



CAL POLY

College of Science and Mathematics

Warren J. Baker Center for Science and Mathematics Mural Project

San Luis Obispo, California

Call for Artists
REQUEST FOR PROPOSALS

Sponsored by:

College of Science and Mathematics, California Polytechnic State University

Direct correspondence and applications to:

c/o Catherine J. Trujillo, Curator
ctrujill@calpoly.edu

Re: RFP Baker Science Mural

Application Deadline:
February 24, 2017
5:00 p.m. PST

RFP Website: <http://artcollection.calpoly.edu/pages/rfp>

QUESTIONS?

Any questions stemming from the review of this RFP can be addressed to:
Catherine J. Trujillo at ctrujill@calpoly.edu • (805) 756-6395
no later than February 21, 2017



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About the Baker Center

Located at the heart of California Polytechnic State University, San Luis Obispo (Cal Poly), the Warren J. Baker Center for Science and Mathematics, College of Science and Mathematics (Baker Center) powerfully symbolizes the central subject of science and mathematics in the university's polytechnic curriculum, opened for classes in fall 2013.

The Baker Center is Cal Poly's second largest building after the Kennedy Library and is a place of comfort, beauty, intrigue, and inspiration. The Center serves as a graceful landmark on the northwest corner of Via Carta and Inner Perimeter.

Project Description

With support from the College of Science and Mathematics and in collaboration with Cal Poly's Cultural Faculty Staff Associations, we are pleased to extend an invitation and request for proposals to provide artwork honoring and **embracing diversity and inclusivity**. An artist (or team of artists) will be selected to create an indoor mural for installation on the second-floor lobby entry wall of the Baker Center.

Wall Dimensions

The selected artist proposal will be responsible for the preparation of the design including, but not limited to, design, layout, and art production. The indoor space is rectangular, 27 feet long by 6 feet high. **The mural should be painted on 1/2" thick MDO plywood (Medium Density Overlay), to be prepared in the studio of the artist, rather than on scaffold at the mural site.**

The wall is 7 feet above windowed offices and is visible from an adjacent entrance, staircase, and upper floor balconies. A layout of the wall is provided with this RFP, but interested muralists are encouraged to visit the site to further evaluate the wall in relation to their proposal.

The indoor artwork must be constructed of materials appropriate for San Luis Obispo's climate. The materials used for the public art shall be low maintenance, durable and fade-resistant, keeping in mind public safety. The selected artist will be required to complete and submit a Maintenance Plan. Accommodation for donor recognition near the mural is required.



Eligibility

1. Artists must be 18 years of age or older to be eligible to apply.
2. Artists must demonstrate their ability to design and successfully paint an indoor mural.
3. Artists must live within the United States and able to travel to mural location.

Thematic Approach

To the extent possible, artists submitting project ideas are strongly encouraged to consider:

1. Inclusivity

- a. How the proposed mural contributes to and enhances Cal Poly's campus climate as a more equitable and inclusive place to study, research and work.
 - i. Demonstrates educational pursuits and joy of learning
 - ii. Encourages critical thinking and pursuit of information to analyze and use sound judgment

2. Diversity

- a. Shared values in collaboration and shared responsibility for social justice, inclusivity and diversity
- b. Demonstrates Multiculturalism and gender diversity—beyond the binary
 - i. Respect, empowerment, resilience

3. Community

- a. Honors the native land
- b. Inspires to serve the community



Selection Criteria

The Art Jury will evaluate each proposal based on the following:

1. Relevance to Theme.
2. Artistic excellence.
3. Ease of maintenance.
4. Proposal Feasibility. Has the artist created a proposal that meets given site specifications/guidelines?
5. Ability to Execute. Based on the artist's existing body of work and experience, does the artist demonstrate the ability to complete the commission on time and in keeping with their proposal?
6. Appropriateness. Is the proposed artwork appropriate for the public location and audience?
7. Appropriateness of scale, form, material, content and aesthetic compatibility relative to the site.
8. Appropriateness of proposed materials in regards to structural and surface integrity, public safety and weathering and its protection against theft and vandalism.
9. Appropriateness of proposed method of installation of artwork, and the safety and structural factors involved with installation.
10. Proposals, which are more forward thinking and without a historical emphasis.
11. Evaluation of proposed budget and the artist's ability to successfully complete the project within the proposed budget.
12. Artist's experience in working on comparable projects.

Mural concepts regarded as negative, violent, hateful, or discriminatory based on race, disability, gender, culture, or religion will NOT be considered.

Application Deadline
February 24, 2017
5:00 p.m. PST



Project Budget

The total artist stipend is a budget between **\$15,000-17,000**

- **ARTIST STIPEND** Costs incurred by the artist including but not limited to: design-stipend and supplies to fabricate the artwork.
- **CAL POLY** Expenses apart from artist stipend include: installation of the artwork, site preparation, plans and specifications, engineering, special inspections, lighting, shipping of artwork, and artist travel & accommodations.

Contract Terms

Proposal Requirements:

Requirement to meet all Contract Terms and General Provisions for Goods and Services Refer to “**Exhibit A.**” Each individual or team submitting a proposal shall meet all of the terms and conditions outlined herein. By virtue of its proposal submittal, the proposer acknowledges agreement with and acceptance of all provisions of the RFP specifications.

Contract Award and Execution:

Proposal Retention and Award

Cal Poly reserves the right to waive non-substantial irregularities in any proposal, to reject any or all proposals, to reject or delete one part of a proposal and accept the other, except to the extent that proposals are qualified by specific limitations.

Competency and Responsibility of Proposer

Cal Poly reserves full discretion to determine the competence and responsibility, professionally and/or financially, of proposers. Proposers will provide, in a timely manner, any and all information that Cal Poly deems necessary to make such a decision.

Contract Requirement

The proposer to whom the award is made (Artist) shall execute a written contract with Cal Poly within ten (10) calendar days after notice that the award has been sent by email or mail at the address given in its proposal. The contract shall be made in the form adopted by the Cal Poly and incorporated in these specifications.

Payment of Taxes

The contract prices shall include full compensation for all taxes that the Artist is required to pay.

Payment Terms

Payment terms are 1/4 upon signed contract, 1/4 upon completion of the work and readiness to commence installation of the work and 1/2 upon complete installation and completion of the project.



Proposal Package – Statement of Work

Proposals are submitted via email in a PDF format to: ctrujill@calpoly.edu
(total file size must be less than 10 MB)

Section A: cover sheet

One page cover sheet stating the following information in the order listed:

- RFP Title: “Proposal to Provide Services for the College of Science and Mathematics Mural Project”
- Title of artwork:
- Medium:
- Proposed dimensions:
- Artist’s name:
- Artist’s telephone number:
- Artist’s email address:
- Artist’s web address: (if applicable)
- Artist’s mailing address:

Section B: approach to project:

A written narrative description of the Artist’s approach to the project, which should address the following areas:

1. Artist’s approach to the theme; artist statement.
2. Artist’s intended materials to be used; their durability and longevity qualities, including the Artist’s analysis of proposed art’s ability to withstand weather and vandalism; and expected on-going maintenance efforts to sustain the Artist’s intention.
3. Three graphic renderings of proposed art concept: Please include your name, address, email address and telephone number at the bottom of each rendering.
4. An estimated budget for design concept. The budget should list costs for design execution, supplies to fabricate the artwork, estimate for shipping, and travel for artist to site for installation and reception.

Finalist Requirements:

If selected as a finalist, the Artist will be required to attend the opening reception and participate in a presentation to the campus community. Failure to attend may be cause for Cal Poly to recommend another entry.

Submittal of Maintenance Plan

The selected artist will be required to complete and submit a maintenance plan prior to the final contract payment.

**Ownership of Artwork**

Upon completion and installation of the artwork, the work becomes the property of California Polytechnic State University.

In addition, if awarded contract, Artist will provide original concept sketches for mural, to be added to the campus art collection archives for study by faculty and students.

In consideration of the acquisition of said work by Cal Poly, the Artist will grant reproduction permission for the use of the work for all conventional educational and interpretive purposes including, however not limited to: public display, reproductions in any appropriate manner including exhibitions catalogues, scholarly publications, slides, transparencies, black-and-white and/or color prints, digital formats, web pages, and any other suitable manner that agents of Cal Poly deems necessary.

TENTATIVE SCHEDULE

RFP Announcement:	January 27, 2016
Application Deadline	February 24, 2017 • 5:00 p.m. PST
Proposal Interviews <i>(Phone or video interview)</i>	February 27 – 28, 2017
Art Acquisition Committee Review <i>(Determination of whether chosen artwork meets University guidelines)</i>	TBD
Award of Contract	March 3, 2017
Installation of Artwork	May 29 – June 2 2017* <i>*(Estimated)</i>
Reception	Between June 2 to June 16, 2017** <i>** (Estimated)</i>

CHECKLIST FOR PROPOSAL PACKAGE

Cover sheet	<input type="checkbox"/>
Approach to project	<input type="checkbox"/>
3 graphic renderings	<input type="checkbox"/>
Budget worksheet	<input type="checkbox"/>
Resume and or/portfolio <i>(examples of work)</i>	<input type="checkbox"/>



FEE SCHEDULE

PUBLIC ART

Warren J. Baker Center for Science and Mathematics Mural Project

Please use this as a guide in developing your project budget to ensure that all costs are addressed. Add any other relevant expenses. Include a pricing contingency. You may use this format in your proposal, or develop one more suited to your project. Areas below with "\$" should be completed by artist/applicant.

- **ARTIST** Costs incurred by the artist including but not limited to: design stipend, and supplies to fabricate the artwork.
- **CAL POLY** Expenses apart from artist stipend include: installation of the artwork, site preparation, plans and specifications, engineering, special inspections, lighting, shipping of artwork, and artist travel and accommodations.

	Artist Costs	Cal Poly Costs
Artist's Fee	\$	
Materials and Supplies Up to \$2,000 (itemize on separate sheet if necessary)	\$	
Fabrication (subcontractors, if any, fabrication by artist, etc.)	\$	
Insurance		
Travel & accommodations (Please estimate and provide cost under "Cal Poly Costs" column)		\$
Transportation/shipping of Artwork (Complete narrative below for shipping plan and provide cost under "Cal Poly Costs" column. Cal Poly will provide wall-to-wall insurance)		\$
Installation (labor, equipment rental, permits, landscaping, etc.)		
Other Expenses (please describe)	\$	
	Artist Total	Cal Poly Total
TOTAL BUDGET: <i>Artist costs not to exceed \$17,000.00</i>	\$	\$

Transportation/Shipping narrative

Describe method of transportation including shipping vendor if applicable and measures to insure the safety, security, and insurance of artwork. Attach shipping estimate if sourcing with vendor:



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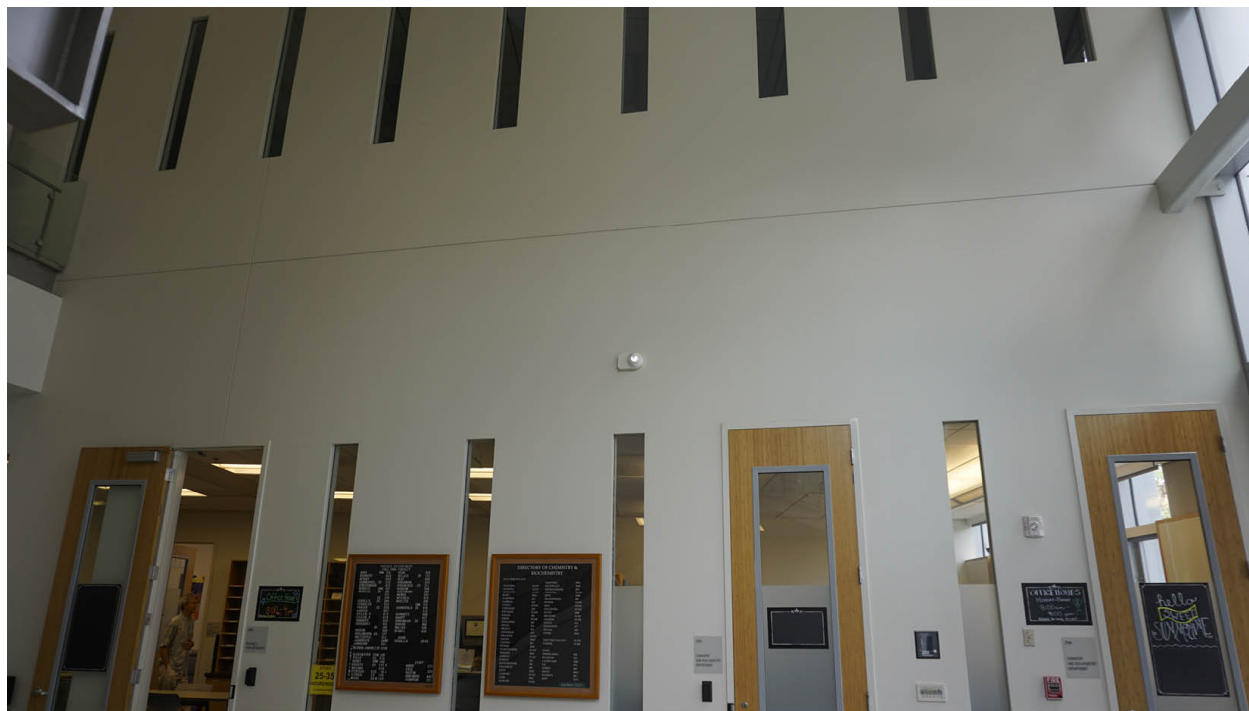
College of Science and Mathematics

Attachment A: Baker Science Center Lobby Images



Entrance to 2nd floor lobby where proposed mural will be located

Baker Science Center, Cal Poly
Building 180, 2nd floor lobby
1 Grand Ave. San Luis Obispo, CA 93407



Lobby wall where proposed mural will be located

The proposed mural indoor location is rectangular, 27 feet long by 6 feet high. The wall is 7 feet above windowed offices and is visible from an adjacent entrance, staircase, and upper floor balconies.



The mural should be painted on $\frac{1}{2}$ " thick MDO plywood (Medium Density Overlay), to be prepared at the studio of the artist, rather than on scaffold at the mural. Primer and edge sealer required. Proof of MDO purchase will be required as part of artist contract.



= (Approximate location and linear span for placement of mural)



Lobby where proposed mural will be located: Balcony view

The proposed mural location is visible from an adjacent entrance, staircase, and upper floor balconies.



Lobby where proposed mural will be located: Front View

The proposed mural location is visible from an adjacent entrance, staircase, and upper floor balconies.



Lobby where proposed mural will be located: Balcony view

The proposed mural location is visible from an adjacent entrance, staircase, and upper floor balconies.



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College of Science and Mathematics

EXHIBIT A: General Provisions for Goods and Services

CSU GENERAL PROVISIONS
FOR
ACQUISITION OF GOODS
Revised 10/15/14

CSU GENERAL PROVISIONS FOR ACQUISITION OF GOODS
Revised 10/15/14

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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 of such provision. 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 employees and 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 Contractor in the performance of this Contract should fail to conform to the requirements herein, or to the sample submitted by Contractor, CSU may reject the same, and it shall thereupon become Contractor's duty to forthwith reclaim and remove all nonconforming deliverables and correct the performance of services, without expense to the CSU, and to immediately replace all such rejected items with others conforming to the specifications or samples. Should Contractor fail, neglect, or refuse to do so, CSU shall thereupon have the right, but not the obligation, to purchase in the open market, in lieu thereof, a corresponding quantity of any such items and to deduct the cost of such cover from any moneys due or that may thereafter become due to Contractor.
- (b) In the event Contractor fails to make prompt delivery of any item as specified in the Contract, the same conditions as to CSU's right, but not obligation, to purchase in the open market and receive reimbursement from Contractor, as set forth in (a), above shall apply.
- (c) In the event the CSU terminates this Contract, either in whole or in part, for Contractor's default or breach, Contractor shall compensate CSU, in addition to any other remedy CSU may have available to it, for any loss or damage sustained and cost incurred by the CSU in procuring any items that Contractor 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. Warranty

- (a) Contractor warrants that (i) Deliverables and services furnished hereunder will conform to the requirements of this Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from defects in materials and workmanship. Where the parties have agreed to design specifications in the Statement of Work directly or by reference, Contractor warrants the Deliverables shall provide all functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, Contractor warrants such Software shall perform in accordance with its license and accompanying Documentation. CSU's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.
- (b) Contractor warrants that at the time of delivery, deliverables (i) shall be free of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or software); and (ii) shall not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if CSU believes harmful code may be present in any Commercial Software delivered, Contractor shall, upon CSU's request, provide a master copy of the Software for comparison and correction. (c) Unless otherwise specified in the Statement of Work: (i). Where Contractor resells Hardware or Software it purchased from a third party, and such third party offers additional or more advantageous warranties than those set forth herein, Contractor shall pass through any such warranties to CSU and shall cooperate in enforcing them. Such warranty pass-through shall be supplemental to, and not relieve Contractor from, Contractor's warranty obligations set forth above.
- (d) All warranties, including special warranties specified elsewhere herein, shall inure to CSU, its successors, assigns, customer agencies, and other governmental users of the Deliverables or services.

17. 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 pursuant to Article 8.01, Acceptance. 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 Article 4.07.

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 Article 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, 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 4.06-d (1) (b), Business Automobile Liability Insurance, the Contractor

shall obtain for hazardous material transporter services:

- (iii) MCS-90 endorsement
- (iv) 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, as described in this Article 4.06-d (2) (b) above, 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 of the requirements in Article 4.06-b: Verification of Coverage and 4.06-c: Insurance Provisions. 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 Article, 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 as required in Article 4.06-d, Amounts of Insurance, subdivision (2).

(g) Miscellaneous.

- (1) Any deductible under any policy of insurance required in this Article 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.

18. 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, 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.

19. 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 (i) CSU's acceptance of goods; (ii) the performance completion date of services; or (iii) 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.

20. Packing and Shipment

- (1) All goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - (i) show the number of the container and the total number of containers in the shipment; and
 - (ii) the number of the container in which the packing sheet has been enclosed.
- (2) All shipments by Contractor or its subcontractors must include packing sheets identifying: the CSU's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

21. Delivery

Contractor shall strictly adhere to the delivery and completion schedules specified in this contract. Time, if stated as a number of days shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If Contractor delivers in excess of the quantities specified herein, the CSU shall not be required to make any payment for the excess deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the CSU at law or in equity.

22. Substitutions

Substitution of Deliverables may not be tendered without advance written consent of the CSU. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the CSU.

23. Inspection, Acceptance and Rejection

Unless otherwise specified in the Statement of Work all deliverables may be subject to inspection and test by the CSU.

24. Taxes, Fees, Expenses, and Extras

- (a) Contractor certifies that it shall comply with all California Sale and Use Tax requirements. 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.
- (c) No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by CSU unless expressly included and itemized in the Contract. Unless otherwise indicated on the Purchase Order or Contract, on "FOB Shipping Point" transactions vendor shall arrange for lowest cost transportation, prepay, add freight to invoice, and furnish supporting freight bills over \$50. On "FOB Shipping Point" transactions, should any shipments under this Contract be received by CSU in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers by wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packing or loading or some inherent defect in the equipment and/or material, vendor shall, at its own expense, assist CSU in establishing carrier liability.
- (d) Contractor certifies it will immediately advise CSU of any change in its retailers seller's permit or certification of registration or applicable affiliate's sellers permit or certificate of registration.

25. Electronic Software Tax Liability

Contractor further agrees to deliver purchased software solely in an intangible form and via electronic means. Contractor shall be responsible for ensuring that the software is not delivered to the CSU in tangible form, and shall defend and indemnify the CSU for any and all tax liability resulting from Contractors failure to deliver the software as required by this Agreement.

26. Document Referencing

All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Contract number. If factory shipment, the factory must be advised to comply. Invoices not properly identified with the Contract number and Contractor identification number may be returned to Contractor and may cause delay in payment

27. 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; and
 - (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.

28. Rights in Work Product

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

29. 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.

30. 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.

31. 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.

32. 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 CSU, its officers or employees.

33. 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.

34. 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.

35. 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

36. 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.

37. 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 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).

38. 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).

39. 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.

40. 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.

41. Expatriate Corporations

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.

42. 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).

43. Loss Leader

Contractor certifies and declares it is not engaged in business within this State of California to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. Note: Authority Cite: (PCC 12104.5(b).)

44. 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).

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Revised 10/15/14

45. Debarment and Suspension

By accepting a contract with the CSU, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency (2 Code Federal Regulations[CFR] 180.220, in accordance with the Office of Management and Budget guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235)).