

CSU GENERAL PROVISIONS  
for  
MAINTENANCE TASKS  
(FACILITIES MAINTENANCE)  
8/1/14

**CSU GENERAL PROVISIONS FOR MAINTENANCE TASKS (FACILITIES MAINTENANCE)**

**August 1, 2014**

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### **1. Commencement of Work**

Contractor shall not commence work under the Contract until Contractor has received a fully executed Contract and been given written approval to proceed. Any work performed by Contractor prior to the date of approval shall be considered as having been performed at Contractor's own risk and as a volunteer.

### **2. Contract Alterations & Integration**

No alteration or variation of the Contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated in writing in the Contract shall be binding on any of the parties hereto.

### **3. Severability**

Contractor and CSU agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of its presumed non-applicability. Should the illegal or unenforceable provision be a material or essential term of the Contract, the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

### **4. Independent Status**

Contractor and its employee's agents, and subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers, employees or agents of CSU or the State of California. While Contractor may be required by this Contract to carry Worker's Compensation Insurance, in no event shall Contractor and its employees and agents be entitled to unemployment or workers' compensation benefits from the CSU.

### **5. Governing Law**

To the extent not inconsistent with applicable federal law, this Contract shall be construed in accordance with and governed by the laws of the State of California.

### **6. Contractor's Power and Authority**

Contractor warrants it has full power and authority to enter into this Contract and will hold CSU harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor shall not enter into any arrangement, agreement or contract with any third party that might abridge any rights of the CSU under this Contract.

### **7. Assignments**

Contractor shall not assign this Contract, either in whole or in part, without CSU's written consent, which will not be unreasonably withheld.

### **8. Personnel**

Contractor shall give its personal attention to the performance of the Contract and shall make every effort consistent with sound business practices to honor CSU's requests regarding Contractor's assignment of its employees. However, Contractor maintains the sole right to determine the assignment of its employees in order to keep all phases of work under its control. If an employee of Contractor is unable to perform due to illness, resignation or other factors beyond Contractor's control, Contractor shall use its best effort to provide suitable substitute personnel.

### **9. Waiver of Rights**

Any action or inaction by CSU or the failure of CSU on any occasion to enforce any right or provision of this Contract shall not be a waiver by CSU of its rights hereunder and shall not prevent CSU from enforcing such provision or right on any future occasion. CSU's rights and remedies provided in this Contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

### **10. Time**

Time is of the essence in the performance of this Contract.

### **11. Entire Contract**

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of each party.

**12. Appropriation of Funds**

- (a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved such continuation of the Contract is subject to the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, Contractor agrees to take back any commodities furnished under the Contract and not yet paid for by CSU, terminate any future services and commodities to be supplied to the CSU under the Contract, and relieve the CSU of any further obligation therefore.
- (b) CSU agrees that if provision (a) above is involved, commodities shall be returned to Contractor in substantially the same condition in which they were delivered, subject to normal wear and tear. CSU further agrees to pay for packing, crating, transportation to Contractor's nearest facility and for reimbursement to Contractor for expenses incurred for its assistance in such packing and crating.

**13. Cancellation**

CSU has the right to cancel this Contract at any time and without future financial obligation upon thirty (30) days written notice to Contractor.

**14. Termination for Default**

CSU may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, the CSU may proceed with the work in any manner deemed proper by the CSU. The cost to the CSU shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

**15. Rights and Remedies of CSU for Default**

- (a) In the event any deliverables furnished or services provided by Service Provider in the performance of this Contract should fail to conform to the requirements herein, or to the design and or specifications submitted by Service Provider, CSU may reject the same. It shall thereupon become Service Provider's duty to forthwith reclaim and remove all nonconforming deliverables and correct the performance of services, without expense to the CSU, and immediately to replace or correct all such rejected items and/or work with others conforming to the specifications. Should Service Provider fail, neglect, or refuse to do so, CSU shall thereupon have the right, but not the obligation, to complete the Statement of Work or any part thereof and charge it's expense of completing the service/work to Service Provider and to deduct from any moneys due or that may thereafter become due to Service Provider the difference between the price named in the Contract and the actual cost thereof to the CSU.
- (b) In the event Service Provider fails to provide required deliverables or services, the same conditions as to CSU's right, but not obligation, to perform the deliverables or services and receive reimbursement from Service Provider as set forth in (a) above shall apply.
- (c) In the event CSU terminates this Contract, either in whole or in part, for Service Provider's default or breach, Service Provider shall compensate CSU, in addition to any other remedy CSU may have available to it, for any loss or damage sustained and cost incurred in procuring items and services which Service Provider therein agreed to supply.
- (d) CSU's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or this Contract.

**16. Minimum Warranty**

- (a) Unless otherwise specified in the Statement of Work, (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work), the warranties in this subsection shall be one (1) year from date of delivery of materials (hereinafter referenced as deliverables) or services. Service Provider warrants the workmanship of services provided and deliverables, and all other aspects regarding the work, shall conform to the requirements specified in this Contract and be free from faults and defects of design, material, and workmanship. Where CSU and Service Provider have agreed to design specifications (such as a Detailed Design Document) in the Statement of Work, either directly or by reference, Service Provider hereby warrants that its deliverables shall be new and of industry standard quality in the trade and in accordance with the approved and agreed to design and specifications.
- (b) All warranties, including special warranties specified elsewhere in this Contract, shall inure to the CSU, its successors, assigns, customer agencies, and governmental users of the deliverables or services.

**17. Safety and Accident Prevention**

In performing work under this Contract on CSU premises, Contractor shall conform to all specific safety requirements contained in this Contract or as required by law or regulation. Contractor shall take all additional precautions as the CSU may reasonably require for safety and accident prevention purposes. Contractor's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Contract.

**18. Protection/Restoration of Facilities**

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Service Provider shall properly and adequately protect from damage all CSU property, including, but not limited to, land, structures, equipment and utilities (CSU Property) while providing goods and services under this Contract. If any CSU Property is damaged, altered or disturbed in any way during the performance of this Contract, whether by Service Provider, sub-Service Provider, or anyone acting on behalf of Service Provider, Service Provider shall restore the CSU Property to its condition prior to damage or alteration at Service Provider's sole cost and expense. If Service Provider is unable or unwilling to restore the CSU Property, CSU shall restore the property at Service Provider's sole cost and expense.

### 19. Cleaning and Removal of Debris/Salvage

Service Provider shall remove at the end of each work day all dirt, debris, waste, rubbish, equipment, and obstacles to CSU pedestrian or vehicular traffic as directed by CSU. Service Provider shall thoroughly clean (vacuum, wet mop, etc.) any dust, soot or similar construction generated contaminants at the end of each work day. Service Provider shall not allow debris, waste, or unused construction material to accumulate under, in, or about the work site, nor shall they be used in backfilling. **NOTE**, authorized Service Provider shall not ask CSU Personnel for assistance in work or use of equipment, tools, or supplies. Upon completion of work, Service Provider shall thoroughly clean the work area, including all fixtures, equipment, floors, and hardware, and shall remove all plaster spots, stains, paint spots, and accumulated dust and dirt. This shall include thorough cleaning of all roofs, sidewalks, or other surfaces where debris may have collected. Additionally, Service Provider shall remove all scaffolding, planking, surplus materials, temporary structures, waste materials and rubbish around the equipment or upon the site and dispose of legally. Absolutely **NO materials shall be left on CSU property.** All salvage items removed in connection with any work remain the property of CSU and shall be deliverable to the location designated by the authorized CSU representative.

### 20. Insurance Requirements

The Contractor shall not commence Work until it has obtained all the insurance required in this Contract, and such insurance has been approved by the CSU.

#### a. Policies and Coverage

- (1) The Contractor shall obtain and maintain the following policies and coverage:
  - (i) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Work.
  - (ii) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
  - (iii) Worker's Compensation including Employers Liability Insurance as required by law.
- (2) The Contractor also may be required to obtain and maintain the following policies and coverage:
  - (i) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
  - (ii) Other Insurance by agreement between the Trustees and the Contractor.

#### b. Verification of Coverage

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the Work is accepted as complete. The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.

#### c. Insurance Provisions

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in this Contract. The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (1) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
- (2) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- (3) Each insurance policy required by this Contract shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty (30) Days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
- (4) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives,

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volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

### **d. Amount of Insurance**

- (1) For all projects, the insurance furnished by Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
  - (i) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability \$2,000,000 General Aggregate \$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.
  - (ii) Business Automobile Liability Insurance-Limits of Liability \$1,000,000 Each Accident-- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
  - (iii) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.
- (2) For projects involving hazardous materials, the Contractor shall provide additional coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
  - (i) Environmental Impairment (pollution) Liability Insurance-Limits of Liability \$10,000,000 General Aggregate, \$5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.
  - (ii) In addition to the coverage described in Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:
    - (1) MCS-90 endorsement
    - (2) Sudden & Accidental Pollution endorsement--Limits of Liability\*  
\$2,000,000 Each Occurrence  
\$2,000,000 General Aggregate

\*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance. With the Trustees' approval, the Contractor may delegate the responsibility to provide this additional coverage to its hazardous materials subcontractor. When the Contractor returns its signed project construction phase agreement to the Trustees, the Contractor shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all CSU insurance requirements. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed, whichever is less.

### **e. Acceptability of Insurers**

Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the University.

### **f. Subcontractor's Insurance**

Contractor shall ensure that its subcontractors are covered by insurance of the types required by this Contract, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Contractor shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials.

### **g. Miscellaneous**

- (1) Any deductible under any policy of insurance required in this Contract shall be Contractor's liability.
- (2) Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the Contract.
- (3) In the event the Contractor does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- (4) If the Trustees are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
- (5) The Contractor's obligations to obtain and maintain all required insurance are non-delegable duties under this Contract.
- (6) The Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving Contractor negligence shall be limited to five percent of the Contract.

## **21. General Indemnity**

Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University, CSU, and their respective officers, agents and employees from any and all claims and losses accruing or resulting to any other person,

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firm or corporation furnishing or supplying work, service, materials or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Contractor's performance of this Contract.

### **22. Invoices**

Invoices shall be submitted, in arrears, to the address provided in the Contract. Each invoice must contain the Contract number and Contractor's Identification number. Final invoice shall be marked as such. Contractor shall submit invoices to CSU for payment of goods and services rendered. Unless otherwise specified, CSU shall pay properly submitted invoices not more than 45 days after

- (a) CSU's acceptance of goods;
- (b) the performance completion date of services; or
- (c) receipt of an undisputed invoice, whichever is later. Late payment penalties shall not apply to this Contract. The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance of this Contract, including travel and per diem, unless otherwise expressly so provided.

### **23. Taxes, Fees, Expenses, and Extras**

- (a) Articles sold to CSU are exempt from certain Federal Excise Taxes. CSU will furnish an exemption certificate on request.
- (b) Unless specified otherwise, prices quoted shall include all required and applicable taxes, delivery charges, insurance, license fees, permits, and costs of bonds.

### **24. Patent, Copyright, and Trade Secret Indemnity**

- (a) Contractor shall indemnify, defend, and hold harmless the State of California, Board of Trustees of the California State University (CSU), and their respective officers, agents, and employees (collectively referred to as CSU), from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any Intellectual Property Right, domestic or foreign, by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to CSU, in addition to the foregoing provision, such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide CSU with indemnity protection.
  - (i) CSU will notify Contractor of such claim in writing and tender its defense within a reasonable time; an
  - (ii) Contractor will control the defense of any action on such claim and all negotiations for its settlement or compromise, except when substantial principles of government or public law are involved, when litigation might create precedent affecting future CSU operations or liability, or when involvement of the CSU is otherwise mandated by law. In such case no settlement shall be entered into on behalf of CSU without CSU's written approval.
- (b) Contractor may be required to furnish CSU a bond against any and all loss, damage, costs, expenses, claims and liability for patent, copyright and trade secret infringement.
- (c) Should the Deliverables or Software, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a Intellectual Property Right, whether domestic or foreign, CSU shall permit Contractor at its option and expense either to procure for CSU the right to continue using the Deliverables or Software or to replace or modify the same so they become non-infringing, provided they comply with Contract and performance requirements and/or expectations. If neither option can reasonably be practicable or if the use of such Deliverables or Software by CSU shall be prevented by injunction, Contractor agrees to take back such Deliverables or Software and use its best effort to assist CSU in procuring substitute Deliverables or Software at Contractor's cost and expense. If, in the sole opinion of CSU, the return of such infringing Deliverables or Software makes the retention of other Deliverables or Software acquired from Contractor under this Contract impracticable, CSU shall then have the option of terminating this Contract, or applicable portions thereof, without penalty or termination charge. Contractor agrees to take back such Deliverables or Software and refund any sums CSU paid Contractor less any reasonable amount for use or damage.
- (d) Contractor certifies it has appropriate systems and controls in place to ensure State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

### **25. Rights in Work Product**

All inventions, discoveries, intellectual property, technical communications and records originated or prepared by Contractor pursuant to this Contract, including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be

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Contractor's exclusive property. The provisions of this sub-section (a) may be revised in a Statement of Work.

**26. Examination and Audit**

For contracts in excess of \$10,000, Contractor shall be subject to the examination and audit by

- (a) the Office of the University Auditor, and
- (b) the Bureau of State Audits, for a period of three (3) years after final payment under the Contract. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the Contract. Note: Authority Cited: Government Code Section 8546.7; Education Code Section 89045(c & d), respectively.

**27. Dispute**

Any dispute arising under or resulting from this Contract that is not resolved within 60 days of time by authorized representatives of Contractor and CSU shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and CSU's Chief Business Officer (or designee) for resolution. Either Contractor or CSU may request that the CSU Vice Chancellor, Business and Finance (or designee) participate in the dispute resolution process to provide advice regarding CSU contracting policies and procedures. If this informal dispute resolution process is unsuccessful, the parties may pursue all remedies not inconsistent with this Contract. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under this Contract. Contractor shall accurately and adequately document all service it has performed under this Contract.

**28. Conflict of Interest**

CSU requires a Statement of Economic Interests (California Form 700) to be filed by any Consultant (or Contractor) who is involved in the making or participation in the making of decisions which may foreseeably have a material effect on any CSU financial interest.

**29. Follow-On Contracts**

No person, firm, or subsidiary thereof who has been awarded a contract for Consulting Services or providing Direction (as provided below) may submit a bid or be awarded a contract for the provision of services, the procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

- (a) If Contractor or its affiliates provides Consulting and Direction, Contractor and its affiliates:
  - (i) shall not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for, or in connection with, any subject of such Consulting and Direction; and
  - (ii) shall not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Consulting and Direction, whichever is later.
- (b) "Consulting and Direction" means services for which Contractor received compensation from CSU and includes:
  - (i) development of, or assistance in the development, of work statements, specifications, solicitations, or feasibility studies;
  - (ii) development or design of test requirements;
  - (iii) evaluation of test data;
  - (iv) direction of or evaluation of another Contractor;
  - (v) provision of formal recommendations regarding the acquisition of products or services; or
  - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- (c) Except as prohibited by law, the restrictions of this Section will not apply:
  - (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - (ii) where CSU has entered into a Contract for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- (d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

**30. Endorsement**

Nothing contained in this Contract shall be construed as conferring on any party, any right to use the other party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other party. Furthermore nothing in this Contract shall be construed as endorsement of any commercial product or service by the



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CSU, its officers or employees.

**31. Covenant Against Gratuities**

Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of CSU with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, CSU shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by CSU in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. CSU's rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under the Contract.

**32. Nondiscrimination**

- (a) During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- (b) Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (c) Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**33. Compliance with NLRB Orders**

Contractor declares under penalty of perjury under the laws of the State of California that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court to comply with an order of the National Labor Relations Board. Note: Cite Authority: PCC 10296

**34. Drug-Free Workplace Certification**

Contractor certifies that Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations
- (b) Establish a Drug-Free Awareness Program to inform employees about all of the following:
  - (i) the dangers of drug abuse in the workplace;
  - (ii) the person's or organization's policy of maintaining a drug-free workplace;
  - (iii) any available counseling, rehabilitation and employee assistance programs; and
  - (iv) penalties that may be imposed upon employees for drug abuse violations.
- (c) Provide that every employee who works on the proposed or resulting Contract:
  - (i) will receive a copy of the company's drug- free policy statement; and,
  - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract. Note: Authority Cited: Government Code Section 8350-8357

**35. Forced, Convict, Indentured and Child Labor**

By accepting a contract with CSU, Contractor:

- (a) Certifies that no equipment, materials, or supplies furnished to CSU pursuant to this Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of

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children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further certifies it will adhere to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at <http://www.dir.ca.gov/>, and Public Contract Code Section 6108.

- (b) Agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

### 36. Recycled Content Certification

Contractor shall certify in writing the minimum, if not exact, percentage of postconsumer material, as defined in Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to CSU regardless whether the product meets the requirements of Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205).

### 37. Child Support Compliance Act

For any contract in excess of \$100,000, Contractor acknowledges in accordance with Public Contract Code Section 7110, that:

- (a) Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- (b) Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

### 38. Americans With Disabilities Act (ADA)

Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101et seq). Contractor hereby warrants the products or services it will provide under this Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services. Contractor further agrees to indemnify and hold harmless CSU from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of this Contract.

### 39. Expatriate Corporation

Contractor declares and certifies that it is not an expatriate corporation, and is not precluded from contracting with CSU by The California Taxpayer and Shareholder Protection Act of 2003, Public Contract Code Section 10286, et seq.

### 40. Citizenship and Public Benefits

If Contractor is a natural person, Contractor certifies he or she is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT.2105, 2268-69).

### 41. DVBE and Small Business Participation

- (a) If Contractor has committed to achieve small business (SB) participation it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU:
- (1) the name and address of the SB(s) who participated in the performance of the Contract;
  - (2) the total amount the prime Contractor received under the Contract; and
  - (3) the amount each SB received from the prime Contractor.(Govt. Code § 14841.)
- (b) If Contractor has committed to achieve disabled veteran business enterprise (DVBE) participation, it shall, within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract), report to CSU: (1) the name and address of the DVBE(s) who participated in the performance of the Contract; (2) the total amount the prime Contractor received under the Contract; and (3) the amount each DVBE received from the prime Contractor. The Contractor shall also certify that all payments under the Contract have been made to the DVBE. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code §14841)

### 42. Contractor's Staff

Contractor warrants that its staff, which is assigned to performing work under this Contract, is legally able to perform such duties in the country where the work is being performed.

**43. Compliance with Applicable Regulations**

The project, when completed, shall conform to the specifications and plans as last amended, and applicable regulations and requirements of the CSU and the State of California.

**44. Hazardous Materials/Environmental Requirements**

In the event of a spill of a hazardous waste, as defined in California Code of Regulations, Title 22, Section 66261.3, at the construction site or within the boundaries of CSU property, the Service Provider shall immediately notify authorized CSU personnel and will make every effort to mitigate the spill and minimize its effect on the environment.

**(a). Hazardous Materials**

(1) Asbestos

The Service Provider is prohibited from installing any asbestos-containing materials or products in any Work to be performed under this Contract. The Service Provider shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Contract.

(2) Lead

The Service Provider is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this Contract without the written consent of the Executive Facilities Officer and Director of Environmental Health and Safety. The Service Provider shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of this Contract. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of The Trustees' employees, property, or licenses, the CSU may undertake, at the Service Provider's expense, without prior notice, all work necessary to correct such violation. The CSU may bring to the attention of the Service Provider a possible hazardous situation in the field regarding the safety of personnel on the site. The Service Provider shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Service Provider absolve the Service Provider of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Service Provider has assumed any responsibility for field safety operations. Explosives shall not be used without first obtaining written permission from the CSU and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the Project site or CSU is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

**(b). Environmental Requirement**

(1) Air and Water Pollution Control

The Service Provider shall comply with all air and water pollution control rules, regulations, ordinances and statutes which apply to the Work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of section 11017 of the Government Code. Service Provider must be eligible to perform work for the State, and is deemed eligible if not found to be in violation of any order, resolution, or regulation relating to air or water pollution adopted in accordance with Government Code Section 4477. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Project, shall comply with the applicable material requirements of the Air Quality Management District (AQMD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements. Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 4.08-c, Protection of Facilities). Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided.

(2) Sound Control Requirements

The Service Provider shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the Service Provider shall conduct its Work to minimize disruption to

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others due to sound and noise from the workers, and shall be responsive to the CSU' requests to reduce noise levels. Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune. Loading and unloading of construction materials will be scheduled so as to minimize disruptions to campus activities. Construction activities will be scheduled to minimize disruption to the CSU and to campus users.

### **(3) Archaeological Finds**

If the Service Provider discovers any artifacts during excavation and/or construction, the Service Provider shall stop all affected work and notify the CSU, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary. If the Service Provider discovers human remains, the Service Provider shall notify the CSU who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the CSU shall contact the appropriate tribal representatives to oversee removal of the remains.

### **45. Prevailing Wage**

In accordance with Labor Code Section 1720, Service Provider must pay employees the current prevailing rate wages for work on this service.

