. assist the **Owner** in the implementation of the **1% For Art Program**, as applicable;
14. upon completion of the **Work**, the **Design Professional** shall, at no additional cost to the **Owner**, update CAD drawings and submit the appropriate electronic files in PDF format, AutoCAD format, and BIM (REVIT) model - compatible with AutoCAD Release latest version, drawings reflecting significant changes in the **Work** made during construction based on marked-up **Contractor** supplied as-built documentation, drawings and other data furnished by the **Contractor** to the **Design Professional** (the "**Record Documents**"), as further detailed in the **Design and Construction Standards**;
15. review the completed **Project** near the end of any applicable warranty period(s) in order to identify defects of materials or workmanship and issue a written report to the **Owner**; and
16. perform those design **Services** as they relate to various governmental agency requirements and or provide relevant information during this phase of the design and or attend meetings with **Owner**, various governmental agencies and others as required in support of the **Project**.

## 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 the **Project**;
7. the **Owner** requests **Additional Services** not identified under the **Basic 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 this **Agreement** may require, furnish the **Design Professional** the following information:

- A. Survey.** A complete and accurate survey of the **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 the **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 this **Agreement** 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.** Upon request by the Owner, OR [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.** To the fullest extent permitted by law, **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, 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 **Design Professional** or its **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 **Design Professional** or its **Sub-Consultants**, partners, joint venturers, subcontractors, officers, agents or employees; provided, however, to the extent **Design Professional** provides architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services (as that term is defined under ORS 279C.100), **Design Professional** has no duty to defend **Owner** against a claim for professional negligence and relating to the professional services provided by the **Design Professional**, except to the extent that **Design Professional'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 **Design Professional** or its **Sub-Consultants**, partners, joint venturers, subcontractors, officers, agents or employees.

**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 damaged incurred by the **Owner** arising out of or related to the work or the **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** ("**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 this **Agreement**, 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** is executed, **Design Professional** shall not enter into any new design professional agreements for any of the **Services** scheduled under this **Agreement** or assign or transfer any of its interest in or rights or obligations under this **Agreement**, 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** 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; NON-AVAILABILITY OF FUNDS, 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 are the only **Parties** entitled to enforce its terms. Nothing in this **Agreement** 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**.

## **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; NON-AVAILABILITY OF FUNDS**

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

**B. Termination by Owner for Convenience.** **Owner** may terminate this **Agreement** in whole or in part whenever **Owner** determines that termination of the **Agreement** 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**, 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**, fails to perform the **Services** under this **Agreement** 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** 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 **Section III**, and within the limitations specified in **Section V** 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 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**, 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** 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** 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** 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**, 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**, and does **not** constitute a termination of the **Agreement** 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**. In the event that the **Owner** determines that the conditions causing suspension of the **Agreement** are not likely to be rectified in a reasonable amount of time, the **Owner** retains the right to terminate this **Agreement**, pursuant to **Section XIX**. In the event of a suspension of performance pursuant to this Section of the **Agreement**, the **Design Professional** agrees to remain contractually obligated to perform the **Services** under this **Agreement** for the same hourly rates set forth in **Section III.C** of this **Agreement** for a period of three years after the **Effective Date** of the **Agreement**. If the **Agreement** 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** 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** 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**. **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**. **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**; pay all contributions or amounts due the Industrial Accident Fund from such contractor incurred in the performance of this **Agreement**; 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** 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** 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**. **Design Professional** will not be eligible for any benefits from these **Agreement** 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**, 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** for the purpose of making audit, examination, excerpts, and transcripts. If for any reason, any part of this **Agreement**, 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.

## XXVIII. SEVERABILITY



**With a Copy to:** OSU Project Manager, Project Manager  
Capital Planning & Development  
Oregon State University  
850 SW 35<sup>th</sup> St.  
Corvallis, OR 97331

**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 this **Project**, including without limitation, concurrent employment on any project in direct competition with the **Project**, 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**, 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; **Non-Availability of Funds**, **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** 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** 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: \_\_\_\_\_

**Bruce Daley**

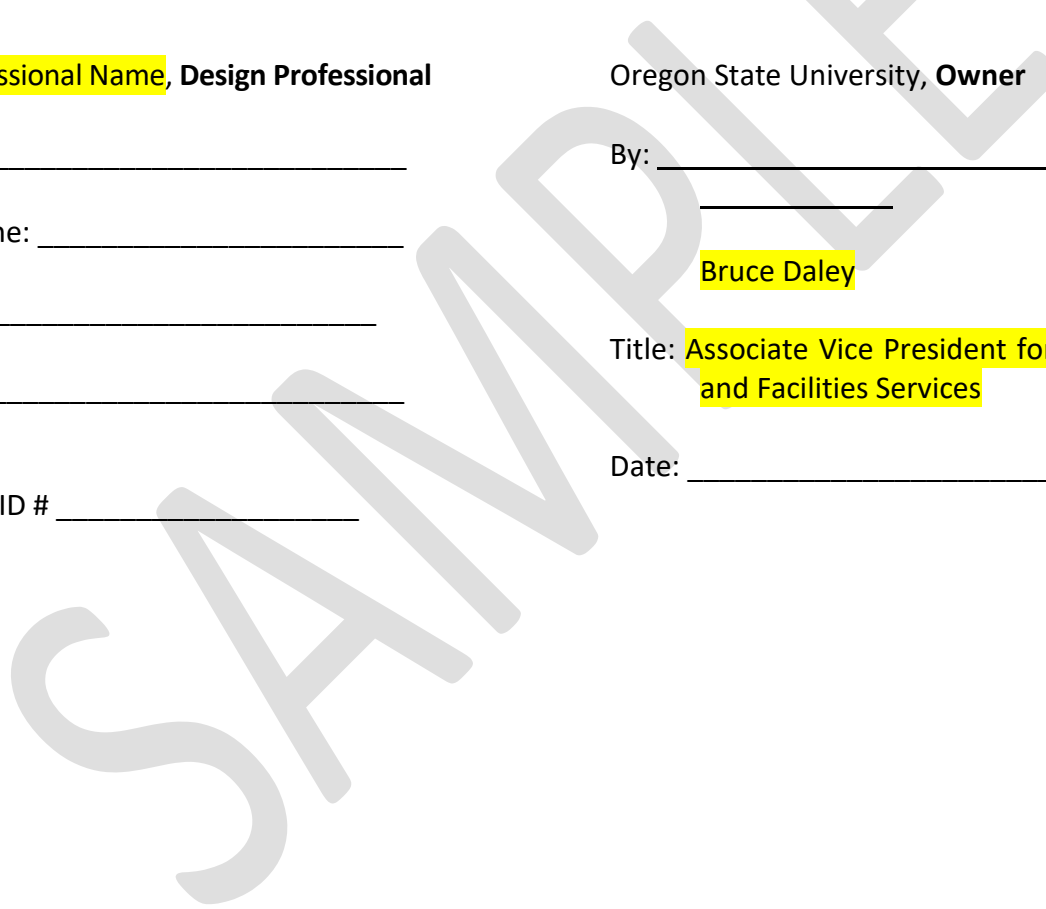
Title: \_\_\_\_\_

Title: **Associate Vice President for Capital Planning and Facilities Services**

Date \_\_\_\_\_

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

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



**EXHIBIT 1**

**DESIGN PROFESSIONAL PROPOSAL**

SAMPLE

**EXHIBIT 2**

**DESIGN PROFESSIONAL'S KEY PERSONNEL AND CONSULTANTS**

**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: \_\_\_\_\_

**Consultants**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

4. \_\_\_\_\_

**EXHIBIT 3**

**REIMBURSABLE EXPENSE RATES**

Reimbursable Expenses shall be reimbursed by the Owner at the following rates:

- (i) cost;
- (ii) the rate allowed Oregon State University employees; or
- (iii) the following rates:

	Air fare (coach class only) and car rental
	At cost for economy
Personal car mileage	\$0.56 per mile
Lodging	Cost
Meals: (documentation not required) (reimbursable only when associated with overnight travel)	
Breakfast	\$15
Lunch	\$15
Dinner	\$30
Printing, photography, long distance telephone charges and other direct expenses	At cost

Requests for reimbursement of allowable expenses, except meals, must include documentation of actual expenditures.

**EXHIBIT 4**

**HOURLY RATES**

**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

**CONSULTANTS:**

\_\_\_\_\_

\_\_\_\_\_ \$\_\_\_/hr

\_\_\_\_\_

\_\_\_\_\_ \$\_\_\_/hr