

UC DAVIS HEALTH

CONSTRUCTION MANAGEMENT AGREEMENT – BLANKET

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

AND

FIRM NAME

MONTH/day/year

CONSTRUCTION MANAGEMENT AGREEMENT – BLANKET

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CONSTRUCTION MANAGEMENT AGREEMENT

BETWEEN

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

AND

THE CONSTRUCTION MANAGER (CM)

This AGREEMENT is made on the {DAY} day of {MONTH} in the year {YEAR} between The Regents of the University of California, A California corporation, hereinafter called "University", and {INSERT THE NAME OF THE CONSTRUCTION MANAGER} hereinafter called "CM", a California

1. IF THE FIRM IS A CORPORATION, USE THE CORPORATE TITLE.

2. IF THE FIRM IS A PARTNERSHIP, LIST THE NAMES OF ALL OF THE PARTNERS. IF THE PARTNERSHIP IS OPERATING AS A "DOING BUSINESS AS" (DBA) FIRM, INCLUDE THE DBA NAME. FOR A GENERAL PARTNERSHIP, STIPULATE AFTER ALL LISTED NAMES THE TERM "Co-Partners".

3. IF THE FIRM IS A SOLE PROPRIETORSHIP, LIST THE NAME OF THE INDIVIDUAL, FOLLOWED BY THE WORDS "an Individual." IF THE SOLE PROPRIETORSHIP IS OPERATING AS A DBA FIRM, INCLUDE THE DBA NAME.

The term of this Agreement shall be from MM/DD/YYYY to MM/DD/YYYY.

The CM shall act as a consultant to UC Davis Health, Facilities Design and Construction, to perform Construction Management Services as required and authorized by University pursuant to the Services Scope described in Exhibit M.

University will authorize the CM to perform specific services by the issuance of a written Authorization(s) on the form contained in the Exhibits. Each written Authorization will state the specific project and services to be performed, the schedule for their completion, and the method of compensation, which shall be in accordance with Article 5.

ARTICLE 1 – GENERAL PROVISIONS

1.1 GENERAL REQUIREMENTS

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

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

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

1.1.4 Time is of the essence for this Agreement.

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

1.1.6 CM shall pay all persons providing services and/or any labor on site, including any University location, no less than UC Fair Wage (defined as \$13 per hour as of 10/01/2015, \$14 per hour as of 10/01/2016, and \$15 per hour as of 10/01/2017) and shall comply with all applicable federal, state and local working condition requirements.

1.1.7 NOT USED

1.2 CONSTRUCTION MANAGER STANDARD OF CARE

1.2.1 CM, its officers, agents, employees, subcontractors, consultants and any persons or entities for whom CM is responsible, shall provide all services pursuant to this Agreement in a manner consistent with the standard of care

under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode).

1.3 DEFINITIONS

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

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

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

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

1.3.4 *Construction Documents*. The term "Construction Documents" shall mean the drawings and specifications, prepared by the Design Professional, setting forth in detail the requirements for the construction of the Project.

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

1.3.6 *Contractor*. The term "Contractor" shall mean the entity or, in the case of a Multiple Prime Contract, one of several entities with whom the University has contracted to construct the Work associated with the Project.

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

1.3.8 *Estimated Project Construction Cost*. The term "Estimated Project Construction Cost" shall mean CM's written estimate in the form specified by University (See Exhibit Supplemental Requirements, B to Exhibit F – Executive Design Professional Agreement), of the total Construction Cost of the Project at the various stages of the design process.

1.3.9 *Project*. CM may provide services on multiple Projects under this Agreement. Such Projects shall be identified in Authorizations issued by University. The term "Project" shall mean the project described in each written Authorization issued by University.

1.3.10 *Project CM*. The term "Project CM" shall mean the specific University-approved CM individual named in this Agreement who is assigned to the Project, and is CM's designated principal or staff member, as the designated person in charge of providing all services required by this Agreement.

1.3.11 *Project Program*. The term "Project Program" (Exhibit Project Program, H to Exhibit F – Executive Design Professional Agreement) is a written statement of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

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

1.3.13 *Record Documents*. The term "Record Documents" shall mean the Design Professional's record drawings and final specifications made from the As-built documents received from the Contractor.

1.3.14 *Bidding Documents*. The term "Bidding Documents" shall mean those documents prepared and furnished by University for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements which are hereby incorporated by reference.

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

1.3.16 University Representative. The term "University Representative" shall mean the person or entity providing the University Representative services as indicated in the Contract Documents including, but not limited to, issuance of written communications with the Contractor, pursuant to subparagraph 4.1.1 of this agreement .

1.3.17 Work. The term "Work" shall mean all construction, services, and other requirements of the Contract Documents, or as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill Contractor's obligations, The Work may constitute the whole or a part of the Project.

ARTICLE 2 – CM'S SERVICES AND RESPONSIBILITIES – BASIC SERVICES

For each Project, Basic Services to be provided by CM consist of the services described in this Article 2 and those Supplemental Services described in Exhibit A. For each Project, the Basic Services and Supplemental Services to be provided by the CM may be further defined in written Authorizations.

2.1 GENERAL/PRE-BIDDING

2.1.1 The CM shall provide full-time on-site construction management staff with experience as required by the University.

2.1.2 CM shall provide other services as are reasonable and necessary to assist the University in the maintenance of the project budget and schedule.

2.1.3 The CM shall provide a full-time Project CM on site to act as CM's representative with the authority to commit resources of the firm to monitor, manage and administer all phases of the project activities and to help achieve the completion of all construction. CM shall provide all necessary qualified personnel to perform CM services under this Agreement. CM shall provide the names of all personnel to the University for prior approval. For each Project, the names of key personnel to be assigned to the work by the CM shall be submitted to the University for prior written approval. No key personnel shall be assigned to or from the Project without prior written approval of the University. If the CM's personnel fail to perform to the University's satisfaction, the University may, upon written notice of fifteen (15) calendar days, cause the CM to remove such person(s) from the project and replace them with another staff personnel acceptable to the University.

2.1.4. As part of the CM's scope of services, for each Project, it shall carry out all duties and responsibilities listed herein. CM shall not have authority to: a) authorize a change in Contract cost, scope, or Contract time; b) issue Notices of Completion; c) issue contracts; and d) approve pay requests. The CM shall make findings and recommendations associated with such effort, or any effort requested by the University to carry out the duties listed herein. CM will coordinate all communications on the Project or relating to the Project, including communications between the Contractor(s), Design Professional, and University, and their agents, and will alert the University of any irregularities or inconsistencies in such communications.

2.1.5 CM shall abide by all regulations imposed by authorities having jurisdiction over the Project.

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

2.1.7 CM shall cooperate with other professionals University may employ for related work.

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

2.1.9 CM shall monitor the Design Professional's work to ensure that it is performed in accordance with Exhibit Supplemental Requirements, B to Exhibit F – Executive Design Professional Agreement.

2.1.10 CM shall develop a Schedule Control System in consultation with University and Design Professional which shall be the basis upon which the CM monitors and evaluates the progress of the Project. The Schedule Control System shall be in accordance with the Project Schedule, and shall define design, construction, and University occupancy phases, delineating the responsibilities of University, Design Professional, CM and Contractor. The Schedule Control System shall be subject to written approval by University. The Schedule Control System shall consist of the following two elements:

- .1 A detailed time-scaled logic diagram depicting the durations and responsibilities for all activities, including University's procurement of equipment and materials with long lead times prior to selection of the Contractor.
- .2 A summary diagram showing the major milestones identified in the time-scaled logic diagram.

2.1.11 CM shall develop an Estimated Project Construction Cost based on the status of the design on the date of this Agreement, or on the date of the written Authorization for the respective Project, or on the date as determined by University, and shall update the Estimate at 100% Construction Documents prior to bidding the Work. CM shall also develop a Cost Control System, in consultation with University which shall be the basis upon which CM monitors all Project costs. The Cost Control System shall be in accordance with the Capital Improvement Budget (Project Budget) (Exhibit E). The Cost Control System shall be used by CM to report the status of the Project Budget and Project costs in a Monthly Cost Report. The Monthly Cost Report shall reflect all encumbrances and expenses and shall provide cost projections through Project completion. Major deviations from the previous month's report shall be annotated and explained in the subsequent Monthly Cost Report. With the exception of Estimated Project Construction Costs, which are provided by CM and Design Professional, all cost information for the Monthly Cost Report will be provided by University. The Cost Control System must be approved in writing by University.

2.1.12 CM shall promptly report to University any non-conformity or potential problems with University's Project objectives of quality construction, timely completion, and economy, with University's Project Program, Construction Budget, and Project Schedule.

2.1.13 CM shall review Design Professional's submittals of outline specifications as required by the Executive Design Professional Agreement, for purposes of determining consistency with the Project Program, Project Budget, and Project Schedule. Inconsistencies shall be reported in writing to University. As requested by University, CM shall meet with Design Professional to discuss its review findings.

2.1.14 CM shall consult with University, Design Professional, and others, as approved by University, in order to analyze, evaluate, and make recommendations regarding elements of the Project site, including Contractor access, storage, site offices, Project site limit lines, coordination with existing or proposed utility systems, and the effect of construction on adjacent buildings, walkways, and streets.

2.1.15 CM shall review Design Professional's submittals of Design Development documents and evaluate the proposed Project design features, systems and materials, and recommend alternatives that would, in the CM's opinion, increase constructability, lessen the construction time, or reduce the Project Budget without deviating from minimum Project Program requirements. CM's written evaluation to University shall include conclusions, alternatives, and recommendations (including energy conservation alternatives). As requested by University, CM shall meet with Design Professional to discuss its findings.

2.1.16 CM shall confirm that the Drawings and Specifications are consistent with the University's General Conditions and the Division 1 tailored for the Project.

2.1.17 CM shall check for coordination of the documents in terms of consistency and conformity each part with all other parts.

2.1.18 CM shall develop a recommendation list of cost items that the Contractor should include in its cost breakdown (as required by the General Conditions). CM shall use the Construction Specification Institute format, and submit this list to University for inclusion in the Construction Documents.

2.1.19 CM shall prepare a Preliminary Master Project Schedule for inclusion in the Construction Documents.

2.1.20 CM shall schedule and conduct a final constructability review on the 100% Construction Documents.

2.2 BIDDING PHASE

2.2.1 CM shall assist University and Design Professional in developing prequalification criteria, and preparation of prequalification documents, as requested by University.

2.2.2 CM shall actively encourage contractors with known expertise on projects of similar size and scope to bid on the Project.

2.2.3 As requested by University, CM shall assist with preparation and conducting the pre-bid conferences, and assist in the preparation of required Addenda to be issued by University.

2.3 CONSTRUCTION PHASE

2.3.1 CM shall assist University and Design Professional as requested in the preparation of the pre-construction meeting. CM shall prepare matrix charts of Design Professionals staff and responsibilities, University's staff and responsibilities, and CM's staff and responsibilities in accordance with the Executive Design Professional Agreement.

2.3.2 CM shall assist University and Design Professional in monitoring written communications between Design Professional, University's Administrator and Contractor (s).

2.3.3 CM shall assist Design Professional, as requested by University, in the resolution of disputes between the Design Professional and the Contractor(s).

2.3.4 CM shall maintain, monitor, and update the Cost Control System. The monthly Cost Report shall compare the original Project Budget with the current Project cost, identify expenditures to date, state the budget required for completion of each major category of Work, identify actual and anticipated Change Orders, and predict the current estimated total Project cost. All major changes and cost factors shall be described in a narrative that shall be attached to the Monthly Cost Report. The current month's report narrative shall identify any changes from the estimate in the previous month's report.

2.3.5 CM shall assist University and Design Professional in evaluating Contractor Change Order Requests, and make written recommendations regarding such requests.

2.3.6 CM shall assist in negotiations with Contractor as requested by University.

2.3.7 CM shall assist Design Professional, as requested by University, in obtaining back-up documentation, shop drawings, and materials submittals from Contractor.

2.4 POST CONSTRUCTION PHASE

2.4.1 CM shall receive Design Professional's Record Documents and Contractor's As-Builts, evaluate their completeness and recommend to University in writing whether to accept or reject said documents.

2.5 INDEPENDENT REVIEWS

2.5.1 CM shall conduct independent reviews when and as required by the University, pursuant to written Authorization(s) issued by University.

ARTICLE 3 – CM'S SERVICES AND RESPONSIBILITIES – ADDITIONAL SERVICES

Any authorized Additional Services shall be paid for by University, as provided in this Agreement, in addition to the compensation for Basic Services. CM shall provide Additional Services only when and as authorized in a written Authorization signed by University. No Additional Services shall be compensable unless so authorized.

ARTICLE 4 – UNIVERSITY RIGHTS AND RESPONSIBILITIES

4.1 ADMINISTRATION

4.1.1 University will designate, in writing, a University Representative who will act on behalf of University with respect to this Agreement. CM shall accept directives only from the designated University Representative and not from other University employees. University may replace the designated University Representative at its sole option; if this replacement is made, University will notify CM in writing.

4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS

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

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

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

4.2.4 University shall furnish information to CM for purposes of updating the Project Schedule as dates and durations applicable to the Project such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known.

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

4.2.6 University will furnish copies of Drawings, Specifications, and other Project-related documents deemed necessary by University and CM for the performance of CM's services under this Agreement.

4.2.7 University will provide CM with an office equipped with a telephone, a photocopy machine, and reasonable furnishings, as determined by University.

ARTICLE 5 – COMPENSATION

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

5.1 COMPENSATION FOR BASIC SERVICES

5.1.1 The fee for Basic Services and those Supplemental Services described in Exhibit A shall be computed as follows unless otherwise mutually agreed upon in writing by CM and University in a written Authorization:

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 as provided in written Amendments issued in accordance with paragraph 12.1.1. 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.
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.

5.1.2 University reserves the right to withhold monies for services not received as part of Basic Services and Supplemental Services which extend beyond the duration of this Agreement unless an Amendment is issued by University for extension of services.

5.2 COMPENSATION FOR ADDITIONAL SERVICES

5.2.1 For the Additional Services of CM, as described in Article 3, compensation shall be in accordance with the attached Rate Schedule (Exhibit B).

5.2.2 University reserves the right to change time and scope of the Work. If University changes either time or scope, the CM's fees shall be adjusted in accordance with the attached Rate Schedule (Exhibit B).

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

5.3 REIMBURSABLE EXPENSES

5.3.1 For Reimbursable Expenses, only actual costs will be reimbursed in accordance with the Reimbursement Schedule in the Exhibit C. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

5.3.2 Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by CM and CM's consultants in relation to the services provided in this Agreement.

ARTICLE 6 – PAYMENTS

6.1 PAYMENTS FOR BASIC SERVICES

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

NOTE: IF EQUAL MONTHLY PAYMENTS ARE CHOSEN IN SUBPARAGRAPH 5.1.1 ADD THE FOLLOWING:

6.1.2 CM shall submit monthly invoices to University setting forth in detail the services rendered during the previous month. Such services shall be allocated to Basic Services (a proportional monthly amount), authorized Additional Services, authorized reimbursable expenses, and any adjustments to the lump-sum amount stipulated in Article 5 or as set forth in Authorizations. Upon University's request, the invoice shall be substantiated by CM's payroll and other cost records and shall be submitted with an affidavit that the invoiced services were performed, that the invoiced costs were incurred, and that the cost records from which the invoice was prepared are true and correct.

6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

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

6.3 PROJECT SUSPENSION

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

6.4 TOTAL MAXIMUM COMPENSATION

6.4.1 Total compensation payable by University under this Agreement (inclusive of Basic Services, Additional Services and Reimbursable Expenses), shall not exceed **\$00,000,000**.

ARTICLE 7 – CM'S RECORDS AND FILES

7.1 Books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of CM's books and records. CM's records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate

charges under this Agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

7.2 CM shall make files available for inspection and copying by University upon reasonable notice. University or University's authorized representative shall have access to the CM's premises and records for inspection and auditing during normal business hours, shall be allowed to interview CM employees pursuant to the provisions of this Article, and be provided adequate and appropriate work space in order to conduct audits in compliance with this Article. The provisions of this Article shall also apply to parent, affiliate, and subsidiary companies as necessary to verify costs associated with this Agreement.

ARTICLE 8 – OWNERSHIP AND USE OF DOCUMENTS, MATERIALS AND SYSTEMS

8.1 All systems, materials and documents developed for and with University resources shall become the property of University, whether or not the Project for which they are developed is executed. Upon completion or termination of CM's Basic Services and Additional Services under this Agreement, CM shall promptly provide to University all files related in any way to the Project, including but not limited to all documents, correspondence (including internal and external correspondence), systems and materials, both electronic and hard copy format, excluding CM's internal accounting books and records addressed in Article 7. CM shall be permitted to retain copies for information and reference at CM's expense.

8.2 University will not defend, indemnify or save harmless CM, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that University's or CM's use of systems, materials or documents is contrary to or in violation of any copyright, patent, trade secret, trade name, trade mark, or any proprietary, contractual or legal right pertaining to their use.

8.3 At all times during the term of this Agreement, all files related in any way to the Project, including but not limited to all documents, correspondence (including internal and external correspondence), systems and materials, both electronic and hard copy format, shall be maintained by the CM pursuant to the University's filing protocol and stored on site, unless otherwise agreed by the University and the CM. The University or the University's Representative shall have access to and the right to copy all such files at any time during the term of this Agreement.

ARTICLE 9 – DISPUTES

9.1 NEGOTIATION

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

9.2 MEDIATION

9.2.1 Within 60 days, but not earlier than 30 days following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties may submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules.

9.3 ARBITRATION OR LITIGATION

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

.1 ARBITRATION WITH CONTRACTOR

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

.2 LITIGATION WITH CONTRACTOR

If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either Contractor or University claims that the acts or omissions of CM are involved, in

whole or in part, any claim by University against CM arising out of or in connection therewith may be asserted, at the option of University, against CM in the same litigation.

.3 ARBITRATION WITHOUT CONTRACTOR

Disputes arising from this Agreement between CM and University which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1.1 and 9.3.1.2 shall be subject to arbitration without Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid Rules of the AAA:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
 - .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the arbitration.
 - .3 Concurrent disputes subject to this subparagraph 9.3.1.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
 - .4 No hearing shall be held prior to final completion of the Project unless University and CM otherwise agree in writing.
 - .5 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California.
 - .6 If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of which shall be an attorney.
 - .7 The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.
- .4 Unless University and CM otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of California, supported by substantial evidence, and in writing. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000 the award shall contain the basis for the decision, findings of fact, and conclusions of law.

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

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

9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE

9.4.1 Claims for personal injury, wrongful death, or property damage (other than property damage to University) shall not be subject to arbitration under subparagraph 9.3.1.3.

ARTICLE 10 – INDEMNIFICATION AND INSURANCE

10.1 INDEMNIFICATION

10.1.1 CM 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 CM's other obligations under this Agreement, but only in

proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of CM, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom CM is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

10.1.2 The indemnification obligations under this Article 10 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the Losses; provided however, that Indemnitor's reasonable defense costs (including attorney and expert fees) will be reimbursed in proportion to the determination of Indemnitee's fault.

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

10.2 INSURANCE REQUIREMENTS

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

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

.1 Each Occurrence	<u>\$0,000,000</u>
.2 Products Completed, Operations Aggregate	<u>\$0,000,000</u>
.3 Personal and Advertising Injury	<u>\$0,000,000</u>
.4 General Aggregate	<u>\$0,000,000</u>

10.2.2 Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than **\$0,000,000** per accident.

10.2.3 Professional Liability Insurance, with limits of **\$0,000,000** per claim and **\$0,000,000** in the aggregate. At the option of the University and in its sole discretion, a written Authorization for a Project may require CM to purchase project specific professional liability insurance for the Project as a reimbursable cost with the minimum limits specified in the written Authorization.

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

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

.1 Each Employee	<u>\$1,000,000</u>
.2 Each Accident	<u>\$1,000,000</u>
.3 Policy Limit	<u>\$1,000,000</u>

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

- .1 CM shall have the insurance company complete University's form, Certificate of Insurance (Exhibit D). It alone constitutes evidence of insurance.
- .2 Provide that coverage cannot be canceled without advance written notice to University, in accordance with policy provisions.
- .3 If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against CM.
- .4 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to CM in writing, will be included as additional insureds on CM's general liability policy for and relating to the Work to be performed by CM and its consultants. CM'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 General Liability Insurance policy and the Business Automobile Liability Insurance policy shall name The Regents of the University of California as an Additional Insured. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.
- .5 The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of CM, its officers, agents, employees, and for CM's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of CM or CM's consultants.

ARTICLE 11 - STATUTORY AND OTHER REQUIREMENTS

11.1 NONDISCRIMINATION

CM agrees as follows during the performance of the Work:

CM 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). CM 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 CM also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CM will, in all solicitations or advertisements for employees placed by or on behalf of the CM, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

11.2 PREVAILING WAGE RATES

1. For purposes of this Article, the term subcontractor or subconsultant shall not include suppliers, manufacturers, or distributors.

2. CM 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, and 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Contract is subject to compliance monitoring and enforcement by the State of California Department of Industrial Relations. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.
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. CM shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by CM in the execution of the Covered Services hereunder. CM shall cause all subcontracts or subconsultant agreements to include the provision that all subcontractors shall pay not less than the prevailing wage rates to all workers employed by such subcontractor in the execution of the Covered Services hereunder. CM 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 CM 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 CM fee. CM shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

11.3 PAYROLL RECORDS

1. CM and all subcontractors 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 CM or subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of CM 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 CM or subcontractors. 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 CM awarded the Agreement or performing the Agreement shall not be marked or obliterated.
2. CM 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. CM shall inform University of the location of such payroll records for the written authorization, including the street address, city, and county; and CM 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, CM shall have 10 days in which to comply following receipt of notice specifying in what respects CM must comply. Should noncompliance still be evident after the 10-day period, CM 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 CM fee.

11.4 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 CM and subcontractors 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 CM 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 CM or subcontractors employ workers in any apprenticeship craft or trade for the Covered Services hereunder, CM or subcontractors 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 CM or subcontractors 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 hour of apprentice work for every five hours of journeyman work, except as permitted by law. CM or subcontractors 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 CM or subcontractors 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 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, CM and subcontractors 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. CM may include the amount of such contributions in computing its compensation under the Agreement; but if CM fails to do so, it shall not be entitled to any additional compensation therefore from University.
6. In the event CM willfully fails to comply with this Paragraph 11D, 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 CM or subcontractors 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.

11.5 WORK DAY

1. CM 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. CM shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Agreement by CM, 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. CM 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.

11.6 PATIENT HEALTH INFORMATION

1. CM 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.). CM 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. CM will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If CM, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, CM will report such actions immediately to the University Representative. CM will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. CM will report to University Representative within five (5) days after CM gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

11.7 INFECTIOUS ILLNESS PRECAUTIONS

1. The University is committed to avoiding the transmission of infectious diseases within its facilities to protect public health. Consultants and subconsultants shall comply with the most current UC Davis Health guidelines for seasonal immunizations and preventative measures against diseases such as influenza and coronavirus in order to enter our campus facilities. Consultants, subconsultants, and its employees shall not enter any UC Davis Health facility if they suspect having a contagious illness or if they don't meet the current health screening requirements at each workday.
2. The University's Chief Medical Officer issues the health guidelines and required screenings and immunizations for staff, faculty, students, visitors, and vendors at the UC Davis Health campus. The Chief Medical Officer also determines the relevant dates of the influenza season each year, which usually extends from November to March, but can be longer.
3. During Flu Season, all of Consultant's and its Subconsultants' employees visiting or working at UC Davis Health facilities may be required to show verification that they received the flu vaccine.
4. COVID-19 – What you can do to prevent coronavirus infection:
 1. Get vaccinated
 2. Wear a mask
 3. Wash and sanitize hands frequently
 4. Limit exposure
 5. Social distance

According to the California Department of Public Health guidance effective June 18, 2020, wearing a mask or face covering is mandatory in situations such as:

- Inside or waiting to enter any indoor public space
- Obtaining health care services
- Waiting in line or riding in public transportation or ride-sharing services
- At work in public spaces and while walking through common spaces
- While outdoors when maintaining a physical distance of 6 feet or more isn't possible

For the latest information on COVID-19 prevention, guidelines, treatments, and research, please go to <https://health.ucdavis.edu/coronavirus/index.html>.

5. University's Project Managers, Inspectors, Infection Control Personnel, and Facilities Personnel may monitor compliance with the above requirements. Violations of UC Davis Health policies may result in Consultant employee being asked to leave the job site.

11.8 CODE OF CONDUCT

1. The usage of all types of two-way radio devices must be approved. Usage of cellular phone devices within 3 feet of any medical device is not allowed. In areas where there are signs indicating "Cell Phones Must

Be Turned Off”, cell phone must be POWERED OFF, not simply in vibrate or silent mode. “Airplane” mode with Wi-Fi ON is acceptable in “OFF” areas.

2. You will be responsible for your employees conduct while on the job site, i.e. whistling, profanity, garbage, dress code, etc. You are required to inform your employees working at the construction site that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. It is the intention of the University to take whatever action may be needed to prevent, correct, and, if necessary, discipline behavior which violates this policy.
3. For the health and safety of patients, visitors, volunteers, and staff; smoking, the use of smokeless tobacco products, and the use of unregulated nicotine products (e-cigarettes) is not allowed on any UC Davis owned or leased property, indoors and outdoors, including, parking lots, roadways and residential spaces. CM is responsible for enforcement of this policy with all employees, workers, vendors, suppliers, and subconsultants at the job site.
4. You are required to establish a policy of non-discriminatory practice in all personnel actions.
5. In accordance with UCDCM Hospital Policies and Procedures Policy ID: 2202, identification badges are required and must be worn at all times while on campus. Consultant is required to email the Project Manager to request identification badges for all its employees and subconsultants that will be working at UC Davis Health jobsites.
6. The University prohibits and has zero tolerance for workplace violence. Any disruptive behavior, act of intimidation, threat of violence or act of violence committed against any person and or property is prohibited.

ARTICLE 12 – EXTENT OF AGREEMENT

12.1 AUTHORITY OF AGREEMENT

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

12.2 EXHIBITS

12.2.1 This Agreement includes the following exhibits attached hereto:

- Exhibit A: Supplemental Services
- Exhibit B: Rate Schedule for Additional Services
- Exhibit C: Reimbursement Schedule
- Exhibit D: Certificate of Insurance
- Exhibit E: Capital Improvement Budget (Project Budget)
- Exhibit F: Executive Design Professional Agreement with all Exhibits
- Exhibit G: Prime Trade Contracts (if applicable, otherwise delete and add “not used”)
- Exhibit H: Contractor General Conditions with Supplemental Conditions
- Exhibit I: Written Order (Authorization) to Perform Services
- Exhibit J: Amendment
- Exhibit K: Self-Certification
- Exhibit L: Final Distribution of Contract Dollars
- Exhibit M: Services Scope

12.3 THIRD-PARTY BENEFICIARIES

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

12.4 SURVIVAL

12.4.1 The provisions of this Agreement which by their nature survive expiration or termination of the Agreement or Final Completion of the Project(s) or the performance of services under this Agreement, including any and all

warranties, confidentiality, indemnities, payment obligations, and University's right to audit CM's books and records, shall remain in full force and effect after any expiration or termination of the Agreement or Final Completion of the Project(s) or the performance of services under this Agreement.

ARTICLE 13 – FEDERAL AND STATE GRANTS

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

ARTICLE 14 – NOTICES

14.1 UNIVERSITY

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

14.2 CONSTRUCTION MANAGER

Any notice may be served upon CM by delivering it, in writing, to CM at the address set forth on the last page of this Agreement, or by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to CM at the aforementioned address or to said address via express overnight delivery service. Notice is effective only if and when it is actually received.

ARTICLE 15 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon University and CM 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 CM without the prior written consent and approval of University.

15.1 CM'S DEATH OR INCAPACITATION

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

15.1.2 If CM transacts business as a corporation, partnership, sole proprietorship or other entity with more than one officer, employee, or representative accepted by the University as the CM, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, University may choose to continue services with CM and make payments to CM as though there had been no such death or incapacitation; University will not be obliged to take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons retained or employed by CM herein. If death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.1.1 shall apply.

ARTICLE 16 – TERMINATION OF AGREEMENT

16.1 UNIVERSITY-INITIATED TERMINATION

16.1.1 If University determines that CM has failed to perform in accordance with the terms and conditions of this Agreement, University may terminate all or part of the Agreement for cause. This termination shall be effective if CM does not cure its failure to perform within 10 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University specifying the failure in performance. If a termination for cause does occur, University will have the right to withhold monies otherwise payable to CM until the Project is completed. If University

incurs additional costs, expenses, or other damages due to the failure of CM 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 CM upon completion of the Project. If the costs, expenses, or other damages incurred by University exceeds the amount withheld, CM shall be liable to University for the difference.

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

16.2 CM-INITIATED TERMINATION

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

16.3 DOCUMENTS AND MATERIALS

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, UNIVERSITY and CONSTRUCTION MANAGER have executed this Agreement as of Month, Day, Year (see Cover Page).

CONSTRUCTION MANAGER:

{FIRM NAME}

By: {Name}
{Title}

(Signature)

(Date)

CM ADDRESS:

Address
City, State, Zip Code

CM TELEPHONE NUMBER:

###-###-####

CM E-MAIL:

e-mail

UNIVERSITY:

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: Jill Tomczyk
Associate Director
Facilities Design and Construction
University of California, Davis Health

(Signature)

(Date)

UNIVERSITY ADDRESS:

Facilities Design and Construction
University of California, Davis Health
4800 2nd Avenue, Suite 3010
Sacramento, CA 95817

UNIVERSITY TELEPHONE NUMBER:

916-734-7024

UNIVERSITY FACSIMILE NUMBER

917-734-7751

CONSTRUCTION MANAGEMENT AGREEMENT – BLANKET

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