

AGREEMENT FOR SERVICES

(Preconstruction Services or Specialty Consultant)

Project Name

CWRU Project Number: CIP or OPR

This **Agreement for Services** (“Agreement”) is entered into as of the ____ day of _____, 2017, by and between **Case Western Reserve University**, an Ohio nonprofit corporation with an address of 10900 Euclid Avenue, Cleveland, Ohio 44106 (“CWRU”) and _____, a limited liability company or corporation organized/incorporated in the State of _____, whose principal place of business is located at _____ (“Consultant”).

1. **Scope of Services.** Consultant agrees to perform for CWRU the services described in the Consultant’s Proposal dated _____, attached as Exhibit A, pages 1 **of or thru** _____, hereto and incorporated by reference herein, and all obligations, duties, responsibilities and requirements for the successful completion of the services specified (the “Services”). The Services shall be completed on or before _____, unless otherwise set forth in Exhibit A.

2. **Compensation/Reimbursable Expenses.**

(a) **Compensation.** In consideration of the Services, Consultant shall be paid a not-to-exceed stipulated lump sum amount of _____ Dollars (\$_____).

(b) **Expenses.** Consultant shall be reimbursed for usual and reasonable expenses actually and necessarily incurred in performing the Services; provided, however, that such reimbursements shall not exceed _____ Dollars (\$_____) **(or)** , if any, are included in the compensation figure in 2a above. Reimbursable expenses shall be reasonable and standard rates for expenses. CWRU will not pay for premium travel, lodging, or meals. For example, CWRU will pay the lowest available or coach fare, but not first class, and does not pay for Travel Agent fees; CWRU will pay cab fare, but not limousine; lodging base room rate shall not exceed One Hundred Ninety-Nine Dollars (\$199) per night. Reimbursable mileage shall be expensed in accordance with current IRS Standard Business Mileage Rate. Reimbursement for meals shall be expensed in accordance with the current USGSA per diem rate for Cleveland, Cuyahoga County, Ohio. Reimbursable meals shall not include alcoholic beverages. Expenses shall be for employees of the Consultant only when engaged in work directly associated with the Services. CWRU does not pay for mark-ups on reimbursable expenses. Charges to CWRU shall match precisely with supporting detailed **itemized** documentation. Supporting detailed **itemized** documentation (e.g., receipts or similar detailed **itemized** documentation) is required for reimbursement.

(c) **Invoices.** Invoices for compensation and reimbursable expenses shall be submitted promptly upon completion of the Services. Invoices shall be in a format agreed to by CWRU and shall contain CWRU’s Purchase Order number. Invoices are payable forty-five (45) days from receipt and approval by CWRU. CWRU shall have no obligation to pay invoices submitted later than ninety (90) days from the date of close of the month in which the Services were completed. All original receipts must be provided as back-up documentation.

(d) **Supplier Information Form.** **If applicable**, Consultant shall complete accurate information on the Supplier Information Form/W-9 which was submitted electronically via email. Payment cannot be processed unless the Supplier Information Form/W-9 is complete.

3. **Independent Contractor.** In all matters relating to this Agreement, Consultant shall be acting as an independent contractor. Neither Consultant nor its employees shall be the employees of CWRU under the meaning or application of any federal or state laws, including but not limited to unemployment insurance or worker's compensation laws. Consultant shall assume all liabilities and obligations imposed by any such laws with respect to its employees. Consultant shall have no authority to act as the agent of CWRU and shall not hold itself out as such.

4. **CWRU Data; Confidential Information.** All data, documents and other CWRU property furnished to Consultant by CWRU shall remain the exclusive property of CWRU. Consultant agrees that such CWRU property shall be used solely for the purpose of performing the Services. Consultant shall be responsible for the safekeeping of such property and, if CWRU so requests, Consultant shall sign and deliver a written, itemized receipt therefore. Upon conclusion of the Services, all such property shall be returned to CWRU or destroyed, at CWRU's option. Consultant may be furnished or given access to knowledge, information, data, and confidential or privileged documents which are confidential and proprietary to CWRU, including financial information concerning CWRU or its employees or students ("Confidential Information"). Consultant shall use Confidential Information only as explicitly permitted for purposes of fulfilling its obligations under this Agreement. Consultant agrees that during, or at any time after the termination of this Agreement, Consultant shall not use the Confidential Information for itself or for any other person or business, or divulge or convey to any person or business any such Confidential Information. Consultant warrants that it will use reasonable efforts to protect Confidential Information and in any event no less than the degree of care that it would use to protect its own confidential information. Violation of confidentiality obligations of this section, or the threat of violation, shall entitle CWRU to (i) obtain injunctive relief without the posting of bond, (ii) terminate this Agreement immediately without penalty of any kind and (iii) all other rights and remedies available to CWRU at law or in equity. Consultant's obligations and CWRU's rights under this section shall survive termination of the Agreement.

5. **Ownership of Instruments of Service.** Consultant hereby assigns to CWRU all of Consultant's right, title and interest in and to the plans, drawings, specifications, notes, reports, renderings, final models, design concepts and images, and all other documents and items to be prepared and furnished by Consultant, including any and all electronic versions of the foregoing (collectively, the "Instruments of Service"), and all such Instruments of Service shall be the exclusive property of CWRU, including, without limitation, the right to use same or any part of them on any other project of CWRU's without additional compensation to Consultant. Consultant shall cause each of its consultants to execute any and all separate instrument(s) necessary to effect such assignment completely. In the case of future reuse of the Instruments of Service by CWRU in connection with a project for which Consultant is not providing services, Consultant shall not be liable to CWRU or third parties in connection with such reuse.

6. **Records.** Consultant shall keep accurate records and books of account showing all charges, disbursements, and expenses made or incurred by Consultant in performing the Services. CWRU may, upon reasonable notice and during normal business hours, examine Consultant's books and records relating to performance of the Services from time to time during the term of this Agreement and at any time within three (3) years after its termination. Such examination shall specifically include the right to audit Consultant's compliance with its confidentiality obligations hereunder.

7. **Reports.** CWRU may request written reports from time to time during the performance of this Agreement. Such reports shall be in a form satisfactory to CWRU.

8. **Use of Name.** Consultant agrees to not use CWRU's name or logos for any advertising or other commercial purposes, or otherwise disclose any provisions of this Agreement, without the prior written approval of CWRU.

9. **Compliance with Law.** Consultant agrees to comply with all applicable federal, state and local laws and regulations. Consultant shall not discriminate on the basis of race, religion, age, sex, color, disability, sexual orientation, political affiliation, national or ethnic origin, or veteran status.

10. **Insurance.** Consultant represents that it now carries, and during the term of this Agreement will continue to carry and maintain at its own cost, with such companies as are reasonably acceptable to CWRU, with an A.M. Best rating of "A-, VII" or better, all liability insurance (which shall include as a minimum the requirements set forth) (i) statutory Worker's Compensation, (ii) Employers Liability or Ohio Stop Gap coverage in an amount of not less than \$500,000, (iii) Comprehensive General Liability, including contractual liability and public liability coverage (minimum \$1 million occurrence/\$1 million aggregate), naming CWRU an Additional Insured, (iv) Umbrellas excess liability in an amount of not less than \$1,000,000, (v) Professional Liability (minimum \$1 million occurrence/\$2 million aggregate), if applicable, and (vi) Automobile Liability (minimum \$1 million combined single limit). Prior to performing the Services, Consultant shall furnish certificates of insurance as evidence of such coverage.

11. **Indemnification.** Consultant shall indemnify, defend and hold CWRU harmless from and against all claims, actions, liabilities, damages and expenses (including reasonable attorney's fees) incurred by CWRU arising out of or contributed to by the acts or omissions of Consultant or anyone acting under Consultant's direction or control or on Consultant's behalf in connection with this Agreement, including but not limited to, Consultant's breach of Paragraph 4 above.

12. **Termination.** CWRU may terminate this Agreement immediately, in whole or in part, at any time, on written notice to Consultant if (i) funding for the Services is withdrawn or curtailed, (ii) Consultant becomes insolvent or otherwise unable to pay its obligations as they become due, (iii) Consultant fails to perform the Services to CWRU's satisfaction, or within the time specified in this agreement, or any CWRU-authorized extension, or (iv) Consultant fails to perform any of its obligations under this Agreement. Upon receipt of such notice, Consultant shall immediately discontinue performance of the Services to the extent specified in the notice. Unless otherwise specified hereto, Consultant shall be paid the actual costs incurred in performing the Services up to the time of notice of termination, provided that such costs are actual, necessary, reasonable and verifiable, and not previously reimbursed by CWRU. In no event shall CWRU pay for unabsorbed overhead or anticipatory profit.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

14. **Assignment.** This Agreement may not be assigned by Consultant. Any attempt to assign this Agreement or subcontract any duties hereunder shall be null and void without the prior written consent of CWRU.

15. **Entire Agreement; Amendment.** This Agreement is the entire Agreement of the parties with regard to the subject matter hereof, and supersedes any and all prior communications, representations and agreements, whether written or oral. No amendment to this Agreement shall be binding on either party unless reduced to writing and duly executed by both parties. The Agreement is comprised of the following documents listed below, each of which is incorporated by reference herein:

a) Exhibit A - Proposal dated _____, pages 1 of 1

- b) Exhibit B – CWRU Standard AutoCAD Documentation, pages 1 thru 9
- c) Exhibit C – Tobacco Free Campus Policy dated July 1, 2017, page 1 of 1

16. **Notices.** Any notices required to be given hereunder shall be deemed sufficient if sent by certified mail or via facsimile (with confirmation of delivery) or email to the parties at the addresses set forth below:

If to CWRU:
 Department Contact:

If to Consultant:
 Contact Name:

 Department Address:
 10620 Cedar Avenue
 Cleveland, Ohio 44106-7228
 Mobile number:
 Email address: ____@case.edu

 Contact Address:

 Mobile number: _____
 Email address: _____

The parties have executed this Agreement as of the date first above written.

CASE WESTERN RESERVE UNIVERSITY

By: _____
 Peter M. Poulos, Vice President & General Counsel
 Title: Office of General Counsel

By: _____

 Title: _____

And

By: _____
 John F. Sideras, Executive Vice President & CFO
 Office of Finance