ADDENDUM #5 - RFP for ADA Third Party Consultant Services

Addendum Dated: 05/08/2019

PURPOSE: The purpose of this Addendum #5 is to provide a copy of the AIA Document B121 2018 Standard Form of Master Agreement Between Owner and Architect (sample contract), and the AIA Document B221 2018 Service Order template (related to the ADA Third Party Consultant Services RFP).

The documents follow this cover sheet and are attached.

End of Cover Sheet for Addenda #5
AGREEMENT made as of the TBD day of TBD in the year 2019 (the "Effective Date")
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

« Portland Community College »
« 9700 Capitol Highway »
« Suite 260 »
« Portland, Oregon 97219 »

and the Architect:
(Name, legal status, address, and other information)

« TBD »
« »
« »
« »

The Owner and Architect agree as follows.
TABLE OF ARTICLES
1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES
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8 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS
9 COMPENSATION
10 MISCELLANEOUS PROVISIONS
11 SPECIAL TERMS AND CONDITIONS
12 SCOPE OF THIS MASTER AGREEMENT

ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES
§ 1.1 This Master Agreement shall be effective for four years after the Effective Date (the “Term”).

§ 1.2 This Master Agreement shall apply to all Service Orders agreed to by the Parties within the Term of this Master Agreement until completion of the Service Order, regardless of whether completion occurs after expiration of the Term. An agreed upon Service Order together with this Master Agreement form a Service Agreement. The Owner and the Architect are to execute each Service Order before the Architect may be compensated for any services or other work performed under the Service Agreement or for the identified Project. A Service Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Agreement may be amended or modified only by a Modification.

§ 1.3 To the extent that a written proposal is incorporated into a Service Agreement, any terms of the proposal that conflict with terms of this Master Agreement are void and are expressly and wholly subject to the terms of this Master Agreement. If any provision of this Master Agreement conflicts with any provision in a Service Order, the provision in this Master Agreement will control.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner’s behalf with respect to this Master Agreement:

« Krista R. Phillips »
« Managing Architect »
« 9700 SW Capitol Hwy, Suite 260 »
« Portland, Oregon 97219 »
« »
« »

§ 1.4.1 In each Service Order, the Owner will identify a representative authorized to act on the Owner’s behalf with respect to the Service Order.

§ 1.5 The Architect identifies the following representative authorized to act on the Architect’s behalf with respect to this Master Agreement:
§ 1.5.1 In each Service Order, the Architect will identify a representative authorized to act on behalf of the Architect with respect to the Service Order.

§ 1.6 Nothing contained in this Master Agreement or in a Service Order shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

ARTICLE 2 SERVICE ORDERS
§ 2.1 The Owner is not required to issue any Service Orders under this Master Agreement.

§ 2.2 The Architect may decline to accept any Service Order issued by the Owner.

§ 2.3 The Architect shall perform the services set forth in each agreed upon Service Order, which shall be based on AIA Document B221-2018, Service Order, or such other document as the Owner and Architect may mutually agree upon. Each Service Order shall state the name, location, and detailed description of the Project; describe the Architect’s Services; state the Architect’s compensation; and list the attachments and exhibits incorporated by reference.

ARTICLE 3 ARCHITECT’S RESPONSIBILITIES
§ 3.1 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the services provided pursuant to a Service Agreement.

§ 3.2 Except with the Owner’s knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect’s professional judgment with respect to this Master Agreement or any Service Agreement.

§ 3.3 Insurance
§ 3.3.1 The Architect, at its sole cost, shall procure and maintain at all times while performing services under this Master Agreement the following insurance issued by responsible carriers rated A VII or better by A.M. Best’s rating service (unless otherwise approved by the Owner), and in a form and substance reasonably satisfactory to the Owner, that affords at least the minimum coverage limits listed in this Section 3.3. (Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

1. General Liability: Commercial General Liability with policy limits of not less than «One Million» ($1,000,000) for each occurrence and «Two Million» ($2,000,000) in the aggregate for bodily injury and property damage. The commercial general liability insurance shall be issued on an occurrence basis, written on ISO form CG 00 01 (or an equivalent form approved in advance by Owner). The CGL coverage shall include all major coverage categories, including without limitation bodily injury, property damage, premises/operations, products and completed operations, independent contractors, and blanket broad form contractual liability.

2. Automobile Liability: Automobile Liability issued on an occurrence basis, and covering hired and non-owned vehicles used by the Architect with a comprehensive single limit of not less than «One Million» ($1,000,000) per claim for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.
3 Workers’ Compensation: Workers’ Compensation at statutory limits.

4 Professional Liability: Professional Liability covering negligent acts, errors and omissions in the performance of professional services by the Architect or its employees, agents, representatives or consultants, with policy limits of not less than "Four Million" ($4,000,000) per claim and "Five Million" ($5,000,000) in the aggregate.

5 Employers’ Liability with policy limits not less than "Five Hundred Thousand" ($500,000) each accident, "Five Hundred Thousand" ($500,000) each employee, and "Five Hundred Thousand" ($500,000) policy limit.

§ 3.3.2 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the policies for Commercial General Liability and Automobile Liability to include the Owner and its officers, directors, employees, and agents as an additional insured for claims caused in whole or in part by the Architect’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

§ 3.3.3 Certificates of Insurance. The Architect shall file with the Owner certificates of insurance in forms acceptable to or provided by the Owner before it commences its services under this Agreement and annually thereafter. Each certificate of insurance must (a) demonstrate the coverage dates, amount, and type of insurance required by this Section 3.3 or by law, (b) provide all endorsements and declarations applicable to the coverage, and (c) identify the insurer(s) providing each set of coverage.

1 The Architect must notify the Owner in writing at least thirty (30) days before cancellation, lapse, or expiration of any insurance required by this Section 3.3.

2 Upon the Owner’s request, the Architect will deliver to the Owner copies of any policy (together with all endorsements, schedules, and other attachments), or a certified abstract of the policy, for any coverage provided under this Agreement.

3 If the Architect has any self-insured retention or deductibles for any of the required coverages, the Architect shall identify on the certificate of insurance the nature and amount of the self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for those obligations. The Architect is solely responsible for satisfying all self-insured retentions or deductibles. No self-insured retention or deductible is a reimbursable expense.

4 The Owner has the right, but not the obligation, to prohibit the Architect from entering the Project Site until the required certificates, in complete compliance with this Section 3.3, are received and approved by the Owner.

§ 3.3.4 Responsibility for Architect Consultants. The Architect shall be responsible to the Owner for acts and omissions of (1) the Architect’s principals and employees, (2) the Architect’s consultants and subcontractors, (3) the respective principals, agents, and employees of the consultants and subcontractors, and (4) other persons or entities for whom the Architect is responsible, for their respective performance of the Architect’s services.

§ 3.3.5 Consultant Insurance. The Architect shall cause all its consultants to carry and maintain workers’ compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by the Owner and the Architect. In the absence of any such agreement, the limits shall be the same as those required of the Architect.
§ 3.3.6 Maintaining Insurance. The Architect must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. The tail-out period for Architect’s professional liability coverage described in Section 2.5.6 may not be less than 4 years from the date of Substantial Completion of the Project. The tail-out period for all other insurance coverage may not be less than two years from the date of Substantial Completion of the Project.

§ 3.3.7 Failure to Maintain Insurance. The Architect’s maintenance of its and its consultants’ insurance coverage in full force and effect for the Project is a condition precedent to the Architect’s right to exercise or enforce any right or remedy for money damages against the Owner. Failure by the Architect to procure and maintain the insurance policies required above in full force and effect during the performance of services under this Agreement, and during any extensions or additional services hereunder, shall constitute a breach of this Agreement, in which case the Owner shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Architect, and the Architect shall reimburse the Owner upon demand and shall furnish such information needed by the Owner to obtain such insurance or, alternatively, the Owner may immediately terminate this Agreement for cause.

§ 3.3.8 Limitations on coverages:

.1 No insurance provided by the Architect under this Section 2.5 shall be required to indemnify the Owner, the Construction Manager, or their agents, representatives, or employees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or part by their negligence, but will require indemnity to the extent of the negligence of the Architect or its agents, representatives, or employees.

.2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Architect. Insurance in effect or procured by the Architect will not reduce or limit the Architect’s contractual obligations to indemnify the Owner for claims or suits that result from or are connected with the services provided under this Agreement.

§ 3.3.9 The Architect’s insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Architect’s insurance shall not include any cross-suit exclusion or preclude the Owner from asserting a claim. The Architect waives all rights of subrogation against the Owner and coverage that the Owner maintains.

§ 3.4 The Architect shall coordinate its services with those services provided by the Owner and the Owner’s consultants. The Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by the Owner and the Owner’s consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.5 The Architect shall not be responsible for an Owner’s directive or substitution made without the Architect’s approval.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The Architect may provide Additional Services after execution of a Service Agreement without invalidating the Service Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Sections 4.1 and 9.3 shall entitle the Architect to compensation pursuant to Section 9.3.

§ 4.2 [Deleted].

ARTICLE 5 OWNER’S RESPONSIBILITIES

§ 5.1 The Owner shall provide information in a timely manner regarding requirements for and limitations of each Service Order.

§ 5.2 The Owner shall render decisions and approve the Architect’s submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services.
§ 5.3 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect’s request, the Owner shall furnish copies of the scope of consulting services in the contracts between the Owner and the Owner’s consultants. The Owner shall furnish the services of consultants as designated in an individual Service Order, or authorize the Architect to furnish them, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Service Order.

§ 5.4 The Owner shall furnish all legal, insurance, and accounting services, including auditing services, that may be reasonably necessary at any time to meet the Owner’s needs and interests under a Service Agreement.

§ 5.5 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the services or work related to a Service Agreement, including errors, omissions or inconsistencies in the Architect’s Instruments of Service.

§ 5.6 [Deleted].

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 Instruments of Service are representations, drawings, specifications, and other documents, including those in electronic form of the tangible creative work performed by the Architect and the Architect’s consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Architect must also provide printed and physically stamped Instruments of Service for this Project. The Architect will be bound by the printed and stamped Instruments of Service and the electronic versions after their delivery to the Owner. The Architect will not be responsible for any change made in electronic forms of its Instruments of Service, whether intentional or unintentional, after the Instruments of Service leave the Architect’s control.

§ 6.2 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with a Service Agreement is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect’s consultants.

§ 6.3 The Architect grants to the Owner an irrevocable nonexclusive license to use the Architect’s Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project for which they are prepared. The Architect shall obtain similar irrevocable nonexclusive licenses from the Architect’s consultants consistent with this Master Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner’s consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project.

§ 6.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect’s consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner’s use of the Instruments of Service under this Section 6.3.1. The terms of this Section 6.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 8.4.

§ 6.3.2 Notwithstanding any other provision of Section 6.3, Instruments of Service may be continuously used for construction of the Project during the pendency of any dispute between the Owner and the Architect, including without limitation any dispute for payment. If and upon the date the Architect is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

§ 6.4 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Master Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect.
§ 6.5 Except as otherwise stated in Section 6.3, the provisions of this Article 6 shall survive the termination of this Master Agreement.

ARTICLE 7 CLAIMS AND DISPUTES
§ 7.1 General
§ 7.1.1 DEFINITION OF CLAIMS A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and the Architect arising out of or relating to this Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim.

§ 7.1.2 NOTICE OF CLAIMS A claim by either the Owner or the Architect must be made by written notice to the other party. Claims by either party must be initiated within twenty-one (21) working days after occurrence of the event giving rise to such Claim or within twenty-one (21) working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Architect must identify known bases for each Claim and the nature and amount of relief sought.

§ 7.1.3 CONTINUING CONTRACT PERFORMANCE Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 8, the Architect shall proceed diligently with performance of its services under this Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 8.1.4 INITIAL RESOLUTION To facilitate the resolution of Claims between the Architect and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before final payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, or remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

.1 All reasonable efforts will be made by the Owner’s Designated Representatives and the Architect’s Designated Representative to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner’s senior executive responsible for the Project and the Architect’s senior executive responsible for the Project.

.2 The parties’ senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in this Agreement.

.3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 7.2.

§ 7.2 Mediation
§ 7.2.1 The parties may endeavor to resolve disputes by mediation at any time and as they may agree.

§ 7.2.2 [Deleted].

§ 7.2.3 [Deleted].

§ 7.2.4 The method of binding dispute resolution shall be the following:
(Check the appropriate box.)

[ ☒ ] Arbitration pursuant to Section 7.3 of this Master Agreement

[ ] Litigation in a court of competent jurisdiction

[ ] Other: (Specify)
§ 7.3 Arbitration

§ 7.3.1 Any claim, dispute or other matter in question arising out of or related to a Service Agreement shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc. in accordance with its rules in effect on the date of this Master Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the arbitration. Exclusive venue for arbitration shall be Multnomah County, Oregon.

§ 7.3.1.1 A notice of the demand for arbitration shall identify the known bases for each claim and the nature and amount of the relief sought and shall be made by written notice to the other party to this Agreement within a reasonable time, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 7.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Master Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 7.3.4 Consolidation or Joinder

§ 7.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Master Agreement with any other arbitration to which it is a party provided that (1) the arbitrations to be consolidated substantially involve common questions of law or fact; and (2) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 7.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration pursuant to this Section 7.3. Before allowing any consultant or other person or entity retained by the Architect to commence services for the Project, the Architect shall require such third party to consent in writing to arbitration under this Section 7.3, if named by the Owner or the Architect.

§ 7.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect have under this Master Agreement.

§ 7.4 The provisions of this Article 7 shall survive the termination of a Service Agreement.

ARTICLE 8 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS

§ 8.1 If the Owner fails to make payments to the Architect when due in accordance with a Service Agreement for more than 70 calendar days, such failure may be considered substantial nonperformance and cause for termination of the Service Agreement or, at the Architect’s option, cause for suspension of performance of services under the Service Agreement for which the Owner failed to make payment. If the Architect elects to suspend services, the Architect shall give seven days’ written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due for that Project prior to suspension and any expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the services under a Service Agreement have been suspended by the Owner for more than 30 consecutive days (not related to phasing of the Project), the Architect shall be compensated for services performed prior to notice.
of such suspension. When the services under the Service Agreement are resumed, the Architect shall be compensated for reasonable expenses incurred in the interruption and resumption of the Architect’s services. The Architect’s fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.3 If the Owner suspends the services under a Service Agreement for more than 90 consecutive days for reasons other than the fault of the Architect (unless related to phasing of the Project), the Architect may terminate the Service Agreement by giving not less than seven days’ written notice.

§ 8.4 Either party may terminate a Service Agreement upon not less than seven days’ written notice should the other party fail substantially to perform in accordance with the terms of the Service Agreement, through no fault of the party initiating the termination. Termination of a Service Agreement under this Section 8.4 shall not be deemed a termination of other Service Agreements under this Master Agreement.

§ 8.5 The Owner may terminate a Service Agreement, upon not less than seven days’ written notice to the Architect for the Owner’s convenience and without cause.

§ 8.6 In the event of termination of a Service Agreement not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, Reimbursable Expenses incurred, and all costs attributable to termination, including the costs attributable to the Architect’s termination of consultant agreements.

§ 8.7 [Deleted]

§ 8.8 [Deleted].

§ 8.9 The Owner’s rights to use the Architect’s Instruments of Service in the event of termination of a Service Agreement are set forth in Article 6 of this Master Agreement.

ARTICLE 9 COMPENSATION

§ 9.1 The Owner shall compensate the Architect for the services described in a Service Order pursuant to the Service Order and as set forth in this Article 9.

§ 9.2 Except as otherwise set forth in a Service Order, the hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

<table>
<thead>
<tr>
<th>Employee or Category</th>
<th>Rate ($0.00)</th>
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§ 9.3 Except as otherwise set forth in a Service Order, the Owner shall compensate the Architect for Additional Services designated in Article 4 as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« The Owner shall compensate the Architect for Additional Services that are authorized by Owner in advance of their performance using the hourly billing rates established under Section 9.2. The Owner is not obligated to compensate the Architect for Additional Services performed without the Owner’s advance written consent. »

§ 9.4 Compensation for Reimbursable Expenses
§ 9.4.1 Reimbursable Expenses are in addition to compensation for the Architect’s professional services and include expenses reasonably and necessarily incurred by the Architect and the Architect’s consultants directly related to a Service Agreement, as follows:

.1 Transportation in connection with a Project and pre-authorized out-of-town travel and subsistence subject to the following:
(a) Expenses of commuting to and from the Project site are excluded from reimbursable expenses.
(b) Routine fax, cellular telephone, e-mail, and postage charges are not reimbursable, and
(c) Reimbursement for transportation and commuting will not exceed the Internal Revenue Service's rate per mile for reimbursement of business transportation in effect at the time of travel;

.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
.3 Permitting and other fees required by authorities having jurisdiction over the Project;
.4 Printing, reproductions, plots, and standard form documents;
.5 Extraordinary postage, handling, and delivery such as Fedex, UPS, overnight, or other expedited delivery;
.6 Expense of overtime work requiring higher than regular rates, only if authorized in advance by the Owner;
.7 Renderings, physical models, mock-ups, professional photography, and non-typical presentation materials requested by the Owner or required for the Project;
.8 [Deleted];
.9 [Deleted];
.10 [Deleted]; and
.11 Other similar Project-related expenditures as preapproved by the Owner pursuant to Section 9.4.4.

§ 9.4.2 [Deleted. See Section 4.3.1 of Service Order].

§ 9.4.3 [Deleted].
§ 9.5 Payments to the Architect
§ 9.5.1 Progress Payments
§ 9.5.1.1 Unless otherwise agreed, payments for services provided pursuant to a Service Agreement shall be made monthly in proportion to services performed. Payments are due and payable within 30 days from presentation of the Architect’s invoice. Amounts unpaid « Ninety days (« 90 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

Interest will accrue at an annual rate of one percent over the prime lending rate published by The Wall Street Journal on the date on which interest begins to accrue. § 9.5.1.2 The Owner shall not withhold amounts from the Architect’s compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or is liable for the amounts. In any event, the Owner shall not withhold payments to the Architect pertaining to a Service Agreement to offset amounts in dispute under a separate Service Agreement.

§ 9.5.1.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 10 MISCELLANEOUS PROVISIONS
§ 10.1 Each Service Agreement shall be governed by and construed in accordance with the law of the place where the Project described in the Service Order is located.

§ 10.2 Notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to each Service Agreement. Neither the Owner nor the Architect shall assign a Service Agreement without the written consent of the other, except that the Owner may assign a Service Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under the Service Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with the Service Agreement, provided the proposed consent is submitted to the
§ 10.5 Unless otherwise required in a Service Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.6 The Architect may, subject to the Owner’s prior review and approval (which shall not be unreasonably withheld), include photographic or artistic representations of the design of the Projects for which services are performed among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Projects to make such representations. Prior to entering onto Owner’s property to make such representations, the Architect shall notify the Owner and the Owner and the Architect shall agree on a schedule for such access. The Architect shall provide the Owner with copies of all photographic or artistic representations of the completed Project. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information, except as may be approved by the Owner. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Projects. This Section 10.6 shall survive the termination of a Service Agreement unless the Owner terminates a Service Agreement for cause pursuant to Section 8.4.

§ 10.7 If the Architect or Owner receives information that is “confidential” or “business proprietary,” the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.7.

§ 10.8 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

§ 10.9 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 10.9.1 [Deleted].

§ 10.10 Compliance with Public Contracting Code. The Architect will comply with all federal, state, and local laws applicable to the Work under this Master Agreement, including without limitation the following requirements of the Oregon Public Contracting Code.

§ 10.10.1 Payment of Laborers (ORS 279B.220 and 279C.505): The Architect shall:

1. Make payment promptly, as due, to all persons supplying to such Architect labor or material for the prosecution of the work provided for each Service Order.

2. Pay all contributions or amounts due the Industrial Accident Fund by the Architect or subcontractors, if permitted, incurred in the performance of each Service Order.

3. Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished by Architect.

4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

5. If Architect neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with any Service Order as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Architect. Owner's payment of such a claim shall not relieve Architect or Architect's surety, if any, from its obligation to any unpaid claims.
§ 10.11.2 Payment for Medical Care and Workers' Compensation (ORS 279B.230 and 279C.530):

.1 Architect shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Architect, of all sums that Architect agrees to pay for such services and all moneys and sums that Architect collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.

.2 All subject employers working under a Service Order are either employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

§ 10.11.3 Hours of Labor (ORS 279B.020(5), 279B.235(3), 279C.520(3), and 279C.540(6)):

.1 Maximum Hours: Architect shall pay its employees at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year’s Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).

.2 Exemption: The requirements of Section 10.11.3.1 do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC. 201 to 209 from receiving overtime.

.3 Discrimination Prohibition. The Architect shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of this Master Agreement and failure to comply is a breach that entitles the Owner to terminate the Master Agreement and each Service Order for cause.

.4 Salary Discussion. The Architect may not prohibit any of the Architect’s employees from discussing the employee’s rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits or other compensation with another employee or another person.

.5 Notice to Employees: Architect must give notice in writing to its employees who perform work under any Service Order, either at the time of hire or before commencement of work under a Service Order, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 10.11.4 Time Limitation on Claim for Overtime (ORS 279C.545): Any worker employed by Architect shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Architect within 90 days from the completion of the Service Order that is the subject of the Claim, providing Architect has:

.1 Posted circular: Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and

.2 Maintaining posted circular: Maintained such circular continuously posted from the inception to the completion of the Service Order under which workers are or have been employed.

§ 10.12 When Work Is Performed on Owner’s property (including school buildings) Architect Shall Comply With the Following:

.1 Identification. Architect performing work on Owner's property or for Owner shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the Owner in its sole discretion determines is required to easily identify Contractors.
.2 Sign-in Required. As required by schools and other Owner facilities, each day of work Architect employees shall sign into the Main Office to receive an in-school identification/visitor tag to be displayed on the person at all times they are in the school or other location.

.3 No Smoking. Smoking or other use of tobacco is prohibited on the Owner property.

.4 No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner property.

§ 10.13 When Work Is Performed in or on School Sites, Architect Shall Comply With the Following:

.1 No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Architect will ensure that Architect, any consultants, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner’s property. Architect will work with the Owner to ensure compliance with this requirement. If Architect is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contract with students in a particular circumstance or circumstances, Architect shall so notify the Owner before performing any services that could result in such contact. Architect authorizes Owner to obtain information about Architect and Architect’s history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Architect that will have unsupervised contact with students. Architect also agrees to cause Architect’s employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Architect shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Architect under this contract, unless the Architect elects to pay such fees directly.

.2 Confidentiality. The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Architect or its consultants in the performance of this Agreement may not be re-disclosed to third parties without written consent of the students’ parents/guardians; and must be used only for the purposes identified in this Agreement.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Master Agreement are as follows:

(Include other terms and conditions applicable to this Agreement.)

«§ 11.1 INDEMNIFICATION

§ 11.1.1 Indemnity – Claims for Other Than Professional Liability:

§ 11.1.1.1 To the fullest extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner, Owner’s consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from our arising out of the activities of the Architect or its consultants, agents or employees under this Master Agreement or any Service Order, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder, including without limitation (a) the Architect’s breach of this Master Agreement or any Service Order; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect’s performance under this Master Agreement or any Service Order; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent or willful acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims).
or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 11.1.

§ 11.1.1.2 No indemnification or insurance provided by the Architect under this Section 11.1.1 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Architect or those entities or persons for whom the Architect is responsible.

§ 11.1.2 Indemnity – Claims for Professional Liability.

§ 11.1.2.1 To the fullest extent permitted by law, Architect shall indemnify and hold harmless the Owner, Owner’s consultants, and agents and employees of any of them for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from our arising out of the professionally negligent acts, errors, or omissions, whether alleged or actual, of the Architect or its subconsultants, agents or employees in the performance of professional services under this Master Agreement or any Service Order, including without limitation (a) the Architect’s breach of this Master Agreement or any Service Order; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect’s performance under this Master Agreement or any Service Order; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 11.1.

§ 11.1.3 No indemnification or insurance provided by the Architect under this Section 11.1.2 will be required to indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the negligence of the Architect or those entities or persons for whom the Architect is responsible.

§ 11.1.4 In claims against any person or entity indemnified under this Section 11.1 by an employee of the Architect or of any entity for whom the Architect is responsible, the indemnification obligation under Section 11.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 12 SCOPE OF THIS MASTER AGREEMENT

§ 12.1 This Master Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Master Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 12.2 This Master Agreement is comprised of the following documents identified below:

.1 AIA Document B121™–2018, Standard Form of Master Agreement Between Owner and Architect

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Master Agreement.)

.3 Exhibits:

(Clearly identify any other exhibits incorporated into this Master Agreement.)

.4 Other documents:
This Master Agreement entered into as of the day and year first written above.

**PORTLAND COMMUNITY COLLEGE**

OWNER (Signature)  
(Printed name and title)

ARCHITECT (Signature)  
(Printed name, title, and license number, if required)
Service Order for use with Master Agreement Between Owner and Architect

SERVICE ORDER number «TBD» made as of the «TBD» day of «TBD» in the year «TBD»
(In words, indicate day, month, and year.)

BETWEEN the Owner:
(Name, legal status, address, and other information)

«Portland Community College » « 9700 Capitol Highway »
« Suite 260 »
« Portland, Oregon 97219 »

and the Architect:
(Name, legal status, address, and other information)

«TBD » «  »
« »
« »

for the following PROJECT:
(Name, location, and detailed description)

«TBD »
« »
« »

THE SERVICE AGREEMENT
This Service Order, together with the Master Agreement between Owner and Architect dated the «TBD» day of «TBD» in the year «TBD»
(In words, indicate day, month, and year.)

form a Service Agreement.

The Owner and Architect agree as follows.
### Table of Articles

1. Initial Information
2. Services Under This Service Order
3. Date of Commencement and Substantial Completion
4. Compensation
5. Insurance
6. Party Representatives
7. Attachments and Exhibits

### Article 1  Initial Information

§ 1.1 Unless otherwise provided in an exhibit to this Service Order, this Service Order and the Service Agreement are based on the Initial Information set forth below:

(State below details of the Project’s site and program, Owner’s contractors and consultants, Architect’s consultants, Owner’s budget and schedule, anticipated procurement method, Owner’s Sustainable Objective, and other information relevant to the Project.)

«TBD»

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect’s services, and the Architect’s compensation. The Owner shall adjust the Owner’s budget for the Cost of the Work and the Owner’s anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

### Article 2  Services Under This Service Order

§ 2.1 The Architect’s Services under this Service Order are described below or in an exhibit to this Service Order, such as a Scope of Architect’s Services document.

§ 2.1.1 Basic Services

(Describe below the Basic Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

«TBD»

§ 2.1.2 Additional Services

(Describe below the Additional Services the Architect shall provide pursuant to this Service Order or state whether the services are described in documentation attached to this Service Order.)

«TBD»

### Article 3  Date of Commencement and Substantial Completion

§ 3.1 Unless otherwise provided in an exhibit to this Service Order, the Owner’s anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

«TBD»

.2 Substantial Completion date:

«TBD»
ARTICLE 4  COMPENSATION

§ 4.1 For Basic Services described under Section 2.1.1, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

« TBD »

.2 Percentage Basis
(Insert percentage value)

« TBD » (% of the Owner’s budget for the Cost of the Work, as calculated in accordance with Section 4.4).

.3 Other
(Describe the method of compensation)

« TBD »

§ 4.2 For Additional Services described under Section 2.1.2 or in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement unless otherwise set forth below:

(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect’s Services document, list the exhibit below.)

« TBD »

§ 4.3 For Reimbursable Expenses described in the Master Agreement, the Architect shall be compensated in accordance with the Master Agreement and the terms set forth below:

(Insert amount of, or basis for, compensation if other than as set forth in the Master Agreement. Where the basis of compensation is set forth in an exhibit to this Service Order, such as a Scope of Architect’s Services document, list the exhibit below.)

« § 4.3.1 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants without markup. Notwithstanding the foregoing sentence, the Architect may include a markup of up to 10 percent of the actual fees assessed by government agencies for Project permits that the Architect pays on the Owner’s behalf, conditioned upon submission of the receipt of payment for the fees assessed. The Architect shall not issue a bill to the Owner for payment of Reimbursable Expenses unless the aggregate Reimbursable Expenses exceed $100.00.

§ 4.3.2 The Architect has provided and the Owner has approved a detailed estimate of anticipated Reimbursable Expenses of $[TBD] based upon the rates outlined in the Fee Proposal incorporated under Section 7.1 of this Service Order. Costs may not be incurred for Reimbursable Expenses in excess of this amount without prior written approval of the Owner. If, subject to Section 4.1, Additional Services are required during the course of the Project that were not previously identified and anticipated, the Architect shall prepare a detailed estimate of the cost of reimbursable expenses arising from such Additional Services and submit it to the Owner for approval before the services are rendered. Thereafter, costs may not be incurred in excess of the approved written estimate without prior written approval of the Owner. Compliance with this Section 4.3.2 is a condition precedent to payment for Reimbursable Expenses. »

§ 4.4 When compensation identified in Section 4.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner’s most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner’s budget for the Cost of the Work.

ARTICLE 5  INSURANCE

§ 5.1 Insurance shall be in accordance with section 3.3 of the Master Agreement, except as indicated below:
(Insert any insurance requirements that differ from those stated in the Master Agreement, such as coverage types, coverage limits, and durations for professional liability or other coverages.)

« TBD »

§ 5.2 In addition to insurance requirements in the Master Agreement, the Architect shall carry the following types of insurance.

(List below any other insurance coverage to be provided by the Architect, not otherwise set forth in the Master Agreement, and any applicable limits.)

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>TBD</td>
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</table>

ARTICLE 6 PARTY REPRESENTATIVES

§ 6.1 The Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:

(List name, address, and other information.)

« TBD »

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« »

§ 6.2 The Architect identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:

(List name, address, and other information.)

« TBD »

« »
« »
« »
« »
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ARTICLE 7 ATTACHMENTS AND EXHIBITS

§ 7.1 The following attachments and exhibits, if any, are incorporated herein by reference:

.1 AIA Document, B121™-2018, Standard Form of Master Agreement Between Owner and Architect for Services provided under multiple Service Orders;

.2 Other Exhibits incorporated into this Agreement:

(Clearly identify any other exhibits incorporated into this Agreement.)

« »

.3 Other documents:

(List other documents, if any, including additional scopes of service forming part of this Service Order.)

« »

« »
This Service Order entered into as of the day and year first written above.

**PORTLAND COMMUNITY COLLEGE**

OWNER (Signature)

« »« »

(Printed name and title)

**[INSERT ARCHITECT]**

ARCHITECT (Signature)

« » « »

(Printed name, title, and license number, if required)