



PROFESSIONAL SERVICES AGREEMENT

PSA Number: XX-2015

This AGREEMENT is made on the DD day of MONTH, 2015 by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, hereinafter called "University", organized under the laws of the State of California with its principal place of business at 101 The City Drive, Building 27, Rte. 131; Orange, California 92868, and CONSULTANT NAME located at ADDRESS; CITY, STATE, ZIP , a California corporation, 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:

RECITALS

WHEREAS, from time to time the UNIVERSITY requires a CONSULTANT to provide professional services; and

WHEREAS, CONSULTANT possesses such necessary skill and expertise and is desirous of providing such services to the UNIVERSITY; and

WHEREAS, CONSULTANT is specially trained, licensed in the State of California and experienced and competent to perform the professional services required by the UNIVERSITY;

NOW THEREFORE, the parties agree as follows:

1.0 CONSULTANT SERVICES AND RESPONSIBILITIES. The Consultant shall furnish the following services:

- 1.1 Scope of Services. Act as a consultant to the University of California, Irvine Medical Center, to perform TYPE OF SERVICE and related services as required and authorized by the University. Under this Agreement, the consultant may perform pre-design services but in no event does this Agreement authorize the preparation of any design documents, including Schematic Design.
1.2 Work Authorizations. The University will authorize the Consultant to perform specific services by the issuance of a Work Authorization(s) on the form contained in Exhibit A. Each Work Authorization will state the specific services to be performed, the schedule for their completion, and the method of compensation in accordance with Article 3.0. No work shall commence prior to or without an applicable Work Authorization signed on behalf of the University. No work shall be performed outside the scope and established budget of an approved Work Authorization. Consultant shall provide timely notice of any necessary schedule or funding revisions for review and approval of University. Each Work Authorization must be separately tracked and invoiced.
1.3 Deliverables. As specified in applicable Work Authorization, Consultant shall provide the designated deliverables. (Drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, etc.)

2.0 TERM.

- 2.1 Order Period. The period of time for issuance of written Authorizations to Perform Services (hereinafter "Order Period") shall be from Month, Day, 2015 to June 30, 2016.
2.2 Period of Performance. The period of performance under the Agreement shall be as specified in any written Authorizations to Perform Services, or subsequent revisions thereto, issued during the Order Period. However, the period of performance shall not commence prior to the date of execution of any such written Authorization.

2.3 *University- initiated Termination*

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

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

2.4 *Consultant- initiated Termination.* Consultant may terminate this Agreement for cause if the University fails to cure a material default in performance within a period of 30 days, or such longer period as the Consultant may allow, after receipt from the Consultant of a written termination notice specifying the default in performance. In the event of termination for cause by the Consultant, the University will pay the Consultant in accordance with Article 3.4.

3.0 **COMPENSATION.** Compensation payable by University under this Agreement shall not exceed the dollar amount of the applicable Work Authorization(s) issued hereunder. **EACH WORK AUTHORIZATION MUST BE INVOICED SEPARATELY.** In no event, shall the total and aggregate amounts of all Work Authorizations issued hereunder exceed **One Hundred Thousand Dollars (\$100,000).**

3.1 The University will have the right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

3.2 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.

(b) All fees shall be in accordance with the Consultant Rate Schedule contained in Exhibit B Rate Schedule. Unless otherwise provided in the Consultant Rate Schedule, rates shall not be changed except in accordance with paragraph 9.0. Alternatively, a lump-sum fee may be negotiated.

- (c) 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.
- (d) 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.

3.3 *Invoicing for Services Performed on a Labor Hour / Time-and-Materials Basis.* The Consultant will invoice the University for authorized services performed on a Labor Hour / Time-and-Materials basis as follows:

- (a) The Consultant may submit an invoice no more than once per month for services rendered by submitting an itemized invoice for each Work Authorization that includes (i) fees and authorized reimbursable expenses for the month invoiced, (ii) the Contract Number of this Agreement, (iii) the Work Authorization number, (iv) the project name and number, (v) the date of services, (vi) a summary of the tasks performed with associated hours and billing rates and (vii) supporting timesheets.
- (b) All direct labor billings shall be in accordance with the Consultant Rate Schedule attached as Exhibit B. Unless otherwise provided in the Consultant Rate Schedule, rates shall not be changed except in accordance with Article 9.0.
- (c) *Overtime premiums* will not be allowed for exempt service professionals. Authorized overtime will be compensated at straight-time rates unless specially designated otherwise in the attached Exhibit B Rate Schedule.
- (d) *Payments* will not be made for services performed in advance of the Work Authorization effective date unless such advanced services are specifically authorized in the applicable Work Authorization. For each Work Authorization, the maximum payment shall not exceed the established Work Authorization amount without the prior written approval of the University.
- (e) *Reimbursable Expenses* are actual expenditures made by the Consultant and the Consultant's employees and subconsultants in accordance with the Reimbursement Schedule attached as Exhibit C. Such reimbursable expenses are paid in addition to the fees for Services under this Agreement if so authorized in the applicable Work Authorization. All expenses will be itemized, justified, and supported with receipts to the satisfaction of the University. All expenses must fall within the established applicable not-to-exceed Work Authorization amount. The Consultant is responsible for all other operating expenses, overhead and administrative costs which are considered part of the Consultant's Hourly Rate Schedule.

3.4 *Invoicing for Services Performed for an Established Lump Sum Fee.* The Consultant will invoice the University for authorized services performed for an established Lump Sum Fee as follows:

- (a) A lump sum invoice may be submitted upon completion of the authorized work. If monthly billings are requested, the Consultant shall submit a proposed monthly billing schedule for approval by the University. Proposed monthly billings must be related to the percentage of work performed each month in relation to the total project amount. Payments will not be made that exceed the value of work performed during the billing period.
- (b) Each invoice will include a copy of the applicable Work Authorization, the month invoiced, a copy of the approved billing schedule, the PSA Number of this Agreement, and the project name and number. Payment will be subject to verification by the University's Authorized Representative.

- (c) For each Work Authorization, the maximum payment shall not exceed the established Work Authorization.
- (d) All project related, overhead, or administrative expenses are the responsibility of the Consultant and considered part of the lump sum fee.

3.5 *Billing Email Address and Physical Address.* Consultant shall submit electronic invoices to Tracy Yi at tyi@uci.edu The contact information field of your invoice shall list the billing address provided below.

**UNIVERSITY OF CALIFORNIA, IRVINE MEDICAL CENTER
PLANNING ADMINISTRATION**
101 The City Drive South, Building 27, Route 131
Orange, CA 92868
Attention: Contract Administrator

3.6 *Payment Terms.* Properly submitted invoices will be paid on a net-30 day basis. Invoices that do not conform to the requirements of this Agreement will be returned to Consultant for revision and/or supporting documents. Properly revised invoices will be paid net-30 days.

If the University fails to pay undisputed amounts within 45 days of invoice receipt, Consultant may submit a written payment demand. If the University fails to cure the requested payment demand within 7 calendar days from receipt, the Consultant may suspend work under this Agreement until such undisputed payments are made. Any payment issues shall be brought to the immediate attention of the University Project Manager for resolution.

3.7 *Right to Withhold Payment.* The University will have the right to withhold payment from Consultant for any unsatisfactory service until such time service is performed satisfactorily.

4.0 GENERAL PROVISIONS

- 4.1 *Independent Contractor.* The Consultant shall perform the services hereunder as an independent contractor and not as an agent or employee of the University. The Consultant understands and agrees that its employees shall not be considered officers, employees or agents of the University, and are not entitled to benefits of any kind or nature normally provided employees of the University and/or to which the University's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. The Consultant assumes the full responsibility for its acts or liabilities including those of its employees or agents as they relate to the services to be provided under this Agreement. The Consultant shall assume full responsibility for payment of all federal, state, and local taxes or contributions, including unemployment insurance, social security, and income taxes, with respect to its employees.
- 4.2 *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.
- 4.3 *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.

- 4.4 *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.
- 4.5 *Copyright, Ownership and Use of Materials.* Consultant hereby assigns to the University all right, title, and interest, including, but not limited to, copyright and all copyright rights, in all Materials created by Consultant in its performance under this Agreement and/or delivered to the University hereunder and shall execute any documents necessary to effectuate such assignment, with the exception that Consultant hereby grants to the University an irrevocable, fully-paid up, royalty-free license to use any document provided to the University including without limitation any document known as a "detail." Consultant warrants that it has the lawful right to grant the foregoing license to the University. In the event Consultant uses any individual who is not a full-time employee of Consultant or entity to perform any work required of it pursuant to this Agreement, Consultant shall require said individual or entity to sign an agreement containing identical wording as the foregoing with the exception that word "Consultant" is to be replaced with the individual's or entity's name. Materials constitute all written and other tangible expressions, including, but not limited to, drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, etc. All Materials furnished by the Consultant hereunder shall be and shall remain the property of the University. In the event of Agreement termination by either party for any reason, as provided under this Agreement, the University will have the right to receive, and the Consultant shall promptly provide to the University, all drawings, documents, reports, surveys, renderings, exhibits, models, prints, photographs, and other materials prepared by the Consultant for the services under this Agreement. In the event of termination, and any dispute regarding the amount to be paid under this Agreement notwithstanding, the University retains the right to receive and use any such documents or materials any dispute regarding the amount to be paid under this Agreement notwithstanding. The foregoing provisions shall survive the term and termination of this Agreement.
- 4.6 *Consultant's Accounting Records.* All books and records relating to this Agreement shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). University or University's authorized representative shall have access to and the right to audit and the right to copy all of Consultant's books and records. Consultant records shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available); contracts; payroll records; subconsultant agreements; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.~~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 3 years from the date of Final Payment under this Agreement.~~
- 4.7 *Conflict of Interest.* The Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between the Consultant's family, business, or financial interests (including services provided to another client) and the services provided under this Agreement, and that in the event of a change in either the private interests or services under this Agreement, any

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

- 4.8 *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 3.0 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.
- 4.9 *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.
- 4.10 *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 Exhibit F. 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 Exhibit G.
- 4.11 *Confidentiality.* The Consultant shall use his or her best efforts to keep confidential a) any information produced or created by Consultant under this Agreement including but not limited to test results, sampling results, data, plans and reports; b) any information provided by the University and marked "Confidential Information"; or c) any oral information conveyed to the Consultant by the University and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. In the event that Consultant determines that it has a legal obligation to disclose such Confidential Information pursuant to a third party demand, Consultant shall notify the University in writing of its receipt of such demand and of Consultant's determination that it has a legal obligation to disclose Confidential Information. Consultant shall not disclose any such Confidential Information until at least ten (10) days from the date of receipt by University of Consultant's written notice. The Consultant shall use his or her best efforts to keep confidential any information provided by the University and marked "Confidential Information," or any oral information conveyed to the Consultant by the University and followed by a written communication within 30 days that said information shall be considered Confidential Information. This nondisclosure provision shall not apply to any of the following:
- (a) Information which the Consultant can demonstrate by written records was known to him or her prior to the effective date of this Agreement;
 - (b) Information that is currently in, or in the future enters, the public domain other than through a breach of this Agreement or thorough other acts or omissions of Consultant; or
 - (c) Information that is obtained lawfully from a third party.

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

5.0 **INDEMNIFICATION.** 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 Consultant's other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (i) the negligent acts, errors or omissions of Consultant, its officers, agents, employees, subcontractors, subconsultants, or any person or entity for whom Consultant is responsible (collectively, "Indemnitor"); (ii) the breach by Indemnitor of any of the provisions of this Agreement; or (iii) willful misconduct by Indemnitor. 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.

5.1 *Obligations.* The indemnification obligations under Article 5.0 shall not be limited by any assertion or finding that (i) the person or entity indemnified is liable by reason of non-delegable duty, or (ii) 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.

5.2 *Waiver or Limitation of Rights.* Nothing in this Agreement, including the provisions of Article 5.0, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

6.0 **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.

6.1 *Coverage.* The coverage required under this Agreement shall not in any way limit the liability of the Consultant.

(a) **Commercial Form General Liability Insurance** with coverage and minimum limits as follows:

i. Each Occurrence	\$1,000,000
ii. Products Completed; Operations Aggregate	\$1,000,000
iii. Personal and Advertising Injury	\$1,000,000
iv. General Aggregate	\$2,000,000

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

- (c) **Professional Liability Insurance**, with minimum limits of \$1,000,000 per claim and \$2,000,000 in the aggregate.

If the above insurance is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion of the services authorized pursuant to each Work Authorization executed. The insurance shall have a retroactive date of placement prior to, or coinciding with, the date services are first provided that are governed by the terms of this Agreement and shall include, without limitation, coverage for professional services as called for in this Agreement.

- (d) **Carrier Financial Rating for Article 6.1 (a), (b), (c):** All insurance required shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

- (e) **Workers' Compensation:** Statutory limits per Federal and/or California law; and
Employer's Liability Insurance: **E. L. Limits**

i. Each Employee	\$1,000,000
ii. Each Accident	\$1,000,000
iii. Policy Limit	\$1,000,000

- (f) **Carrier Financial Rating for Article 6.1 (e):** Insurance required shall be (i) issued by companies 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.

6.2 *Certificate of Insurance.* Consultant, upon the execution of this Agreement, shall furnish University with Certificates of Insurance evidencing compliance with Article 6.0, including the following requirements:

- (a) Consultant shall have the insurance company complete University's Certificate of Insurance form contained in Exhibit D. If Consultant's insurance company refuses to use the University's Certificate of Insurance form, it must provide a Certificate of Insurance (and endorsements, if needed) evidencing compliance with Article 6.1 and Special Provisions 1 through 3 on the Certificate of Insurance Exhibit D. It alone constitutes evidence of insurance.
- (b) Provide that coverage cannot be canceled without 10 calendar days advance written notice to University.
- (c) 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.
- (d) University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Consultant in writing, will be included as additional insureds on Consultant's general liability policy for and relating to the Work to be performed by Consultant and Subcontractors. Consultant's general liability insurance policy shall name University as an additional insured pursuant to additional insured endorsement CG2010 (11/85) or a combination of both CG 2010 (10/01) and CG 2037 (10/01). The General Liability

coverage shall contain a Severability of Interest provision and shall be primary insurance as respects The Regents of the University of California, its officers, agents and employees. Any insurance or self-insurance maintained by The Regents of the University of California shall be excess of and non-contributory with this insurance. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance. The Professional Liability insurance policy shall include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for liability that would exist in the absence of the contract.

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

7.0 STATUTORY AND OTHER REQUIREMENTS. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in the County of Orange, California.

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

provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

7.2 *Prevailing Wage Rates.* For purposes of this Article, the term subcontractor or subconsultant shall not include suppliers, manufacturers, or distributors.

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

~~(a) 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 State of 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 State of California Department of Industrial Relations.~~

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

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

- (a) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
- (b) A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
- (c) A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Consultant or subcontractors or subconsultants. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Consultant awarded the Agreement or performing the Agreement shall not be marked or obliterated.
- (d) Consultant shall file a certified copy of the payroll records with the entity that requested the records within 10 calendar days after receipt of a written request. Consultant shall inform University of the location of such payroll records for the Work Authorization, including the street address, city, and county; and Consultant shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article or with the State of California Labor Code Section 1776, Consultant shall have 10 calendar days in which to comply following receipt of notice specifying in what respects Consultant must comply. Should noncompliance still be evident after the 10-day period, Consultant shall forfeit to University, as a penalty, \$100 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Consultant fee.

7.4 *Apprentices.* Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Consultant and subcontractors or subconsultants as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training. 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. 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 Work Authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, for a certificate approving Consultant or subcontractors or subconsultants under the apprenticeship standards for the

employment and training of apprentices in the locality so identified. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Consultant or subcontractors or subconsultants shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards. "Apprenticeship craft or trade," as used in this Article, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

- 7.5 *Contribution of Funds.* If Consultant or subcontractors or subconsultants employ journeypersons or apprentices in any apprenticeship craft or trade in the locality, if any, listed in the Work Authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the locality so identified are contributing, Consultant and subcontractors or subconsultants shall contribute to the fund or funds in each craft or trade in which they employ journeypersons or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same manner done by the other contractors. Consultant may include the amount of such contributions in computing its compensation under the Agreement; but if Consultant fails to do so, it shall not be entitled to any additional compensation therefore from University.
- 7.6 *Failure to Comply.* In the event Consultant willfully fails to comply with this Article, it will be considered in violation of the requirements of the Agreement. Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Consultant or subcontractors or subconsultants of journeyperson trainees who may receive on-the-job training to enable them to achieve journeyperson status in any craft or trade under standards other than those set forth for apprentices.
- 7.7 *Work Day.* Consultant shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Consultant shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Agreement by Consultant, or any subcontractors or subconsultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Article 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.

7.8 *Drug-Free Workplace Policy and Requirements.* While performing any service for the University, the Consultant and its employees, agents, or subcontractors shall not: (i) be under the influence of alcohol or any controlled substance, (ii) use, possess, distribute, or sell illicit or unprescribed controlled drugs, drug paraphernalia, or alcoholic beverages, or (iii) misuse legitimate prescription drugs. The Consultant shall advise its employees, agents, or subcontractors of this policy. Their entry onto University premises or the work site constitutes consent to searches and inspections. When the University has reason to believe there has been a violation of any aspect of the drug-free workplace requirements, the Consultant and its employees, agents, suppliers, subcontractors, and consultants shall, when requested, immediately submit to a search of their person, and/or lockers, lunch boxes, briefcases, purses, packages, desks, workstations, vehicles and other personal belongings available for inspection.

7.9 *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 report to University Representative within five (5) days after Consultant gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

8.0 **NOTICES.** All notices to be given under this Agreement shall be in the form and manner stated below.

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

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

9.0 **AUTHORITY OF AGREEMENT.** This Agreement represents the entire and integrated agreement between the University and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by a written instrument signed by both the University and the Consultant and the written instrument shall be an Amendment on the form contained in Exhibit E.

9.1 *Contract Documents.* The Contract Documents for this Agreement consist of this Agreement and any exhibits attached to or referenced herein, and all modifications issued and executed by the parties after the release of this Agreement. Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (i) provisions set forth in this

Agreement, (ii) provisions set forth in any referenced attachments or exhibits to this Agreement attached or incorporated by reference.

9.2 *Exhibits.* This Agreement includes the following Exhibits attached herewith:

- Exhibit A: Work Authorization
- Exhibit AA: Work Authorization Amendment
- Exhibit B: Consultant Rate Schedule
- Exhibit C: Reimbursement Schedule
- Exhibit D: Certificate of Insurance
- Exhibit E: Amendment
- Exhibit F: Self-Certification Form
- Exhibit G: Final Distribution of Contract Dollars

IN WITNESS WHEREOF, the University and the Consultant agree, as of the date first written above,

UNIVERSITY:

University of California Irvine, Medical Center
Planning Administration
101 City Drive, Building 27, Route 131
Orange, CA 92868
Tel: (714) 456-8842
Fax: (714) 456-8749

by (authorized signature)

Léon T. Roach
Director, Capital Design and Construction
UCIMC- Planning Administration

Typed or printed name

Date

CONSULTANT:

Tel: ()
Fax: ()

by (authorized signature)

Typed or printed name and title

Date

Tax Identification Number (EIN)

PLEASE RETURN TWO (2) SIGNED COPIES TO:

Elita Dao, Principal Contract Administrator
University of California, Irvine Medical Center
Planning Administration
101 The City Drive South, Building 27, Route 131
Orange, CA 92868
Tel: (714) 456-8842
Fax: (714) 456-8749