

# Professional Services Agreement

This Agreement is made on \_\_\_\_\_ between The Regents of the University of California, a constitutionally created California corporation, hereinafter called University, and «consultantfirm», «FormOfBus», 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. The Consultant shall furnish the following services:

Act as a consultant to the University of California, Berkeley to perform consulting services. Except as provided in section IV.H, the University will issue a written authorization, similar to Exhibit A, to perform the specific services required. Each authorization will state the particular area of concern, the specific services to be performed, the schedule for their completion, and their estimated cost. Under this Agreement, the consultant may perform design services up to and including Schematic Design but in no event does this Agreement authorize the preparation of construction documents.

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

## II. TERM. The term of this Agreement shall be five years from the date first above written unless terminated earlier in accordance with the terms hereof, which term may be extended by the mutual agreement of the University and Consultant.

### A. 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 ten 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. The University may terminate this Agreement for convenience at any time upon written notice to the 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.

B. CONSULTANT-INITIATED TERMINATION. Consultant may terminate this Agreement for cause if University fails to cure a material default in performance within a period of thirty days, or such longer period as Consultant may allow, after receipt from Consultant of a written termination notice specifying the default in performance. In the event of termination for cause by Consultant, University will pay Consultant in accordance with paragraph A.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, including without limitation all applicable licensing requirements.

E. **COPYRIGHT, OWNERSHIP AND USE OF DOCUMENTS.** Consultant hereby assigns to the University all right, title, and interest, including, but not limited to, all rights under copyright laws, 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 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. 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 three years from the date of Final Payment under this Agreement.

G. **CONFLICT OF INTEREST.** Consultant affirms that to the best of its knowledge, there exists no actual or potential conflict between 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"; and,
  - c) any oral information conveyed to the Consultant by the University and followed by a written communication within thirty 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 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. PUBLIC STATEMENTS. Neither Consultant nor any entity over which Consultant has control or supervision shall make any announcement, release any information, or authorize or participate in any interview to or with any member of the public or the press, any business, nonprofit entity, or other official or nonofficial body, or representative thereof, concerning any Project, or this or any related Agreement, without first obtaining written consent from University; provided, however, that consent is not required to release information pursuant to court order or requests of official regulatory entities.

IV. COMPENSATION. The University will have the right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily. The University will compensate the Consultant for the scope of services provided in accordance with this Agreement, computed as follows:

- A. For each written authorization, a maximum payment shall be established that shall not be exceeded without the prior written approval of the University. Alternatively, a lump-sum fee may be negotiated.
- B. All fees shall be in accordance with the Consultant Rate Schedule, pursuant to Exhibit B. Rates shall not be changed except with prior written approval of the University.
- C. Payments to the Consultant shall be made monthly, subsequent to the receipt of an invoice itemizing the costs of each written authorization for the month invoiced.
- D. Reimbursable Expenses shall be only for actual costs. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.
- E. Reimbursable Expenses are paid in addition to the compensation for Services of this Agreement and are actual expenditures made by the Consultant and the Consultant's employees and subconsultants for the following expenses:
  - 1. Transportation and living expenses while traveling more than 150 miles from the Berkeley campus. Transportation, lodging, and per diem expenses for travel between the Consultant's offices and subconsultant's offices are not reimbursable. Transportation expenses shall be paid on the same basis and shall be subject to the same conditions as those in effect for employees of the University. First class air travel is permitted only with express written

authorization. The following expenses shall not be compensable unless authorized, in writing, in advance by the University. Lodging expenses, and all other expenses of \$25 or more, must be supported by receipts.

a. Daily meals (excluding alcoholic beverages) and incidental expenses—

i. for periods in excess of 24 hours: \$64, and

ii. for periods between 12 and 24 hours: \$42.

b. Private vehicle use on University-related business: IRS standard rate

c. Lodging: actual cost.

2. Expenses for printing, reproductions, and postage for documents, reports, surveys, drawings, and other materials (excluding reproductions for office use by the Consultant and the Consultant's subconsultants), licensing and other regulatory costs advanced, and subconsultant fees, shall be reimbursed at the rate of 1.1 times the amount expended and supported by documentation.

F. Compensation for Additional Services, if required, shall be negotiated separately.

G. Except as provided in Section II, in the event of termination of this Agreement prior to completion of the services being performed, the University will pay the Consultant 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 up to the date of termination, consideration shall be given to both completed service and service in progress, whether delivered to the University or in the possession of the Consultant, and to authorized Reimbursable Expenses. No other compensation shall be payable for anticipated profit on unperformed services.

H. Following an earthquake or other disaster—

1. If the President, Governor, or Chancellor of the Berkeley campus has declared a state of disaster or emergency, Consultant is hereby authorized, without further request from the University, to perform services within the scope of Consultant's license, including but not limited to building inspections, under the direction of the Vice Chancellor for Facilities Services or his designee. Consultant may thereafter submit invoices to University for professional services, pursuant to Exhibit B, identifying the declared disaster or emergency in place of the purchase order number described in Exhibit A; or,

2. A Consultant holding (i) a Professional Engineer license within the meaning of the California Business and Professions Code 6700 et seq., or (ii) an Architect license within the meaning of B&PC 5500 et seq., is hereby authorized to serve without compensation or the expectation of compensation, as provided in §§ 6706 and 5536.27, when invited, personally or by public announcement, to do so by the Chief of the University Police Department or another sworn officer of the University police. The provisions of §§ 6706 and 5536.27 shall supersede the terms of this Agreement to the extent they are inconsistent, including the release from liability in negligence for any personal injury, wrongful death, or property damage caused by the engineer's or architect's good faith but negligent inspection of a structure used for human habitation or owned by a public entity for structural integrity or nonstructural elements affecting life and safety. Consultants who qualify for service pursuant to §§ 6706 or 5536.27 should—

a. Commit licensed staff to participate on UC Berkeley's Emergency Response Team for Post-earthquake Building Assessments as a priority, and as personal situations permit or allow;

b. Identify licensed staff that could be called in to assist on an emergency basis, including home phone numbers, pagers, cellular phone numbers, etc. Such staff should include individuals proximate to the Berkeley campus, as well as some non-local staff that may not be affected by an earthquake. Information will be kept confidential to the extent permitted by law; and,

c. Commit to train staff and stay current on ATC-20 (or similar) post-earthquake building assessment training.

## 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—

a. 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");

b. the breach by Indemnitor of any of the provisions of this Agreement; or,

- c. willful misconduct by Indemnitor.
  - 2. The indemnification obligations under this Article V shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of non-delegable duty, or 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. 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.
- 1. Either Comprehensive Form General Liability Insurance (Contractual, products, and completed operations coverages included) with a combined single limit of no less than \$1,000,000 per occurrence, or Commercial-Form General Liability Insurance with coverage and minimum limits as follows:
 

Each Occurrence	\$1,000,000
Products Completed, Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
  - 2. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than \$1 million per accident.
  - 3. Professional Liability Insurance, with limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.
  - 4. If the above insurance (subparagraphs V.B.1–V.B.3) is written on a claims-made basis, it shall be maintained continuously for a period of no less than three years after the date of Final Completion of the services authorized pursuant to each Exhibit A 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–V.B.3 shall be—
    - a. 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
    - b. 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).
  - 5. Workers' Compensation as required and under the Workers' Compensation Insurance and Safety Act of the State of California, as amended from time to time.
  - 6. Employer's Liability:
 

Each Employee	\$1,000,000
Each Accident	\$1,000,000
Policy Limit	\$1,000,000
  - 7. Consultant, upon the execution of this Agreement, shall furnish University with Certificate Of Insurance from a company with a Best rating of A- or better, and a financial classification of VIII or better, or a rating by Standard &

Poor of AA or better, or a Moody's rating of AA or better, or as otherwise approved by University, evidencing compliance with this Article V, including the following requirements:

- a. Consultant shall have the insurance company complete University's form, Certificate Of Insurance (<http://www.ucop.edu/facilities-manual/volume3/part1/psaexd.pdf>). It alone constitutes evidence of insurance.
- b. 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.
- c. The General Liability insurance and the Business Automobile Liability insurance policies shall—
  - i. name The Regents of the University of California, its officers, agents, employees, consultants, representatives, and representative's consultants 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).; and,
  - ii. 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.
- d. The Professional Liability policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage.
- e. All 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 REQUIREMENTS

A. **NONDISCRIMINATION.** 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 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 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 or subconsultants comply with Section 1770, and the applicable sections that follow, including Section 1775 of the California Labor Code. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the California Department of Industrial Relations.

3. The 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 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 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 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 California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the 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 ten 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 five working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Paragraph or with California Labor Code Section 1776, Consultant shall have ten days in which to comply following receipt of notice specifying in what respects Consultant must comply. Should noncompliance still be evident after the ten-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 California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the 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.

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 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 journeyworkers 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 one apprentice for each five journeyworkers, 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 journeyworkers 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 journeyworkers 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 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 journeyworkers 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 journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.
- E. **WORKDAY.** Consultant shall not permit any worker providing Covered Services to labor more than eight hours during any one day or more than forty hours during any one 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 eight hours in any one day and forty hours in any one 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** 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



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 amended only by a written instrument signed by both the University and the Consultant.

B. This Agreement includes the following exhibits attached herewith:

- Exhibit A: Written Authorization to Perform Services
- Exhibit B: Consultant Rate Schedule
- Exhibit C: Certificate of Insurance

IN WITNESS WHEREOF, the UNIVERSITY and the CONSULTANT have executed this Agreement.

CONSULTANT

«consultantfirm»

COMPANY REPRESENTATIVE

\_\_\_\_\_  
«firstnam» «lastnam», «title»

\_\_\_\_\_  
Date

CONSULTANT ADDRESS

«streetaddress»  
«citystatezip»  
Phone: «voice»  
Fax: «fax»  
Tax ID#: «TaxID»

UNIVERSITY

The University of California, Berkeley

\_\_\_\_\_  
David R. Hunsberger, Capital Projects  
for The Regents of the University of California

\_\_\_\_\_  
Date

UNIVERSITY ADDRESS

1936 University Avenue, 2<sup>nd</sup> Floor  
Berkeley CA 94704-7027  
Fax: 510-642-7271  
[End of contract]



EXHIBIT B

CONSULTANT RATE SCHEDULE

<u>NAME</u>	<u>HOURLY RATE</u>
[Partner]	\$
[Senior Staff]	\$
[Drafter]	\$

EXHIBIT C

CERTIFICATE OF INSURANCE

(See: <http://www.ucop.edu/facilities-manual/volume3/part1/psaexd.pdf>)