

**University of California, Riverside**

**Request for Qualifications**

**Field 11C/D, CVC (Citrus Variety Collection)**

**Screen House**

**Project No. 958092**

**Professional Services Agreement (PSA)**

Scope 1 - Work authorization for Field 11C/D; Develop stable and adequate project description for CEQA, Field 11C CUPS structure Conceptual Design and Cost Estimate

**Executive Design Professional Agreement (EDPA)** Scope 2 - Work authorization for Field 11C CUPS structure; Schematic Design, Design Development, Construction Documents, Construction Administration, Record Documents, and Warranty Period phases.

Advertisement Date: May 22, 2018 – June 5, 2018  
Document Issue Date: May 22, 2018  
Notice of Intent Requested by: May 29, 2018, 12:00 PM PST  
Last day for Questions: May 29, 2018, 12:00 PM PST  
RFQ Submittal Due by: June 8, 2018, 2:00 PM PST

For additional information, you may visit: <http://ae.ucr.edu/business/consultants.html>

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## I. ADVERTISEMENT FOR EXECUTIVE DESIGN PROFESSIONAL SERVICES

The University of California, Riverside requests that qualified architects or engineers submit written Statements of Qualifications to provide programming, site planning, and design services for the following proposed project, as described below:

### SCOPE 1: Work Authorization for PSA to include:

#### 1. Adequate and Stable Project Description for CEQA

#### 2. Conceptual Design

#### 3. Statement of Probable Cost.

- Fixed 2.6-acre site for clearance and construction of one (1) C.U.P.S.\* structure of approximately 90,000 square feet, with modified shipping container vestibule access.
- Pole supports shall not overlap tree spacing HDPE product dimensions shall be taken into consideration.
- Site access.
- Site domestic water.
- Site electrical.
- Site irrigation.
- Site storm water management.

\*Citrus Under Protective Screen [C.U.P.S.] is pole & cable screen house construction utilizing ASTM-E84, Class-1A, UV-Stabilized polyethylene monofilament [HDPE] mesh of varying opacity.

**SCOPE 2:** Work Authorization for Executive Design Professional Services for Schematic Design, Design Development, Construction Documents, Cost Estimating, Bidding and Construction Administration Phases for SCOPE 1 scope items listed above, with construction to be completed in calendar year 2019.

**SCOPE 2:** Anticipated Construction Cost: **\$900,000.00** (nine hundred thousand U.S. dollars)

The University of California, Riverside (UC Riverside) and the College of Natural and Agricultural Sciences (CNAS) in response to the identification of the Huanglongbing (HLB) disease in Riverside, as spread by the Asian Citrus Psyllid, has determined to protect, preserve and promulgate the 1038 citrus cultivars included in the Citrus Variety Collection by the construction of *APHIS*\* approved screen house structures.

\**APHIS* is the Animal and Plant Health Inspection Service, and is an agency of the United States Department of Agriculture (USDA) responsible for protecting animal health, animal welfare, and plant health.

## II. OVERVIEW OF UNIVERSITY OF CALIFORNIA, RIVERSIDE

The University of California, Riverside is situated on 1,125 acres located three miles east of downtown Riverside. It is in the heart of the "Inland Southern California," an area that includes western Riverside and San Bernardino counties and has become one of the fastest growing areas in California. The campus serves as one of the most important educational and cultural resources for the area.

The campus is bisected by the Interstate 215/SR-60 freeway. The two resulting areas of campus are:

- **East Campus:** The 602-acre main campus is situated east of the freeway and includes the academic Core Campus, student housing and the majority of support functions.
- **West Campus:** The 523-acre area west of the freeway currently is utilized primarily for agricultural research. West Campus is bisected by Martin Luther King Drive, areas south of which are dedicated to long term land based research. The proposed location for the project is on the south-east corner of intersection of Martin-Luther King Boulevard and Canyon Crest Drive.

### III. PROJECT DESCRIPTION

Develop existing Agricultural Operations Field 11C for one (1) CUPS\* structure of approximately 90,000 square feet. Project includes site development, existing citrus tree removal, soil fumigation, storm water management, new irrigation, utilities, vestibule access, CUPS structure design, de-confliction of structure from planting layout, thermal buoyancy and passive cooling technologies to maintain <105 degrees.

#### A. AWARD OF CONTRACT

**SCOPE 1** services will be provided under a Professional Service Agreement (PSA). Award of the contract for **SCOPE 1** services does not guarantee that the chosen firm will continue through **SCOPE 2**.

The delivery method of this project shall be **Design-Bid-Build**. Exercise of **SCOPE 2** services will be at the sole discretion of the University and will be provided under the appropriate Design Professional Agreement (EDPA).

### IV. PROJECT REQUIREMENTS

#### A. CONSULTANT TEAM AND PROCESS

- The consultant team shall include appropriate individuals, based upon scope, as may be needed to appropriately complete the indicated scope of work. It is required that the structure be *APHIS\** approved, however it is intended that the University Representatives (the PMT) act to determine an acceptable level of containment for the facility, as such a green-house/screen-house consultant is not required in this instance.
- The consultant team shall receive direction from the UCR Project Management Team (PMT). The PMT shall consist of representatives from the UC Riverside offices of Capital Planning, Architects & Engineers, and the College of Natural and Agricultural Sciences. The PMT shall act as a liaison for the University and the consultant team.
- The planning and design process shall require interactive meetings with the PMT, and shall not require presentation to the campus Design Review Board (DRB), but shall be reviewed by the Campus Architect.
- The consultant team shall be responsible for producing all meeting minutes and associated handouts in an electronic format. These materials shall be provided in a format consistent with campus standards, and shall be promptly distributed to campus participants by the PMT within one week of the meeting.

\**APHIS* is the Animal and Plant Health Inspection Service, and is an agency of the United States Department of Agriculture (USDA) responsible for protecting animal health, animal welfare, and plant health.

B. SCOPE OF SERVICES (SCOPE 1 only)

The selected consultant team shall be required to produce graphic, written, and digital documentation that clearly presents site and facility requirements. Program requirements and site analysis will be accomplished by working closely with the PMT. Planning and design processes will need to demonstrate stewardship of the campus' limited financial resources and environmental assets. Key elements of the Scope of Services include:

1. **Mobilization / Data Collection:** Review schedule and deliverables with the PMT. Compile existing programmatic and campus information that is necessary to complete the identified scope of services using surveys, interviews, and other applicable techniques.
2. **Site Program:** Develop a site program that addresses the programmatic needs for the identified functions.
3. **Site Analysis:** Examine the proposed campus location to identify site opportunities that will address program requirements as well as constraints. The goal will be to incorporate the program into the identified site in the best possible manner. Proposed utility service points of connection, and aspects of site drainage and storm water management shall also be identified.
4. **Functional Concepts and Design Criteria:** Evaluate programmatic requirements for an *APHIS* approved structure, given C.U.P.S. construction and site considerations. Concepts will show how overall program requirements can be implemented while optimizing the use of limited financial resources, with minimal site disturbance and grading. Code analysis narrative is also required.
5. **System Criteria/Requirements:** Develop performance standards for applicable system components including HDPE mesh, structural, storm water, site electrical and mechanical ventilation, moveable elements [modified shipping container vestibule]. Performance standards must be in accordance with applicable UCR specifications and design criteria.
6. **Project Schedule and Implementation Plan (for Proposed Project Only):** Develop a preliminary project schedule that shows the concept design, schematic through working drawings, specifications, and construction timeframes in tabular and graphical formats and is aligned with the project schedule. Identify an implementation strategy that meets project schedule and/or improves the project delivery timeline. Schedule will include all aspects of the project. Any alternative delivery opportunities that the UC Riverside may consider to reduce time to delivery, manage costs, and maintain quality should also be considered.
7. **Cost Plan:** Compute preliminary construction cost utilizing all program variables, including all assumptions about site layout, materials, systems, etc. at current California Construction Cost Index (CCCI). All assumptions must be clearly documented, and furnish cost in current

dollars computed to the construction midpoint. Preference is to utilize the expertise of a Certified Professional Estimator and/or equivalent to produce the estimate.

- 8. **Findings and Conclusions:** Present project information to the Campus Architect at a minimum of one milestone each of Phases 1 and 2 respectively.

The project shall consider all utility systems that are necessary to support the Proposed Project, and shall include, but may not be limited to: Domestic Water and proximity to Fire Hydrant; Storm Water Management; Electrical Power Distribution (no provision for emergency power is included); Campus Irrigation Water, and utility relocations that may be necessitated by the proposed scope of work.

C. DELIVERABLES

The recommendations of **SCOPE 1** shall be submitted in report form in graphic and narrative format, as necessary to communicate the site planning and design intent. All reports, maps, plans and graphics will be provided in PDF format as well as their original format such as the AutoCAD (version in use at UCR), Adobe Photoshop (.PSD), Adobe Illustrator (.AI), etc., with all layers and links intact. All site plans will be aligned with the campus coordinate system and be provided in a format that can easily be incorporated into the Campus Geographic Information System (GIS).

The deliverables for **SCOPE 2** shall be defined in the EDPA.

D. PROJECT SCHEDULE

Due to the identification of the HLB disease in Riverside, it is imperative that the planning, design, and construction of the 1.4-acre C.U.P.S. structure be accomplished in calendar year 2018. The selected consultant team must be ready to start work immediately upon receipt of written notice to proceed.

**SCOPE 1:** Services for SCOPE 1 may tend overlap partially, i.e. into schematic design phase with SCOPE 2. The PMT will work with the selected consultant team to develop a detailed project schedule.

**SCOPE 2:** The schedule for SCOPE 2 is driven in part by the need to attain the point of irrevocable commitment and to then complete **CEQA**, however all elements of SCOPE 2 must be completed by not later than March 29, 2019.

**CEQA:** CEQA documentation for the gross square footage of Field 18, Block C shall be completed as a separate effort with a firm selected by UCR to allow for the construction of SCOPE 2 to be operational by September 31, 2019.

V. **SUBMITTAL REQUIREMENTS & SCREENING PROCESS**

Entities intending to submit Qualification Documents for this project are asked to confirm their intent to do so by emailing a written statement (Notice of Intent) to the RFQ Administrator by 12:00 PM on May 29, 2018.

The last day for questions will be on May 29, 2018, 12:00 PM. Please use the RFQ project name and number on the subject line of your correspondence.

**Submit Notice of Intent and Questions to:**

Reggi Thomas  
UCR Contracts Administration  
Email: [reggi.thomas@ucr.edu](mailto:reggi.thomas@ucr.edu)

**Submit 1 electronic copy of your response to this RFQ on a flash drive and mail or hand deliver on or before 2:00 PM, June 8, 2018 to:**

Architects and Engineers, Reggi Thomas  
1223 University Avenue, Suite 240  
Riverside, CA 92507

**E-mail submissions, faxed submissions and telephonic submissions will not be accepted.**

Every effort will be made to ensure that all persons, regardless of race, religion, sex, color, ethnicity and national origin have equal access to contracts and other business opportunities with UC Riverside. 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.

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.

A. **SUBMITTAL FORMAT (Electronic copy, maximum of 10 pages of content excluding UCR required forms, cover letter, tabs/divider pages)**

UC Riverside is looking for a highly creative, responsive, and best qualified consulting team. Proposals should be concise and contain a cover letter that highlights the firm and/or team's unique qualifications, and the primary point of contact name, telephone number and direct e-mail address.

In order to be considered complete, proposals should be organized per the sections listed below in sequential order with adequate supporting materials as necessary for UCR to make an informed selection:

1. **Qualification Submittal Form:** Please complete, sign and provide requested documents.
2. **Introduction:** Describe the composition of the team assigned to the project, its planning and design approach and how this will contribute to a successful project. Explain the firm/team's unique qualifications for the project.
3. **Approach:** The consultant team proposal shall include a description of the recommended planning approach. Also describe the approach that will be used to complete the identified tasks within the identified timeframe, specific challenges associated with the project, and how these challenges will be addressed. Summarize the methodology that will be used. Outline an anticipated work plan and schedule that illustrates how the project will be completed within the identified timeframe.

4. Team Description of Relevant Professional Experience: Proposals should outline the entire consultant team (see Submittal Format section). Provide names, educational background, professional registrations, experience and proposed role for each team member (including sub-consultants). Describe and furnish a project team organization chart. The team project manager shall be clearly identified. Team members described must be only those assigned to work on the project. The University reserves the right to participate in the selection of and approval of certain sub-consultants.
5. Project Experience: List comparable projects in reverse chronological order in which team members were involved. Identify the team member involved and their role with each project. Indicate clearly whether the project was completed by the firm or the by a team member when employed in another firm. Additional consideration may be given to proposed team members and firms that have successfully worked together on previous projects.
6. Illustrative Materials: Provide project pages that illustrate the team's capabilities with similar projects.

B. QUALIFICATIONS

Highest consideration shall be given to consultants with demonstrated experience in:

1. The programming, planning, design and construction of like projects.
2. Familiarity with the UCR processes, and responsiveness to campus needs.
3. Code analysis and resultant impacts upon design and construction for like projects.

C. SELECTION PROCESS/CRITERIA

All proposals will be examined for merit and ranked by a selection committee according to quality and responsiveness. The successful proposals will be placed on a shortlist, and called for interviews. Only key individuals representing the particular firm and/or team should attend the interview, and must include the team project manager.

The selection committee is seeking project teams that exhibit strong site planning and design skills and have demonstrated experience with comparable projects at large colleges and universities. Major considerations in the team/firm selection will be based upon the following criteria:

1. Planning and design expertise
2. Experience of the firm/proposed team at large colleges and universities
3. Planning approach
4. Experience of the team members
5. Management plan and approach to quality control
6. References

D. SCHEDULE FOR SCREENING AND SELECTION OF CONSULTANTS, INTERVIEWS

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.

The selection process will proceed as follows:

1. Entities are requested that they submit a written Notice of Intent as indicated in the Request for Qualifications Advertisement. The Notice of Intent shall be in the form of an email to the RFQ Administrator announcing the entity's intent to submit Qualification Documents for this project.
2. Entities who are eligible to submit Qualification Documents for this project, must submit all required documents by the given deadlines, as required in the Request for Qualifications Advertisement.
3. The University Screening Committee will evaluate each Statement of Qualifications Submittal and will rank the top three (3) prospective firms on their demonstrated competence and professional qualifications necessary for the satisfactory performance of the services required.
4. The Screening Committee shall develop a list ranking the top three firms, and shall submit the list to the A&E Project Manager or designee, for review and approval.
5. The A&E Project Manager or designee shall review and approve the list and shall notify all parties of the top three (3) ranking firms.  
*Note: The University reserves the right to interview more than 3 firms if the University determines it is in the University's best interest to do so.*
6. The University will notify the top three (3) ranking firms that they have been selected for a Presentation/Interview with the selection committee for each of the proposed teams. Notice shall be in writing, shall include the time and date for the presentation/interview. Each selected firm shall have the proposed key team members and project manager in attendance.
7. Submitting firms will be notified of the decision by the Selection Committee within 3 days of the Selection Committee's decision.

If the University receives submissions from fewer than three qualified firms, the University may select from among the available qualified firms.

E. NEGOTIATION AND AWARD OF CONTRACT

1. The University shall 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 within 5 business days after the successful firm has been notified of its selection, unless the written notice provides that additional time is necessary to begin negotiations.

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 5 business 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.

## VI. 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 Service Agreement (PSA) and appropriate Design Professional Services Agreement (EDPA).

Note any exceptions to the attached Professional Service Agreement (PSA) and Design Professional Services 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. To view samples of the Design Agreements, please visit:

<http://www.ucop.edu/construction-services/facilities-manual/contract-templates-design/edpa.html>

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	\$1,000,000
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>	Minimum Requirement
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	\$1,000,000
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.

Selected firm shall provide evidence of an Equal Employment Opportunity policy, and its compliance with applicable federal law pertaining to Equal Employment Opportunity.

**END**



**SURVEY (Information Only)**

**1. 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

<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	\$1,000,000
Products - Completed Operations Aggregate	\$1,000,000
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

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

<u>Professional Liability Insurance* – Limits of Liability</u>	<u>Minimum Requirement</u>
Each Occurrence	\$1,000,000
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



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

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, {FACILITY NAME}**

**{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>Discipline</u>
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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 and specifications needed to issue Field Orders and Change Orders as required by the Supplemental Requirements in the Exhibits.

**{FACILITY HAS THE OPTION TO USE 2.6.7 OR TO LEAVE PREPARATION OF CHANGE ORDERS AS ADDITIONAL SERVICES.}**

**2.6.7** 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.

## **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, "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** 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 auto-mobiles, 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  
Architects & Engineers  
\_\_\_\_\_  
(Print Name & Title)

**Funds Sufficient:**

By: Financial Administrative Officer

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

Greg Artman  
Director Business Support Services  
Facilities Services  
\_\_\_\_\_  
(Print Name & Title)

**UNIVERSITY:**

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

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

John A. Casey, P.E., Executive Director  
Construction and Project Management  
Architects & Engineers  
\_\_\_\_\_  
(Print Name & Title)

Address: UCR Capital Programs  
Architects & Engineers  
1223 University Avenue, Suite 240  
Riverside, CA 92521

Telephone Number: 951.827.4064

Facsimile Number: 951.827.3890

**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, confidentialities, 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 Architects & Engineers; Capital Finance  
1223 University Avenue, Suite 240  
Riverside, CA 92521

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 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 every 5 hours of journeyman 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 journeymen 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 journeymen 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 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. 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 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.

**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

SAMPLE

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

Greg Artman  
 Director Business Support Services  
 Facilities Services  
 \_\_\_\_\_  
 (Print Name & Title)

**UNIVERSITY:**

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

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

John A. Casey, P.E., Executive Director  
 Construction Project Management  
 Architects & Engineers  
 \_\_\_\_\_  
 (Print Name & Title)

Address: UCR Capital Programs  
Architects & Engineers, Attn: Contracts  
1223 University Avenue, Suite 240  
Riverside, CA 92521

Telephone Number: 951.827.4724

Facsimile Number: 951.827.4556

Account No.: \_\_\_\_\_ Activity Code: \_\_\_\_\_  
 Fund: \_\_\_\_\_ Function: \_\_\_\_\_  
 Cost Center: \_\_\_\_\_ Project Code: \_\_\_\_\_