

Professional Services Agreement

This Professional Services Agreement (“Agreement”) is made and entered into by and between the Cal Poly Corporation (“Corporation”), a nonprofit 501(c)(3) public benefit corporation and auxiliary that provides support to California Polytechnic State University (“University”), and [SERVICE PROVIDER], [ENTITY TYPE], (“Service Provider”), each referred to as a “Party” or collectively the “Parties”. This Agreement shall be effective on the date that the last authorized signature is affixed (“Effective Date”).

| | |
|--------------------------|--------------------------------|
| Service Provider: | Agreement No. |
| License No. N/A | Corporation Vendor ID # |

Service Provider, in consideration of the statements and conditions herein contained, agrees to furnish labor, materials, and equipment, and to perform all work necessary to complete, in a skillful and professional manner, such services as contemplated by the terms of this Agreement.

Now therefore, the Parties agree as follows:

1. **Exhibits.** The following Exhibits are attached and hereby incorporated into this Agreement:
 Exhibit-A: [Proposal for Professional Services]
 Exhibit-B: Insurance Requirements
2. **Services.** Except as provided herein or modified in writing by the Parties, Service Provider agrees to provide all labor and resources necessary to complete in a diligent and professional manner, the services described in Exhibit A: [“Proposal for Professional Services”] in accordance with all Exhibits and the following terms and conditions, collectively, (the “Services”).
3. **Term.** This Agreement shall expire upon completion of the contemplated Services, unless terminated sooner in accordance with Section 21 of this Agreement.
4. **Contract Price.** As full compensation for the Services and all of Service Provider’s obligations hereunder, Corporation shall pay to Service Provider an amount not to exceed [\$xxx,xxx.xx] (the “Contract Price”). The Contract Price may be increased or decreased by change order and as otherwise stated in this Agreement. The Contract Price shall be paid in accordance with Section 5.
5. **Terms of Payment.** Service Provider shall invoice Corporation monthly for completed Services. Notwithstanding Section 5(a), all invoices shall be paid by Corporation within thirty (30) calendar days from the date of receipt. All further references to “Day” or “Days” in this Agreement shall have the meaning calendar days.
 - (a) Disputes Regarding Payment. Corporation reserves the right to withhold payment of any invoiced amount disputed in good faith. Failure by Corporation to pay any invoiced amount disputed in good faith until resolution of such dispute shall not alleviate, diminish, modify nor excuse the performance of Service Provider or relieve Service Provider’s obligations to perform hereunder. Service Provider’s acceptance of any payment, and Corporation’s payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute. Service Provider and Corporation shall use reasonable efforts to resolve all disputed amounts reasonably expeditiously and in any case in accordance with the provisions of Section 31 of this Agreement. No payment made hereunder shall be construed to be acceptance or approval of any Services to which such payment relates or to relieve Service Provider of any of its obligations hereunder.
6. **Commencement and Scheduling of Services.** Service Provider shall not commence any Services until receipt of a purchase order “PO” for such Services from Corporation.
7. **Acceptance of Services.** All Services performed under this Agreement shall be to the satisfaction of Corporation and in accordance with all Exhibits, Corporation PO, and the terms and conditions of this Agreement, together the (“Contract Documents”). Corporation reserves the right to review the Services performed, and in its sole discretion, determine the quality, acceptability, and fitness of such Services. “Acceptance” will occur upon “Final Completion”, which means the full operational availability of the Services to the Corporation in conformance with all aspects of the Contract Documents.

- 8. Ownership of Work Product.** Originals of all drawings, specifications, reports, records, documents and other materials whether in hard copy or electronic form that is prepared by Service Provider, its employees, subcontractors or agents in the performance of this Agreement, shall be the property of Corporation and shall be delivered to Corporation upon the termination of this Agreement, or upon the earlier request of Corporation. Service Provider shall have no claim for further engagement or additional compensation as a result of the exercise by Corporation of its full rights of ownership of the documents and materials hereunder. Service Provider may retain copies of such documents for its own use. The drawings, specifications, reports, records, documents and other materials prepared by Service Provider in the performance of services under this Agreement shall not be released publicly without the prior written approval of Corporation or as required by law. The proprietary information and methodologies of Service Provider utilized in connection with the Services hereunder shall at all times remain the exclusive property of Service Provider.
- 9. Subcontractors & Sub-consultants.** Service Provider shall ensure that all subcontractors and/or sub-consultants are appropriately licensed, possess the requisite skill and capabilities, and are adequately insured for the work they are assigned. Determination of adequate insurance coverage and review is the responsibility of Service Provider, as Service Provider remains obligated to Corporation for all subcontractor and sub-consultant work, acts, and omissions.
- 10. Independent Capacity of Service Provider.** The Parties hereto agree that Service Provider, their officers, agents, and employees, in the performance of this Agreement shall act in the capacity of an independent contractor and not as an officer, employee, or agent of Corporation. Nothing in this Agreement shall be construed to create a partnership or joint venture and neither Party is authorized to act as agent or bind the other Party except as expressly stated in this Agreement. Except as expressly provided in this Agreement, Service Provider is not authorized to enter into any contract, lease or other arrangement in Corporation's or University's name, or for Corporation's or University's account or by which Corporation or University would be legally bound or held liable. Service Provider shall perform the Services under the general direction of Corporation, but Service Provider shall determine, in Service Provider's sole discretion, the manner and means by which the assignment is accomplished. Where applicable, Service Provider and the work produced by Service Provider shall be deemed a work for hire as that term is defined under Copyright Law.
- 11. Parking & Deliveries.** Service Provider is required to pay parking fees for vehicles parked on campus during performance of Services under this Agreement. Special permits are available for delivery vehicles. Prices are subject to change without notice. All deliveries shall be coordinated prior to arrival at the construction site with the Corporation or their designee.
- 12. Taxes and Fees.** The Contract Price includes all applicable tax. Service Provider assumes exclusive liability for and shall pay before delinquency all other federal, state or local, use, value added, excise, real estate, income, and other taxes, charges or contributions imposed on, or with respect to, the Services provided under this Agreement. Each Party shall hold harmless, indemnify and defend the other Party, together with the other Party's officers, directors, agents and employees, from any liability, penalty, interest and expense by reason of such Party's failure to pay the taxes, charges or contributions for which it is responsible by law.
- 13. Damage to Corporation Property.** Service Provider shall protect from damage all existing Corporation, and University property insofar as performance of this Agreement affects said property. Should damage occur due to the negligence, recklessness, or willful misconduct of Service Provider, its officers, subcontractors, assignees, appointees, agents, or employees., it is Service Provider's responsibility to restore the property to its original condition. Service Provider shall immediately notify Corporation of any loss, damage, or destruction of Corporation or University property caused by Service Provider, and shall furnish Corporation with a statement concerning the loss in such detail as Corporation may require. Should Service Provider fail to restore the damaged property to its original condition, Corporation (or its Agent) will do so and assign the cost to Service Provider. Claims by Corporation or the University under this clause shall be made in writing to the Service Provider within a reasonable time of the first observance of such damage.
- 14. Use of University or Corporation Marks.** Service Provider shall not use any image, logo, mark or intellectual property of Corporation or University in any manner or form without the express written consent of Corporation or the University, respectively. This includes the use of Service Provider or product logo in conjunction with Corporation or University logos, which must be pre-approved by the Corporation and the University.
- 15. News Releases.** News releases pertaining to this Agreement shall not be made without the prior written approval of Corporation or their designee.
- 16. Recordkeeping and Record Retention.** Service Provider shall establish and maintain adequate records of all expenditures incurred under this Agreement. All records must be kept in accordance with generally accepted accounting principles (GAAP). All procedures must be in accordance with federal, state and local ordinances. Corporation shall have the right to audit, review, examine, copy, and transcribe any pertinent records or documents relating to any Purchase Order resulting from this Agreement held by the Service Provider. The Service Provider will retain all documents applicable to the Agreement for a period of not less than three (3) years after expiration or termination of this Agreement.

- 17. Insurance.** During the term of this Agreement, Service Provider shall provide insurance as set forth in Exhibit-C “Insurance Requirements”.
- 18. Title & Risk of Loss.** From the Effective Date and until the date of completion or Termination, whichever occurs sooner, Service Provider bears the risk of loss and full responsibility for the cost of replacing or restoring all work product in Service Provider’s care, custody and control.
- 19. Indemnification.**
- (a) Service Provider, agrees to indemnify, hold harmless, and defend, the Cal Poly Corporation, the California State University and each of their trustees, officers, employees, agents and volunteers from and against any and all liability, loss, expense, or claims for injury or damages arising out of, resulting from, or in connection with the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligence, recklessness, or willful misconduct of Service Provider, its officers, subcontractors, assignees, appointees, agents, or employees.
 - (b) Corporation agrees to indemnify, including the cost to defend, and hold harmless the Service Provider and each of their officers, employees, agents and volunteers from and against any and all liability, loss, expense, or claims for injury or damages arising out of, resulting from, or in connection with the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligence or willful misconduct of Corporation, its officers, subcontractors, assignees, appointees, agents, or employees. This indemnification expressly excludes the duty of Corporation to defend any indemnified party, however, the absence of the duty to defend shall not preclude the indemnified party from seeking its reasonable attorneys’ fees as part of its damages where and to the extent such fees are caused by the Corporation’s negligence.
 - (c) Waiver of Consequential Damages. THE PARTIS AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES FOR LOST PROFITS, LOST REVENUE OR LOSS OF USE OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT.
 - (d) Limitation of Liability. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO SECTION 19(b), CORPORATION’S TOTAL LIABILITY TO SERVICE PROVIDER UNDER OR ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNTS PAID OR PAYABLE BY CORPORATION TO SERVICE PROVIDER HEREUNDER. EXCEPT FOR AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO SECTION 19(a), SERVICE PROVIDERRS TOTAL LIABILITY TO CORPORATION UNDER OR ARISING OUT OF THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE INSURANCE LIMITS SET FORTH IN EXHIBIT-B.
- 20. Representations and Warranties.** Service Provider represents and warrants that i) it possesses the requisite knowledge, skill, and experience necessary to perform the Services, ii) all Services shall be performed in accordance applicable federal, state and local laws, rules and regulations.
- (a) Additional Representations and Warranties. The Parties each hereby represent and warrant to the other Party as follows: (i) that it has full power, authority and capacity to enter into this Agreement and to perform all its obligations hereunder, and (ii) that it is not bound by any other agreement, arrangement, judgment or order which would be violated as a result of its entering into this Agreement or performing any of its obligations hereunder.
- 21. Termination.**
- (a) Termination for Cause: Either Party shall be entitled to terminate this Agreement pursuant to written notice upon the occurrence of any of the following circumstances:
 - 1. Any representation or warranty made in this Agreement proves to have been false or misleading in any material respect as of the time made, confirmed or furnished (but, if such breach is capable of being cured, only to the extent such breach continues for thirty (30) Days following receipt of a notice in writing of such breach);
 - 2. A violation in any material respect of any of the provisions of this Agreement, which violation remains uncured for thirty (30) Days following receipt of written notice thereof; provided however, that if the nature of the breach requires more than thirty (30) Days to cure, and the violating Party is using commercially reasonable efforts to cure, then such time period shall be extended accordingly;
 - 3. A Party voluntarily commences bankruptcy, insolvency or similar debtor-relief proceedings, or becomes insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or
 - 4. Insolvency, receivership, reorganization, bankruptcy or a similar proceeding is commenced against a Party under the bankruptcy laws of the United States or under any insolvency act of any state and such proceeding is not

dismissed or stayed within a period of ninety (90) Days thereafter.

- (b) Rights upon Termination. Upon termination for any of the foregoing reasons, and in addition to all rights and remedies that may be available under applicable law, Service Provider shall discontinue all or any part of the Services and use commercially reasonable efforts to reduce or otherwise mitigate any expense to Corporation. Corporation shall pay Service Provider, within sixty (60) Days' of the termination date, for all completed Services through the effective date of such termination. Service Provider shall provide copies of supporting documentation upon Corporation's request.
- (c) Termination for Convenience. Corporation shall have the right to terminate this Agreement at any time for its convenience, upon (15) Days written notice to Service Provider. Corporation shall pay Service Provider, within thirty (30) Days of the termination date, for all completed Services and any equipment and materials ordered through the effective date of such termination. Service Provider shall provide copies of supporting documentation upon Corporation's request. Service Provider shall use commercially reasonable efforts to return or redistribute any materials procured by Service Provider.

22. Safety and Accident Prevention. In performing work under this Agreement, Service Provider shall conform to all specific safety requirements contained in this Agreement or as required by law or regulation. Service Provider shall take all additional precautions as the Corporation or Swanton Ranch staff may reasonably require for safety and accident prevention purposes. Service Provider's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Agreement.

23. 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 Swanton Ranch, Service Provider shall immediately notify authorized Swanton Ranch personnel and will make every effort to mitigate the spill and minimize its effect on the environment.

(a) Hazardous Materials

1. Asbestos. Service Provider is prohibited from installing any asbestos-containing materials or products in any Work to be performed under this Agreement. 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 completion of the Services, the warranty period, or other provisions of this Agreement.
2. Lead. Service Provider is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this Agreement without the written consent of the Corporation or their designee. 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 completion of the Services, the warranty period, or other provisions of this Agreement. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Corporation, the Trustees, or their respective employees, property, or licenses, the Corporation may undertake, at the Service Provider's expense, without prior notice, all work necessary to correct such violation. The Corporation or their designee 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 Corporation 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 Corporation or University property is strictly 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(s)

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 Services performed under this Agreement, 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 Corporation, 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 in connection with the Services, 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. 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 Services. In the absence of any such rules, regulations and ordinances, the Service Provider shall conduct Services in such a way as to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Corporation's requests to reduce noise levels. Each internal combustion engine, used for any purpose related to the Services, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the site 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.

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 Corporation, 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 Swanton Ranch who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the Corporation shall contact the appropriate tribal representatives to oversee removal of the remains.

24. Minimum Warranty.

(a) Unless otherwise specified in the Scope 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 Agreement and be free from faults and defects of design, material, and workmanship. Where Corporation and Service Provider have agreed to design specifications (such as a Detailed Design Documents), 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 Agreement, shall inure to the Corporation, its successors, assigns, customer agencies, and governmental users of the deliverables or services.

25. Safety and Accident Prevention. In performing work under this Agreement, Service Provider shall conform to all specific safety requirements contained in this Agreement or as required by law or regulation. Service Provider shall take all additional precautions as the Corporation may reasonably require for safety and accident prevention purposes. Service Provider's violation of such rules and requirements, unless promptly corrected, shall constitute a material breach of this Agreement.

26. 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 pedestrian or vehicular traffic as directed by Corporation. Service Provider shall thoroughly clean (broom sweep, 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 Corporation or University personnel for assistance in work or use of equipment, tools, or supplies. Upon completion of Services, Service Provider shall thoroughly clean the work area, and shall remove all stains, paint spots, accumulated dust and dirt, waste, etc. This shall include thorough cleaning of all paved roads, sidewalks, or other surfaces where debris may have collected. Additionally, Service Provider shall remove all 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 Corporation or University. All salvage items removed in connection with any work remain the property of Corporation and shall be deliverable to the location designated by the authorized Corporation representative.

27. 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 University property, the Service Provider shall immediately notify authorized Corporation personnel and will make every effort to mitigate the spill and minimize its effect on the environment.

(a). Hazardous Materials

3. Asbestos. The Service Provider is prohibited from installing any asbestos-containing materials or products in any work to be performed under this Agreement. 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 completion of the Services, the warranty period, or other provisions of this Agreement.
4. Lead. The Service Provider is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under this Agreement without the written consent of the Corporation or their designee. 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 completion of the Services, the warranty period, or other provisions of this Agreement. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Corporation, the Trustees, or their respective employees, property, or licenses, the Corporation may undertake, at the Service Provider's expense, without prior notice, all work necessary to correct such

violation. The Corporation or their designee 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 Corporation 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 Corporation or University property is strictly 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(s)

3. **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 Services performed under this Agreement, 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 Corporation, 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 in connection with the Services, 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. 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.
4. **Sound Control Requirements.** The Service Provider shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Services. In the absence of any such rules, regulations and ordinances, the Service Provider shall conduct Services in such a way as to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Corporation's requests to reduce noise levels. Each internal combustion engine, used for any purpose related to the Services, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the site 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.
5. **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 Corporation, 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 Corporation who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the Corporation shall contact the appropriate tribal representatives to oversee removal of the remains.

28. Force Majeure.

- (a) Neither Party shall be liable for any failure to perform its obligations under this Agreement for the period of time that it is prevented, hindered, or delayed in performing those obligations by circumstances beyond its control, including, but not limited to, fire, strike, war, riots, acts of terrorism, disaster, acts of God, acts of any governmental authority, communicable disease outbreak, epidemic or pandemic, unavailability or shortages of labor, materials, or equipment, disruption of transportation, or any other comparable event beyond the control of the Party whose performance is affected (each, a "Force Majeure Event.").
- (b) The Party claiming Force Majeure shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event, provide written notice to the other Party of the nature, extent, and expected duration of the Force Majeure Event and use its diligent efforts to mitigate the effects of the Force Majeure Event upon such Party's performance under this Agreement, it being understood that upon completion of the Force Majeure Event, the Party whose performance was affected must, as soon as reasonably practicable, recommence the performance of its obligations under this Agreement.
- (c) Notwithstanding any other term in this Agreement, including, but not limited to, the foregoing subsections of this section 28, during the period of a Force Majeure Event affecting performance by Service Provider, Corporation may elect to do all or any of the following:

- i. Suspend the Agreement for the duration of the Force Majeure Event and be relieved of any payment obligation for services not delivered or accepted due to the Force Majeure Event;
- ii. Obtain elsewhere the services not delivered or accepted due to the Force Majeure Event;
- iii. Extend the time for Service Provider's performance by a period equal to the duration of the Force Majeure Event; and/or
- iv. Terminate the Agreement as to any goods or services not already received with no further financial obligation if the Force Majeure Event continues to exist for more than thirty (30) Days.

29. COVID-19 In the event that Corporation considers it necessary or prudent to cancel this Agreement due to circumstances related to COVID-19, or to any reoccurrence of the COVID-19 outbreak, Corporation may do so and be relieved of any further financial obligation, risk, or other liability by providing seventy-two (72) hours prior written notice of cancellation to Service Provider. Corporation's right to cancel the Agreement pursuant to this section 29 shall not be limited or restricted in any manner by any other term or section of this Agreement.

30. Notices: All notices and all other matters pertaining to this Agreement requiring legal notice to a Party shall be in writing, shall be hand delivered, or sent by Certified U.S. Mail return receipt required, and shall be deemed to have been duly given when received by the addressees at the following addresses:

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| CAL POLY CORPORATION | CONTRACTOR/ SERVICE PROVIDER |
| 1 GRAND AVE. | ADDRESS |
| CPC ADMINISTRATION BLDG. #15 | ADDRESS |
| SAN LUIS OBISPO, CA 93407 | ATTN: |
| ATTN: LEGAL & FACILITIES | |

31. Resolution of Disputed Claims.

(a) Dispute Resolution.

1. The Parties each acknowledge and agree that the other Party could be irreparably injured by a breach of the provisions in this Agreement concerning Confidential Information, misuse of intellectual property, or improper news releases concerning the Services and that money damages may be an inadequate remedy for an actual or threatened breach of such provisions because of the difficulty of ascertaining the amount of damage that would be suffered in the event of breach. Therefore, the Parties acknowledge and agree that they may seek specific performance under such provisions and injunctive or other equitable relief as a remedy for a breach of such a provision. Such remedy shall not be deemed exclusive, but shall be in addition to all other remedies available at law or in equity.
2. The Parties shall first endeavor to resolve any differences which may arise between them by discussion and negotiation rather than litigation. If these methods fail, either Party may refer the matter to non-binding mediation to be conducted in accordance with the commercial rules of the American Arbitration Association (the "AAA"). Mediation shall take place in San Luis Obispo, California, and each Party shall bear its own costs and one-half (½) of the costs of the mediator and the AAA. The first mediation session shall occur within 45 days of filing a request. The Parties will cooperate with the AAA and with one another in selecting a neutral mediator from the AAA's panel of neutrals and in scheduling the mediation proceedings. If the Parties are unable to select the mediator within 10 business days after receipt of the mediation notice by the AAA, then the AAA shall designate the mediator. The Parties' covenant that they will (i) participate in the mediation in good faith, (ii) share equally in the costs of the mediator and related administrative costs, and (iii) pay in advance the estimated reasonable fees and costs of the mediation, as may be specified in advance by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any AAA employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any reference, arbitration, litigation or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 10 business days after the first mediation session, either Party may (a) give written notice to the AAA and the other Party that the mediation is terminated and (b) submit any remaining disputes to binding arbitration pursuant to Section 31(a)(3) below.
3. If the Parties are unable to resolve their differences through mediation, either Party shall refer the matter to final and binding arbitration with the American Arbitration Association ("AAA") in accordance with the commercial rules of the AAA. Arbitration shall take place in San Luis Obispo County, California. Each Party shall bear its own costs and one-half (½) the cost of the arbitrator and AAA. The Parties agree that any and all disputes that are submitted to arbitration in accordance with this Agreement shall be decided by one (1) neutral arbitrator who is experienced in

commercial transactions. If the Parties are unable to agree on an arbitrator, AAA shall designate the arbitrator. The Parties will cooperate with AAA and with one another in selecting the arbitrator and in scheduling the arbitration proceedings in accordance with applicable AAA procedures. Either Party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with AAA, with a copy to the other Party. Any award issued as a result of such arbitration shall be final and binding between the Parties thereto and shall be enforceable by any court having jurisdiction over the Party against whom enforcement is sought. The Parties expressly acknowledge and understand that by entering into this Agreement, they each are waiving their respective rights to have any dispute between the Parties hereto adjudicated by a court or by a jury.

- a. Choice of Law. The Parties agree that California law shall govern the construction, interpretation, validity and enforcement of this Agreement and shall be applied in any mediation or judicial proceeding to resolve all disputes between them.
- b. Attorneys' Fees. Except as expressly provided in this Agreement, in any action or proceeding brought to enforce any provision of this Agreement or arising out of or in connection with the relationship of the Parties hereunder, the prevailing Party shall be entitled to recover against the other its reasonable attorneys' fees and/or arbitration or court costs in addition to any other relief awarded by the court. As used in this Agreement, the "Prevailing Party" is the Party who recovers greater relief in the action.

32. Statutory Requirements and Policies. Service Provider shall perform the Services in accordance with laws, statutes, ordinances, rules, regulations, lawful orders, and policies of all public authorities having jurisdiction over Service Provider, Corporation, or the planned development, including, without limitation, the following:

- c. **Nondiscrimination.** Service Provider agrees to maintain a work environment free of discriminatory practices and to comply with all applicable federal, state and local non-discrimination/affirmative action laws.
- d. ~~**Prevailing Wages.** Service Provider shall comply and shall ensure that all Subcontractors comply with prevailing wage law pursuant to the State of California Labor Code, including but not limited to Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, and 1775, 1776, 1777.5, and 1777.6 of the State of California Labor Code. Compliance with these sections is required by this Contract. The Work under this Agreement is subject to compliance monitoring and enforcement by Corporation.~~

33. Confidentiality. Except as set forth in this section, Service Provider shall hold in confidence all information supplied by Corporation, University, or any other person (the "Disclosing Party") to the other Party (the "Recipient") under the terms of this Agreement that is marked or otherwise indicated to be confidential ("Confidential Information"). Service Provider shall inform its affiliates, subcontractors, suppliers, vendors and employees of its obligations under this section and require such persons to adhere to the provisions hereof. Notwithstanding the foregoing, the Recipient may disclose the following categories of information or any combination thereof: (i) information which was in the public domain prior to receipt thereof by Recipient or which subsequently becomes part of the public domain by publication or otherwise unless by a wrongful act of Recipient; (ii) information that Recipient can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; (iii) information received by Recipient from a third party having no obligation of confidentiality with respect thereto; (iv) information at any time developed independently by Recipient providing it is not developed from otherwise confidential information; (v) information disclosed pursuant to and in conformity with the law or a judicial order or in connection with any legal proceedings; or (vi) information required to be disclosed under applicable provisions of the Public Records Act.

34. General Provisions.

- (a) Amendments. This Agreement may be modified or amended in writing signed by authorized signatories of Service Provider and Corporation, including changes altering, adding to, or deducting from the Agreement terms and conditions, provided that such changes are within the general scope of the Agreement. Such equitable adjustments require the written consent of the Service Provider and Corporation, which shall not be unreasonably withheld.
- (b) Severability. If any provision of this Agreement shall be, or shall be adjudged to be, unlawful or contrary to public policy, then that provision shall be deemed to be null and separable from the remaining provisions, and shall in no way affect the validity of this Agreement.
- (c) Waiver. A waiver by either party of any terms or conditions, provisions, or covenants of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term, condition, provision, or covenant for the future, or of any subsequent breach of same. All remedies, rights, undertakings, obligations, and agreements contained in this Agreement shall be cumulative and shall not be in limitation of any other right, remedy, undertaking, obligation, or agreement of either party.
- (d) Assignment. The Service Provider shall not assign or subcontract any of its obligations, except as expressly allowed in the Agreement, without the prior written approval of Corporation.
- (e) Successors. The provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns to the parties hereto.
- (f) Time is of the Essence. Timely performance of all obligations by each Party is expressly agreed to be important of this Agreement, and failure to so perform is a material breach of the Agreement.

- (g) Priority of Documents. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement and third, the other Contract Documents.
- (h) Survival. Sections 8, 13, 14, 15, 19, and 27 shall survive termination under this Agreement.
- (i) Counterparts. This Agreement may be executed in counterparts all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement by electronic means shall constitute effective execution and delivery of this Agreement and shall have the same force and effect as copies executed and delivered with original signatures.
- (j) Entire Agreement. This Agreement, together with the Contract Documents and the Exhibits, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

THIS AGREEMENT is entered into by the Corporation and Service Provider as set forth by the terms and conditions herein and is effective as of the date of the last signature of the Parties.

SERVICE PROVIDER

CAL POLY CORPORATION

BY: _____

BY: _____

Name

Name

Title

Title

Date: _____

Date: _____

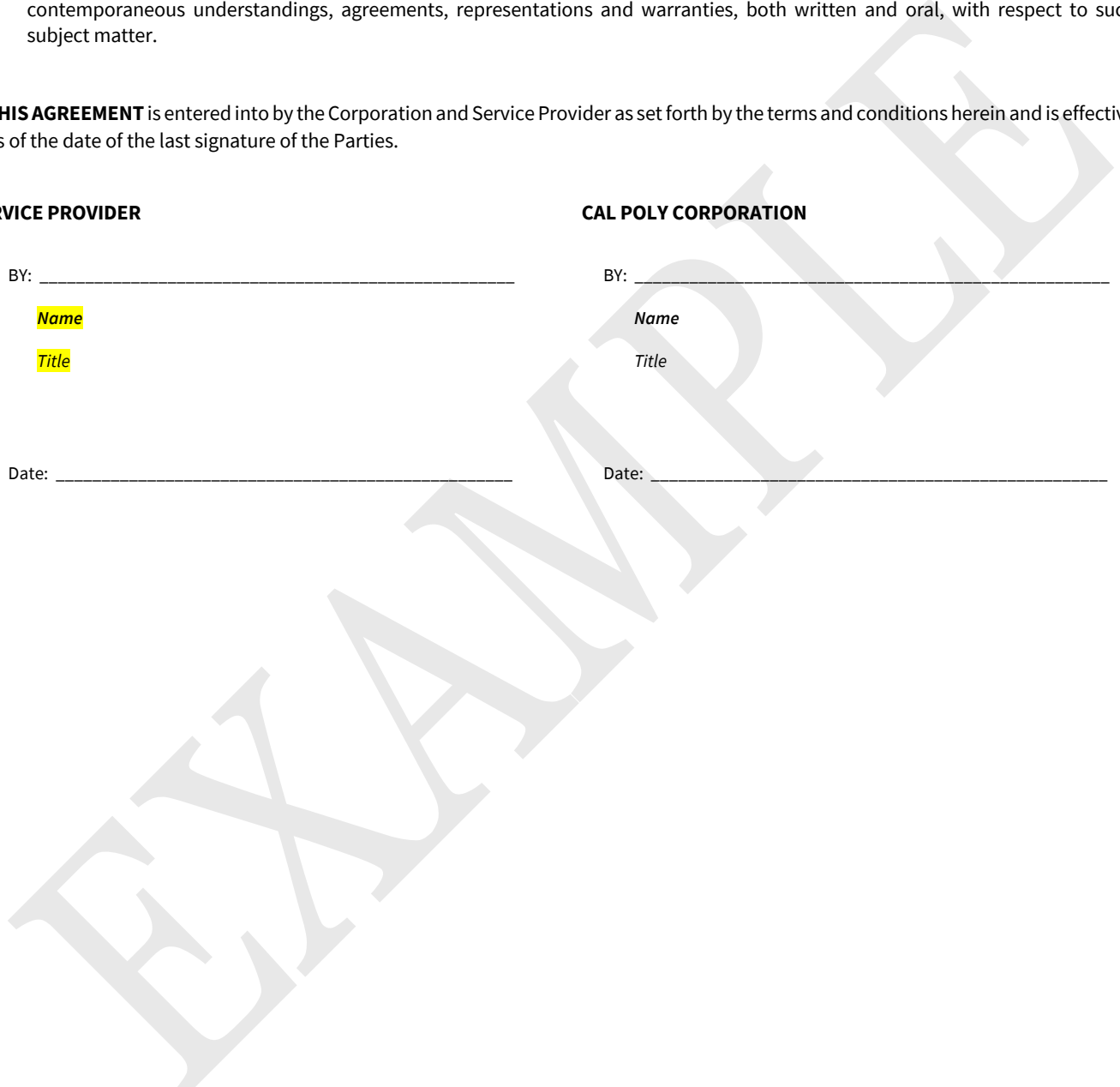


EXHIBIT A

PROPOSAL FOR PROFESSIONAL SERVICES

[Selected Muralist's RFP]

EXAMPLE

EXHIBIT B

Insurance Requirements. Service Provider shall provide a certificate of insurance and additional insured endorsement to Corporation, or confirm that current documentation is on file, prior to the commencement of Services as required herein. Corporation requires that the Service Provider shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Services hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

Commercial General Liability

| | |
|---|-------------|
| General Aggregate | \$2,000,000 |
| Products/Completed Operations Aggregate | \$2,000,000 |
| Each Occurrence Limit | \$1,000,000 |
| Personal/Advertising Injury | \$1,000,000 |
| Fire Damage (Any one fire) | \$50,000 |
| Medical Payments (Any one person) | \$5,000 |

Business Automobile Liability

| | |
|---|--------------------|
| Bodily Injury/Property Damage (Each Accident) | \$1,000,000 |
| Personal Injury Protection | Statutory |
| Collision and comprehensive | Deductible Amounts |
| Uninsured Motorist & Underinsured Motorist | \$500,000 |

Workers' Compensation

| | |
|--|-------------|
| Coverage A (Workers' Compensation) | Statutory |
| Coverage B (Employers Liability) each accident | \$1,000,000 |

- (a) If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.
- (b) General liability coverage can be provided in the form of an endorsement to the Service Provider's insurance, or as a separate owner's policy. If the project involves subcontractors, the subcontractors must be endorsed as insureds under the Service Provider's policy.
- (c) Service Provider shall not commence performance of any work under this Agreement until Corporation is provided with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the Corporation.
- (d) The required insurance must be in effect prior to awarding the Agreement and it or a successor policy must be in effect for the duration of the project. Maintenance of proper insurance coverage is a material element of the Agreement. Failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract and subject the Agreement to termination. Corporation reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.
- (e) Service Provider shall disclose deductibles or self-insured retentions (SIRs) for approval by Corporation.
- (f) Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII and insurer may not cancel insured's coverage without thirty (30) Days written notice by certified mail, return receipt requested, to Corporation.
- (g) For any claims related to this project, the Service Provider's insurance coverage shall be primary as respects Corporation, the Trustees of California State University, Cal Poly, its trustees, employees, directors, officers, and volunteers. Corporation's insurance or self-insurance shall be excess of the Service Provider's insurance and shall not contribute to it.
- (h) Business automobile liability insurance is required for any rented commercial or Service Provider-owned commercial vehicles that are to be used in or near the premises, including the campus.

Additional Insured Endorsements. The general liability and automobile liability policies shall be endorsed to provide the following endorsements as additional insureds for General Liability and Automobile:

Cal Poly Corporation, Trustees of California State University, California Polytechnic State University, and the directors, employees, officers, and volunteers of entities, with respect to liability arising out of work or operations performed by or on behalf of the Service Provider including materials, parts or equipment furnished in connection with such services or operations.

Service Provider will provide Additional Insured Endorsement form CG 10 11 85 OR forms CG 20 10 07 04 (ongoing operations) AND CG20 37 07 04 (completed operations)