

GROUND LEASE MODEL

This Ground Lease, dated as of _____, 20__ (the "Ground Lease"), by and between the TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, by their duly qualified and acting Chancellor on behalf of California State University ___campus_____ (hereinafter called "Trustees") and the ***add name of lessee here. Be specific***

<p><i>Replace all occurrences of "Lessee" with the appropriate reference to the lessee, Foundation or Auxiliary, etc.</i></p>

W I T N E S S E T H

WHEREAS, pursuant to Education Code Sections 89036 and 89046, the Trustees of The California State University may lease any property of a state university for any purpose which is not inconsistent with the functions of the California State University;

WHEREAS, the ***lessee name*** has agreed to undertake the planning, financing and construction of a ***project*** on the campus of California State University, ***Campus*** (the "University") at the location as described in Exhibit A (the "Site"), as defined in Exhibit B (the "Project") and the Trustees has found and determined that the lease of the Site (as hereinafter defined) to the Lessee for such purposes is not inconsistent with the functions of the California State University;

WHEREAS, the Lessee and the Trustees desire to enter into this Ground Lease;

NOW, THEREFORE, the parties hereto mutually agree as follows:

Section 1. Representations and Warranties of the Lessee. The Lessee makes the following representations and warranties to the Trustees as of the date of the execution of this Ground Lease:

(a) Lessee is duly established, has full legal right, power, and authority to enter into this Ground Lease and to carry out and consummate all transactions contemplated by this Ground Lease, and by appropriate action, has duly authorized the execution and delivery of this Ground Lease.

(b) The officers of the Lessee executing this Ground Lease are duly and properly in office and fully authorized to execute the same.

(c) This Ground Lease has been duly authorized, executed and delivered by the Lessee, and (i) will constitute a legal, valid and binding agreement of the Lessee, enforceable against the Lessee in accordance with its terms, and (ii) any rights of the Trustees and obligations of the Lessee not so assigned to the Trustees constitute the legal, valid, and binding agreements of the Lessee, enforceable against the Lessee in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and by the application of equitable principles if equitable remedies are sought.

(d) The execution and delivery of this Ground Lease, the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any indenture, mortgage, deed of trust, agreement, lease, contract or other agreement or instrument to which the Lessee is a party or by which it or its properties are otherwise subject or bound, or, to the knowledge of the Lessee, any applicable law or administrative rule or regulation, or any applicable court of administrative decree or order, or result in the creation or imposition of any prohibitive lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Ground Lease or the financial condition, assets, properties, or operations of the Lessee.

(e) No consent of approval of any trustee or holder of any indebtedness of the Lessee, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Ground Lease or the consummation of any transaction herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) No information, exhibit or report furnished to the Trustees by the Lessee in connection with the negotiation of this Ground Lease contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

Section 2. Representations and Warranties of the Trustees. The Trustees makes the following representations and warranties to the Lessee as of the date of the execution of this Ground Lease.

(a) The Trustees have full legal right, power and authority to enter this Ground Lease and to carry out and consummate all transactions contemplated by this Ground Lease, and by proper action have duly authorized the execution and delivery of this Ground Lease.

(b) The officers of the Trustees executing this Ground Lease are fully and properly holding their respective offices and are fully authorized to execute this Ground Lease.

(c) The Ground Lease has been duly authorized, executed and delivered by the Trustees, and will constitute a legal, valid and binding agreement of the Trustees, enforceable against the Trustees in accordance with its terms.

(d) The Trustees are the owner in fee simple of the Site (as hereinafter defined).

Section 3. Site. The Trustees hereby leases to the Lessee and the Lessee hereby leases from the Trustees, on the terms and conditions hereinafter set forth, real property situated on the campus of the University in the County of *County*, California and more particularly described on the attached Exhibit "A", which by this reference is incorporated herein (the

"Site"). The Trustees hereby further irrevocably grants to the Lessee and the Lessee hereby accepts from the Trustees, a license for ingress and egress to the Site.

Section 4. Possession. The Trustees covenant to deliver possession of the Site to the Lessee upon commencement of the term of this Ground Lease as set forth in Section 8 herein.

Section 5. As-Is Condition. The Site is leased in an as-is condition. Without limiting the foregoing, the Trustees do not warrant the suitability of the soil on the Site for support of any improvement to be constructed thereon including, but not limited to, the Project.

Section 6. Quiet Enjoyment. The Trustees covenant that, subject to the limitations expressly set forth herein, the Lessee, upon performing all covenants in this Ground Lease, may quietly have, hold, and enjoy all of the Site during the term of this Ground Lease and any extended term hereof, without hindrance or interruption by the Trustees.

Section 7. Purpose. The Site shall be used by the Lessee during the term hereof solely for the purposes of constructing and operating the Project and appurtenances thereto.

Section 8. Term. The term of this Ground Lease shall commence on the earlier of the date of recordation of this Ground Lease in the office of the County Recorder of the County of *County*, California, or *Date*, and shall end on *Ending Date* unless such term is extended or sooner terminated as hereinafter provided. *Note: If the ground lease is not going to be recorded, just state the dates.*

Section 9. Consideration.

The Trustees make this Ground Lease in consideration for the agreement of the Lessee to plan, finance, construct, and operate the Project on the Site, which Project shall become the property of the Trustees without demand or further action by the Trustees at the termination of this Ground Lease and any extension thereof. The Project shall be constructed in conformity with the schematic plans provided by the Lessee and approved by the Trustees.

The Project, and any additions to the Project, will be required by the terms of this Ground Lease to vest in the Trustees.

Note: add financial consideration as appropriate.

Section 10. Responsibility for Construction of Project. The Lessee shall arrange for the design and construction of the Project, including all attendance facilities, in substantial accordance with the contract documentation approved (or to be approved) by the Trustees and consistent with the requirements of the Trustees and University. Any substantial change in the approved plans shall be submitted to the Trustees or the Trustees' designee for review and approval.

The Lessee shall ensure that all workers on the Project shall be paid prevailing wage rates as those rates are set in accordance with Labor Code Section 1770 et seq.

The Lessee shall obtain at its expense all licenses and permits required to perform the work and shall comply with all applicable laws affecting the work. All work and materials shall be in accordance with the latest published and approved editions of the California Code of Regulations, Title 19, Public Safety, and Title 8, Industrial Relations; National Electric Code; Uniform Plumbing and Building Codes; and all other applicable codes and regulations.

The Lessee shall ensure that the Project is maintained in a safe condition and that only those involved in supervising and performing the construction work shall be permitted access to the Project.

Section 11. Title on Termination. The Lessee shall, upon the termination or expiration of this Ground Lease, quit and surrender the Project, and all right, title and interest in and to all improvements and equipment constructed or installed on the Site, including the Project, shall vest in the Trustees free and clear of all and any liens and encumbrances created or caused by the Lessee.

Section 12. Default. In the event the Lessee shall be in default in the performance of any obligation on its part to be performed under the terms of this Ground Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Lessee, the Trustees may exercise any and all remedies granted by law.

Section 13. Right of Entry. The Trustees, through any of its duly authorized representatives, shall have the right to enter upon the Facility for the purposes of inspection, or any other lawful purpose, including, without being limited to, the right to enter to inspect construction work during the course of construction for compliance with the provisions of this Ground Lease. The Trustees shall exercise such rights reasonably during ordinary business hours, and in such manner as not to interfere with the business of the Lessee or its contractors.

Section 14. Signs. The Lessee shall not construct, hang or paint any signs on the grounds or exterior of buildings other than safety or directional signs and signs provided for in the approved plans, without written consent of the Trustees or the University President.

Section 15. Waste. The Lessee shall not knowingly commit, suffer or permit any waste or nuisance on the Facility or any acts to be done thereon in violation of any applicable laws or ordinances.

Section 16. Taxes and Assessments. The Lessee shall pay all lawful taxes, assessments, or charges which at any time may be levied upon any interest the Lessee may have under this Ground Lease (including both the land and improvements).

Section 17. Assignment or Sublease. The Lessee may not sublet the Facility or assign this Ground Lease, or any interest therein, without the prior consent in writing of the Trustees, which consent may not be unreasonably withheld by the Trustees.

Section 18. Liens. In the event the Lessee shall at any time during the term of this Ground Lease cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Facility, the Lessee shall pay, when due, all sums of money that may become due for any labor, services, materials, supplies or equipment

furnished to or for the Lessee in, upon or about the Facility and which may be secured by any mechanic's, materialmen's, or other lien against the Facility or the Lessee's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or comes due, except that, if the Lessee desires to contest any such lien, it may do so. If any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or, if so stayed, said stay thereafter expires, the Lessee shall forthwith pay and discharge said judgment.

Section 19. Relationship of Parties. The Lessee and the agents and employees of the Lessee in the performance of this Ground Lease shall act in an independent capacity and not as officers or employees or agents of the Trustees. The employees of the Trustees who participate in the performance of this Ground Lease are not agents of the Lessee.

Section 20. Fair Employment Practices. In the performance of this Ground Lease, the Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, or physical handicap. The Lessee will take affirmative action to ensure that applicants for employment are employed, and that its employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The Lessee shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this section.

The Lessee will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment and Housing Commission, or any other agency of the State of California designated by the Trustees for the purpose of investigation to ascertain compliance with this Fair Employment Practices Section.

The Trustees may determine a violation of this Fair Employment Practices provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which the Lessee was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Lessee has violated the Fair Employment and Housing Act and has issued an order, under Government Code Section 12970, which has become final or obtained an injunction under Government Code Section 12973. (See Government Code Sections 12900-12993 for further details.)

Section 21. Encumbrance of Lease Hold. With the exception of this Ground Lease, the Lessee shall not encumber the Trustees' fee title except by such legislative means that may be available. The Lessee shall not have the right to subject this Ground Lease to any mortgage nor subject this Ground Lease to any trust deed or other security device.

Section 22. Possessory Interest The (*insert appropriate county name here*) County Assessor may value the possessory interest created by this lease, or any subleases. Under California Revenue and Taxation Code section 107, a property interest tax may be levied on that possessory interest. The lessee is obligated to pay this property tax, and failure to do so may be considered a material breach of the lease."

Section 23. Amendments. This Ground Lease may not be amended, changed, modified, or altered without the prior written consent of the parties hereto.

Section 24. Waiver. The waiver by any party of a breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 25. Non-Liability of The Trustees. Any obligation of the Trustees created by or arising out of this Ground Lease shall not impose a debt or pecuniary liability upon the Trustees or the State of California or a charge upon the general credit or taxing powers thereof but shall be payable solely out of funds duly authorized and appropriated by the State of California.

The delivery of this Ground Lease shall not, directly or indirectly or contingently, obligate the Trustees or the State of California to levy any form of taxation therefor or to make any appropriation. Nothing herein or in the proceedings of the Trustees shall be construed to authorize the Trustees to create a debt of the Trustees or the State of California, within the meaning of any constitutional or statutory provision of the State of California. No breach of any pledge, obligation or agreement made or incurred in connection herewith may impose any pecuniary liability upon, or any charge upon the general credit of the Trustees or the State of California.

Section 27. Indemnification. Tenant shall indemnify, defend, protect, and hold harmless Trustees from any and all loss, cost, damage, expense and liability (including without limitation court costs and reasonable attorneys' fees) incurred in connection with or arising from any cause in, on or about the Premises during the Lease Term, provided that the terms of the foregoing indemnity shall not apply to the negligence or willful misconduct of Landlord.

Section 28. Law Governing. This Ground Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist.

Section 29. Section Headings. All articles, paragraph and section headings, titles or captions contained in this Ground Lease are for convenience of reference only and are not intended to define or limit the scope of any provision of this Ground Lease.

Section 30. Notices. All notices herein which are to be given or which may be given by either party to the other, shall be in writing and shall be deemed to have been given three (3) business days after deposit in the United States Mail, certified and postage prepaid, return receipt requested and addressed as follows:

To the Trustees:

Trustees of The California State University
Attn: Contract Services and Procurement
401 Golden Shore
Long Beach, CA 90802

To the Lessee:

To the University President:

California State University, *Campus*
Attn: President

Nothing herein contained shall preclude the giving of any such written notice by personal service, in which event notice shall be deemed given when actually received. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice given by such party to the other as hereinabove provided.

Section 31. Successors and Assigns. The terms and provisions hereof shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

Section 32. Holding Over. Should the Lessee hold over the expiration of the term hereof with the express or implied consent of the Trustees, such holding over shall be deemed to be on a month-to-month basis, subject otherwise to all the terms and conditions of this Ground Lease.

Section 33. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Ground Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants or conditions of this Ground Lease shall be affected thereby, and each provisions of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 34. Execution. This Ground Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same Ground Lease. It is also agreed that separate counterparts of this Ground Lease may separately be executed by the Lessee and the Trustees, all with the same force and effect as though the same counterpart had been executed by both its Lessee and the Trustees.

IN WITNESS WHEREOF, this Ground Lease has been executed by the parties hereto as of the first day of _____, 20__.

LESSEE

By_____

CALIFORNIA STATE UNIVERSITY,
Campus

By_____ President

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY

By_____

EXHIBIT A

SAMPLE

DESCRIPTION OF PROPERTY

Real property situated in the city of concord, county of contra costa, state of california, described as follows:

A portion of that "379.93 acre" parcel of land shown on the record of survey map, filed 21 december 1970, in book 53 of licensed surveyor's maps, at page 27, contra costa county records, being more particularly described as follows:

Commencing at the northwestern corner of said parcel (53 lsm 27); thence leaving said point of commencement southerly along the western line of said parcel south $2^{\circ} 13' 42''$ east, 1139.81 feet; thence leaving said western line north $80^{\circ} 21' 25''$ east, a distance of 145.14 feet to the true point of beginning; thence leaving said point of beginning the following courses and distances: north $9^{\circ} 27' 38''$ west, a distance of 191.52 feet to the beginning of a nontangent curve, from which the radius point bears north $3^{\circ} 21' 17''$ west; thence easterly a distance of 109.48 feet along the arc of said curve, concave to the north having a radius of 1545.00 feet and a central angle of $04^{\circ} 3' 35''$, thence north $82^{\circ} 35' 07''$ east, a distance of 74.95 feet to the beginning of a tangent curve; thence easterly, southeasterly and southerly a distance of 33.06 feet along the arc of said curve, concave to the southwest, having a radius of 20.00 feet and a central angle of $94^{\circ} 42' 43''$ to a point of compound curvature; thence southerly a distance of 108.60 feet along the arc of said curve, concave to the west having a radius of 600.00 feet and a central angle of $10^{\circ} 22' 13''$; thence south $7^{\circ} 40' 04''$ west, a distance of 54.67 feet; thence south $80^{\circ} 21' 25''$ west, a distance of 164.73 feet to the point of beginning.

Containing 0.80 acres more or less.

End of description.

EXHIBIT B

Project Description

Describe the project(s) that will take place on the leased property.