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| --- | --- |
| **Cover Sheet and Instructions** | APPROVED DOCUMENT – This document is approved by the Office of the President and Office of the General Counsel for use by the Facility. |
|  |  |
| **PURPOSE OF DOCUMENT:** | Provides the University and the Consultant with a legally binding contract for Inspection Services for Exterior, elevated wood framed elements . |
| **CROSS-REFERENCE TO FACILITIES MANUAL:** | FM3[I]:[3.7](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/ch3.pdf) |
| **CONTENTS:** | Agreement document |
| **FOR USE WITH:****(Not applicable to Some Documents)** | √ | Professional Services Agreement (PSA) |
| **COMPLETED BY:** | √ | Filling in |   | Adding Text |  | No Data Required |
| **ITS USE IS:** | √ | Required |  | Optional |

**NOTE:** To use the electronic file of this document, you must go to the “Tools” pull down menu in Microsoft Word, select “Options,” select the “View” tab, and then put a check in the box “Hidden text.” Most instructions and alternate language is displayed in hidden text. Do not print the hidden text for the final document.

**Completion Instructions:**

1. The Professional Services Agreement between The Regents of the University of California and the Balcony Bill Inspection Consultant (Professional Services Agreement) has been crafted to accommodate most situations encountered in the procurement of consulting services (for design services, use the Executive Agreement).
2. Negotiations between the Facility’s responsible administrator and the consultant will determine such required information as specific services, fees, expenses, schedules, additional consultants, and the number and types of documents the consultant must provide. Negotiations must comply with the procedures for consultant selection required by Section 2.2 of Volume 3 of the Facilities Manual (see [FM3[I]:2.2](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/ch2.pdf) ).
3. After the negotiations outlined in Step 2 have been completed, but prior to providing a copy of the Professional Services Agreement to the consultant, complete the Agreement and the Exhibits according to the following:

• Blank spaces in the Agreement are left empty until after the selection process when the Agreement is prepared for issuance to the selected Consultant.

• Hidden text within brackets. {This is an example of the format.} Read the material within the brackets and take the appropriate action (usually inserting text or selecting from a choice of texts.) When printing this document, the default print property will not print the hidden text.

• Coded instruction within brackets. {This is an example of the format.} The instructions and shading will disappear when the required information is typed.

• Suggested text is shaded in gray without brackets (see Modification and Additions below.)

**4. *Order Period***. The “Order Period” represents the time during which a written Authorization for new scope may be issued. In contrast, the ***Period of Performance*** is specified in each written Authorization rather than in the PSA itself.

**5. *Consultant Rate Schedule*** *and* ***Reimbursement Schedule.*** These Exhibits contain suggested text shaded in gray which may be modified by the Facility. (See comments below).

**6. *Non-asbestos hazardous materials***. Several modifications to the agreement may be necessary for non-asbestos hazardous materials consulting services. Consult with campus risk management regarding recommended modifications, if any, to the insurance requirements in Article V.B.

Additionally, replace paragraph K “Confidentiality” in Article III the following revised paragraph:

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. This nondisclosure provision shall not apply to any of the following:

1. Information that the Consultant can demonstrate by written records was known to him or her prior to the effective date of this Agreement.

2. 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. Is obtained lawfully from a third party.

NOTE: CHANGES TO THE AGREEMENT (OTHER THAN THOSE SHOWN ABOVE) REQUIRE REVIEW AND APPROVAL BY THE OFFICE OF THE PRESIDENT AND BY THE OFFICE OF THE GENERAL COUNSEL BEFORE THESE DOCUMENTS ARE ISSUED (SEE (i):4.2). SEND DOCUMENT TO OFFICE OF THE PRESIDENT FOR REVIEW.

**Comments:**

1. ***Compensation***. The default method of compensation for each Written Authorization is by the agreed rates in the Consultant Rate Schedule plus actual expenditures of Consultant and its subconsultants (not to exceed specified reimbursement limits) in accordance with the Reimbursement Schedule. An estimate of person-hours may aid in monitoring Consultant progress including measurement of earned value. At the Facility’s election, a Written Authorization may include an estimated number of person-hours, preferably by job classification, to be compensated in accordance with the Consultant Rate Schedule. Alternatively, a lump sum fee may be negotiated for one or more Written Authorizations. Therefore, it is recommended to include in the Reimbursement Schedule a restriction on reimbursement of fees of Consultant’s subconsultants or subcontractors where a lump sum fee has been negotiated.

1. ***Escalation***. Unless escalation is provided in the Consultant Rate Schedule, the rates may not be changed except by Amendment. At the Facility’s election, the Consultant Rate Schedule may provide for escalation of hourly rates on a periodic basis (i.e. every 2 years). It is recommended that the Agreement provide for escalation if the contract duration exceeds 3 years.

**PROFESSIONAL SERVICES AGREEMENT**

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**{NOTE: DO NOT USE THIS DOCUMENT FOR THE PROCUREMENT OF DESIGN SERVICES EXCEPT AS NOTED BELOW}**

**PROFESSIONAL SERVICES AGREEMENT**

between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

and

This AGREEMENT is made on the                                day of                                in the year                                between The Regents of the University of California, a California corporation, hereinafter called “University” and , a {INSERT FORM OF ENTITY e.g. a California corporation, a Partnership, etc.} , 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, , to perform Inspection Services as required and authorized by the University. {ADD THE FOLLOWING SUBPARAGRAPH IF CONSULTANT WILL ACT AS UNIVERSITY’S REPRESENTATIVE:} Consultant may be required to act as University’s Representative or as his or her authorized representative under a {INSERT DELIVERY METHOD, E.G., LUMP SUM, DESIGN-BUILD, etc.} contract as required and authorized by the University.

The University will authorize the Consultant to perform specific professional 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.

1. Furnish drawings, documents, reports, surveys, renderings, exhibits, models, prints, and photographs, and other materials as required and as authorized by the University. as needed.
2. Provide overall construction management, coordination, scheduling, logistic, site safety, security, cost estimating, cost forecasting, constructability, and information and document management for all Construction Work authorized by the University through the issuance of a Work Order, as needed. Consultant will manage the participation of its consultants, subcontractors, and vendors in the development of the design, other pre-construction efforts, and construction.

**II. TERM**

 A. *Order Period.* The period of time for issuance of written Authorizations to Perform Services or Work Orders (hereinafter “Order Period”) shall be from {DATE} to {DATE}.

B. *Period of Performance.*  The period of performance under the Agreement shall be as specified in any written Authorizations to Perform Services or Work Orders, 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 or Work Order.

 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. *Work Order*. Additional services and Construction Work may be added to the Agreement (“Work”) in the future through the execution by the Parties of a work order in the form attached hereto as **Exhibit F** (“Work Order”)

 C. *Selection of Subconsultants, Subcontractors, and Vendors.* Subject to approval by the University, the Consultant shall contract for or employ, at its expense, such professional subconsultants, subcontractors, or vendors as the Consultant deems necessary for the completion of the services. Consultant will provide the University in writing, with the names of persons or entities proposed to perform any portion of the Work as a subconsultant, subcontractor, or vendor together with their qualifications, educational history, work history, proposed compensation terms, and any other information relevant to their proposed role on the Project. The University will provide timely a written response if it objects to the proposed person or entity because of the proposed person’s or entity’s qualifications, educational history, work history, or other reasonable basis. Consultant will then propose another person or entity for review by the University. This process will continue until the University has no reasonable objection. Subconsultants, subcontractors, and vendors will be selected on an open bid or qualifications basis as determined by the University. All subconsultants, subcontractors, and vendors will be properly licensed by the State of California for their respective portions of the Work, including any Design Services performed by design-build trades. Substitution of an approved subconsultant, subcontractor, or vendor may not be made without University approval and must comply with the Subletting and Subcontracting Fair Practices Act.

 D. *Subconsultant, Subcontractor, and Vendor Requirements.* The Consultant shall cooperate with other professionals employed by the University in the production of other work related to its services. The Consultant is as responsible for the performance of its subconsultants, subcontractors, and vendors 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, subcontractors, or vendors. Consultant will require each of its subconsultants, subcontractors, and vendors, to the extent of the portion of the Work each of them performs, to be bound to Consultant by the terms of the Agreement, and to assume toward the Consultant all the obligations and responsibilities that the Consultant assumes toward the University through the Agreement.

 E. *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. If any requirements of this Agreement are stricter in nature than any of the preceding requirements, the requirements of this Agreement shall take precedence.

 F. *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 forgoing 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 not withstanding, 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.

G. *Warranty and Correction of Work for Construction Work Only*. Consultant warrants that any Construction Work performed by it and/or its subcontractors will be of good quality, free from defects, and conforming with Applicable Law. Under this warranty, Consultant and each subcontractor, at no additional expense to the University, will repair or replace any deficient or defective Construction Work related to its portion of the Work, together with any other work that is damaged during repair or replacement. Establishment of the warranty period for correction of Construction Work relates only to Consultant’s or the subcontractors’ specific obligation to correct defective or non-conforming Construction Work and does not shorten or restrict the statute of limitations periods for legal claims arising from this Agreement. The warranty obligation commences on Substantial Completion of the scope of Work performed under a given Work Order and continues until two years after that date or, for a defective component only, the date of repair of that defective component, whichever is later, but in no event for more than three (3) years after the date of the scope of Work performed under a given Work Order. The warranty provisions set forth in Section III.G of the Agreement must be included in any subcontracts.

 H. *Assignment of Agreements.* All subcontracts, purchase orders, and subconsulting agreements will include a provision requiring the subcontractor, subconsultant, or vendor to assign the subcontract, purchase order, or subconsulting agreement to the University upon termination of this Agreement by the University and the University’s election to accept the assignment of the subcontract, purchase order, or subconsulting agreement. All subcontracts, subconsulting agreements, and purchase orders will also include a provision stating that if the subcontract, subconsulting agreement, or purchase order is assigned to the University as a result of a termination of the Consultant, and the Work has been suspended for more than 30 days, the subcontractors’, subconsultants’, and vendors’ compensation will be equitably adjusted for increases in cost resulting from the suspension.

I. *Consultants 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; subcontractor 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. Consultant will require its consultants, subcontractors, and vendors to be bound by and fully comply with Section III.I of this Agreement

J. *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.

K. *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.

 L. *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.

M. *Statistical Reporting*. At the commencement of performance, Consultant shall complete and submit, and require each subconsultant or subcontractor who performs services under this Agreement to complete and submit, a Confirmation of Certification 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.

N. *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

O. *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.

P. *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 $15 per hour ) and shall comply with all applicable federal, state and local working condition requirements.

**{OPTIONAL: INSERT THE FOLLOWING LANGUAGE IF CAMPUS HAS A DIGITIAL SIGNATURE PREFERENCE FOR CONTRACT AND DOCUMENT EXECUTION}**

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

**IV. COMPENSATION**

A. Compensation payable by University under this Agreement shall not exceed $ {AMOUNT IN FIGURES}.

 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 VIIIA. 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. {OPTIONAL: INSERT INVOICING INSTRUCTIONS: e.g. Invoices shall be sent to the following address(e)}

4. 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. Such reimbursable expenses will be paid in addition to the fees for Services under this Agreement.

**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.

5. Consultant must include indemnification provisions that are substantially similar to those outlined in Section V.A of the Agreement in its subcontracts, purchase orders, and consulting agreements that require each subcontractor, vendor, and consultant to defend and indemnify Consultant, the University, and their respective representatives, representative’s consultants, and the respective directors, officers, agent and employees of any of them. The required indemnification provision will also include the following provision: Nothing contained within these indemnification obligations requires defense or indemnity that is not permitted under Applicable Law and if a conflict exists between Applicable Law and these indemnification obligations, then the indemnification obligations should be construed to require as much as, but no more than, permitted by Applicable Law.

 **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

ii. Products Completed; Operations Aggregate

iii. Personal and Advertising Injury

iv. General Aggregate

 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 per claim and 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, subcontractors, and anyone directly or indirectly under the control, supervision, or employ of Consultant or Consultant's subconsultants and/or subcontractors.

g. Consultant must require its consultants, subcontractors, and vendors to be bound by and fully comply with Section V.B to the Agreement.

**VI.** **DISPUTES**

**A.** **NEGOTIATION**

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

**B.** **MEDIATION**

Within 60 days, but no earlier than 30 days, following the receipt by the other party of the disputing party’s written notice of intent to litigate, the parties shall submit the matter to non-binding mediation.

**C.** **LITIGATION**

 Disputes arising from this Agreement between Design Professional and University which cannot be settled through negotiation or mediation shall be subject to litigation. The Parties agree that the forum for such litigation shall be the Superior Court of California in the county where the campus on which the work was to be performed is located.

**VII. 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 journeyperson, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by Consultant or subcontractors or subconsultants keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:

 a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

 b. A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

 c. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access

 to such records at the principal offices of Consultant or subcontractors or subconsultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant awarded the Agreement or performing the Agreement shall not be marked or obliterated.

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

 **D. APPRENTICES**

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

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

 3. When Consultant or subcontractors or subconsultants employ workers in any apprenticeship craft or trade for the Covered Services hereunder, Consultant or subcontractors or subconsultants shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, for a certificate approving Consultant or subcontractors or subconsultants under the apprenticeship standards for the employment and training of apprentices in the locality so identified. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Consultant or subcontractors or subconsultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

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

 5. If Consultant or subcontractors or subconsultants employ journeypersons or apprentices in any apprenticeship craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the locality so identified are contributing, Consultant and ~~s~~ubcontractors or subconsultants shall contribute to the fund or funds in each craft or trade in which they employ journeypersons or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same manner done by the other contractors. Consultant may include the amount of such contributions in computing its compensation under the Agreement; but if Consultant fails to do so, it shall not be

 entitled to any additional compensation therefore from University.

 6. In the event Consultant willfully fails to comply with this Paragraph VI.D, it will be considered in violation of the requirements of the Agreement.

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

 **E. WORK DAY**

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

**VIII. 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.

**IX. 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:

 **Exhibit** **{A}:** [Written Authorization to Perform Services](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexa.pdf)

 **Exhibit {B}:** [Consultant Rate Schedule](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexb.pdf)

 Exhibit **{C}Exhibit C:** [Reimbursement Schedule](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexc.pdf)

 Exhibit **{D}:** [Certificate of Insurance](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexd.pdf)

 Exhibit **{E}**: [Amendment](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexe.pdf)

 Exhibit **{F}**: [Work Order](https://www.ucop.edu/construction-services/_files/facman/balcony-bill-psa-work-order.docx)

 Exhibit **{SC}:** [Confirmation of Certification](https://www.ucop.edu/construction-services/_files/confirmation_of_certification.docx)

 Exhibit **{FD}:** [Final Distribution of Contract Dollars](http://www.ucop.edu/facil/fmc/facilman/volume3/part1/psaexfd.pdf)

IN WITNESS WHEREOF, the UNIVERSITY and the CONSULTANT have executed this Agreement on the day of ,

CONSULTANT

 By:

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 (Signature)

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 (Date)

CONSULTANT ADDRESS

CONSULTANT FACSIMILE NUMBER

EMPLOYER IDENTIFICATION NUMBER

**{NOTES: (1) THE UNIVERSITY SIGNATURE IS NOT TO BE AFFIXED TO THIS DOCUMENT UNTIL IT HAS BEEN SIGNED BY THE CONSULTANT.**

**(2) THE PERSON SIGNING FOR THE UNIVERSITY MUST HAVE DELEGATED AUTHORITY TO DO SO. THIS DELEGATION MUST BE MADE IN WRITING BY THE FACILITY CHANCELLOR OR BY THE LABORATORY DIRECTOR AND IT MUST BE MADE IN ACCORDANCE WITH THE REGENT’S STANDING ORDER 100.4}**

UNIVERSITY THE UNIVERSITY OF CALIFORNIA,

 By:

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 (Signature)

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 (Date)

UNIVERSITY ADDRESS

UNIVERSITY FACSIMILE NUMBER