

# **ADDENDUM NO. 1**

**July 8, 2022**

## **PREQUALIFICATION DOCUMENTS**

**FOR**

**BANNOCKBURN VILLAGE HOUSING STUDY  
PROJECT NO. 958136**



The following changes, additions, or deletions shall be made to the following documents as indicated for this Project; and all other terms and conditions shall remain the same.

1. **REQUEST FOR DESIGN QUALIFICATIONS**

**Replace** Request for Design Qualifications with one included in this addendum.

**END OF ADDENDUM**

# University of California, Riverside

## Request for Design Professional Qualifications

FOR

## BANNOCKBURN VILLAGE HOUSING STUDY

Project Number: **958136**

July 1, 2022

Advertisement Date: July 1, 2022 – July 22, 2022

Document Issue Date: July 1, 2022, 10:00 AM

Notice of Intent Requested by: July 13, 2022, 3:00 PM

Last day for Questions: July 13, 2022, 3:00 PM

RFQ Submittal Due by: July 25, 2022, 12:00 PM

## TABLE OF CONTENTS

### I. ADVERTISEMENT FOR PROFESSIONAL DESIGN SERVICES

### II. PROJECT INFORMATION AND REQUIREMENTS

- A. BACKGROUND
- B. PROJECT DESCRIPTION
- C. PROJECT LOCATION
- D. SCOPE OF SERVICES
- E. PHASE 1 SERVICES SCHEDULE
- F. CONSULTANTS
- G. CONTRACT REQUIREMENTS

### III. RFQ SUBMITTAL PROCESS

- A. RFQ SCHEDULE FOR SCREENING AND SELECTION OF CONSULTANTS
- B. RFQ SELECTION PROCESS
- C. **SUBMITTAL FORMAT**
- D. NEGOTIATION AND AWARD OF CONTRACT

### IV. ATTACHMENTS

Attachment A: RFQ QUESTIONNAIRE & SUBMITTAL FORM

**Attachment B: UC Consultant Experience Form**

Attachment C: SAMPLE PSA AGREEMENT

Attachment D: SAMPLE EDPA AGREEMENT

Attachment E: SAMPLE EDPA CMAR AGREEMENT

## I. ADVERTISEMENT FOR DESIGN PROFESSIONAL SERVICES

The University of California, Riverside (UCR, UC Riverside, or University), through its Planning, Design & Construction (PD&C) department, will select a Design Professional to perform pre-design services, Phase 1, for the Bannockburn Village Housing Study. The University will initiate a multi-phase contract to complete the Bannockburn **Village** Housing Study as Phase 1, with the option to enter into Phase 2 for preparation of the Detail Project Program and/or Construction Documents. Timing and funding of a future project is unknown.

### **Bannockburn Village Housing Study**

Project TBD

- Phase 1 services will be assigned using a Professional Service Agreement (PSA). Award of the contract for Phase 1 services does not guarantee that the chosen firm will continue through Phase 2.
- Exercise of Phase 2 Services will be at the sole discretion of the University and will be assigned using an Executive Design Professional Agreement (EDPA) if it is determined that the project delivery will be Lump-Sum or CM at Risk. If Phase 2 services are to be delivered via a Design Build process, the PSA will be used to cover the balance of services to complete a Basis of Design. Subconsultants on Phase 1 services will not be eligible to participate in any subsequent services or work covered in Phase 2.

The Design Professional will provide strategic planning and development planning services to understand opportunities and constraints for the potential rehabilitation and/or redevelopment of the UC Riverside Bannockburn Village complex in order to address UCR's growing student population and on-campus housing need. The Design Professional will also provide recommendations on program options that are economically viable, support student success, and are in alignment with the 2021 Long Range Development Plan (LRDP) land use goals.

The campus seeks to explore potential rehabilitation and redevelopment options that could include a mix of student housing, educational programs, commercial uses, and parking. It is the intent by way of this planning process to determine which option or combination of options the University would find most suitable and feasible to pursue.

The selected entity must be able to start work immediately and in alignment with the specific project schedule. Generally, the Phase 1 Services are anticipated to last approximately 5 months.

The complete RFQ packet will be available (in electronic format only) on July 1, 2022, at 1:00 PM. To receive a copy of the RFQ Documents, email the RFQ Administrator listed below.

RFQ Administrator:

**Mary Ramirez**

UCR Contracts Administration

Email: [mary.ramirez@ucr.edu](mailto:mary.ramirez@ucr.edu)

Or download directly from: <https://pdc.ucr.edu/contracts/design-professionals-consultants>

Every effort will be made to ensure that all persons, regardless of race, religion, sex, color, ethnicity, national origin, gender, age, marital status, sexual orientation, gender identity, veteran status, disability, or any other characteristics protected by law have equal access to contracts and other business opportunities with the University. Each candidate firm will be required to show evidence of its equal employment opportunity policy.

The University reserves the right to reject any or all responses to this RFQ and to waive non-material irregularities in any response received. The execution of an Agreement with any firm selected pursuant to this advertisement may be contingent upon pending University approvals, including but not necessarily limited to the approval of the University's Board of Regents to commence the Preliminary Plans Phase ("P-phase") of project implementation.

All information submitted for evaluation will be considered official information acquired in confidence, and the University will maintain its confidentiality to the extent permitted by law.

Originally Published: July 1, 2022

## II. PROJECT INFORMATION AND REQUIREMENTS

### A. BACKGROUND

UC Riverside is one of 10 Universities within the prestigious University of California (“UC”) system, and the only UC campus, as well as the only public research University, located in inland Southern California. For an overview of UC Riverside, please refer to the Campus homepage at: <http://www.ucr.edu/>

Widely recognized as one of the most ethnically diverse and innovative research Universities in the nation, UCR currently hosts approximately 26,000 students (as of Fall 2021).

The 1,127-acre UCR campus is located three miles east of downtown Riverside and is bisected by a freeway, consisting of the joint alignment of Interstate 215 (“I-215”) and State Route 60 (“SR-60”), also jointly denoted as “I-215/SR-60”. The 616 acres east of the freeway include most of the existing campus facilities; the 511 acres west of the freeway include agriculture research fields and support facilities, a large parking lot, administrative facilities, and University Extension. The physical setting of UC Riverside at the base of the Box Springs Mountains, is an integral part of the educational experience for all those who come to live, learn, and work on campus. This relationship is vital to its students, faculty, and staff, as the campus is a living laboratory for the exploration of issues critical to growing communities – air, water, energy, transportation, politics, the arts, history, culture and healthcare. Please refer to the UC Riverside Campus map at <https://campusmap.ucr.edu/>.

Currently, UCR’s housing portfolio contains 6,511 beds, or approximately 33% of the current enrollment, and accommodates undergraduate students, graduate students, and students with families. The 2021 Long Range Development Plan (LRDP) establishes a goal of housing approximately 40% of enrolled students (14,000 beds) to live in University-managed or controlled housing within proximity to the Academic Center. ***Please refer to the LRDP at <https://lrdp.ucr.edu>.***

The majority of campus’ current student housing is located north of the Academic Center, with major expansion occurring in the form of the University’s Public Private Partnership project, North District. The North District added 1,500 new beds in 2021, and is currently planning the next phase of expansion by adding an additional 1,500 beds, and with up to an additional 3,000 more to come in subsequent phases. ***More information on UCR’s housing programs can be found at <https://housing.ucr.edu>.***

While the North District represents a significant expansion of student housing, additional University controlled/owned student housing is still needed, and is planned to occur through strategic infill and selective replacement of existing housing facilities. It is also the case that some of the existing campus student housing is in need of deferred maintenance and seismic upgrades.

### B. PROJECT DESCRIPTION

The Bannockburn Village, was constructed in 1968 as a private mixed-use complex on approximately 7 acres and purchased by the University in 1975. With approximately 181,680 GSF Bannockburn Village includes 243 residential apartments in various configurations, along with some University managed services and leased commercial / retail space. These structures have significant accumulated deferred

maintenance, seismic improvement, and code-related improvement needs. However, as is often the case with older housing at higher education institutions, Bannockburn Village also provides some of the most affordable on-campus housing options for UCR students, many of whom have limited financial resources. Thus, despite the development's deteriorating physical condition, it meets a critical need by providing comparatively low-cost leases for UCR students who might otherwise look to off-campus housing for affordable options.

The University desires to evaluate the feasibility of a rehabilitating this complex, or redeveloping of the site to provide modern mixed-use student housing at a higher density in order to address UCR's growing student population and on-campus housing need. Any rehabilitated or new student housing must carefully consider both affordability for the UC Riverside student population and financial feasibility for the University to construct and manage.

The University seeks specific evaluation services and strategic planning and development planning services to understand opportunities and constraints for rehabilitation, and replacement / redevelopment options of the UC Riverside Bannockburn Village complex, along with recommendations on programmatic functions that support the students and are in alignment with the 2021 LRDP land use goals.

The campus seeks to explore potential rehabilitation options and development options that could include a mix of student housing, educational programs, commercial uses, and parking.

It is the intent by way of this planning process to determine what options the University would find most suitable and feasible to pursue, particularly with respect to the financial implications for UCR and its students.

Goals for a new Bannockburn housing rehabilitation or redevelopment would include consideration of how to:

- Achieve housing affordability for students in a modern and safe on-campus residential environment
- Extend the useful life of the existing development while maintaining low-cost housing options for students
- If pursuing a redevelopment option, create a long-lasting, safe and welcoming mixed-use environment for students through higher densities and synergistic land uses that engage the street, while being conscious of affordability.
- Achieve facility and operational savings through innovative, and efficient, and sustainable design and construction



***Available record drawings for Bannockburn Village can be found at:***

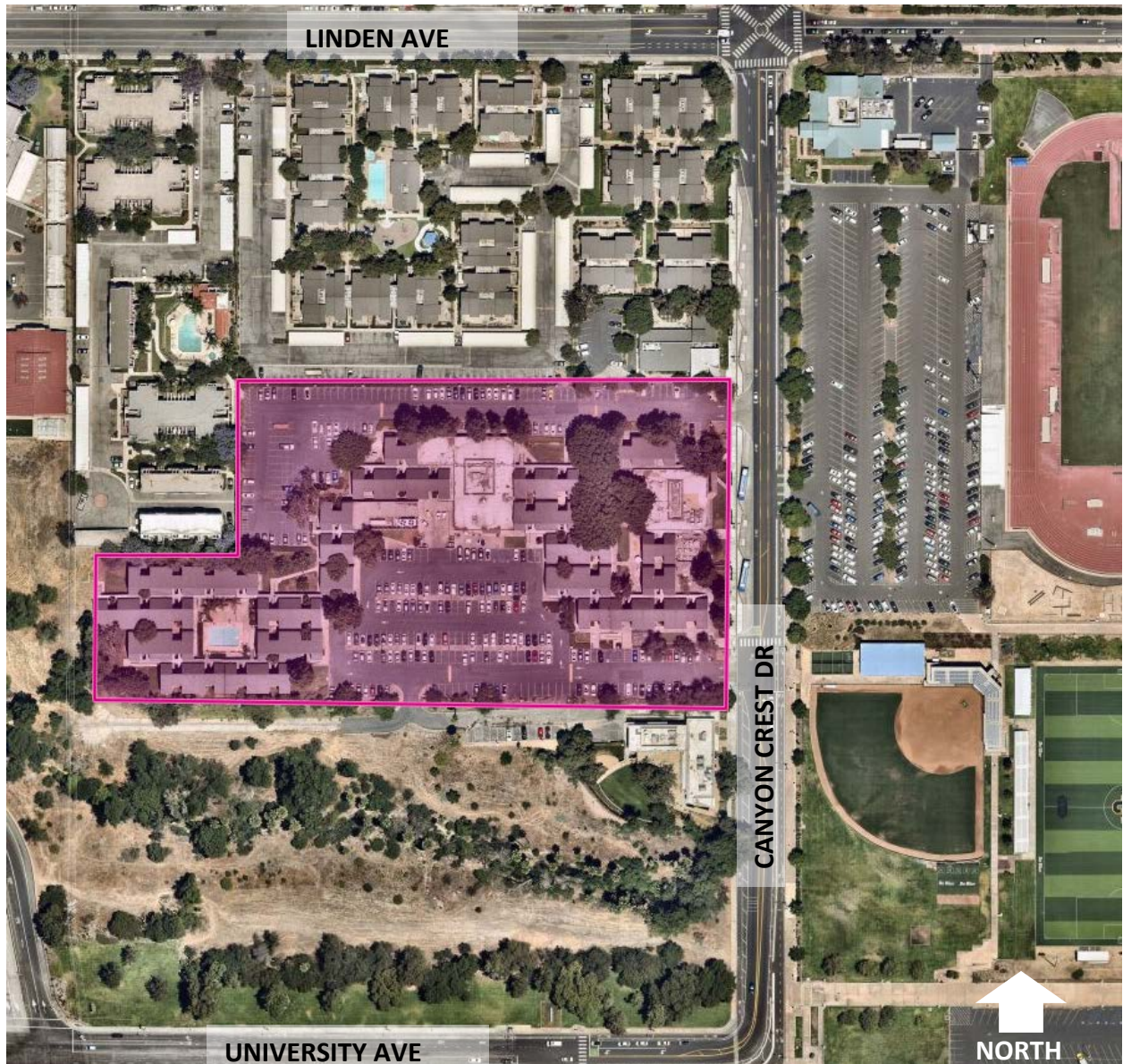
**[958892 Bannockburn Commons Bldg 1980](#)**

**[956313 Bannockburn Renovation](#)**

### **C. PROJECT LOCATION**

Bannockburn Village site is located on the East Campus, just north of the University Ave / Canyon Crest Drive intersection. The site is bounded by University uses on the north, south and east, and by a private apartment complex on the west. The site contains surface parking, and a mix of residential units above ground-floor commercial.

The site fronts Canyon Crest drive on the west, and therefore has significant visibility to both the campus and the broader Riverside community. The LRDP proposed transforming this corridor into a vibrant and welcoming campus “Main Street”, with high-density, horizontal and vertical mixed-use gateway environments that bring year-round vitality to the area. and is also an infill development opportunity on campus.



**D. SCOPE OF SERVICES**

Phase 1 Planning Services will include, but are not limited to:

**Rehabilitation and Redevelopment Study**

- Review other housing projects at regional universities of similar size and with similar objectives, including private off-campus apartment complexes that specifically target the local student population
- Perform site analysis, including consideration of access, traffic, drainage, parking, building placement, utilities (capacity and points of connection), and other considerations affecting a rehabilitation and/or redevelopment, as well as associated environmental issues and energy use.

### *Rehabilitation Analysis*

- Evaluate the feasibility of rehabilitating the existing facility- in total or in part- in order to sustain a lower cost housing option for students, and compare this with the projected costs to students for a redeveloped housing facility.
- Outline options for rehabilitation that includes mitigation of deferred maintenance, seismic, building code requirements, environmental and energy use issues.
- Provide financing model, including operating parameters, as well as conceptual construction budget and implementation schedule.

### *Redevelopment Analysis*

- Evaluate the feasibility of redeveloping the site- in total, or in part- and identify financially feasible opportunities in this marketplace for non-residential items such as campus support spaces, commercial businesses, retail, and parking. Perform as needed surveys and/or focus groups to include students, employees, and community constituencies.
- Define and analyze potential redevelopment to determine the development capacity of the Bannockburn site. Provide analytical models used to determine optimal bed capacity, unit types, and other programmatic uses, of the Bannockburn site.
- Establish design parameters in terms of quantity of buildings, building height, setbacks, and open space character, demonstrating how the concepts address the goals of the 2021 LRDP Canyon Crest Gateway district.
- Develop (3) concept scenarios to outline options for redevelopment, including unit types and site utilization and that promotes sustainability and creates a unique neighborhood identity with a distinct sense of place.
- Develop a conceptual phasing plan to guide the implementation of the preferred redevelopment scenario.
- Provide financing model, including operating parameters, as well as conceptual construction budget and implementation schedule.
- Consider all of the above items in the context of UCR's commitment to sustainable design principles and UC Policy. It is preferred that the ultimate redevelopment exceed the University of California's minimum requirement, USGBC LEED V Silver/Title 24 +20%

### *Final Deliverable*

- Prepare a report describing both the rehabilitation and redevelopment concepts and guidelines with text, tables, images, and illustrations in sufficient detail to provide clear guidance to future consultant involved in the rehabilitation or redevelopment of the entire Bannockburn site, or a portion thereof.

***Note: UCR Housing Services will provide a housing market analysis that will provide information regarding the demand for differing types of on campus bed spaces and the financial feasibility and optimal market rents.***

## **E. PHASE 1 SERVICES SCHEDULE**

Work would proceed according to the following approximate schedule:

- Consultant Selection: 8-10 weeks
- Bannockburn Redevelopment Study: 18-22 weeks

**F. CONSULTANTS**

The University is selecting an experienced team with expertise in urban design, physical planning, architecture and landscape architecture, and with experience in both higher education housing and in market-rate multifamily residential development/redevelopment. Architectural firms submitting for this RFQ shall recommend sub-consultants that would form the consultant team. Sub-consultant disciplines shall include Landscape, Civil, Structural, Mechanical, Electrical, Plumbing, Cost Estimating. The University will review the proposed sub-consultant team.

Although timing and funding of the Bannockburn rehabilitation and/or redevelopment project is unknown, should the University proceed with implementation of the Study recommendations, it may utilize a Design-Build project delivery, CMAR or Lump Sum delivery, and the deliverables then would correlate to the delivery method determined upon completion of Phase 1. Please be aware that the selected firm will not be eligible to compete in a subsequent selection process that seeks to implement the study.

**G. CONTRACT REQUIREMENTS**

1. All consulting services to be provided by the consultant shall be in accordance with the issued University Contract Documents. University Standard Form of Professional Services Agreement (PSA) or Executive Design Professional Agreement (EDPA).
  - a. Note any exceptions to the attached Professional Services Agreement (“PSA”) or Executive Design Professional Agreement (EDPA) that would prevent your firm from executing the Agreement in your response. We cannot accept any request to include language to limit liability with regards to insurance and/or modify the indemnification clauses.
2. University requires evidence of insurance coverage: general liability, automobile liability, and worker’s compensation. If consultant does not currently have coverage in accordance with University requirements, listed below, documentation shall be submitted indicating that such coverage will be in place prior to execution of the Consultant Agreement.

<u>Commercial Form General Liability Insurance* - Limits of Liability</u>	<u>Minimum Requirement</u>
Each Occurrence - Combined Single Limit for Bodily Injury and Property Damage	\$2,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
<u>Business Automobile Liability Insurance* - Limits of Liability</u>	<u>Minimum Requirement</u>
Each Accident - Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000

<u>Workers' Compensation and Employer's Liability**</u>	<u>OBMinimum Requirement</u>
Workers' Compensation:	(as required by Federal and State of California law)
Employer's Liability:	
Each Employee	\$1,000,000
Each Accident	\$1,000,000
Each Policy	\$1,000,000
<u>Professional Liability Insurance* – Limits of Liability</u>	<u>Minimum Requirement</u>
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000

\*This insurance must be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Further, the deductible, or retained limit, for each coverage shall not be more than \$100,000.

\*\*This insurance must be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University.

3. Every effort will be made to ensure that all persons, regardless of race, religion, sex, color, ethnicity, national origin, gender, age, marital status, sexual orientation, gender identity, veteran status, disability, or any other characteristics protected by law have equal access to contracts and other business opportunities with the University. Each candidate firm will be required to show evidence of its equal employment opportunity policy.

### III. SUBMITTAL PROCESS

#### A. SCHEDULE FOR SCREENING AND SELECTION OF CONSULTANTS

In accordance with established University procedures, UC Riverside will review all submittals in response to the RFQ and will select the most qualified firm for the listed project.

1. The complete request for qualifications (RFQ) packet will be available at <http://pdc.ucr.edu/business/consultants.html> on **Friday, July 1, 2022 at 1:00 PM.**
2. **RFQ Qualification Submittals must be received on or before 12:00 PM, on Monday, July 25, 2022.** Provide (1) original, (1) copy, and one (1) electronic copy (flash drive) of the submittal to:

University of California, Riverside  
Architects & Engineers; Contracts Administration  
1223 University Avenue, Suite 240  
Riverside, CA 92507

Attention: Mary Ramirez

**Please note: Email submissions will not be accepted.**

3. Questions may be addressed by email to Mary Ramirez at [mary.ramirez@ucr.edu](mailto:mary.ramirez@ucr.edu). The last day questions will be received will be **July 13, 2022, 3:00 PM**.

**LATE SUBMISSIONS, FOR ANY REASON, WILL NOT BE ACCEPTED.**

#### **B. RFQ SELECTION PROCESS**

The selection process will proceed as follows:

1. The University Screening Committee will evaluate each RFQ Submittal and will rank the prospective firms on the criteria provided in the RFQ Questionnaire & Submittal Form (Attachment A).
2. The highest ranked firms will be recommended to the Selection Committee. The Selection Committee will review the finalists and make a recommended selection to the Associate Vice Chancellor / Campus Architect for review and approval.
3. After review of the submittals the University may, or may not, schedule interviews.
4. If the University receives submissions from fewer than three qualified firms, the University may select from the available qualified firms.

#### **C. SUBMITTAL FORMAT**

##### **SUBMITTAL FORMAT (40 pages maximum length)**

##### **Section 1: Cover Letter (10 points possible).**

**The Cover Letter should introduce the team and provide a brief history of the firm, including:**

- 1) **Number of years in business as the current entity or its legally-recognized predecessor.**
- 2) **Number of employees (aggregate of all office locations).**
- 3) **The individuals proposed to fill the following roles, at a minimum:**
  - a) **Designated principal-in-charge, authorized to make contractual commitments on behalf of the firm;**
  - b) **Designated project lead, responsible for delivery of services to the University in connection with the project;**
  - c) **Designated technical lead for the project.**
- 4) **The firm's office location that will be the firm's primary base for delivery of services to the University in connection with the project.**

##### **Section 2: Project Team and Qualifications (30 points possible).**

- 1) **Team Organization Chart.**
- 2) **Explain the role of each individual and each proposed consultant, and explain how the individual's past experience is directly relevant to his/her proposed role and the**

specific services as described in the RFQ Advertisement.

- 3) Describe the Team's, or Team members', experience in working together on projects comparable to this project.
- 4) Resumes for each proposed team member, indicating individual's experience relevant to the requirements of the project and relevant contact information such as their email address.

**Section 3: Describe relevant project experience (30 points possible).**

- 1) Describe (3) projects comparable to the project in which the firm has had a leading design role (example as the Architect of Record or Engineer of Record);
  - a) For each of the projects cited under item 1) above, provide no more than four (2) pages containing the following information: brief project description, including owner, location and dates of engagement;
  - b) No more than two (2) photographs or diagrams e.g. plans, conveying features relevant to the requirements of this project, as described herein;
  - c) The firm's scope of work;
- 2) Work scope, including services and deliverables.
- 3) Work product examples demonstrating design responses and graphic abilities, particularly as relevant to the preparation of Construction Documents);
- 4) Key personnel assigned to the project;
- 5) Construction Contract sum.
- 6) Start and completion construction dates.

**Section 4: Project Understanding (30 points possible).**

- 1) Understanding of Architect role, scope of services and deliverables, based on information provided herein.
- 2) Describe how Team would work with the University to achieve the project goals. Describe proposed approach and work plan, consistent with schedule and other information provided herein.

**D. NEGOTIATION AND AWARD OF CONTRACT**

1. The University will negotiate a contract with the best ranked qualified firm for services at compensation that the University determines as fair and reasonable.
2. Negotiations shall begin no later than 14 days after the successful firm has been notified of its selection.
3. The University and firm shall work together to ensure the successful delivery of the requested services in a timely fashion.
4. In the event an impasse is reached in negotiations, the University may terminate negotiations and enter into negotiations with the next qualified firm, in the same manner as prescribed below.
  - a. Should the University be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the University determines to be fair and reasonable, negotiations with that firm shall be formally terminated in writing by the University.

- b. The University shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the University shall terminate negotiations in writing. The University shall then undertake negotiations with the third most qualified firm.
- c. Should the University be unable to negotiate a satisfactory contract with any of the selected firms, the University shall select additional firms in order of their competence and qualification and continue negotiations in accordance with these Instructions until an agreement is reached.
- d. Upon the completion of negotiations, the University and the firm shall proceed to execute a contract. The University shall provide the firm the contract within 45 days after the conclusion of negotiations, unless the University notifies the firm that additional time is necessary to complete the contract.
- e. If the selected firm fails to execute the contract within 14 days of receipt, the University may formally terminate the negotiations with that firm in writing and undertake negotiations with the second most qualified firm and so on as previously described above.





**ATTACHMENT A**

**QUALIFICATION SUBMITTAL FORM**

for

**Request for Design Professional Qualifications**

**BANNOCKBURN VILLAGE HOUSING STUDY**

Project Number: 958136

July 1, 2022

SUBMITTED BY:

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(Company Name. If a Joint Venture, state name of JV Entity)

Type of Organization:    Sole Proprietor/Individual    Partnership  
 Joint Venture  
 Corporation                      \_\_\_\_\_  
(State of Incorporation)

---

(Contact Name & Title)

---

(Street Address)

---

(City, State, Zip Code)

---

(Telephone Number)                      \_\_\_\_\_                      (Facsimile Number)

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(E-mail)

Each prospective firm must answer all of the following questions and provide all requested information.

All information submitted for prequalification evaluation in response to Section 2, if applicable, and marked as “confidential” will be considered official information acquired in confidence, and the University of California will maintain its confidentiality unless (1) the University determines that it is required to release the information to a third party pursuant to the requirements of the California Public Records Act or (2) the University is required by court order to release the information to a third party pursuant to the requirements of the California Public Records Act. In the event that the University receives a request pursuant to the California Public Records Act and the University determines that it is required to disclose information marked “confidential” by the provisions of the California Public Records Act, the University will notify the prospective firm of the pending disclosure at least 72 hours prior to such disclosure so that the prospective firm may seek a restraining order in advance of such disclosure. The University shall err on the side of transparency and will generally treat information provided by the prospective firm that is not marked “confidential” as subject to disclosure pursuant to the California Public Records Act. Likewise, any decision by the University that any document is subject to disclosure pursuant to the California Public Records Act shall not prevent the University from making a subsequent determination that any document is not subject to disclosure pursuant to the California Public Records Act.

All other information submitted for evaluation will be considered official information acquired in confidence, and the University will maintain its confidentiality to the extent permitted by law.

WHERE NECESSARY, COPY THE FORMS IN THIS PACKAGE. USE ONLY THESE FORMS. Oral, telephonic, electronic mail (e-mail), facsimile, or telegraphic Prequalification Questionnaires are invalid and will not be accepted.

**SUBMIT ONE ELECTRONIC FILE ON TRANSFERABLE MEDIA NO LATER THAN THE RFQ DEADLINE.**



**1. SURVEY (Information Only)**

**How did you hear about this RFQ?**

Press Enterprise

UCR Website

Other: \_\_\_\_\_

**2. INSURER**

Prospective firm shall obtain and submit the Insurance Declaration in the form shown below, or submit a sample certificate of insurance form from its insurer, or submit a letter that declares the same as the Insurance Declaration, signed by an authorized representative of its insurer on the representative's or insurer's letterhead. (If more than one insurer or insurance representative, submit a completed form or sample certificate of insurance form or letter for each).

**2.1 Is the firm able to obtain insurance in the following limits for the required coverages?**

YES  NO

Commercial Form General Liability Insurance\* - Limits of Liability

	<u>Minimum Requirement</u>
Each Occurrence - Combined Single Limit for Bodily Injury and Property Damage	\$2,000,000
Products - Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000

Business Automobile Liability Insurance\* - Limits of Liability

	<u>Minimum Requirement</u>
Each Accident - Combined Single Limit for Bodily Injury and Property Damage	\$1,000,000

Workers' Compensation and Employer's Liability\*\*

Workers' Compensation:

Minimum Requirement  
(as required by Federal and State of California law)

Employer's Liability:

Each Employee	\$1,000,000
Each Accident	\$1,000,000
Each Policy	\$1,000,000

Professional Liability Insurance\* – Limits of Liability

	<u>Minimum Requirement</u>
Each Occurrence	\$2,000,000
General Aggregate	\$2,000,000

\*This insurance must be (i) issued by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's). Further, the deductible, or retained limit, for each coverage shall not be more than \$100,000.

\*\*This insurance must be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University.

**2.2 Insurance Declaration:**

**PROVIDE THIS DECLARATION TO YOUR INSURANCE CARRIER FOR COMPLETION AND HAVE YOUR CARRIER RETURN THE COMPLETED DECLARATION TO YOU. THE PROSPECTIVE FIRM MUST SUBMIT THIS DECLARATION TO UNIVERSITY. DO NOT HAVE YOUR CARRIER SUBMIT THIS DECLARATION DIRECTLY TO THE UNIVERSITY**

The undersigned declares under penalty of perjury that the below named insurer is currently willing to provide the insurance listed above in Section 2.1. of this RFQ Qualification

submittal

\_\_\_\_\_ (Name of Prospective Firm)

and that this Declaration was executed in

\_\_\_\_\_, in the State of \_\_\_\_\_,

\_\_\_\_\_ (Name of City if within a City, otherwise Name of County)

\_\_\_\_\_ (State)

on

\_\_\_\_\_ (Date)

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Name & Title)

\_\_\_\_\_ (Insurer Name)

\_\_\_\_\_ (Street Address)

\_\_\_\_\_ (City, State & Zip Code)

\_\_\_\_\_ (Telephone Number)

\_\_\_\_\_ (Facsimile Number)

\_\_\_\_\_ (Mobile Number)

\_\_\_\_\_ (Email)



**4. DECLARATION**

I, \_\_\_\_\_, hereby declare that I am the

(Printed Name)

of

(Title)

(Name of Company)

submitting this Qualification Submittal; that I am duly authorized to sign this Qualification Submittal on behalf of the above named company; and that all information set forth in this Qualification Submittal and all attachments hereto are, to the best of my knowledge, true, accurate, and complete as of its submission date.

I declare, under penalty of perjury, that the foregoing is true and correct and that this Declaration was executed in:

\_\_\_\_\_, in the State of \_\_\_\_\_,

(Name of City if within a City, otherwise Name of County)

(State)

on

(Date)

(Signature)

END OF QUALIFICATION SUBMITTAL

**3. UNIVERSITY OF CALIFORNIA CONSULTANT EXPERIENCE FORM**

Complete this form if your firm has worked on a UC Campus in the last 5 years, or check this box to confirm that this is not applicable.

Have not worked at a UC Campus in the last 5 years.

Firm's Role e.g. Architect, Geotechnical Consultant, etc.	Active UC projects - campus/project (list all for your firm)	Claims* or litigation (Yes** or No)	All UC projects within last 5 years - campus/project (list all for each firm)	Claims* or litigation? (Yes** or No)	All other projects with any claims* - active & past 5 years (list all for each firm)

The information provided on this experience form was prepared by the office of the prime consultant listed above, who verifies under penalty of perjury that all information set forth on this form, to the best of my knowledge, is complete and accurate as of the date of submission of the Statement of Qualifications.

**Attach additional pages if necessary for any category**

Signature \_\_\_\_\_

\* Claims includes all Claims includes all pending, unresolved claims of professional negligence or breach of contract for professional services against your firm or any owner or principal of your firm.

Name \_\_\_\_\_  
 Title \_\_\_\_\_ Date \_\_\_\_\_

**\*\* If yes, explain**

**PROFESSIONAL SERVICES AGREEMENT**

between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

**{CONSULTANT or LABORATORY NAME}**

This Agreement is made on \_\_\_\_\_ between The Regents of the University of California, a California corporation, hereinafter called "University," and \_\_\_\_\_,

an individual/sole proprietor  a partnership  a joint venture  a \_\_\_\_\_ corporation, (State of Incorporation)

holder of all necessary and applicable licenses required for the performance of the services described in this Agreement, hereinafter called "Consultant," to furnish certain services upon the following terms and conditions:

**I. CONSULTANT SERVICES AND RESPONSIBILITIES**

A. The Consultant shall furnish the following services:

1. Act as a consultant to the University of California, Riverside, to perform **{BRIEF DESCRIPTION OF SERVICES}** as required and authorized by the University. Under this Agreement, the consultant may perform pre-design services but in no event does this Agreement authorize the preparation of any design documents, including Schematic Design.

The University will authorize the Consultant to perform specific services by the issuance of a Written Authorization(s) on the form contained in the Exhibits. Each Written Authorization will state the specific services to be performed, the schedule for their completion, and the method of compensation in accordance with paragraph IV.

2. Furnish drawings, documents, reports, surveys, renderings, exhibits, models, prints, and photographs, and other materials as required and as authorized by the University.

**{OPTIONAL: INSERT THE FOLLOWING LANGUAGE IN PSA IF CONSULTANT HAS BEEN SELECTED TO ACT AS DESIGN PROFESSIONAL INCLUDING, IF NECESSARY, ADVERTISEMENT AND INTERVIEWS/DISCUSSIONS}**

B. Consultant hereby represents to the University that:

1. Consultant acknowledges that it has been selected to perform services for the Project including services as Design Professional under the Executive Design Professional Agreement (EDPA) in the Exhibits;
2. Consultant acknowledges that University have deferred negotiations on a fee for Basic Services and rate schedule for Additional Services described in the EDPA; and
3. Consultant has read and understood the EDPA in Exhibits and agrees to all of its terms and provisions.

C. If University requires the Consultant's services as Design Professional for the Project, Consultant agrees to the following:

1. Consultant will not request any modifications to those terms and provisions to the EDPA and will execute the EDPA in the form in the Exhibits; and

2. Consultant will negotiate in good faith both a fee to perform the Basic Services and a rate schedule to perform Additional Services based on its then current rate structure consistent with its normal practice and consistent with University guidelines for fees and rates for similar projects.

## II. TERM

- A. *Order Period.* The period of time for issuance of written Authorizations to Perform Services (hereinafter "Order Period") shall be from \_\_\_\_\_ to \_\_\_\_\_.
- B. *Period of Performance.* The period of performance under the Agreement shall be as specified in any written Authorizations to Perform Services, or subsequent revisions thereto, issued during the Order Period. However, the period of performance shall not commence prior to the date of execution of any such written Authorization.
- C. ***University- initiated Termination***

1. If the University determines that the Consultant has failed to perform in accordance with the terms and conditions of this Agreement, the University may terminate all or part of the Agreement for cause. This termination shall become effective if the Consultant does not cure its failure to perform within 10 days (or more, if authorized in writing by the University) after receipt of a notice of intention to terminate from the University specifying the failure in performance. If a termination for cause does occur, the University shall have the right to withhold monies otherwise payable to the Consultant until the services under this Agreement are completed. If the University incurs additional costs, expenses, or other damages due to the failure of the Consultant to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to the Consultant upon completion of the services to be provided under this Agreement. If the costs, expenses, or other damages incurred by the University exceed the amounts withheld, the Consultant shall be liable to the University for the difference.

2. University may terminate this Agreement for convenience at any time upon written notice to Consultant, in which case University will pay Consultant for all services performed and all expenses incurred under this Agreement up to and including the effective date of termination less any costs, expenses or other damages due to the failure of the Consultant to properly perform pursuant to the Agreement. In ascertaining the services actually rendered up to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to University or in the possession of Consultant, and to authorized Reimbursable Expenses. No other compensation will be payable for anticipated profit on unperformed services.

- D. ***Consultant - initiated Termination***

Consultant may terminate this Agreement for cause if the University fails to cure a material default in performance within a period of 30 days, or such longer period as the Consultant may allow, after receipt from the Consultant of a written termination notice specifying the default in performance. In the event of termination for cause by the Consultant, the University will pay the Consultant in accordance with paragraph II.C.2.

## III. GENERAL PROVISIONS

- A. *Independent Contractor.* The Consultant shall perform the services hereunder as an independent contractor and not as an agent or employee of the University.
- B. *Consultant Hiring.* The Consultant shall not hire any officer or employee of the University to perform any

service covered by this Agreement. If the service is to be performed in connection with a federal contract or grant, the Consultant shall not hire any employee of the United States government to perform any service covered by this Agreement.

- C. *Subconsultants.* The Consultant shall cooperate with other professionals employed by the University in the production of other work related to its services. Subject to approval by the University, the Consultant shall contract for or employ, at its expense, such professional subconsultants, as the Consultant deems necessary for the completion of the services. The Consultant may hire the services of subconsultants with University approval in place of or in addition to those employed or retained by the Consultant. The Consultant is as responsible for the performance of its subconsultants as it would be if it had rendered these services itself. Nothing in the foregoing procedure shall create any contractual relationship between the University and the professionals employed by the Consultant under the terms and conditions of this Agreement. The Consultant is solely responsible for payment of any subconsultants.
- D. *Legal and Regulatory Compliance.* The Consultant shall perform all services and prepare documents in compliance with the applicable requirements of laws, codes, rules, regulations, ordinances, and standards.
- E. *Copyright, Ownership and Use of Materials.* Consultant hereby assigns to the University all right, title, and interest, including, but not limited to, copyright and all copyright rights, in all Materials created by Consultant in its performance under this Agreement and/or delivered to the University hereunder and shall execute any documents necessary to effectuate such assignment, with the exception that Consultant hereby grants to the University an irrevocable, fully-paid up, royalty-free license to use any document provided to the University including without limitation any document known as a "detail." Consultant warrants that it has the lawful right to grant the foregoing license to the University. . In the event Consultant uses any individual who is not a full-time employee of Consultant or entity to perform any work required of it pursuant to this Agreement, Consultant shall require said individual or entity to sign an agreement containing identical wording as the foregoing with the exception that word "Consultant" is to be replaced with the individual's or entity's name. Materials constitute all written and other tangible expressions, including, but not limited to, drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, etc. All Materials furnished by the Consultant hereunder shall be and shall remain the property of the University. In the event of Agreement termination by either party for any reason, as provided under this Agreement, the University will have the right to receive, and the Consultant shall promptly provide to the University, all drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, and other materials prepared by the Consultant for the services under this Agreement. In the event of termination, and any dispute regarding the amount to be paid under this Agreement notwithstanding, the University retains the right to receive and use any such documents or materials any dispute regarding the amount to be paid under this Agreement notwithstanding. The foregoing provisions shall survive the term and termination of this Agreement.
- F. *Consultant's Accounting Records.* All books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). University or University's authorized representative shall have access to and the right to audit and the right to copy all of Consultant's books and records. Consultant records shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available); contracts; payroll records; subconsultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.
- G. *Conflict of Interest.* The Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between the Consultant's family, business, or financial interests (including services provided to another client) and the services provided under this Agreement, and that in the event of a



change in either the private interests or services under this Agreement, any questions regarding a possible conflict of interest that may arise as a result of this change shall be disclosed in writing to the University. The Consultant shall not be in a reporting relationship to a University employee who is a near relative, nor shall the near relative be in a decision-making position with respect to the Consultant.

- H. *Successors and Assigns.* If the Consultant transacts business as an individual, upon the Consultant's death or incapacitation, the University will automatically terminate this Agreement as of the date of such event. If so terminated, neither the Consultant nor the Consultant's estate shall have any further right to perform hereunder, and University shall pay the Consultant, or the Consultant's estate, the prorated unpaid compensation due under Article IV for any services rendered prior to this termination.

If there is more than one Consultant, and any one of them dies or becomes incapacitated, and the others continue to render the consulting services covered herein, the University will make payments to those continuing as though there had been no death or incapacitation; the University will not be obliged to take any account of the person who died or became incapacitated or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as Consultant herein; if death or incapacitation befalls the last member of this group before the services of this Agreement are fully performed, then the rights shall be as if there had been only one Consultant.

This Agreement shall be binding upon the University and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, may be assigned by the Consultant without the prior written consent and approval of the University.

- I. *Information Furnished by University.* If required for the performance of the Consultant's services, the University will furnish information, surveys, reports, as-builts, and other materials at the University's expense.
- J. *Statistical Reporting.* At the commencement of performance, Consultant shall complete and submit, and require each Subconsultant who performs services under this Agreement to complete and submit, a Self-Certification on the form contained in the Exhibits. At the completion of work and prior to final payment, Consultant shall complete and submit a Final Distribution of Contract Dollars under this Agreement on the form contained in the Exhibits.
- K. *Confidentiality.* The Consultant shall use his or her best efforts to keep confidential a) any information produced or created by Consultant under this Agreement including but not limited to test results, sampling results, data, plans and reports; b) any information provided by the University and marked "Confidential Information"; or c) any oral information conveyed to the Consultant by the University and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. In the event that Consultant determines that it has a legal obligation to disclose such Confidential Information pursuant to a third party demand, Consultant shall notify the University in writing of its receipt of such demand and of Consultant's determination that it has a legal obligation to disclose Confidential Information. Consultant shall not disclose any such Confidential Information until at least ten (10) days from the date of receipt by University of Consultant's written notice. This nondisclosure provision shall not apply to any of the following:
1. Information which the Consultant can demonstrate by written records was known to him or her prior to the effective date of this Agreement;
  2. Information that is currently in, or in the future enters, the public domain other than through a breach of this Agreement or through other acts or omissions of Consultant; or
  3. Information that is obtained lawfully from a third party

- L. *Survival*. The provisions of this Agreement which by their nature survive expiration or termination of the Agreement or Final Completion of any related Project or the performance of services under this Agreement, including any and all warranties, confidentiality, indemnities, payment obligations, and University's right to audit Consultant's books and records, shall remain in full force and effect after any expiration or termination of the Agreement or Final Completion of any related Project or the performance of services under this Agreement.
- M. *UC Fair Wage*. Consultant/Design Professional shall pay all persons providing services and/or any labor on site, including any University location, no less than UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) and shall comply with all applicable federal, state and local working condition requirements.

#### IV. COMPENSATION

- A. Compensation payable by University under this Agreement shall not exceed \$\_\_\_\_\_.
- B. The University will have the right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.
- C. The University will compensate the Consultant for the scope of services provided in accordance with this Agreement, computed as follows:
  - 1. For each written authorization, a maximum payment shall be established that shall not be exceeded without the prior written approval of the University.
  - 2. All fees shall be in accordance with the Consultant Rate Schedule contained in the Exhibits. Unless otherwise provided in the Consultant Rate Schedule, rates shall not be changed except in accordance with paragraph VIII.A. Alternatively, a lump-sum fee may be negotiated.
  - 3. Payments to the Consultant shall be made monthly, subsequent to the University's receipt of an invoice itemizing the fees and reimbursable expenses for each written authorization for the month invoiced.
    - a. *Invoicing for Services Performed on a Labor Hour / Time-and-Materials Basis*. Consultant must submit an itemized invoice for services rendered for each Work Authorization. The itemized invoice must include (i) fees and authorized reimbursable expenses for the month invoiced, (ii) the Contract Number of this Agreement, (iii) the Work Authorization number, (iv) the project name and number if applicable, (v) the date of services, (vi) a summary of the tasks performed with associated hours and billing rates and (vii) supporting timesheets. Payment will be subject to verification by University's Representative. *Overtime premiums* will not be allowed for exempt service professionals. Authorized overtime will be compensated at straight-time rates unless specifically provided otherwise in the Rate Schedule.
    - b. *Invoicing for Services Performed for an Established Lump-Sum Fee*. Consultant will invoice University for authorized services performed for an established Lump-Sum Fee. A lump-sum invoice may be submitted upon completion of the authorized work. If monthly billings are requested, Consultant shall submit a proposed monthly billing schedule for University's approval. Proposed monthly billings must relate to the percentage of work performed each month in proportion to the total Work Authorization amount. Payments will not be made that exceed the value of work performed during the billing period. Each invoice must include (1) the fee for the month invoiced, (ii) the Contract Number of this Agreement, (iii) the Work Authorization number, (iv) the project name and number if applicable, (v) the dates of services

or a copy of the approved billing schedule, and (vi) a summary of the tasks performed. The amount invoiced will be subject to verification by University's Authorized Representative. All overtime premiums, reimbursable expenses except as mutually agreed per IV.C.4., and project related overhead or administrative expenses are Consultant's responsibility and are considered included in the lump-sum fee.

- c. Invoices shall be sent to the following address:

UCR Planning, Design & Construction  
1223 University Avenue, Suite 240  
Riverside, CA 92507

or

[pdcinvoice@ucr.edu](mailto:pdcinvoice@ucr.edu)

4. When provided in a written Work Authorization as mutually agreed between Consultant and University, reimbursable expenses will be paid in addition to the fees for Services under this Agreement; otherwise, Consultant is responsible for all other operating expenses, overhead and administrative costs that are considered included in the rates in the Consultant's Rate Schedule contained in the Exhibits. Reimbursable expenses are actual expenditures made by the Consultant and the Consultant's employees and subconsultants in accordance with the "Reimbursement Schedule" contained in the Exhibits. All expenses must be itemized, justified, and supported with receipts to University's reasonable satisfaction. All expenses must fall within the established applicable not-to-exceed Work Authorization amount.
5. Payment Terms. Properly submitted invoices will be paid on a net-30 day basis. Invoices that do not conform to the requirements of this Agreement will be returned to Consultant for revision and/or supporting documents. Properly revised invoices will be paid net-30 days.
- a. Payments will not be made for services performed in advance of the Work Authorization effective date unless such advanced services are specifically authorized in the applicable Work Authorization. For each Work Authorization, the maximum payment shall not exceed the established Work Authorization amount without University's prior signed written approval.
- b. If University fails to pay undisputed amounts within 45 days of invoice receipt, Consultant may submit a written payment demand. If University fails to cure the requested payment demand within 7 calendar days from receipt, Consultant may suspend work under this Agreement until such undisputed payments are made. Any payment issues must be brought to the immediate attention of University's Director of Contracts Administration for resolution.
6. Consultant must complete and sign an IRS Form W-9, and send it to the above address for invoices.

## V. INDEMNIFICATION AND INSURANCE

### A. INDEMNIFICATION

1. Consultant shall indemnify, defend, and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee ("Losses") arising out of the performance of services or Consultants other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of Consultant, its officers, agents, employees, subcontractors, subconsultants, or any person or entity

for whom Consultant is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

2. The indemnification obligations under this Article V shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by University except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.
3. Consultant shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use by Indemnitee of any documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.
4. Nothing in this Agreement, including the provisions of this Article V, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

**B. INSURANCE**

1. Insurance Requirements. Consultant, at Consultant's sole cost and expense, shall insure its activities in connection with this Agreement, and shall obtain, keep in force, and maintain insurance as listed below. The coverages required under paragraph V.B. shall not in any way limit the liability of the Consultant.
  - a. Commercial Form General Liability Insurance with coverage and minimum limits as follows:
 

i.	Each occurrence	\$1,000,000
ii.	Products Completed; Operations Aggregate	\$1,000,000
iii.	Personal and Advertising Injury	\$1,000,000
iv.	General Aggregate	\$2,000,000
  - b. Business Automobile Liability Insurance for owned, scheduled, non-owned, and hired automobiles, with a combined single limit of no less than \$1,000,000 per accident.
  - c. Professional Liability Insurance, with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.
  - d. If the above insurance (subparagraphs V.B.1.a – V.B.1.c) is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion of the services authorized pursuant to each Written Authorization executed. The insurance shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement and shall include, without limitation, coverage for professional services as called for in this Agreement.

Insurance required by subparagraphs V.B.1.a-V.B.1.c shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

- e. Workers' Compensation and Employer's Liability Insurance as follows:
  - i. Worker's Compensation: as required by Federal and State of California law.
  - ii. Employer's Liability:     Each Employee \$1,000,000  
                                      Each Accident \$1,000,000  
                                      Policy Limit \$1,000,000
  - iii. Insurance required by this subparagraph V.B.1.e shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) that are acceptable to the University.
- f. Consultant, upon the execution of this Agreement, shall furnish University with Certificate of Insurance evidencing compliance with this Article V., including the following requirements:
  - i. Consultant shall have the insurance company complete University's Certificate of Insurance on the form contained in the Exhibits. If Consultant's insurance company refuses to use the University's Certificate of Insurance form, it must provide a Certificate of Insurance (and endorsements, if needed) evidencing compliance with Paragraph V.B. and Special Provisions 1 through 3 on the Certificate of Insurance Exhibit. It alone constitutes evidence of insurance.
  - ii. If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Consultant.
  - iii. University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Consultant in writing, will be included as additional insureds on Consultant's general liability policy for and relating to the Work to be performed by Consultant and Subcontractors. Consultant's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04). The General Liability coverage shall contain a Severability of Interest provision and shall be primary insurance as respects The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of California shall be excess of and non-contributory with this insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

- iv. The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of Consultant, its officers, agents, employees, and for Consultant's legal responsibility for the negligent acts or omissions of its subconsultants and anyone directly or indirectly under the control, supervision, or employ of Consultant or Consultant's subconsultants.

## **VI. STATUTORY AND OTHER REQUIREMENTS**

### **A. NONDISCRIMINATION**

1. In connection with the performance of the Consultant pursuant to this Agreement, the Consultant shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Contractor will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

### **B. PREVAILING WAGE RATES**

1. For purposes of this Article, the term subcontractor or subconsultant shall not include suppliers, manufacturers, or distributors.
2. Consultant shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. References to Covered Services hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.

3. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code for each craft, classification, or type of worker required to perform the Covered Services hereunder. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By this reference, such schedule is made part of this Agreement. Consultant shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Consultant in the execution of the Covered Services hereunder. Consultant shall cause all subcontracts or subconsultant agreements to include the provision that all subcontractors or subconsultants shall pay not less than the prevailing wage rates to all workers employed by such subcontractor or subconsultants in the execution of the Covered Services hereunder. Consultant shall forfeit to University, as a penalty, not more than \$200 for each calendar day, or portion thereof, for each worker that is paid less than the prevailing wage rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Covered Services hereunder performed by Consultant or any subcontractor or subconsultant. The amount of this penalty shall be determined by the Labor Commissioner pursuant to applicable law. Such forfeiture amounts may be deducted from the Consultant fee. Consultant shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

#### **C. PAYROLL RECORDS**

1. Consultant and all subcontractors or subconsultants shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey person, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by Consultant or subcontractors or subconsultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
  - b. A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
  - c. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Consultant or subcontractors or subconsultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant awarded the Agreement or performing the Agreement shall not be marked or obliterated.

2. Consultant shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Consultant shall inform University of the location of such payroll records for the written authorization, including the street address, city, and county; and Consultant shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Paragraph or with the State of California Labor Code Section 1776, Consultant shall have 10 days in which to comply following receipt of notice specifying in what respects Consultant must comply. Should noncompliance still be evident after the 10-day period, Consultant shall forfeit to University, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Consultant fee.

#### **D. APPRENTICES**

1. Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Consultant and subcontractors or subconsultants as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Consultant bears responsibility for compliance with this section for all apprenticeable occupations.
2. Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Covered Services hereunder in the craft or trade to which the apprentice is indentured.
3. When Consultant or subcontractors or subconsultants employ workers in any apprenticeship craft or trade for the Covered Services hereunder, Consultant or subcontractors or subconsultants shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, for a certificate approving Consultant or subcontractors or subconsultants under the apprenticeship standards for the employment and training of apprentices in the locality so identified. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Consultant or subcontractors or subconsultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.
4. "Apprenticeship craft or trade," as used in this Paragraph, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.
5. If Consultant or subcontractors or subconsultants employ journeypersons or apprentices in any apprenticeship craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, and there exists a fund for assisting to allay the cost of the apprenticeship



program in the trade or craft, to which fund or funds other contractors in the locality so identified are contributing, Consultant and subcontractors or subconsultants shall contribute to the fund or funds in each craft or trade in which they employ journeypersons or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same manner done by the other contractors. Consultant may include the amount of such contributions in computing its compensation under the Agreement; but if Consultant fails to do so, it shall not be entitled to any additional compensation therefore from University.

6. In the event Consultant willfully fails to comply with this Paragraph VI.D, it will be considered in violation of the requirements of the Agreement.
7. Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Consultant or subcontractors or subconsultants of journeyperson trainees who may receive on-the-job training to enable them to achieve journeyperson status in any craft or trade under standards other than those set forth for apprentices.

#### **E. WORK DAY**

1. Consultant shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Consultant shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Agreement by Consultant, or any subcontractors or subconsultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the compensation otherwise due under this Agreement. Consultant and each subcontractor or subconsultant shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed under this Agreement, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

#### **F. PATIENT HEALTH INFORMATION**

1. Consultant acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Consultant shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Consultant will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Consultant, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Consultant will report such actions immediately to the University Representative. Consultant will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Consultant will report to University Representative within five (5) days after Consultant gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

#### **VII. NOTICES**

- A. *University.* Any notice may be served upon the University by delivering it, in writing, to the University at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to the University at the aforementioned address, or by sending a facsimile of it to the University facsimile number set forth on the last page of this Agreement.
- B. *Consultant.* Any notice may be served upon the Consultant by delivering it, in writing, to the Consultant at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to the Consultant at this address, or by sending a facsimile of it to the Consultant facsimile number set forth on the last page of this Agreement.

### **VIII. AUTHORITY OF AGREEMENT**

- A. This Agreement represents the entire and integrated agreement between the University and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by a written instrument signed by both the University and the Consultant and the written instrument shall be an Amendment on the form contained in the Exhibits.
- B. This Agreement includes the following Exhibits attached herewith:

- Amendment
- Certificate of Insurance
- Final Distribution of Contract Dollars
- Rate Schedule
- Reimbursement Schedule
- Self-Certification
- Work Authorization
- Reference RFQ/RFP Documents
- Executive Design Professional Agreement

IN WITNESS WHEREOF, the UNIVERSITY and the CONSULTANT have executed this Agreement on the **{DAY}** day of **{MONTH}**, **{YEAR}**

**CONSULTANT:**

\_\_\_\_\_  
 (Name of Company)

By: \_\_\_\_\_  
 (Signature & Date)

\_\_\_\_\_  
 (License Number, if applicable)

\_\_\_\_\_  
 (Print Name & Title)

\_\_\_\_\_  
 (Employer ID Number)

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Telephone Number(s): \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

**Recommended:**

By: University's Representative

**Funds Sufficient:**

By: Financial Administrative Officer

\_\_\_\_\_  
 (Signature & Date)

\_\_\_\_\_  
 (Signature & Date)

Name  
 Title  
 Planning, Design & Construction  
 \_\_\_\_\_  
 (Print Name & Title)

Susan McFadden  
 Senior Financial Analyst  
 Planning, Design & Construction  
 \_\_\_\_\_  
 (Print Name & Title)

**UNIVERSITY:**

By: The Regents of the University of California  
 University of California, Riverside

\_\_\_\_\_  
 (Signature & Date)

Drew Hecht, Architect  
 Director of Project Management  
 Planning, Design & Construction  
 \_\_\_\_\_  
 (Print Name & Title)

Account No.: \_\_\_\_\_

Activity Code: \_\_\_\_\_

Fund: \_\_\_\_\_

Function: \_\_\_\_\_

Cost Center: \_\_\_\_\_

Project Code: \_\_\_\_\_

Address: University of California, Riverside  
Planning, Design & Construction  
Attn: Contracts  
1223 University Avenue, Suite 240  
Riverside, CA 92521

Telephone Number: 951.827.4724

Facsimile Number: 951.827.4556

EXECUTIVE DESIGN PROFESSIONAL AGREEMENT  
TABLE OF CONTENTS

COVER PAGE

ARTICLE 1 - GENERAL PROVISIONS

- 1.1 GENERAL REQUIREMENTS
- 1.2 DESIGN PROFESSIONAL STANDARD OF CARE
- 1.3 DEFINITIONS

ARTICLE 2 - BASIC SERVICES

- 2.1 GENERAL
- 2.2 SCHEMATIC DESIGN PHASE
- 2.3 DESIGN DEVELOPMENT PHASE
- 2.4 CONSTRUCTION DOCUMENTS PHASE
- 2.5 BIDDING PHASE
- 2.6 CONSTRUCTION PHASE
- 2.7 INDEPENDENT SEISMIC/STRUCTURAL REVIEW
- 2.8 SCHEDULE

ARTICLE 3 - ADDITIONAL SERVICES

ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES

- 4.1 ADMINISTRATION
- 4.2 PROVISION OF INFORMATION, SURVEYS, REPORTS, AND DATA

ARTICLE 5 - COMPENSATION

- 5.1 COMPENSATION FOR BASIC SERVICES
- 5.2 COMPENSATION FOR ADDITIONAL SERVICES OR FOR EXTENSIONS OF CONTRACT TIME
- 5.3 REIMBURSABLE EXPENSES

ARTICLE 6 - PAYMENTS

- 6.1 PAYMENTS FOR BASIC SERVICE
- 6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES
- 6.3 TAX BENEFITS

ARTICLE 7 - DESIGN PROFESSIONAL'S RECORDS AND FILES

ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS

- 8.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS
- 8.2 CONSTRUCTION DOCUMENTS
- 8.3 INDEMNIFICATION

ARTICLE 9 - DISPUTES

- 9.1 NEGOTIATION
- 9.2 MEDIATION
- 9.3 ARBITRATION OR LITIGATION
- 9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE

ARTICLE 10 - INDEMNIFICATION AND INSURANCE

- 10.1 INDEMNIFICATION
- 10.2 INSURANCE REQUIREMENTS

ARTICLE 11 - STATUTORY REQUIREMENTS

- 11.1 NONDISCRIMINATION
- 11.2 PREVAILING WAGE RATES
- 11.3 PAYROLL RECORDS
- 11.4 APPRENTICES
- 11.5 WORK DAY

11.6 PATIENT HEALTH INFORMATION

ARTICLE 12 - EXTENT OF AGREEMENT

- 12.1 AUTHORITY OF AGREEMENT
- 12.2 EXHIBITS
- 12.3 THIRD-PARTY BENEFICIARIES
- 12.4 SURVIVAL

ARTICLE 13 - FEDERAL AND STATE GRANTS

ARTICLE 14 - NOTICES

- 14.1 UNIVERSITY
- 14.2 DESIGN PROFESSIONAL

ARTICLE 15 - SUCCESSORS AND ASSIGNS

- 15.1 DESIGN PROFESSIONAL'S DEATH OR INCAPACITATION

ARTICLE 16 - TERMINATION OF AGREEMENT

- 16.1 UNIVERSITY-INITIATED TERMINATION
- 16.2 DESIGN PROFESSIONAL-INITIATED TERMINATION
- 16.3 DOCUMENTS AND MATERIALS

ARTICLE 17 - STATISTICAL REPORTING

**EXECUTIVE DESIGN PROFESSIONAL AGREEMENT**  
**between**  
**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**  
**and**  
**ENTER THE DESIGN PROFESSIONAL NAME**

This AGREEMENT is made on \_\_\_\_\_ between The Regents of the University of California, a California Corporation, hereinafter called "University" and **{INSERT THE NAME OF THE EXECUTIVE ARCHITECT OR ENGINEER}** hereinafter called "Design Professional".

**{CONTINUE THE PARAGRAPH AFTER CHOOSING THE APPROPRIATE OPTION:**

- 1. IF THE FIRM IS A CORPORATION, USE THE CORPORATE TITLE.**
- 2. IF THE FIRM IS A PARTNERSHIP, LIST THE NAMES OF ALL OF THE PARTNERS. IF THE PARTNERSHIP IS OPERATING AS A "DOING BUSINESS AS (DBA)" FIRM, INCLUDE THE DBA NAME. FOR A GENERAL PARTNERSHIP, STIPULATE AFTER ALL LISTED NAMES THE TERM "Co-partners."**
- 3. IF THE FIRM IS A SOLE PROPRIETORSHIP, LIST THE NAME OF THE INDIVIDUAL, FOLLOWED BY THE WORDS "An Individual." IF THE SOLE PROPRIETORSHIP IS OPERATING AS A DBA FIRM, INCLUDE THE DBA NAME.}**

The above named individual or firm shall be the Executive Architect or Engineer and shall comply with the licensing laws of the State of California regarding the practice of Architecture or Engineering in performing the services set forth in this Agreement for the following project:

**{NOTE:THE FACILITY NAME, PROJECT NUMBER, AND PROJECT NAME MUST BE THE SAME AS THOSE RECORDED FOR FUNDING PURPOSES.}**

**UNIVERSITY OF CALIFORNIA, RIVERSIDE**

**{PROJECT NUMBER}**

**{PROJECT NAME}**

PROJECT DESCRIPTION: Describe including approximate sq. ft.

CONSTRUCTION BUDGET: \$

## **ARTICLE 1 - GENERAL PROVISIONS**

### **1.1 GENERAL REQUIREMENTS**

**1.1.1** This Agreement shall be governed by the laws of the State of California.

**1.1.2** In the event of a conflict between the provisions of any exhibit to this Agreement and the Agreement, the provisions of this Agreement shall govern.

**1.1.3** University's exercise of any of its rights or remedies prescribed in this Agreement shall not relieve Design Professional from responsibility for damages or other losses incurred or to be incurred by University as a result of Design Professional's breach of its obligation under this Agreement.

**1.1.4** Time is of the essence for this Agreement.

**1.1.5** Design Professional shall cooperate with University, its designees, and Contractor in furthering the interests of University.

**1.1.6** Design Professional shall cooperate with other professionals University may employ for related work.

**1.1.7** To the extent required by University, Design Professional shall consult with authorized employees, agents, and representatives of University relative to the design and construction of a Project.

**1.1.8** Design Professional shall perform all services in compliance with applicable laws, codes, rules, regulations, ordinances, University policies, and Facility standards. University policies include without limitation those related to Seismic Safety and Sustainable Practices.

**1.1.9** Services required by this Agreement include, at no additional cost to University, all services necessitated, in whole or in part, by errors and omissions of, or breach of this Agreement by, Design Professional, its subconsultants, or any person or entity working under Design Professional.

**1.1.10** Consultant/Design Professional shall pay all persons providing services and/or any labor on site, including any University location, no less than UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) and shall comply with all applicable federal, state and local working condition requirements.

### **1.2 DESIGN PROFESSIONAL STANDARD OF CARE**

**1.2.1** Design Professional, its officers, agents, employees, subcontractors, subconsultants and any persons or entities for whom Design Professional is responsible, shall provide all services pursuant to this Agreement in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode).

### **1.3 DEFINITIONS**

Unless defined differently herein, terms used in this Agreement shall have the same meaning as those used in

University's Bidding Documents, General Conditions in the Exhibits.

**NOTE: EXHIBITS MUST ALSO INCLUDE THE FACILITY'S STANDARD SPECIFICATIONS, DIVISION 1, GENERAL REQUIREMENTS.**

**1.3.1 Agreement.** The term "Agreement" means this Agreement, Supplemental Requirements, Exhibits, Amendments, and all other documents identified in this Agreement which together form the agreement between University and the Design Professional for the Work the Agreement constitutes the complete agreement between University and the Design Professional and supersedes any previous agreements or understandings.

**1.3.2 Architect (or Engineer) of Record.** The term "Architect of Record" or "Engineer of Record" shall mean the specific University-approved Design Professional named in this Agreement who is the Design Professional's designated principal or staff member in charge of providing all services required by this Agreement.

**1.3.3 As-builts (As-built Drawings and Specifications).** The term "As-builts" shall mean the marked-up version of the Contract Documents prepared by the construction Contractor to record as-built conditions, current changes, and selections made during construction.

**1.3.4 Bidding Documents.** The term "Bidding Documents" shall mean those documents prepared and furnished by University for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements attached in the Exhibits.

**1.3.5 Construction Budget.** The term "Construction Budget" shall mean University's written statement of funds available to pay for the cost of construction.

**1.3.6 Construction Documents.** The term "Construction Documents" shall mean the documents prepared and furnished by the Design Professional to be used for bidding the construction work for the Project.

**1.3.7 Contract Documents.** The term "Contract Documents" shall mean the Advertisement for Bids, Instructions to Bidders, Supplementary Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary Conditions, Exhibits to the Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other items identified as Contract Documents in the Construction Contract Agreement.

**1.3.8 Coordination.** The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.

**1.3.9 Estimated Project Construction Cost.** The term "Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by University in the Exhibits, of the total Construction Cost of the Project at the various stages of the design process.

**1.3.10 Facility.** The term "Facility" means the University of California, Riverside.

**1.3.11 Project.** The term "Project" means the project described on page 1 of this Agreement.

**1.3.12 Project Architect (or Engineer).** The term "Project Architect" or "Project Engineer" shall mean the specific University-approved Design Professional named in this Agreement who is the Design Professional's designated architect (or engineer) who is the first point of contact in providing all services required by this Agreement.

**1.3.13 Project Program.** The term "Project Program" shall mean a written statement in the Exhibits of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

**1.3.14 Project Schedule.** The term "Project Schedule" shall mean the schedule prepared by University showing project milestones, funding, design, design review, construction, and other deadlines applicable to the Project.

**1.3.15 Record Documents.** The term "Record Documents" shall mean those documents (including without limitation the updated version of the Construction Documents) prepared by the Design Professional incorporating Addenda, Change Orders and information from the As-Builts and other data furnished by Contractor to Design Professional.

**1.3.16 University.** The term "University" shall mean the Regents of the University of California.

**1.3.17 University's Representative.** The term "University's Representative" shall mean the person or entity providing University's Representative services as indicated in the Contract Documents including, but not limited to, issuance of written communications with the Contractor.

**1.3.18 University's Designated Administrator.** The term "University's Designated Administrator" shall mean the individual acting as University's Designated Administrator pursuant to paragraph 4.1.1.

**ARTICLE 2 - BASIC SERVICES**

Basic Services to be provided by Design Professional include the services described in this Article 2 and as further described in the Supplemental Requirements in the Exhibits.

**2.1 GENERAL**

**2.1.1** The services of Design Professional shall be performed in accordance with this Agreement and the Supplemental Requirements in the Exhibits.

**2.1.2** To the extent deemed necessary by Design Professional, Design Professional shall employ architects, mechanical, electrical, structural, and civil engineers licensed as such by the State of California, and such other consultants necessary for the provision of services under this Agreement. All consultants provided under basic services shall be paid by Design Professional. Design Professional shall submit, for approval by University, names of consultants for each

professional element of service of the Project. University-approved consultants provided under basic service shall be as named below:

<u>Consultant Name</u>	
<u>Consultant Name</u>	<u>Discipline</u>

Nothing in the foregoing shall create any contractual relationship between University and any consultants employed by Design Professional under the terms of this Agreement. Design Professional is as responsible for the performance of its consultants as it would be if it had rendered these services itself.

**2.1.3** Design Professional shall designate a principal or a staff member as the Project Architect or Project Engineer. So long as the Project Architect or Project Engineer performs in a manner acceptable to University, and remains in Design Professional's employ, the Project Architect or Project Engineer shall remain the first point of contact for all design and other services required under this Agreement, including attending design-related meetings for the Project, unless a substitution mutually acceptable to Design Professional and University is made. University-approved Project Architect or Project Engineer shall be the person named below:

Name of Project Architect or Engineer

Additionally, the University may require other individuals working for the Design Professional or its subconsultants to attend design-related meetings as requested by University.

**2.1.4** Design Professional shall assist University in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.

**2.1.5** Design Professional shall abide by all regulations imposed by authorities having jurisdiction over the Project.

**2.1.6** Design Professional shall review site surveys; existing record documents; seismic data; mechanical, geotechnical, and other test reports; environmental documents, and any other documentation furnished by University. From an examination of the site and a review of available information, Design Professional shall determine whether such data are sufficient for purposes of design or whether additional data are needed and, if so, recommend the manner in which it be provided and needed services obtained. Design Professional may rely on the information provided by University but only to the extent such reliance shall be consistent with Design Professional's obligations under this Agreement.



**2.1.7** Review, approval or acceptance of Design Professional's work whether by University or others and whether during Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve Design Professional from responsibility for errors and omissions in Design Professional's work.

**2.1.8** Design Professional shall, at no cost to University, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the Construction Documents prepared by Design Professional or Design Professional's consultants promptly upon discovery or notice. The obligations of Design Professional to correct defective or nonconforming Work shall not in any way limit any other obligations of Design Professional.

## **2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** Upon University's written direction to proceed, Design Professional shall provide Schematic Design Phase services described herein and in the Supplemental Requirements in the Exhibits including, without limitation, Schematic Design Documents for approval by University.

## **2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Upon University's written direction to proceed, Design Professional shall provide Design Development Phase services as described herein and in the Supplemental Requirements in the Exhibits and based on Schematic Design documents approved in writing by University and any written adjustments in the scope or quality of the Project or in the Construction Budget including, without limitation, Design Development Documents for approval by University.

## **2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Upon University's written direction to proceed, Design Professional shall provide Construction Documents Phase services as described herein and in the Supplemental Requirements in the Exhibits and based on Design Development documents approved in writing by University and any written adjustments in the scope or quality of the Project or in the Construction Budget including, without limitation, Construction Documents for approval by University.

**2.4.2** The Drawings and Specifications shall be consistent with the University's General Conditions in the Exhibits and the Division 1 tailored for the Project including but not limited to any Facility requirements.

## **2.5 BIDDING PHASE**

**2.5.1** Upon University's written direction to proceed, Design Professional shall provide Bidding Phase services as described herein and in the Supplemental Requirements in the Exhibits.

**2.5.2** If the lowest responsive total bid price received exceeds the Construction Budget 10%, University may, at its discretion, (1) authorize rebidding of the Project within a reasonable period of time; or (2) require Design Professional, at Design Professional's expense, to modify the Project

design and the Construction Documents in order to reduce the Estimated Project Construction Cost to a level that falls within the Construction Budget. Modifications proposed by Design Professional shall require University approval prior to incorporation into the revised documents.

## **2.6 CONSTRUCTION PHASE**

**2.6.1** Upon University's written direction to proceed, Design Professional shall provide Construction Phase services as described herein and in the Supplemental Requirements in the Exhibits.

**2.6.2** The Construction Phase will commence on the date the Agreement between University and Contractor is signed by University and will terminate one year after Notice of Completion or Notice of Cessation, or in the absence of either a Notice of Completion or Notice of Cessation, one year after Final Completion.

**2.6.3** Except as otherwise provided in the Contract Documents or as directed by University, all written communications with Contractor shall be sent and received by University's Representative.

**2.6.4** Design Professional shall render design interpretations of, and design decisions regarding, the Contract Documents that are necessary for the proper execution or progress of the Work including provision of clarifications and interpretations of the Contract Documents that are consistent with the intent of the documents but which do not involve a change in the scope of the Work. Such clarifications and interpretations shall not involve an adjustment of the Contract Sum or an extension of the Contract Time.

**2.6.5** Design Professional shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work, unless Design Professional specifies, directs, recommends or approves such means, methods, techniques, sequences, procedures, or safety precautions/ programs.

**2.6.6** Design Professional shall prepare drawings, specifications, supporting data, and other services in connection with Field Orders and Change Orders as required by the Supplemental Requirements in the Exhibits. Design Professional will be paid for these services, as Additional Services, if it (1) submits a written estimate of the cost of such service within {DAYS} of the notification that the services are required and (2) the cost of such services do not exceed the estimated amount, as thereafter approved in writing by University. Under no circumstances will the Design Professional be entitled to compensation in excess of {AMOUNT} for such services for any individual Change Order without prior written approval of University. **THE OPTION TO USE 2.6.7 OR TO LEAVE PREPARATION OF CHANGE ORDERS AS ADDITIONAL SERVICES.**

2.6.7 However, no additional compensation shall be paid to Design Professional for the preparation of Change Orders, including the preparation of Drawings, Specifications, and supporting data and other services required in connection with the preparation of Change Orders until the total cumulative

value (calculated by adding the absolute values of both additive and deductive changes not caused, in whole or in part, by Design Professional errors or omissions) exceeds { } percent of the Contract Sum.

**2.6.8** Design Professional shall provide Record Documents as described herein and in the Supplemental Requirements in the Exhibits.

**2.6.9** Design Professional shall review the Work at 11 months after Substantial Completion or Final Completion, as applicable, and shall make written recommendations to University for the correction of any deficiencies as required by the Supplemental Requirements in the Exhibits. Dates for inspections shall be as mutually agreed by the parties within the 11th month time frame. The number of work hours associated with the on-site review and preparation of written recommendations shall not exceed { } hours excluding review and preparation necessitated in whole or in part by Design Professional's errors and omissions.

## **2.7 INDEPENDENT SEISMIC/STRUCTURAL REVIEW**

**2.7.1** This Project is subject to an independent seismic/structure review conducted by University and at University expense. Design Professional shall attend meetings as necessary to resolve all seismic issues. Design Professional shall present Drawings and other items as necessary to describe the Project design.

## **2.8 SCHEDULE**

**2.8.1** Design Professional acknowledges that all time limits stated in this Agreement are of the utmost importance to University. Design Professional shall meet the Project Schedule, which may be revised from time to time by mutual agreement, for completion of Design Professional's services.

**2.8.2** Design Professional shall submit its proposed work plan for the performance of Design Professional's services within 5 calendar days following the later of (1) the execution date of this Agreement, or (2) the date on which University authorizes Design Professional to begin performing Schematic Design Phase services. Design Professional's work plan shall include without limitation, a schedule for how Design Professional will comply with the Project Schedule.

Design Professional's work plan shall include allowances for the periods of time required for University's review and approval of submissions and for approvals by authorities having jurisdiction over the Project. Design Professional's work plan, when approved by University, shall not be exceeded by Design Professional except when University and Design Professional mutually agree, in writing, to a revised Project Schedule.

**2.8.3** The total time scheduled for full completion of Design Professional's services for each phase of the Project shall not exceed the durations listed in the Project Schedule, unless mutually agreed upon in writing by Design Professional and University. The durations for University review period listed in the Project Schedule shall be computed from the date on which a clear, complete submittal is received by University. University's failure to meet its commitment to provide written

requested information or to review within the stipulated time frames shall be cause for an adjustment in the Project Schedule. However, submittals received for review which are rejected, in writing, as not meeting the deliverables required by submittal requirements of this Agreement and the attachments thereto, shall not be cause for adjustment of the Project Schedule, and any such delay caused by such rejected submittals shall be at the sole responsibility of Design Professional.

## **ARTICLE 3 - ADDITIONAL SERVICES**

Unless required in Article 2 of this Agreement or in the Supplemental Requirements to be performed as part of Basic Services, the services described in this Agreement and the Supplemental Requirements are Additional Services. These Additional Services shall be paid for by University, as provided in this Agreement, in addition to the compensation for Basic Services. Design Professional shall provide Additional Services only when and as authorized in a written instrument signed by University. No Additional Services shall be compensable unless so authorized.

## **ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES**

### **4.1 ADMINISTRATION**

**4.1.1** University shall designate, in writing, an Administrator who will act on behalf of University with respect to this Agreement. Design Professional shall accept directives only from University's Designated Administrator and not from other University employees or consultants. University may replace University's Designated Administrator at its sole option; if this replacement is made, University shall notify Design Professional in writing.

**4.1.2** University shall designate, in writing, prior to bidding, a University's Representative.

### **4.2 PROVISION OF INFORMATION, SURVEYS, REPORTS, AND DATA**

**4.2.1** University shall have the right to make changes to the Project Program. When such changes increase the duties of Design Professional beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

**4.2.2** University shall have the right to make reasonable changes to its Bidding Documents and Design Professional shall be bound by such changes. When such changes increase the duties of Design Professional, beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

**4.2.3** University shall furnish structural, mechanical, electrical, chemical, soils, and other tests, inspections, and reports as required by law or by the Contract Documents, which are not required to be furnished by Contractor under the Contract Documents.

**4.2.4** University shall update the Project Schedule as dates and durations applicable to the Project such as funding

deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known.

**4.2.5** If required for the performance of Design Professional's services, University shall furnish an accurate land survey of the Project site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and floor elevations pertaining to existing buildings, other improvements, and trees; and information in University's possession concerning available service and utility lines, both public and private.

**4.2.6** University shall furnish geotechnical data when these data are reasonably deemed necessary by Design Professional, including test logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions.

**4.2.7** The University shall have the right to require Design Professional and its subconsultants to participate in meetings and provide documents and data (in addition to those required by Basic Services) and to perform Additional Services, pursuant to this Agreement, whether or not such Additional Services are described in the Agreement or the Supplemental Requirements.

**4.2.8** The services, information, surveys, reports, and Additional Services required by this Article 4 shall be furnished at University's expense.

## **ARTICLE 5 - COMPENSATION**

University will compensate Design Professional for the scope of services provided, in accordance with this Article 5 and with the other terms and conditions of this Agreement, as follows:

### **5.1 COMPENSATION FOR BASIC SERVICES**

**5.1.1** The fee for Basic Services shall be computed as follows:

For services rendered in accordance with this Agreement, the basis for compensation shall be a lump-sum fee in the amount stated in the Compensation Schedule Exhibit, payable upon completion of each Project phase, after the review and approval by University, in accordance with the Compensation Schedule. As an alternative to payment at the completion of each phase, with University's prior approval, monthly payments based on the percentage of completion may be made, not to exceed the total fee due for each phase.

### **5.2 COMPENSATION FOR ADDITIONAL SERVICES OR FOR EXTENSION OF CONTRACT TIME**

**5.2.1** For the Additional Services of Design Professional, as described in Article 3, including the Additional Services of consultants, compensation shall be in accordance with the attached Design Professional Rate Schedule in the Exhibits.

**5.2.2** If the Contract Time initially established in the Contract Documents at the time of award is exceeded or extended by a number of days in excess of **60** calendar days

through the fault of University or Contractor and through no fault of Design Professional, compensation for any Basic Services provided during this extended period of the construction phase of the construction contract shall be adjusted to compensate Design Professional for any additional costs reasonably incurred by Design Professional as the result of such delay, provided University has approved such adjustments in advance. These extended Basic Services shall be approved, in writing, by University and shall not include Basic Services that would have been performed under this Agreement had the initial Contract Time not been substantially exceeded or extended.

**5.2.3** If the Work of the Project is suspended or abandoned for more than **3** consecutive months, and such suspension was not scheduled at the beginning of the Project, as provided under subparagraph 4.2.4, Design Professional shall be compensated for all authorized services performed prior to the receipt of written notice from University of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than **3** consecutive months, Design Professional's compensation shall be adjusted as mutually agreed to compensate Design Professional for any additional costs reasonably incurred as the result of the suspension.

## **5.3 REIMBURSABLE EXPENSES**

**5.3.1** For Reimbursable Expenses, as described in this paragraph 5.3, only actual costs will be reimbursed in accordance with the Reimbursement Schedule in the Exhibits. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

**5.3.2** Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by Design Professional and Design Professional's consultants in the interest of the Project.

## **ARTICLE 6 - PAYMENTS**

### **6.1 PAYMENTS FOR BASIC SERVICES**

**6.1.1** Payments for Basic Services, as defined in Article 2, shall be made as stipulated in subparagraph 5.1.1.

### **6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

**6.2.1** Payments for Design Professional's Additional Services, as defined in Article 3, and for Reimbursable Expenses, as defined in paragraph 5.3, shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof.

**6.2.2** Payments related to paragraph 5.2.2 shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof unless otherwise agreed by the parties thereto.

### **6.3 TAX BENEFITS**

The University may seek to allocate certain tax benefits

pursuant to Section 179D of the Internal Revenue Code of 1986, as amended (the "Code") through its agreement with the Design Professional.

1) If The University and the Internal Revenue Service (IRS) determine that Designer is eligible and shall receive the 179D deduction allocation as a "Designer" for the purposes of Section 179D of the Code or that the Design Professional shall otherwise benefit financially from the monetization of the benefit, Designer hereby agrees to provide savings to The University in an amount and form to be determined when the financial benefit net of associated costs realized by Design Professional becomes ascertainable.

2) The University reserves the right to retain a third party consultant (the "Consultant") to manage and administer the process of allocating the benefit derived from the Project(s).

3) Design Professional agrees to cooperate in all reasonable respects with the Consultant's efforts to obtain and monetize any such benefits derived from the Project(s) on behalf of The University.

#### **ARTICLE 7 - DESIGN PROFESSIONAL'S RECORDS AND FILES**

**7.1.1** Books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of Design Professional and Design Professional's consultants' books and records. Such records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; subconsultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

**7.1.2** Design Professional and Design Professional's consultants shall make their files available for inspection and copying by University upon reasonable notice.

**7.1.3** Design Professional shall include appropriate language in consultant's agreements to enforce the provision of paragraph 7.1.2.

#### **ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS**

##### **8.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS**

**8.1.1** Drawings and Specifications shall become the property of University, whether or not the Project for which they are made is executed. Design Professional shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference except as provided in paragraph 8.2. Neither University nor Design Professional shall use the Drawings and Specifications as a whole or in substantial part on other

projects, but either may reuse details of the Drawings for other projects.

**8.1.2** All presentation drawings, slides, and models shall become and remain the property of University.

**8.1.3** University may purchase the design of the Project from Design Professional for its then fair market value. If University purchases the design of the Project, then University may use the Drawings and Specifications as a whole or in substantial part on other projects, and Design Professional may not use the Drawings and Specifications in whole, in part, or details thereof for other projects.

##### **8.2 CONSTRUCTION DOCUMENTS**

**8.2.1** Design Professional, upon request, shall provide copies of the Construction Documents in the number required by University for bidding and construction purposes; the reproduction expense shall be borne by University. University reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

**8.2.2** University may use the Construction Documents, without Design Professional's consent, in connection with the Project, including without limitation, future additions, expansions, renovations, alterations, connections, repairs, information, reference, use, or occupancy.

**8.2.3** Except as provided in subparagraphs 8.2.1 and 8.2.2 University will not use the Construction Documents for another project without Design Professional's written consent unless University has purchased the design from Design Professional in accordance with subparagraph 8.1.3.

##### **8.3 INDEMNIFICATION**

**8.3.1** University will defend, indemnify and save harmless Design Professional, its officers, agents and employees from any costs or claims for damages arising from University's use, on other projects, of the Construction Documents, the Drawings and Specifications, or the designs depicted in them. As used in this Article 8, the use "on other projects" does not include any of the uses specified in subparagraph 8.2.2.

**8.3.2** Notwithstanding paragraph 8.3.1, University will not defend, indemnify or save harmless Design Professional, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that University's use of the Construction Documents, the Drawings and Specifications, or the designs depicted in them is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

#### **ARTICLE 9 - DISPUTES**

##### **9.1 NEGOTIATION**

**9.1.1** The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement by negotiation.

##### **9.2 MEDIATION**

**9.2.1** Within 60 days, but no earlier than 30 days, following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties shall submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

### **9.3 ARBITRATION OR LITIGATION**

Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows

**9.3.1** *Arbitration with Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same arbitration proceeding which shall be conducted under the procedures specified in the General Conditions of the construction contract.

**9.3.2** *Litigation with Contractor.* If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same litigation.

**9.3.3** *Arbitration without Contractor.* Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1. and 9.3.2 shall be subject to arbitration without Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid Rules of the AAA:

- .1** Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2** University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University, join in and be bound by the arbitration.
- .3** Concurrent disputes subject to this subparagraph 9.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .4** No hearing shall be held prior to final completion of the Project unless University and Design Professional otherwise agree in writing.

- .5** The exclusive forum for determining arbitrability shall be the Superior Court of the State of California.
- .6** If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of which shall be an attorney.
- .7** The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.

Unless University and Design Professional otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of California, supported by substantial evidence. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000, the award shall contain the basis for the decision, findings of fact, and conclusions of law.

Any arbitration award shall be subject to confirmation, verification or correction under the procedures and on the grounds specified in the California Code of Civil Procedure including without limitation Section 1296.

The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

The University may offset against the outstanding contract balance the amount of the University's own affirmative claims against the Design Professional provided such claims are based upon alleged breaches of this Agreement or alleged failure to conform to the professional standard care set forth in Article 1.2 of this Agreement. The University shall inform the Design Professional in writing of its intention to offset on or before exercising its right to offset under this Agreement. Within three days following receipt of such written notice, the Design Professional may elect to submit the issue of the University's intention to offset to non-binding mediation administered by the AAA. Such mediation shall take place not less than 15 days and not more than 45 days following the date that the University receives notice of Design Professional's election to mediate regarding the University's intention to offset. The University's obligation to pay any outstanding contract balance shall be stayed

and tolled until the first business day following the date of the mediation concerning the University's intention to offset. If the University decides to exercise its right to offset following mediation regarding the University's intention to offset, notice of such offset shall be given to Design Professional by University in writing. If Design Professional does not demand mediation concerning the University's intention to offset, then the University's notice of its intention to offset shall be deemed notice of the decision to offset by the University. Irrespective of whether Design Professional elects to mediate the issue of the University intention to offset, Design Professional may dispute the University's decision to offset by demanding arbitration or commencing litigation pursuant to the terms of Article 9.

**9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE**

**9.4.1** Claims for personal injury, wrongful death, or property damage (other than property damage to University) shall not be subject to arbitration under Paragraph 9.3.3.

**ARTICLE 10 - INDEMNIFICATION AND INSURANCE**

**10.1 INDEMNIFICATION**

**10.1.1** Design Professional shall indemnify, defend, and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, "Indemnatee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnatee ("Losses") arising out of the performance of services or Design Professional's other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of Design Professional, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design Professional is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

**10.1.2** The indemnification obligations under this Article 10 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnatee. The obligation to defend shall arise regardless of any claim or assertion that Indemnatee caused or contributed to the Losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by University except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.

**10.1.3** Design Professional shall indemnify, defend, and save harmless Indemnatee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in

equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnatee of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.

**10.1.4** Nothing in this Agreement, including the provisions of this Article 10, shall constitute a waiver or limitation of any rights which Indemnatee may have under applicable law, including without limitation, the right to implied indemnity.

**10.2 INSURANCE REQUIREMENTS**

Design Professional, at Design Professional's sole cost and expense, shall insure its activities in connection with this Agreement and shall obtain, keep in force, and maintain insurance as listed below. The coverages required under Paragraph 10.2 shall not in any way limit the liability of Design Professional.

**10.2.1** Commercial-Form General Liability Insurance with coverage and minimum limits as follows:

.1 Each Occurrence	<b>\$1,000,000</b>
.2 Products Completed, Operations Aggregate	<b>\$1,000,000</b>
.3 Personal and Advertising Injury	<b>\$1,000,000</b>
.4 General Aggregate	<b>\$2,000,000</b>

**10.2.2** Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than **\$1,000,000** per accident.

**10.2.3** Professional Liability Insurance, with limits of **\$1,000,000** per claim and **\$2,000,000** in the aggregate. At the option of the University and in its sole discretion, the University may require Design Professional to purchase project specific professional liability insurance for the Project as a reimbursable cost with the minimum limits.

**10.2.4** If the above insurance (subparagraphs 10.2.1-10.2.3) is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Agreement and shall include, without limitation coverage for professional services as called for in this Agreement. Insurance required by subparagraphs 10.2.1-10.2.3 shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

**10.2.5** Workers' Compensation as required by law in the state in which work is performed and Employer's Liability insurance with coverage and minimum limits as follows:

Each Employee	\$1,000,000
Each Accident	\$1,000,000
Policy Limit	\$1,000,000

Insurance required by this subparagraph 10.2.5 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University.

**10.2.6** Design Professional, upon the execution of this Agreement, shall furnish University with Certificate of Insurance evidencing compliance with this Article 10, including the following requirements:

- .1 Design Professional shall have the insurance company complete University's form, Certificate of Insurance in the Exhibits. If Design Professional's insurance company refuses to use the University's Certificate of Insurance form, it must provide a Certificate of Insurance (and endorsements, if needed) evidencing compliance with Paragraph 10.2 and Special Provisions 1 through 3 on the Certificate of Insurance Exhibit. It alone constitutes evidence of insurance.
- .2 Provide that coverage cannot be canceled without advance written notice to University, in accordance with policy provisions.
- .3 If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Design Professional.
- .4 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Design Professional in writing, will be included as additional insureds on Design Professional's general liability policy for and relating to the Work to be performed by Design Professional and its consultants. Design Professional's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04). The General Liability coverage shall contain a Severability of Interest provision and shall be primary insurance as respects The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of California shall be excess of and non-contributory with this insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that

would exist in the absence of the contract.

- .5 The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of Design Professional, its officers, agents, employees, and for Design Professional's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of Design Professional or Design Professional's consultants.

**ARTICLE 11 - STATUTORY AND OTHER REQUIREMENTS**

**11.1 NONDISCRIMINATION**

**11.1.1** In connection with the performance of the Design Professional pursuant to this Agreement, Design Professional shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Design Professional will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Professional also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Design Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership,

performance of service, application for service, or obligation for service in the uniformed services.

## 11.2 PREVAILING WAGE RATES

**11.2.1** For purposes of the Article, the term subcontractor or consultant shall not include suppliers, manufacturers, or distributors.

**11.2.2** Design Professional shall comply and shall ensure that all Subcontractors or Subconsultants comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, and 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.

**11.2.3** The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Project is to be performed for each craft, classification, or type of worker required to perform the Covered Services hereunder. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By this reference, such schedule is made part of the Agreement. Design Professional shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Professional in the execution of the Covered Services hereunder. Design Professional shall cause all subcontracts or consultant agreements to include the provision that all subcontractors or consultants shall pay not less than the prevailing rates to all workers employed by such subcontractor or consultants in the execution of the Covered Services hereunder. Design Professional shall forfeit to University, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Covered Services hereunder performed by Design Professional or any subcontractor or consultant. The amount of this penalty shall be determined by the Labor Commissioner pursuant to applicable law. Such forfeiture amounts may be deducted from the Design Professional's fee. Design Professional shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

## 11.3 PAYROLL RECORDS

**11.3.1** Design Professional and all subcontractors or consultants shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by Design Professional or subcontractors or consultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Professional on the following basis:

- .1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
- .2 A certified copy of all payroll record shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
- .3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Design Professional or subcontractors or consultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design Professional awarded the Agreement or performing the Agreement shall not be marked or obliterated.

**11.3.2** Design Professional shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Design Professional shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Design Professional shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of the Paragraph or with the State of California Labor Code Section 1776, Design Professional shall have 10 days in which to comply following receipt of notice specifying in what respects Design Professional must comply. Should noncompliance still be evident after the 10-day period, Design Professional shall forfeit to University, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Design Professional's fee.

## 11.4 APPRENTICES



**11.4.1** Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Design Professional and subcontractors or consultants as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Design Professional bears responsibility for compliance with this section for all apprenticeable occupations.

**11.4.2** Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Covered Services hereunder in the craft or trade to which the apprentice is indentured.

**11.4.3** When Design Professional or subcontractors or consultants employ workers in any apprenticeship craft or trade for the Covered Services hereunder, Design Professional or subcontractors or consultants shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design Professional or subcontractors or consultants under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeymen who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for each 5 hours of journeyman work, except as permitted by law. Design Professional or subcontractors or consultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeymen fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

**11.4.4** "Apprenticeship craft or trade", as used in this Paragraph, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**11.4.5** If Design Professional or subcontractors or consultants employ journeymen or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design Professional and subcontractors or consultants shall contribute to the fund or funds in each craft or trade in which they employ journeymen or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same manner done by the

other contractors. Design Professional may include the amount of such contributions in computing its compensation under the Agreement; but if Design Professional fails to do so, it shall not be entitled to any additional compensation therefore from University.

**11.4.6** In the event Design Professional willfully fails to comply with this Paragraph 11.4, it will be considered in violation of the requirements of the Agreement.

**11.4.7** Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Professional or subcontractors or consultants of journeyman trainees who may receive on-the-job training to enable them to achieve journeyman status in any craft or trade under standards other than those set forth for apprentices.

## **11.5 WORK DAY**

**11.5.1** Design Professional shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design Professional shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of the Agreement by Design Professional, or any subcontractors or consultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the compensation otherwise due under this Agreement. Design Professional and each subcontractor or consultant shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed under this Agreement, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

## **11.6 PATIENT HEALTH INFORMATION**

**11.6.1** Design Professional acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Design Professional shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Design Professional will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Design Professional, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Design

Professional will report such actions immediately to the University Representative. Design Professional will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Design Professional will report to University Representative within five (5) days after Design Professional gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

## **ARTICLE 12 - EXTENT OF AGREEMENT**

### **12.1 AUTHORITY OF AGREEMENT**

**12.1.1** This Agreement represents the entire and integrated agreement between University and Design Professional and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument in the form of the Amendment in the Exhibits signed by both University and Design Professional.

### **12.2 EXHIBITS**

**12.2.1** The following exhibits are incorporated and made part of this Agreement:

- .1 Amendment
- .2 Campus Design Guidelines, Campus Signage, Facilities Management System CAD Standards, Facilities Management System Room Numbering Standards, & GIS Data Standards Documentation
- .3 Certificate of Insurance
- .4 Compensation Schedule
- .5 Constructability Analysis / Quality Assurance
- .6 Estimated Project Construction Cost Format
- .7 Final Distribution of Contract Dollars
- .8 Project Program
- .9 Project Schedule
- .10 Proposal
- .11 Rate Schedule
- .12 Regulatory Agencies & Approval Requirements
- .13 Reimbursement Schedule
- .14 Self-Certification
- .15 Supplemental Requirements
- .16 Sustainability Score Sheet (New Construction / Major Renovation OR Renovation)
- .17 University's Bidding Documents, General Conditions & Specifications Division 1, General Requirements
- .18 Value Engineering Program

### **12.3 THIRD-PARTY BENEFICIARIES**

Nothing contained in this Agreement is intended to make the construction Contractor or any construction Subcontractor (regardless of tier), any employee or agent of the construction Contractor or any Subcontractor or any person, including any consultant of Design Professional (regardless of tier), a third-party beneficiary of any obligations between University and Design Professional.

## **12.4 SURVIVAL**

The provisions of this Agreement which by their nature survive expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement, including any and all warranties, indemnities, payment obligations, and University's right to audit Design Professional's and Design Professional's consultants' books and records, shall remain in full force and effect after any expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement.

## **ARTICLE 13 - FEDERAL AND STATE GRANTS**

In the event that a federal or state grant or other federal or state financing is used in the funding of this Project, Design Professional shall permit the funding agency or its designee access to, and grant the funding agency the right to examine, documents covering the services performed under this Agreement. Design Professional shall comply with applicable federal or state agency requirements including, but not limited to, the requirements regarding hours, overtime compensation, nondiscrimination, and contingent fees.

## **ARTICLE 14 - NOTICES**

### **14.1 UNIVERSITY**

**14.1.1** Any notice may be served upon University by delivering it, in writing, to University at the address set forth on the last page of this Agreement, or by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to University at the address set forth on the last page of this Agreement, or by sending a facsimile of the notice to University's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

### **14.2 DESIGN PROFESSIONAL**

**14.2.1** Any notice may be served upon Design Professional by delivering it, in writing, to Design Professional at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to Design Professional at the address set forth on the last page of this Agreement, or by sending a facsimile of the notice to Design Professional's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

## **ARTICLE 15 - SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon University and Design Professional and their respective successors and assigns. Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due hereunder, may be assigned by Design Professional without the prior written consent and approval of University.

### **15.1 DESIGN PROFESSIONAL'S DEATH OR INCAPACITATION**

**15.1.1** If Design Professional transacts business as an individual, upon Design Professional's death or incapacitation, University may, at its option, terminate this Agreement as of the date of such event. If so terminated, neither Design Professional, nor Design Professional's estate shall have any further right to perform hereunder, and University shall pay Design Professional or the estate the compensation payable under Article 5 for any services rendered prior to this termination not theretofore paid. This compensation shall be reduced by the amount of additional costs that will be incurred by University by reason of this termination.

**15.1.2** If there is more than one Design Professional, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, University will make payments to those continuing as though there had been no such death or incapacitation; University will not be obliged to take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as Design Professional herein if death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.1.1 shall apply.

## **ARTICLE 16 - TERMINATION OF AGREEMENT**

### **16.1 UNIVERSITY-INITIATED TERMINATION**

**16.1.1** If University determines that Design Professional has failed to perform in accordance with the terms and conditions of this Agreement, University may terminate all or part of the Agreement for cause. This termination shall be effective if Design Professional does not cure its failure to perform within 10 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University specifying the failure in performance. If a termination for cause does occur, University will have the right to withhold monies otherwise payable to Design Professional until the Project is completed. If University incurs additional costs, expenses, or other damages due to the failure of Design Professional to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to Design Professional upon completion of the Project. If the costs, expenses, or other damages incurred by University exceed the amounts withheld, Design Professional shall be liable to University for the difference.

**16.1.2** University may terminate this Agreement for convenience at any time upon written notice to Design Professional, in which case University will pay Design Professional in full for all services performed and all expenses incurred under this Agreement up to and including the effective date of termination. In ascertaining the services actually rendered to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to University or in the possession of Design

Professional, and to authorized Reimbursable Expenses. No other compensation will be payable for anticipated profit on unperformed services.

### **16.2 DESIGN PROFESSIONAL-INITIATED TERMINATION**

**16.2.1** Design Professional may terminate this Agreement for cause if University fails to cure a material default in performance within a period of 30 days, or such longer period as Design Professional may allow, after receipt from Design Professional of a written termination notice specifying the default in performance. In the event of termination for cause by Design Professional, University will pay Design Professional in accordance with subparagraph 16.1.2.

### **16.3 DOCUMENTS AND MATERIALS**

**16.3.1** In the event of Agreement termination by either party for any reason, University reserves the right to receive, and Design Professional shall promptly provide to University, all Drawings, Specifications, models, and other documents, data, and materials prepared or generated by Design Professional and its subconsultants for the Project. In the event of termination, any dispute regarding the amount to be paid under Article 16 shall not derogate from the right of University to receive and use any such documents or materials.

## **ARTICLE 17 - STATISTICAL REPORTING**

At the commencement of performance, Design Professional shall complete and submit, and require each subconsultant who performs services under this Agreement to complete and submit, a certification in the form of the Self-Certification. At the completion of work, Design Professional shall complete and submit a report of the distribution of compensation received under this Agreement in the form of the Final Distribution of Contract Dollars.

IN WITNESS WHEREOF, UNIVERSITY and DESIGN PROFESSIONAL have executed this Agreement as of the date first written above (see Cover Page).

**DESIGN PROFESSIONAL:**

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature & Date)

\_\_\_\_\_  
(Print Name & Title)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(License Number)

\_\_\_\_\_  
(Employer ID Number)

Telephone Number(s): \_\_\_\_\_

Facsimile Number: \_\_\_\_\_

**Recommended:**

By: University's Representative

\_\_\_\_\_  
(Signature & Date)

Name  
Title  
Planning, Design & Construction  
\_\_\_\_\_  
(Print Name & Title)

**Funds Sufficient:**

By: Financial Administrative Officer

\_\_\_\_\_  
(Signature & Date)

Susan McFadden  
Senior Financial Analyst  
Planning, Design & Construction  
\_\_\_\_\_  
(Print Name & Title)

**UNIVERSITY:**

By: The Regents of the University of California  
University of California, Riverside

\_\_\_\_\_  
(Signature & Date)

Drew Hecht, Architect  
Director of Project Management  
Planning, Design & Construction  
\_\_\_\_\_  
(Print Name & Title)

Address: University of California, Riverside  
Planning, Design & Construction  
900 University Avenue  
Riverside, CA 92521

Telephone Number: 951.827.4064

Facsimile Number: 951.827.3890

Account No.: \_\_\_\_\_ Activity Code: \_\_\_\_\_

Fund: \_\_\_\_\_ Function: \_\_\_\_\_

Cost Center: \_\_\_\_\_ Project Code: \_\_\_\_\_

EXECUTIVE DESIGN PROFESSIONAL AGREEMENT FOR CM AT-RISK DELIVERY  
TABLE OF CONTENTS

COVER PAGE

ARTICLE 1 GENERAL PROVISIONS

- 1.1 GENERAL REQUIREMENTS
- 1.2 DESIGN PROFESSIONAL STANDARD OF CARE
- 1.3 DEFINITIONS

ARTICLE 2 DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES C BASIC SERVICES

- 2.1 GENERAL
- 2.2 SCHEMATIC DESIGN PHASE
- 2.3 DESIGN DEVELOPMENT PHASE
- 2.4 CONSTRUCTION DOCUMENTS PHASE
- 2.5 BIDDING PHASE
- 2.6 CONSTRUCTION PHASE
- 2.7 CONTRACT DOCUMENTS COMPLIANCE
- 2.8 INTERPRETATION OF THE CONTRACT DOCUMENTS
- 2.9 CHANGES TO THE CONTRACT DOCUMENTS
- 2.10 RECORD DOCUMENTS
- 2.11 GUARANTEE TO REPAIR PERIOD
- 2.12 INDEPENDENT REVIEWS
- 2.13 VALUE ENGINEERING
- 2.14 SCHEDULE

ARTICLE 3 DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES C ADDITIONAL SERVICES

- 3.1 PRE-CONSTRUCTION PHASES
- 3.2 CONSTRUCTION PHASE
- 3.3 POST-CONSTRUCTION
- 3.4 GENERAL

ARTICLE 4 UNIVERSITY RIGHTS AND RESPONSIBILITIES

- 4.1 ADMINISTRATION
- 4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS

ARTICLE 5 COMPENSATION

- 5.1 COMPENSATION FOR BASIC SERVICES
- 5.2 COMPENSATION FOR ADDITIONAL SERVICES
- 5.3 REIMBURSABLE EXPENSES

ARTICLE 6 PAYMENTS

- 6.1 PAYMENTS FOR BASIC SERVICE
- 6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES
- 6.3 PROJECT SUSPENSION

ARTICLE 7 DESIGN PROFESSIONAL'S RECORDS AND FILES

- 7.1 MAINTAINING BOOKS AND RECORDS
- 7.2 AVAILABILITY OF BOOKS AND RECORDS

ARTICLE 8 OWNERSHIP AND USE OF DOCUMENTS

- 8.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS
- 8.2 CONSTRUCTION DOCUMENTS
- 8.3 INDEMNIFICATION

ARTICLE 9 DISPUTES

- 9.1 NEGOTIATION
- 9.2 MEDIATION
- 9.3 ARBITRATION OR LITIGATION

9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE

ARTICLE 10 INDEMNIFICATION AND INSURANCE

10.1 INDEMNIFICATION

10.2 INSURANCE REQUIREMENTS

ARTICLE 11 STATUTORY REQUIREMENTS

11.1 NONDISCRIMINATION

11.2 PREVAILING WAGE RATES

11.3 PAYROLL RECORDS

11.4 APPRENTICES

11.5 WORK DAY

11.6 PATIENT HEALTH INFORMATION

ARTICLE 12 EXTENT OF AGREEMENT

12.1 AUTHORITY OF AGREEMENT

12.2 EXHIBITS

12.3 THIRD-PARTY BENEFICIARIES

12.4 SURVIVAL

ARTICLE 13 FEDERAL AND STATE GRANTS

ARTICLE 14 NOTICES

14.1 UNIVERSITY

14.2 DESIGN PROFESSIONAL

ARTICLE 15 SUCCESSORS AND ASSIGNS

15.1 DESIGN PROFESSIONAL'S DEATH OR INCAPACITATION

ARTICLE 16 TERMINATION OF AGREEMENT

16.1 UNIVERSITY - INITIATED TERMINATION

16.2 DESIGN PROFESSIONAL - INITIATED TERMINATION

16.3 DOCUMENTS AND MATERIALS

SIGNATURE PAGE

**EXECUTIVE DESIGN PROFESSIONAL AGREEMENT FOR CM AT-RISK DELIVERY**

between

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

and

**THE DESIGN PROFESSIONAL**

This AGREEMENT is made on the { } day of { } in the year { } between The Regents of the University of California, a California Corporation, hereinafter called "University" and {INSERT THE NAME OF THE EXECUTIVE ARCHITECT OR ENGINEER} hereinafter called "Design Professional".

The above named individual or firm shall be the Executive {Architect OR Engineer} and shall comply with the licensing laws of the State of California regarding the practice of {Architect OR Engineer} in performing the services set forth in this Agreement for the following project:

UNIVERSITY OF CALIFORNIA, RIVERSIDE

{PROJECT NUMBER}

{PROJECT NAME}

PROJECT DESCRIPTION (include approximate square footage): { }

CONSTRUCTION BUDGET: {DOLLAR AMOUNT}

ENR: {ENTER THE APPROPRIATE ENGINEERING NEWS RECORD CONSTRUCTION COST INDEX.}

## **ARTICLE 1 - GENERAL PROVISIONS**

### **1.1 GENERAL REQUIREMENTS**

**1.1.1** This Agreement shall be governed by the laws of the State of California.

**1.1.2** In the event of a conflict between the provisions of any exhibit to this Agreement and the Agreement, the provisions of this Agreement shall govern.

**1.1.3** University's exercise of any of its rights or remedies prescribed in this Agreement shall not relieve Design Professional from responsibility for damages or other losses incurred or to be incurred by University as a result of Design Professional's breach of its obligation under this Agreement.

**1.1.4** Each design phase (Schematic, Design Development, Bidding Documents and Construction Documents), portions of which design phases are anticipated to occur concurrently, shall be subject to a separate written authorization to proceed to be issued by University. Work on a design phase shall not commence until issuance of the appropriate written authorization to proceed. Work on a design phase shall be based on documents, if any, from the prior design phase approved by University in writing (to the extent that such work is complete), any written directives by University with respect thereto, and any adjustments authorized by University in the Project Program or Construction Budget.

**1.1.5** Time is of the essence for this Agreement.

**1.1.6** Design Professional shall cooperate with University, its designees, and CM/Contractor in furthering the interests of University.

**1.1.7** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of this Agreement may be executed via a University approved digital signature process and shall have the same force and effect as the use of a manual signature. The University reserves the right to reject any digital signature that cannot be positively verified by the University system as an authentic digital signature.

### **1.2 DESIGN PROFESSIONAL STANDARD OF CARE; CONSTRUCTION MANAGER AT-RISK MODE OF CONTRACTING**

**1.2.1** Design Professional, its officers, agents, employees, subcontractors, consultants and any persons or entities for whom Design Professional is responsible, shall provide all services pursuant to this Agreement in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project; such services shall be provided in a manner consistent with the Construction Manager At-Risk Mode of Contracting as defined herein, which will require Design Professional, at no additional cost to University, to prepare plans and specifications for discrete portions of the Work that can be incorporated into separate Bid Packages for

the various Subcontractors who will construct the Project. Such Subcontracts may be awarded concurrently with other subcontracts or individually, at different points in time, which may result in Design Professional completing portions of the design after commencement of construction of the Project and/or providing Construction Phase services before completion of all design phase services. The design work for each separate Bid Package shall separately be subject to all requirements applicable to the various phases set forth in this agreement (including the phases set forth in Article 3) and shall be performed in a manner consistent with the construction budget and Project Schedule.

### **1.3 DEFINITIONS**

Unless defined differently herein, terms used in this Agreement shall have the same meaning as those used in University's Bidding Documents General Conditions (Exhibit A).

**1.3.1 As-builts (As-built Drawings and Specifications).** The term "As-builts" shall mean the record copy of the Contract Documents prepared by the CM/Contractor to record as-built conditions, current changes, and selections made during construction.

**1.3.2 Construction Budget.** The term "Construction Budget" shall mean University's written statement of funds available to pay for the cost of construction.

**1.3.3 Construction Cost Index.** (ENR) The term "Construction Cost Index" shall mean the *Engineering News Record's* Construction Cost Index for the time period designated by University. The 20 cities average is used as a benchmark.

**1.3.4 Construction Documents.** The term "Construction Documents" shall mean the documents described in subparagraph 2.4.1 of this Agreement.

**1.3.4A Construction Manager At-Risk Mode of Contracting.** The term "Construction Manager At-Risk Mode of Contracting" shall mean the contracting mode used by the University to construct the Project. Under the Construction Manager At-Risk Mode of Contracting, the University will select a CM/Contractor through competitive bidding. The CM/Contractor will be responsible, within the limits prescribed in its contract, to provide both pre-construction and construction services (these services may overlap when portions of the design are being developed concurrently with ongoing construction). Pre-construction services will include using the Construction Documents prepared by Design Professional to solicit bids from Subcontractors; entering into Subcontracts with such Subcontractors consistent with competitive bidding laws applicable to the University; and utilizing the Subcontractors to whom such Subcontracts have been awarded to complete the Project within the Contract Time.

**1.3.5 Contract Documents.** The term "Contract Documents" shall mean the Advertisement for Bids, Instruction to Bidders, Supplementary Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary Conditions, Exhibits to the Construction Documents, Specifications, List of Drawings,



Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other items identified as contract documents in the Construction Contract Agreement between the University and the CM/Contractor.

**1.3.6 Coordination.** The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.

**1.3.7 Estimated Project Construction Cost.** The term "Estimated Project Construction Cost" shall mean Design Professional's written estimate in the form specified by University (Exhibit C), of the total Construction Cost of the Project at the various stages of the design process.

**1.3.8 Project.** The term "Project" means the project described on page 1 of this Agreement.

**1.3.9 Project Architect (or Engineer).** The term "Project Architect" or "Project Engineer" shall mean the specific University-approved Design Professional named in this Agreement who is the Design Professional's designated principal or staff member in charge of providing all services required by this Agreement.

**1.3.10 Project Program.** The term "Project Program" (Exhibit H) is a written statement of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

**1.3.11 Project Schedule.** The term "Project Schedule" shall mean the schedule prepared by University showing project milestones, funding, design, design review, construction, and other deadlines applicable to the Project. The University may make reasonable changes to the Project Schedule, consistent with the Construction Manager At-Risk Mode of Contracting, which may include adding or adjusting timelines for preparing plans and specifications for discrete portions of the Work to be incorporated into separate Bid Packages that may be awarded concurrently with other subcontracts or individually, at different points in time, and which may result in Design Professional completing portions of the design after commencement of construction of the Project and/or providing Construction Phase services before completion of all design phase services.

**1.3.12 Record Documents.** The term "Record Documents" shall mean those documents as described in subparagraph 2.10.1.

**1.3.13 Bidding Documents.** The term "Bidding Documents" shall mean those documents prepared and furnished by University for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements attached as Exhibit A.

**1.3.14 University.** The term "University" shall mean the Regents of the University of California.

**1.3.15 University Representative.** The term "University Representative" shall mean the person or entity providing University Representative services as indicated in the contract documents including, but not limited to, issuance of written communications with the CM/Contractor.

**1.3.16 University's Designated Administrator.** The term "University's Designated Administrator" shall mean the individual acting as University's Designated Administrator pursuant to paragraph 4.1.1.

## **ARTICLE 2 - DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES - BASIC SERVICES**

Basic Services to be provided by Design Professional consist of the services described in this Article 2.

### **2.1 GENERAL**

**2.1.1** Design Professional shall be responsible for Construction Phase services only as described hereafter.

**2.1.2** To the extent deemed necessary by Design Professional to perform its services in accord with the Project Schedule (and all revisions and updates thereto), and as may be applicable at each particular stage of the progress of the Project, Design Professional shall employ architects, mechanical, electrical, structural, and civil engineers licensed as such by the State of California, and such other consultants necessary for the provision of services under this Agreement. All consultants provided under basic services shall be paid by Design Professional. Design Professional shall submit, for approval by University, names of consultants for each professional element of service of the Project. University-approved consultants provided under basic service shall be as named below.

<u>Consultant Name</u>	<u>Discipline</u>
{LIST THE NAMES OF UNIVERSITY-APPROVED CONSULTANTS}	{LIST DISCIPLINE FOR EACH CONSULTANT}

Nothing in the foregoing shall create any contractual relationship between University and any consultants employed by Design Professional under the terms of this Agreement. Design Professional is as responsible for the performance of its consultants as it would be if it had rendered these services itself.

**2.1.3** Design Professional shall designate a principal or a staff member as the Project {Architect OR Engineer}. So long as the Project {Architect OR Engineer} performs in a manner acceptable to University, and remains in Design Professional's employ, the Project {Architect OR Engineer} shall remain in charge of all design and other services required under this Agreement, including attending design-related meetings for the Project, unless a substitution mutually acceptable to Design Professional and University is made. University-approved Project {Architect OR Engineer} shall be the person named below:

{LIST NAME OF UNIVERSITY-APPOINTED PROJECT ARCHITECT OR ENGINEER}  
**2.1.**

**2.1.5** Design Professional shall assist University in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.

{LIST}

**2.1.6** Design Professional shall abide by all regulations imposed by authorities having jurisdiction over the Project.

**2.1.7** Design Professional shall cooperate with other professionals University may employ for related work.

**2.1.8** To the extent required by University, Design Professional shall consult with authorized employees, agents, and representatives of University relative to the design and construction of the Project.

**2.1.9** Design Professional shall review: site surveys; existing record documents; seismic data; mechanical, geotechnical, and other test reports; environmental documents; and any other documentation furnished by University. From an examination of the site and a review of available information, Design Professional shall determine whether such data are sufficient for purposes of design or whether additional data are needed and, if so, recommend the manner in which it be provided and needed services obtained. Design Professional may rely on the information provided by University but only to the extent such reliance is consistent with Design Professional's obligations under this Agreement.

**2.1.10** Review, approval or acceptance of Design Professional's work whether by University or others and whether during Schematic Design Phase, Design Development Phase, Construction Documents Phase, Bidding Phase, Construction Phase, Guarantee to Repair Period, or otherwise, shall not relieve Design Professional from responsibility for errors and omissions in Design Professional's work.

**2.1.11** Design Professional shall prepare Construction Documents in compliance with applicable laws, codes, rules, regulations, ordinances, and standards including, without limitation, those listed in Exhibit C.

**2.1.12** As a result of the use of the form of contracting applicable to the Project, it is anticipated that Design Professional will concurrently perform certain of its obligations as set forth in this Agreement with regard to Schematic Design, Design Development, preparation of Construction Documents, preparation of Bidding Documents and services to be performed during Construction, as determined by the University. The services of Design Professional shall be performed in accordance with the Supplemental Requirements (Exhibit C). The Design Professional must provide for resources sufficient to permit the Design Professional to render all services pursuant to this Agreement in strict accord with the requirements of the Project Schedule (and all revisions and updates thereto). The Design Professional shall have the obligation and opportunity to contribute to the development of the Project Schedule (and revisions and updates thereto) as provided in this Agreement.

The Design Professional shall strictly comply with the Project Schedule.

## **2.2 SCHEMATIC DESIGN PHASE**

**2.2.1** Upon written authorization to proceed, Design Professional shall evaluate the Project Program (Exhibit H) to ascertain the requirements of the Project and shall review and clarify Design Professional's understanding of these requirements with University and its CM/Contractor, if any.

**2.2.2** Design Professional shall provide a written preliminary evaluation of the Project program and the Construction Budget requirements each in terms of the other.

**2.2.3** Design Professional shall prepare and submit to University an outline of applicable provisions of building codes which apply to this Project. The outline shall include a written report and diagrammatic drawings which delineate the design criteria (e.g., exit paths, travel distances, required exits, rated walls, rated corridors, building occupancy, construction type, and fire zones). This graphic documentation of the design criteria shall be updated with each subsequent submittal.

### **2.2.4**

**2.2.5** Design Professional shall prepare Schematic Design studies consistent with and incorporating the Project Program requirements, including site plans, floor plans, elevations, sections, and other drawings, sketches, or graphic materials needed to describe the Project (and Design Packages, if required by University) in three dimensions. Design Professional shall also prepare descriptive outline specifications indicating proposed architectural, structural, mechanical, and electrical systems and materials and other systems as described in Supplemental Requirements (Exhibit C). Schematic studies shall be consistent with the construction budget, Project Schedule and Design Packages, if required by University and shall be revised until approved by University as acceptable. Schematic Design studies shall be required for separate portions of the Project (and Design Packages, if required by University) in advance of completion of Schematic Design studies for the Project as whole.

**2.2.6** Design Professional shall submit a tabulation comparing both gross and assignable floor areas to the initial Project Program area requirements, as required by Exhibit C.

**2.2.7** Design Professional shall submit a written Estimated Project Construction Cost based on the documents submitted in this phase. The estimate shall be in the form included in Exhibit C. Design Professional shall submit a written Estimated Phase Construction Cost for each separate portion of the Project for which Design Professional submits a Schematic Design Study.

### **2.2.8**

### **2.2.9**

### **2.2.10**

## **2.3 DESIGN DEVELOPMENT PHASE**

**2.3.1** Upon University's written authorization to proceed and based on Schematic Design documents approved in writing by University and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare for approval by University Design Development documents. These documents shall consist of such drawings, outline specifications, and narratives as are needed to establish and describe the size and character of the entire Project or Design Package(s). Design Professional shall incorporate into the Design Development documents architectural, structural, mechanical, and electrical systems, materials, and such other elements and other systems as described in Supplemental Requirements (Exhibit C). The Design Development documents shall be consistent with the Project Program (including the gross and assignable floor areas), the Construction Budget and the Project Schedule. The University may direct the Design Professional to prepare Design Development documents for the Project as a whole or for separate portions of the Project. If Design Development documents are prepared for separate portions of the Project, then Design Development documents may be prepared for later portions of the Project concurrent with the development of Construction Documents or Bidding Documents for earlier portion(s) of the Project, and/or concurrently with construction based upon those previously prepared documents. The Design Professional shall consult with the CM/Contractor and provide the CM/Contractor an opportunity to review and comment upon materials developed by the Design Professional during the Design Development Phase. All obligations of the Design Professional set forth in Article 2.3 shall be undertaken for the entire Project and for each and every separate portion of the Project.

**2.3.2** Design Professional shall furnish a tabulation comparing both gross and assignable floor areas to the Schematic Design Phase Project Program area requirements as required by Exhibit C.

**2.3.3** Design Professional shall furnish an update of the Schematic Design Phase building code analysis (or for applicable Design Packages) as required by Exhibit C that delineates the design criteria (e.g., exit paths, travel distances, required exits, rated walls, and rated corridors, building occupancy, construction type, and fire zones).

**2.3.4** Design Professional shall submit documentation supporting the design criteria for the structural (including structural loading), HVAC, plumbing, electrical, lighting and communication systems; and other specialized building systems.

### **2.3.5**

**2.3.6** Upon completion of Design Development for each portion of the Project, Design Professional shall submit an Estimated Project Construction Cost based on the documents submitted to University for each such portion. At such time as Design Development is complete for all portions of the Project, Design Professional shall submit an Estimated Project Construction Cost based on the documents submitted to University for all portions of the project. All estimates submitted pursuant to this Article 2.3.6 shall be in the form indicated in Exhibit C.

## **2.4 CONSTRUCTION DOCUMENTS PHASE**

**2.4.1** Upon University's written authorization to proceed and based on Design Development documents approved in writing by University (or applicable Design Package(s)) and any written adjustments in the scope or quality of the Project or in the Construction Budget, Design Professional shall prepare for approval by University, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project (or applicable Design Package(s)). The Construction Documents shall describe the quality, configuration, size and relationships of all components to be incorporated into the Project. The Construction Documents shall be consistent with the Project Program (including the gross and assignable floor areas), the Construction Budget and the Project Schedule (and all revisions and updates thereto).

**2.4.2** Design Professional shall submit a tabulation comparing both gross and assignable floor areas to the Design Development Phase area requirements.

**2.4.3** The Drawings and Specifications shall be consistent with the University's General Conditions (Exhibit A) and the Division 1 tailored for the Project, as required by subparagraph 2.4.5.

**2.4.4** Design Professional shall submit construction documents for the Design Packages to University for review and approval upon 50% completion, and upon Design Professional's determination that the documents are 100% complete and coordinated. Design Professional shall resubmit the documents for back check by University after corrections are made to the 100% submittal.

**2.4.5** Prior to submission of the 50% completed Construction Documents for University review (or applicable Design Packages), Design Professional and Design Professional's consultants shall review University's Bidding Documents for requirements of the Project (or applicable Design Packages) and recommend any changes needed to make them applicable to the Project. Design Professional shall submit, with the review set of the 50% completed Construction Documents (for the applicable Design Package(s)), a single marked-up set of University Facility's Specifications, Division 1, General Requirements, showing the recommended changes.

**2.4.6** Upon 50% and 100% completion of the Construction Documents for Design Package(s), Design Professional shall submit for University review and comment { } copies each of the Construction Documents (for the applicable Design Package(s)), a summary of the calculations for the structural, HVAC electrical, plumbing, communications, (as applicable) and other specialized building system calculations.

**2.4.7** Upon 50%, 100% and final backcheck completion of the Construction Documents for the applicable Design Package(s), Design Professional shall prepare and submit for University approval { } copies of Design Professional's then current Estimated Project Construction Cost. The estimate shall be submitted in the form as required in Exhibit C.

### **2.4.8**

**2.4.9** The Construction Documents submittals shall either incorporate any changes or corrections required by University or review agencies as a result of their review of the 50% and 100% completed Construction Documents (for the applicable Design Package(s)), or be accompanied by a written statement as to why such changes were not incorporated. University may reject Design Professional's explanation and require Design Professional to make the changes or corrections to the Construction Documents (for the applicable Design Package(s)) as previously requested by University.

**2.4.10** Unless directed otherwise in writing by University the Construction Document Phase shall not be considered 100% complete until all required agency and University approvals have been received by Design Professional. Design Professional shall prepare and submit required agency applications as required by Exhibit D.

**2.4.11** Upon 100% completion of the Construction Documents, Design Professional shall provide a complete listing of all rooms and spaces, as required in Format for Listing Rooms and Spaces (Exhibit E).

**2.4.12** Final Construction Drawings and the Certification page of the specifications submitted to University for bidding purposes shall be signed and stamped by Design Professional or the appropriate Design Professional's consultant.

**2.4.13** Design Professional shall be responsible for the content of all Construction Documents. All Construction Documents prepared or signed by Design Professional or Design Professional's consultants shall be complete, coordinated (including without limitation coordinated with Construction Documents prepared for previous portions of the Project) and contain directions as will enable a competent contractor to carry them out.

**2.4.14** Design Professional shall submit for University review and comment { } copies of the final (100%-completed) Construction Documents for all Design Package(s)

**2.4.15** When all University and review agency required changes or corrections have been incorporated by Design Professional, the 100%-completed Construction Documents for the applicable Design Package(s) will be deemed to be final and ready for bid. Design Professional shall provide to University one (1) set of Mylar reproducible, {NUMBER}, {set OR sets} of prints, and the complete set of the Specifications, of the final (100% backchecked and corrected) set of Construction Documents for the applicable Design Package(s). The Specifications shall be submitted in both hard copy form and on computer disk. {FACILITY TO INSERT APPROPRIATE COMPUTER DISK FORMAT: i.e., computer disk format shall be WordPerfect 5.2.}

#### **2.4.16**

**2.4.17** If the Estimated Project Construction Cost at the Construction Documents Phase for any Bid Package exceeds the Construction Budget for the Bid Package, University may, at its discretion, (1) give written approval of an increase in the Construction Budget, (2) authorize the solicitation of bids

(reserving its rights under subparagraph 2.5.4), or (3) require Design Professional, at Design Professional's expense, to revise the design and corresponding Construction Documents for the Bid Package and/or the design and corresponding Construction Documents or Design Package(s) (if then existing) for other portions of the Project, in cooperation with University, so as to reduce the Estimated Project Construction Cost for the entire Project (including the Bid Package) to match the Construction Budget for the entire Project.

## **2.5 BIDDING PHASES OF THE WORK**

**2.5.1** If prequalification of CM/Contractors is required by University, Design Professional shall review and comment on the prequalification criteria prepared by the University.

**2.5.2** There will be multiple Bid Packages for the Project. Multiple Bid Packages may be assembled and bid concurrently as a portion of the Project. Portions of the Project will be bid separately from other portions. During bidding of each Bid Package, Design Professional shall assist University in document clarification and in the preparation of Addenda as required for issuance only by University in accordance with both the Instructions To Bidders and the Supplementary Instructions To Bidders of University's Bidding Documents. Design Professional's Project Architect or Engineer shall attend all scheduled pre-bid conferences and jobsite visits.

**2.5.3** Design Professional's Project Architect or Engineer shall assist University in the review and evaluation of bids if requested by University.

**2.5.4** If the lowest responsive bid for a Bid Package exceeds the Construction Budget for the Bid Package by more than 10%, University may, at its discretion, (1) authorize rebidding of the Bid Package within a reasonable period of time; or (2) require Design Professional, at Design Professional's expense, to modify the design and the corresponding Construction Documents or Design Package(s) for Bid Package, in order to reduce the Estimated Project Construction Cost for the Bid Package to a level that falls within the Construction Budget for the Bid Package; or (3) award the Bid Package; reduce the Construction Budget for Bid Packages to be bid at a later time by an amount commensurate with the amount by which the lowest responsive bid exceeds the Construction Budget for the Work of the Bid Package; and require Design Professional, at Design Professional's expense, to modify the design and corresponding Construction Documents to be included in Bid Packages to be bid later in time so that the Estimated Project Construction Cost for such Bid Packages is consistent with the reduced Construction Budget. Modifications proposed by Design Professional shall require University approval prior to incorporation into the revised documents.

## **2.6 CONSTRUCTION PHASE**

**2.6.1** The Construction Phase will commence on the date established by the Agreement between University and CM/Contractor, and will terminate one year after Notice of Completion or, in the absence of a Notice of Completion, one year after Final Completion, of the entire Work.

**2.6.2** Design Professional shall attend and participate in all pre-construction meetings called by the University's Representative. Pre-construction meetings may be held prior to commencement of separate portions of the Project. Attendees shall be Design Professional's consultants, CM/Contractor and major subcontractors, University's Designated Administrator and others as deemed necessary by the University.

**2.6.3** The Design Professional's responsibilities shall include, but not be limited to, interpretation of the Contract Documents; periodic site observations; review of submittals; review of the Project Schedule (and all proposed updates and revisions thereto); providing comments to the University's Representative regarding Design Professional's ability to undertake its responsibilities pursuant to this Agreement within the time provided in proposed revisions and updates to the Project Schedule; providing cost or schedule analysis for field or change orders; preparation of documents for proposed changes; review of and making recommendations regarding approval of CM/Contractor cost, schedule or application for payment data; and general consultation to the University on design matters. All responsibilities of the Design Professional pursuant to this Agreement, including but not limited to services provided during the Construction Phase, shall be undertaken in conformance with the Project Schedule (and all revisions and updates thereto). Design Professional shall employ and assign adequate professional staff and sub-consultants to ensure its ability to perform services in accordance with the Project Schedule (and all proposed revisions and updates thereto). The Design Professional shall be fully responsible for all matters related to the Design Professional's design and all of the Design Professional's recommendations to the University which are carried out by the University without substantive change. The Design Professional's duties shall not include administration of communications with CM/Contractor, chairing meetings with CM/Contractor; monitoring the compliance of other parties with the Project Schedule; negotiation of price changes; and coordination of closeout. Design Professional shall cooperate with the University's Representative in the University Representative's provision of contract administration services as those services are described in the Contract Documents.

Except as otherwise provided in the Contract Documents or as directed by University, all written communications with CM/Contractor shall be sent and received by University's Representative. The Design Professional shall advise and consult with University Representative and shall keep University Representative informed of the observed progress of the Work. The Design Professional shall render written or graphic interpretations and decisions that are consistent with the intent of, and reasonably inferable from, the Contract Documents; review and recommend any action to be taken regarding CM/Contractor's required submittals; and evaluate, with the University's Representative, the equivalence of proposed substitutions for materials, products, or services specified by brand or trade names in the Contract Documents and recommend either approval or rejection of substitutions as being equal in quality, utility, and appearance. Such services shall be performed in accordance with the requirements of the Project Schedule (and all proposed revisions and updates thereto).

The Design Professional shall perform all Construction Phase services in a timely manner, as required by the Project Schedule (and all revisions and updates thereto), this Agreement and the Contract Documents. Design Professional shall employ and assign adequate professional staff and sub-consultants to ensure that its interpretations, decisions, reviews, or other functions pursuant to this Agreement do not cause or contribute to a disruption of construction or a delay in completion of the Project.

**2.6.4** Design Professional shall, at no cost to University, satisfactorily correct any and all errors, omissions, deficiencies, or conflicts in the Construction Documents prepared by Design Professional or Design Professional's consultants promptly upon discovery or notice. The obligations of Design Professional to correct defective or nonconforming Work shall not in any way limit any other obligations of Design Professional.

## **2.7 CONTRACT DOCUMENTS COMPLIANCE**

**2.7.1** Design Professional shall make (1) periodic on-site observations of construction as it progresses except for periods of construction downtime as approved by University in writing, and upon completion of construction and (2) off-site observations of fabricated materials and equipment when such off-site checks are specified in the Contract Documents. Observations shall be conducted deliberately and thoroughly. The frequency, duration, and extent of such observations shall be appropriate to and for: the progress, character, and complexity of the Work; design issues or questions of concern to Design Professional, its consultants, University's Representative or as noted in any inspection reports furnished to Design Professional; the observed quality of CM/Contractor's performance during previous visits; the review of construction of crucial components of the Work; and the observation of the performance of specified or University's Representative's directed tests significant to the acceptability of crucial components of the Work. Such observations shall also be performed when reasonably requested by University.

Observations shall be for the purpose of ascertaining: the progress of the Work; that the character, scope, quality and detail of construction (including workmanship and materials) comply with the design expressed in the Contract Documents, University's Representative's directives, approved product data and samples and clarification drawings. Observations shall be separate from any inspections which may be provided by University. University's provision of inspection services, if any, shall not relieve Design Professional of its responsibilities under this Agreement.

**2.7.2** Design Professional shall have the authority to recommend rejection of Work that does not conform to any of the following: the Contract Documents; Design Professional's directives; applicable code requirements; approved Shop Drawings, Product Data, and Samples; Clarification Drawings; or defective Work. Such recommendation for rejection will be transmitted to the University's Representative in writing for communication to CM/Contractor.

The Design Professional shall recommend special inspection or testing of the Work in accordance with the provisions of the Contract Documents if, in Design Professional's reasonable opinion, such inspection or testing is necessary or advisable for the implementation of the Contract Documents, regardless of the state of completion of the Work subject to such inspection or testing.

**2.7.3** The Design Professional shall review inspection reports, laboratory reports, and test data to determine conformity of such data with the design requirements expressed, implied, or depicted in the Contract Documents; approved Shop Drawings, Product Data, and Samples; and Clarification Drawings.

The Design Professional shall also recommend to the University's Representative, in writing, actions that need to be taken by University's Representative, as determined from Design Professional Project site visits, inspection reports, laboratory reports, and test data or from CM/Contractor proposals, or other relevant documents.

**2.7.4** Design Professional shall attend regular construction meetings scheduled to occur **{INSERT MEETING FREQUENCY}**, plus special meetings as they are deemed necessary. If, through no fault of Design Professional, the total number of regular construction meetings attended exceeds **{ }** meetings, Design Professional shall be compensated for additional meetings in accordance with paragraph 5.2. Construction meeting notes shall be prepared and distributed by University's Representative.

**2.7.5** Design Professional shall accompany and assist University Representative and University with punch list inspections to determine Beneficial Occupancy, Substantial Completion, and Final Completion. Design Professional shall advise on the issuance of the Certificate of Beneficial Occupancy and the Certificate of Substantial Completion in accordance with the Construction Contract Documents.

## **2.8 INTERPRETATION OF THE CONTRACT DOCUMENTS**

**2.8.1** The Design Professional shall be, in the first instance, the interpreter of the design requirements of the Contract Documents and the judge of the performance thereunder.

Design Professional shall render design interpretations of, and design decisions regarding, the Construction Contract Documents that are necessary for the proper execution or progress of the Work including provision of clarifications and interpretations of the Construction Contract Documents that are consistent with the intent of the documents but which do not involve a change in the scope of the Work. Such clarifications and interpretations shall not involve an adjustment of the Contract Sum or an extension of the Contract Time.

**2.8.2** Design Professional shall not be responsible for construction means, methods, techniques, sequences, procedures, or safety precautions and programs in connection with the Work, unless Design Professional specifies, directs, recommends or approves such means, methods, techniques, sequences, procedures, or safety precautions/programs.

## **2.9 CHANGES TO THE CONTRACT DOCUMENTS**

**2.9.1** Design Professional shall prepare drawings and specifications needed by University Representative to issue Field Orders and Change Orders for University's approval and execution.

## **2.10 RECORD DOCUMENTS**

**2.10.1** Record Documents shall consist of Record Drawings and final Specifications.

**2.10.2** Within 60 days after Final Completion, Design Professional shall, at no additional cost, furnish University with one (1) **{Mylar or CAD}** copy of the Record Drawings and one (1) annotated hard copy of the Specifications and one (1) computer disk compatible with **{SPECIFY, e.g. WordPerfect 5.2}**. The Record Drawings shall be made from the As-built Drawings, including revisions and changes made via Addenda and, during the course of construction, via marked-up prints, As-built Drawings and other data furnished by CM/Contractor to Design Professional. These revisions and changes shall be accurately annotated and cross-referenced. Each page of the Drawings shall prominently note the words "Record Documents." The cover page of the annotated Specifications shall also note the words "Record Documents."

## **2.11 GUARANTEE TO REPAIR PERIOD**

**2.11.1** Design Professional shall review the Work at 11 months after Substantial Completion or Final Completion, as applicable, and shall make written recommendations to University for the correction of any deficiencies within **{ }** days after the inspection date. Design Professional shall be accompanied by University during these inspections. Dates for inspections shall be as mutually agreed by the parties within the 11th month time frame. The number of work hours associated with the on-site review and preparation of written recommendations shall not exceed **{ }** hours excluding review and preparation necessitated in whole or in part by Design Professional's errors and omissions.

## **2.12 INDEPENDENT REVIEWS**

**2.12.1**  
**2.12.2**

**2.12.3** This Project is subject to an independent seismic/structure review conducted by University and at University expense. Design Professional shall attend meetings as necessary to resolve all seismic issues. Design Professional shall present Drawings and other items as necessary to describe the Project design.

## **2.13 VALUE ENGINEERING**

2.13.1 }  
2.13.2 }  
2.13.3 }

**2.14 SCHEDULE**

**2.14.1** Design Professional acknowledges that all time limits and scheduling requirements stated in this Agreement are of the utmost importance to University. Design Professional shall comply with all time requirements of the Project Schedule, (and all revisions and updates thereto). The Project Schedule shall be revised and updated from time to time by the University and then provided in revised or updated form to the Design Professional by the University. The Project Schedule shall include time requirements for completion of Design Professional's services. Design Professional shall be obligated to participate in the development of the Project Schedule in the manner set forth in this Agreement, shall be provided an opportunity to comment upon and propose revisions to the Project Schedule prior to release and/or publication of the Project Schedule, and shall be provided an opportunity to comment upon and propose changes to all revisions of and updates to the Project Schedule prior to release and/or publication thereof. Design Professional's failure to comply with the Project Schedule (and all revisions and updates thereto) may cause economic damages to the University including but not limited to claims by the CM/Contractor to be compensated for delays in construction of the Project, claims by the CM/Contractor for acceleration of construction to compensate for delays caused by the Design Professional, and damages incurred by the University as a result of its inability to use the Project in the manner and within the time anticipated by the University.

**2.14.2** Design Professional shall submit its proposed work plan for the performance of Design Professional's services within { } calendar days following the later of (1) the execution date of this Agreement, or (2) the date on which University authorizes Design Professional to begin performing Schematic Design Phase services. Design Professional's work plan shall include without limitation, a schedule for how Design Professional will comply with Project Schedule. The University will consider Design Professional's proposed work plan in preparing revisions and updates to the Project Schedule. Design Professional shall regularly provide information to the University regarding Design concerning its ability to comply with the Project Schedule (and any proposed revisions or updates thereto), and shall revise its work plan to conform to each revision of and/or update to the Project Schedule.

Design Professional's work plan shall include allowances for the periods of time required for University's review and approval of submissions and for approvals by authorities having jurisdiction over the Project.

**ARTICLE 3 - DESIGN PROFESSIONAL'S SERVICES AND RESPONSIBILITIES-ADDITIONAL SERVICES**

Unless required to be performed as part of basic services, the services described in this Article 3 are additional services. These Additional Services shall be paid for by University, as provided in this Agreement, in addition to the compensation for Basic Services. Design Professional shall provide Additional Services only when and as authorized in a written Agreement Change Authorization signed by University. No Additional Services shall be compensable unless so authorized.

**3.1 PRE-CONSTRUCTION PHASES**

**3.1.1** Provide analyses of University's need and formal programming documentation of the requirements of the Project.

**3.1.2** Provide planning surveys, site evaluations, environmental studies, or comparative studies of prospective Project sites.

**3.1.3** Provide services to investigate existing conditions or facilities, to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by University beyond those reasonably and customarily provided in Basic Services except that additional information recommended by the Design Professional in accordance with subparagraph 2.1.9 shall not entitle Design Professional to additional compensation.

**3.1.4** Provide planning services for tenant or rental spaces.

**3.1.5** Provide financial feasibility studies or other special studies.

**3.1.6** Prepare special surveys, environmental studies, and submissions required for review or approval by governmental authorities or others having jurisdiction over the Project except submittals required for approval of the Construction Documents and as required to prepare Change Orders under basic services as stipulated in subparagraph 2.9.1, if applicable.

**3.1.7** Prepare revisions to the documents during the Schematic Design, Design Development, Construction Documents, Bidding, and Construction Phases when these revisions are inconsistent with data or written approvals previously given by University, excluding (1) corrections of design errors or omissions, and (2) modifications of the Construction Documents in accordance with paragraphs 2.4, 2.5, 2.12 and 2.13 herein.

**3.1.8** Provide services related to future facilities, systems and equipment that are not intended to be constructed during the construction period or that are not anticipated in the Project Program.

**3.1.9** Provide interior design and similar services required for or in connection with the selection, procurement, or installation of furniture, furnishings and related equipment that are not included in the Construction Documents.

**3.1.10** Provide detailed quantity surveys or inventories of material, equipment, and labor.

**3.1.11** Make investigations or take inventories of materials or equipment, or make valuations and detailed appraisals of existing facilities.

**3.1.12** Provide analyses of owning and operating costs, except as needed to prepare the energy analysis required by subparagraph 2.4.4 herein or to participate in Value Engineering sessions as required by paragraph 2.13.

**3.1.13** Provide perspective drawings, models, and mock-ups, including slides thereof except as indicated in subparagraph 2.2.9 for Regents presentation.

## **3.2 CONSTRUCTION PHASE**

### **3.2.1**

## **3.3 POST-CONSTRUCTION**

**3.3.1** Provide services as necessary to correct major defects or deficiencies in the Work of CM/Contractor when such defects or deficiencies require services in excess of those reasonably expected on a project of this type, size and complexity, excluding warranty items, provided that such defects or deficiencies are not caused in whole or in part by errors or omissions on the part of the Design Professional.

**3.3.2** Provide extensive assistance in the utilization of any equipment or system; prepare operation and maintenance manuals; train personnel for operation and maintenance; and consult during operation.

**3.3.3** Provide services after the issuance of the final Certificate For Payment provided that these services do not relate to the guarantee or warranty services described in paragraph 2.11 or to corrections of design errors or omissions.

**3.3.4** Provide services regarding replacement of any Work damaged by fire or other cause (excluding any cause resulting from the negligent acts, errors, or omissions by Design Professional).

## **3.4 GENERAL**

**3.4.1** Provide services in connection with a public hearing, mediation, arbitration proceeding, or legal proceeding, except where Design Professional is party thereto.

**3.4.2** Provide services made necessary by the termination of CM/Contractor but only to the extent such services exceed the level of service that would have been provided in the absence of a termination of CM/Contractor.

## **ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES**

### **4.1 ADMINISTRATION**

**4.1.1** University shall designate, in writing, an Administrator who will act on behalf of University with respect to this Agreement. Design Professional shall accept directives only from University's Designated Administrator and not from other

University employees or consultants. University may replace University's Designated Administrator at its sole option; if this replacement is made, University shall notify Design Professional in writing.

**4.1.2** University shall designate, in writing, prior to bidding, a University Representative.

### **4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS**

**4.2.1** University has furnished the exhibits set forth in paragraph 12.2.1, which are hereby incorporated and made a part of this Agreement.

**4.2.2** University shall have the right to make changes to the Project Program (Exhibit H). When such changes increase the duties of Design Professional beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

**4.2.3** University shall have the right to make reasonable changes to its Bidding Documents and Design Professional shall be bound by such changes. When such changes increase the duties of Design Professional, beyond those reasonably and customarily provided in Basic Services, Design Professional shall be compensated in accordance with this Agreement.

**4.2.4** University shall furnish structural, mechanical, electrical, chemical, soils, and other tests, inspections, and reports as required by law or by the Contract Documents, which are not required to be furnished by CM/Contractor under the Contract Documents.

**4.2.5** University shall revise and update the Project Schedule as dates and durations applicable to the Project such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known. Design Professional shall comply with all time requirements for work of the Design Professional that are set forth in the Project Schedule (and revisions and updates thereto).

**4.2.6** If required for the performance of Design Professional's services, University shall furnish an accurate land survey of the Project site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions, and floor elevations pertaining to existing buildings, other improvements, and trees; and information in University's possession concerning available service and utility lines, both public and private.

**4.2.7** University shall furnish geotechnical data when these data are reasonably deemed necessary by Design Professional, including test logs, soil classifications, soil bearing values, and other data necessary to define subsoil conditions.

**4.2.8** The format to be used by Design Professional in its preparation of the Specifications shall be as stipulated in Supplemental Requirements (Exhibit C).



**4.2.9** The services, information, surveys, and reports required by this Article 4 shall be furnished at University's expense.

**ARTICLE 5- COMPENSATION**

University will compensate Design Professional for the scope of services provided, in accordance with this Article 5 and with the other terms and conditions of this Agreement, as follows:

**5.1 COMPENSATION FOR BASIC SERVICES**

**5.1.1** The fee for Basic Services shall be computed as follows:

For services rendered in accordance with this Agreement, the basis for compensation shall be a lump-sum fee in the amount of  $\$ \{ \}$ , payable upon completion of each Project phase, after the review and approval by University, in accordance with the following rate schedule. Services required by the Design Development Phase and the Construction Documents Phase shall only be performed, and University will only be obligated to compensate the Design Professional therefore, if University has issued a notice to proceed under paragraphs 2.3.1 and 2.3.2:

<u>Phase or Stage Completed</u>	<u>Rates of Portions of Total Fees to be Paid at Completion</u>
Schematic Design Phase	$\{ \}$ %
Design Development Phase	Increase to $\{ \}$ %
Construction Documents Phase	Increase to $\{ \}$ %
Bidding Phase (Award of Bid Packages)	Increase to $\{ \}$ % (or a proportional percentage when a portion of the Project is awarded)
Construction Phase	(Proportional monthly payments of $\{ \}$ % the fee, prorated to the proportion of the Project construction that is certified as complete)
Construction Completed	Increase to $\{ \}$ %
Receipt of Design Professional's Record Documents	Increase to $\{ \}$ %
Guarantee to Repair Period Services Completed	Increase to 100%

**5.2 COMPENSATION FOR ADDITIONAL SERVICES**

**5.2.1** For the Additional Services of Design Professional, as described in Article 3, including the Additional Services of consultants, compensation shall be in accordance with the attached Rate Schedule, Exhibit B.

**5.2.2** If the Contract Time initially established in the Contract Documents is exceeded or extended by  $\{ \}$  calendar days through the fault of University or CM/Contractor and through no fault of Design Professional, compensation for any Basic Services provided during this extended period of the construction period of the construction contract shall be adjusted

to compensate Design Professional for any additional costs reasonably incurred by Design Professional as the result of such delay, provided University has approved such adjustments in advance. These extended Basic Services shall be approved, in writing, by University and shall not include Basic Services that would have been performed under this Agreement had the initial Contract Time not been substantially exceeded or extended.

### **5.3 REIMBURSABLE EXPENSES**

5.3.1 For Reimbursable Expenses, as described in this paragraph 5.3, only actual costs will be reimbursed in accordance with the Reimbursement Schedule in the Exhibits. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

5.3.2 Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by Design Professional and Design Professional's consultants in the interest of the Project.

## **ARTICLE 6 - PAYMENTS**

### **6.1 PAYMENTS FOR BASIC SERVICES**

6.1.1 Payments for Basic Services, as defined in Article 2, shall be made as stipulated in subparagraph 5.1.1.

### **6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES**

6.2.1 Payments for Design Professional's Additional Services, as defined in Article 3, and for Reimbursable Expenses, as defined in paragraph 5.3, shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof.

6.2.2 Payments related to paragraph 5.2.2 shall be made monthly after presentation of Design Professional's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof unless otherwise agreed by the parties thereto.

### **6.3 PROJECT SUSPENSION**

6.3.1 If the Project is suspended or abandoned for more than { } consecutive months, and such suspension was not scheduled at the beginning of the Project, as provided under subparagraph 4.2.5, Design Professional shall be compensated for all authorized services performed prior to the receipt of written notice from University of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than { } consecutive months, Design Professional's compensation shall be adjusted as mutually agreed to compensate Design Professional for any additional costs reasonably incurred as the result of the suspension.

## **ARTICLE 7 - DESIGN PROFESSIONAL'S RECORDS AND FILES**

### **7.1 MAINTAINING BOOKS AND RECORDS**

Books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (**GAAP**) or **International Financial Reporting Standards (IFRS)**. University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of Consultants' books and records. Consultants records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; subconsultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

### **7.2 AVAILABILITY OF BOOKS AND RECORDS**

Design Professional and Design Professional's consultants shall make their files available for inspection and copying by University upon reasonable notice. Such files shall be maintained for a period of at least 3 years from the date of Final Payment under this Agreement. Design Professional shall include appropriate language in consultant's agreements to enforce the provision of this paragraph 7.2.

## **ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS**

### **8.1 DRAWINGS, SPECIFICATIONS, AND PRESENTATION MATERIALS**

8.1.1 Drawings and Specifications shall become the property of University, whether or not the Project for which they are made is executed. Design Professional shall be permitted to retain copies, including reproducible copies, of the Drawings and Specifications for information and reference except as provided in paragraph 8.2. Neither University nor Design Professional shall use the Drawings and Specifications as a whole or in substantial part on other projects, but either may reuse details of the Drawings for other projects.

8.1.2 All presentation drawings, slides, and models shall become and remain the property of University.

### **8.2 CONSTRUCTION DOCUMENTS**

8.2.1 Design Professional, upon request, shall provide copies of the Construction Documents in the number required by University for bidding and construction purposes; the reproduction expense shall be borne by University. University reserves the right to select the type of document reproduction and to establish where the reproduction will be accomplished.

8.2.2 University may use the Construction Documents, without Design Professional's consent, on in connection with the Project, including without limitation, future additions, alterations, connections, repairs, information, reference, use, or occupancy.

8.2.3 Except as provided in subparagraphs 8.2.1 and 8.2.2 University will not use the Construction Documents for another project without Design Professional's written consent.

## **ARTICLE 9 - DISPUTES**

### **9.1 NEGOTIATION**

**9.1.1** The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement by negotiation.

### **9.2 MEDIATION**

**9.2.1** Within 60 days, but no earlier than 30 days, following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties shall submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

### **9.3 ARBITRATION OR LITIGATION**

Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows

**9.3.1 Arbitration with CM/Contractor.** If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either CM/Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same arbitration proceeding which shall be conducted under the procedures specified in the General Conditions of the construction contract.

**9.3.2 Litigation with CM/Contractor.** If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either CM/Contractor or University claims that the acts or omissions of Design Professional are involved, in whole or in part, any claim by University against Design Professional arising out of or in connection therewith may be asserted, at the option of University, against Design Professional in the same litigation.

**9.3.3 Arbitration without CM/Contractor.** Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1. and 9.3.2 shall be subject to arbitration without CM/Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect (except as otherwise provided in this Agreement). The following additional modifications shall be made to the aforesaid Rules of the AAA:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the

arbitrator. All disputes regarding discovery shall be decided by the arbitrator.

- .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University, join in and be bound by the arbitration.
- .3 Concurrent disputes subject to this subparagraph 9.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .4 No hearing shall be held prior to final completion of the Project unless University and Design Professional otherwise agree in writing.
- .5 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California.
- .6 If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of whom shall be an attorney.
- .7 The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.

Unless University and Design Professional otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of California, supported by substantial evidence. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000, the award shall contain the basis for the decision, findings of fact, and conclusions of law.

Any arbitration award shall be subject to confirmation, vacation or correction under the procedures and on the grounds specified in the California Code of Civil Procedure including without limitation Section 1296.

The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

The University may offset against the outstanding contract balance the amount of the University's own affirmative claims against the Design Professional provided such claims are based upon alleged breaches of this Agreement or alleged failure to conform to the professional standard care set forth in Article 1.2 of this Agreement. The University shall inform the Design Professional in writing of its intention to offset on or before exercising its right to offset under this Agreement. Within three days following receipt of such written notice, the Design Professional may elect to submit the issue of the University's intention to offset to non-binding mediation administered by the AAA. Such mediation shall take place not less than 15 days and not more than 45 days following the date that the University receives notice of Design Professional's election to mediate regarding the University's intention to offset. The University's obligation to pay any outstanding contract balance shall be stayed and tolled until the first business day following the date of the mediation concerning the University's intention to offset. If the University decides to exercise its right to offset following mediation regarding the University's intention to offset, notice of such offset shall be given to Design Professional by University in writing. If Design Professional does not demand mediation concerning the University's intention to offset, then the University's notice of its intention to offset shall be deemed notice of the decision to offset by the University. Irrespective of whether Design Professional elects to mediate the issue of the University's intention to offset, Design Professional may dispute the University's decision to offset by demanding arbitration or commencing litigation pursuant to the terms of Article 9.

**9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE**

**9.4.1** Claims for personal injury, wrongful death, or property damage (other than property damage to University) shall not be subject to arbitration under Paragraph 9.3.3.

**ARTICLE 10 - INDEMNIFICATION AND INSURANCE**

**10.1 INDEMNIFICATION**

**10.1.1** Design Professional shall indemnify, defend, and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee ("Losses") arising out of the performance of services or Design Professional's other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of Design Professional, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design Professional is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

**10.1.2** The indemnification obligations under this Article 10 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The

obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by University except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Agreement; or (c) willful misconduct.

**10.1.3** Design Professional shall indemnify, defend, and save harmless Indemnitee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitee of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.

**10.1.4** Nothing in this Agreement, including the provisions of this Article 10, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

**10.2 INSURANCE REQUIREMENTS**

Design Professional, at Design Professional's sole cost and expense, shall insure its activities in connection with this Agreement and shall obtain, keep in force, and maintain insurance as listed below. The coverages required under Paragraph 10.2 shall not in any way limit the liability of Design Professional.

**10.2.1** Either Comprehensive Form General Liability Insurance (Contractual, products, and completed operations coverages included) with a combined single limit of no less than {\$ } per occurrence, or Commercial-Form General Liability Insurance with coverage and minimum limits as follows:

- .1 Each Occurrence {\$ }
- .2 Products Completed, Operations Aggregate {\$ }
- .3 Personal and Advertising Injury {\$ }
- .4 General Aggregate {\$ }

**10.2.2** Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than {\$ } per accident.

**10.2.3** Professional Liability Insurance, with limits of {\$ } per claim and {\$ } in the aggregate.

**10.2.4** If the above insurance (subparagraphs 10.2.1-10.2.3) is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Agreement and

shall include, without limitation coverage for professional services as called for in this Agreement. Insurance required by subparagraphs 10.2.1-10.2.3 shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

**10.2.5** Workers' Compensation as required and under the Workers' Compensation Insurance and Safety Act of the State of California, as amended from time to time. Insurance required by this subparagraph 10.2.5 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) that are acceptable to the University.

**10.2.6** Design Professional, upon the execution of this Agreement, shall furnish University with Certificate Of Insurance evidencing compliance with this Article 10, including the following requirements:

.1 Design Professional shall have the insurance company complete University's form, Certificate Of Insurance (Exhibit I). If Design Professional's insurance company refuses to use the University's Certificate of Insurance form, it must provide a Certificate of Insurance (and endorsements, if needed) evidencing compliance with Paragraph 10.2 and Special Provisions 1 through 3 on the Certificate of Insurance Exhibit. It alone constitutes evidence of insurance.

.2 Provide that coverage cannot be canceled without advance written notice to University, in accordance with policy provisions.

.3 If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against Design Professional.

.4 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Design Professional in writing, will be included as additional insureds on Design Professional's general liability policy for and relating to the Work to be performed by Design Professional and its consultants. Design Professional's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01 or 07/04) and CG 2037 (10/01 or 07/04). The General Liability coverage shall contain a Severability of Interest provision and shall be primary insurance as respects The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of

California shall be excess of and non-contributory with this insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

.5 The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of Design Professional, its officers, agents, employees, and for Design Professional's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of Design Professional or Design Professional's consultants.

## **ARTICLE 11 - STATUTORY REQUIREMENTS**

### **11.1 NONDISCRIMINATION**

**11.1.1** In connection with the performance of the Design Professional pursuant to this Agreement, Design Professional shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). Design Professional will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Professional also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Design Professional will, in all solicitations or advertisements for employees placed by or on behalf of the Design Professional, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the

Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

## 11.2 PREVAILING WAGE RATES

**11.2.1** For purposes of the Article, the term subcontractor or consultant shall not include suppliers, manufacturers, or distributors.

**11.2.2** Design Professional shall comply and shall ensure that all subcontractors or consultants comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, and 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.

**11.2.3** The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Project is to be performed for each craft, classification, or type of worker required to perform the Covered Services hereunder. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By this reference, such schedule is made part of the Agreement. Design Professional shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Professional in the execution of the Covered Services hereunder. Design Professional shall cause all subcontracts or consultant agreements to include the provision that all subcontractors or consultants shall pay not less than the prevailing rates to all workers employed by such subcontractor or consultants in the execution of the Covered Services hereunder. Design Professional shall forfeit to University, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Covered Services hereunder performed by Design Professional or any subcontractor or consultant. The amount of this penalty shall be determined by the Labor Commissioner pursuant to applicable law. Such forfeiture amounts may be deducted from the Design Professional's fee. Design Professional shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

## 11.3 PAYROLL RECORDS

**11.3.1** Design Professional and all subcontractors or consultants shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journey worker, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by Design Professional or subcontractors or consultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Professional on the following basis:

- .1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
- .2 A certified copy of all payroll record shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
- .3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Design Professional or subcontractors or consultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Design Professional awarded the Agreement or performing the Agreement shall not be marked or obliterated.

**11.3.2** Design Professional shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Design Professional shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Design Professional shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of the Paragraph or with the State of California Labor Code Section 1776, Design Professional shall have 10 days in which to comply following receipt of notice specifying in what respects Design Professional must comply. Should noncompliance still be evident after the 10-day period, Design Professional shall forfeit to University, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Design Professional's fee.

## **11.4 APPRENTICES**

**11.4.1** Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Design Professional and subcontractors or consultants as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training and in accordance with prevailing wage law pursuant to the Labor Code, including but not limited to Section 1777.5. The Design Professional bears responsibility for compliance with this section for all apprenticeable occupations.

**11.4.2** Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Covered Services hereunder in the craft or trade to which the apprentice is indentured.

**11.4.3** When Design Professional or subcontractors or consultants employ workers in any apprenticeship craft or trade for the Covered Services hereunder, Design Professional or subcontractors or consultants shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Design Professional or subcontractors or consultants under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journey workers who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 apprentice for each 5 journey workers, except as permitted by law. Design Professional or subcontractors or consultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journey workers fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

**11.4.4** "Apprenticeship craft or trade", as used in this Paragraph, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

**11.4.5** If Design Professional or subcontractors or consultants employ journey workers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the area of the Project site are contributing, Design Professional and subcontractors or consultants shall contribute to the fund or funds in each craft or trade in which they employ journey workers or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same

manner done by the other contractors. Design Professional may include the amount of such contributions in computing its compensation under the Agreement; but if Design Professional fails to do so, it shall not be entitled to any additional compensation therefore from University.

**11.4.6** In the event Design Professional willfully fails to comply with this Paragraph 11.4, it will be considered in violation of the requirements of the Agreement.

**11.4.7** Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Professional or subcontractors or consultants of journey worker trainees who may receive on-the-job training to enable them to achieve journey worker status in any craft or trade under standards other than those set forth for apprentices.

## **11.5 WORK DAY**

**11.5.1** Design Professional shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Design Professional shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of the Agreement by Design Professional, or any subcontractors or consultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in day 1 day and 40 hours in any 1 calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the compensation otherwise due under this Agreement. Design Professional and each subcontractor or consultant shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed under this Agreement, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

## **11.6 PATIENT HEALTH INFORMATION**

**11.6.1** Design Professional acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Design Professional shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Design Professional will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Design Professional, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Design Professional will report such actions immediately to the University Representative. Design Professional will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this

contractual responsibility will occur. Design Professional will report to University Representative within five (5) days after Design Professional gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

## **ARTICLE 12 - EXTENT OF AGREEMENT**

### **12.1 AUTHORITY OF AGREEMENT**

**12.1.1** This Agreement represents the entire and integrated agreement between University and Design Professional and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both University and Design Professional.

### **12.2 EXHIBITS**

**12.2.1** This Agreement includes the following exhibits attached hereto:

- .1 Campus Design Guidelines, Campus Signage, Facilities Management System CAD Standards, Facilities Management System Room Numbering Standards, & GIS Data Standards Documentation
- .2 Certificate of Insurance
- .3 Constructability Analysis / Quality Assurance
- .4 Project Program
- .5 Project Schedule
- .6 Rate Schedule
- .7 Regulatory Agencies & Approval Requirements
- .8 Reimbursement Schedule
- .9 Supplemental Requirements
- .10 University's Bidding Documents, General Conditions & Specifications Division 1, General Requirements
- .11 Value Engineering Program

### **12.3 THIRD-PARTY BENEFICIARIES**

**12.3.1** Nothing contained in this Agreement is intended to make the CM/Contractor or any construction Subcontractor (regardless of tier), any employee or agent of the construction Contractor or any Subcontractor or any person, including any consultant of Design Professional (regardless of tier), a third-party beneficiary of any obligations between University and Design Professional.

### **12.4 SURVIVAL**

**12.4.1** The provisions of this Agreement which by their nature survive expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement, including any and all warranties, indemnities, payment obligations, and University's right to audit Design Professional's and Design Professional's consultants' books and records, shall remain in full force and effect after any expiration or termination of the Agreement or Final Completion of the Project or the performance of services under this Agreement.

## **ARTICLE 13 - FEDERAL AND STATE GRANTS**

In the event that a federal or state grant or other federal or state financing is used in the funding of this Project, Design Professional shall permit the funding agency or its designee access to, and grant the funding agency the right to examine, documents covering the services performed under this Agreement. Design Professional shall comply with applicable federal or state agency requirements including, but not limited to, the requirements regarding hours, overtime compensation, nondiscrimination, and contingent fees.

## **ARTICLE 14 - NOTICES**

### **14.1 UNIVERSITY**

Any notice may be served upon University by delivering it, in writing, to University at the address set forth on the last page of this Agreement, or by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to University at the aforementioned or by sending a facsimile of the notice to University's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

### **14.2 DESIGN PROFESSIONAL**

Any notice may be served upon Design Professional by delivering it, in writing, to Design Professional at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to Design Professional at the aforementioned address, or by sending a facsimile of the notice to Design Professional's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

## **ARTICLE 15 - SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon University and Design Professional and their respective successors and assigns. Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due hereunder, may be assigned by Design Professional without the prior written consent and approval of University.

### **15.1 DESIGN PROFESSIONAL'S DEATH OR INCAPACITATION**

**15.1.1** If Design Professional transacts business as an individual, upon Design Professional's death or incapacitation, University may, at its option, terminate this Agreement as of the date of such event. If so terminated, neither Design Professional, nor Design Professional's estate shall have any further right to perform hereunder, and University shall pay Design Professional or the estate the compensation payable under Article 5 for any services rendered prior to this termination not theretofore paid. This compensation shall be reduced by the amount of additional costs that will be incurred by University by reason of this termination.



**15.1.2** If there is more than one Design Professional, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, University will make payments to those continuing as though there had been no such death or incapacitation; University will not be obliged to take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as Design Professional herein if death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.1.1 shall apply.

performance. In the event of termination for cause by Design Professional, University will pay Design Professional in accordance with subparagraph 16.1.2.

### **16.3 DOCUMENTS AND MATERIALS**

**16.3.1** In the event of Agreement termination by either party for any reason, University reserves the right to receive, and Design Professional shall promptly provide to University, all Drawings, Specifications, models, and other documents and materials prepared by Design Professional for the Project. In the event of termination, any dispute regarding the amount to be paid under Article 16 shall not derogate from the right of University to receive and use any such documents or materials.

## **ARTICLE 16 - TERMINATION OF AGREEMENT**

### **16.1 UNIVERSITY - INITIATED TERMINATION**

**16.1.1** If University determines that Design Professional has failed to perform in accordance with the terms and conditions of this Agreement, University may terminate all or part of the Agreement for cause. This termination shall be effective if Design Professional does not cure its failure to perform within 10 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University specifying the failure in performance. If a termination for cause does occur, University will have the right to withhold monies otherwise payable to Design Professional until the Project is completed. If University incurs additional costs, expenses, or other damages due to the failure of Design Professional to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to Design Professional upon completion of the Project. If the costs, expenses, or other damages incurred by University exceed the amounts withheld, Design Professional shall be liable to University for the difference.

**16.1.2** University may terminate this Agreement for convenience at any time upon written notice to Design Professional, in which case University will pay Design Professional in full for all services performed and all expenses incurred under this Agreement up to and including the effective date of termination. In ascertaining the services actually rendered to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to University or in the possession of Design Professional, and to authorized Reimbursable Expenses. No other compensation will be payable for anticipated profit on unperformed services.

### **16.2 DESIGN PROFESSIONAL - INITIATED TERMINATION**

**16.2.1** Design Professional may terminate this Agreement for cause if University fails to cure a material default in performance within a period of 30 days, or such longer period as Design Professional may allow, after receipt from Design Professional of a written termination notice specifying the default in

IN WITNESS WHEREOF, UNIVERSITY and DESIGN PROFESSIONAL have executed this Agreement as of the date first written above (see Cover Page).

**DESIGN PROFESSIONAL:**

\_\_\_\_\_  
(Name of Company)

By: \_\_\_\_\_  
(Signature & Date)

\_\_\_\_\_  
(Print Name & Title)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(License Number)

\_\_\_\_\_  
(Employer ID Number)

Telephone Number(s): \_\_\_\_\_  
\_\_\_\_\_

Facsimile Number: \_\_\_\_\_

**Recommended:**

By: University's Representative

\_\_\_\_\_  
(Signature & Date)

Name  
Title  
\_\_\_\_\_  
Planning, Design & Construction  
(Print Name & Title)

**Funds Sufficient:**

By: Financial Administrative Officer

\_\_\_\_\_  
(Signature & Date)

Susan McFadden  
Senior Financial Analyst  
\_\_\_\_\_  
Planning, Design & Construction  
(Print Name & Title)

**UNIVERSITY:**

By: The Regents of the University of California  
University of California, Riverside

\_\_\_\_\_  
(Signature & Date)

Blythe R. Wilson, Architect  
Director of Project Management  
\_\_\_\_\_  
Planning, Design & Construction  
(Print Name & Title)

Address: University of California, Riverside  
\_\_\_\_\_  
Planning, Design & Construction  
\_\_\_\_\_  
1223 University Avenue, Suite 240  
\_\_\_\_\_  
Riverside, CA 92521

Telephone Number: 951.827.4724

Facsimile Number: 951.827.3890