

**MASTER ENABLING AGREEMENT  
SEISMIC PEER REVIEW**

This AGREEMENT is made and entered into this 1 day of July, 2011 pursuant to the Public Contract Code 10700 *et seq.*, by and between the Trustees of The California State University on behalf of

University California State University	Agreement No: 2204	Amendment No: 1	Project No: Systemwide	Project Name: Seismic Peer Review
hereafter referred to as Trustees, and Service Provider, Richard Niewiarowski	CSU Vendor ID No. 5963	Federal ID No:	License No: 2079	
Address of Service Provider 1946 Whitecliff Ct., Walnut Creek, CA 94596			Telephone No: 925-937-0417	Fax No:

WITNESSETH: That the Service Provider in consideration of the covenants, conditions and agreements of the Trustees herein contained, does hereby agree to furnish all labor, materials, and equipment and to perform all work necessary to complete, in a skillful manner, the following:

Agreement No. 2204, dated May 2, 2010, is hereby amended as follows:

1. This amendment exercises the option to extend the term for an additional one (1) year. The term of this agreement shall be from July 1, 2010 through June 30, 2012 with one (1) one-year extension remaining.

Except as amended herein, all other terms and conditions of the original Agreement remain unchanged.

Service Provider shall report to Thomas Kennedy, Chief of Architecture and Engineering for Capital Planning, Design and Construction in the Office of the Chancellor.

The total amount to be expended under this Agreement shall be determined by the overall usage by each participating campus and the administrative office of the California State University.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon date first above written.

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY					SERVICE PROVIDER						
Campus California State University, Systemwide					Full Legal Name of Service Provider Richard Niewiarowski						
By (Trustees Authorized Signature) 					By (Service Provider's Authorized Signature) 						
Printed Name and Title of Person Signing for Trustees Elvyra F. San Juan, Assistant Vice Chancellor, Capital Planning,					Printed Name and Title of Person Signing for Service Provider RICHARD NIEWIAROWSKI, STRUCTURAL ENGINEER						
Design and Construction 401 Golden Shore, Long Beach, CA 90802					Check appropriate box below that best describes Service Provider: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Other (specify)						
SCO Account Data:											
Fund	Sub Fund	Agency	Yr	Ref/Item	Category	Program Element	Component	Chapter	Fiscal Yr	Legal Reference	
Trust Fund				613001	PS Fund	54209	PS Dept ID	1089	PS Program	PS Class	PS Project/Grant
Amount Encumbered \$0	I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.										
Amount of Increase \$0	Accounting Officer signs "Service Order and Authorization to Proceed"										
Amount of Decrease \$0	I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law. CHRISTINE HELWICK, General Counsel.										
Total Amount Encumbered \$0	By Attorney:									Date 7/12/11	

**MASTER ENABLING AGREEMENT**

**SEISMIC PEER REVIEW (3/10/09)**

This AGREEMENT is made and entered into this 2<sup>nd</sup> day of May, 2010 pursuant to the Public Contract Code 10700 *et seq.*, by and between the Trustees of The California State University on behalf of

University <b>California State University, Systemwide</b>	Agreement No: <b>2204</b>	Amendment No: <b>N/A</b>	Project No: <b>Systemwide</b>	Project Name: <b>Seismic Peer Review</b>
hereafter referred to as Trustees, and Service Provider, <b>Richard Niewiarowski</b>	CSU Vendor ID No. <b>5963</b>		Federal ID No:	License No: <b>2079</b>
Address of Service Provider <b>1946 Whitecliff Ct., Walnut Creek, CA 94596</b>			Telephone No: <b>925-937-0417</b>	Fax No:

WITNESSETH: That the Service Provider in consideration of the covenants, conditions and agreements of the Trustees herein contained, does hereby agree to furnish all labor, materials, and equipment and to perform all work necessary to complete, in a skillful manner, the following:

The Service Provider is to provide seismic peer review services for public works projects submitted by the California State University. This Agreement is a Master Enabling Agreement under which each campus and the administrative office of the California State University may engage the services of Service Provider as provided herein. Campuses and the administrative office shall execute a Service Order and Authorization to Proceed (Exhibit A) to secure Service Provider's peer review services under this Agreement. The Service Provider shall perform seismic peer review services in accordance with the Riders and Exhibit, which by this reference are incorporated herein and made a part of this Agreement.

- Rider A - Scope of Services and Payment Schedule, consisting of nine (9) pages;
- Rider B - Agreement General Provisions, consisting of three (3) pages;
- Exhibit A, Sample Service Order and Authorization to Proceed, consisting of one (1) page.

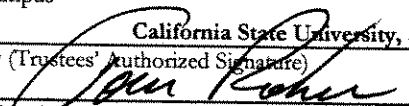
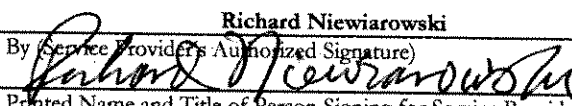

The term of this Agreement is from July 1, 2010 through June 30, 2011 with the option given the Trustees of extending the Agreement with the same terms and conditions for two (2) additional one (1) year period.

The Service Provider shall not perform services in excess of the Agreement without prior written authorization to proceed from the Trustees' Representative.

Service Provider shall report to Thomas Kennedy, Chief of Architecture and Engineering for Capital Planning, Design and Construction in the Office of the Chancellor.

The total amount to be expended under this Agreement shall be determined by the overall usage by each participating campus and the administrative office of the California State University.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon date first above written.

THE TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY					SERVICE PROVIDER								
Campus <b>California State University, Systemwide</b>					Full Legal Name of Service Provider <b>Richard Niewiarowski</b>								
By (Trustees' Authorized Signature) 					By (Service Provider's Authorized Signature) 								
Printed Name and Title of Person Signing for Trustees <b>Tom Roberts, Director</b>					Printed Name and Title of Person Signing for Service Provider								
Contract Services & Procurement <b>401 Golden Shore Long Beach, CA 90802</b>					Check appropriate box below that best describes Service Provider: <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Other (specify)								
Fund		Sub Fund		Agenc y	Yr	Ref/Item	Category	Program	Element	Component	Chapter	Fiscal Yr	Legal Reference
<b>SCO Account Data:</b>													
Fund Name					PS Account	PS Fund	PS Dept ID	PS Program	PS Class	PS Project/Grant			
					607801		1089				SY600PRJ		
Amount Encumbered \$0		I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditures stated above.											
Amount of Increase \$0													
Amount of Decrease \$0		Accounting Office signs "Service Order & Authorization to Proceed"										Date	
Total Amount Encumbered \$0		Signature of Accounting Officer											
I hereby certify that I have examined the written Agreement and find the same to be in accordance with the requirements of the California State University Contract Law. CHRISTINE HELWICK, General Counsel.													
By Attorney:  <span style="float: right;">16/9/10</span>													

**Rider A  
CSU Seismic Peer Review  
Scope of Services and Payment Schedule**

**1.0. Purpose:**

[Excerpted from CSU Seismic Policy] The California State University shall cause to be performed independent technical peer reviews of the seismic aspects of all construction projects from their design initiation, including both new construction and remodeling, for conformance to good seismic resistant practices consistent with this policy.

**2.0. Responsibility**

A seismic peer review is an objective technical review by an independent, knowledgeable reviewer experienced in structural design, analysis and structural performance issues. The responsibility of the design remains fully and solely with the Architect/Engineer-of-Record for the project. While a peer review shall consider elements of code compliance it is not a plan check and is not expected to provide a detailed determination of the compliance of submittals to applicable codes.

**3.0. Authorization of Work:**

- 3.1. Only trustee's representatives (individual campus or Office of the Chancellor, CPDC staff) may authorize work under this agreement.
- 3.2. CPDC administers the Master Enabling Agreement. Individual campuses participate in this agreement. CPDC assigns peer review responsibilities and may change or add new assignments during the agreement term. No minimum assignment of work to the Service Provider is guaranteed.
- 3.3. The campus project manager shall issue a Service Order and Authorization to Proceed (Service Order Authorization) to authorize a peer review assignment to an individual Service Provider under this Agreement. All work, extra services and reimbursable expenses require pre- authorization.
- 3.4. In the event that a Service Provider, or his firm, is or anticipates being professionally involved with a project submitted for peer review, the Service Provider shall decline any peer review assignment in connection with said project.
- 3.5. Peer review fees are pre-established and consistent for all Service Providers. Special reviews and studies may be authorized under this Agreement on a negotiated fee basis.
- 3.6. The Service Provider (peer reviewer) shall send correspondence and invoicing for individual peer review assignments to the respective individual requesting campus project manager.

3.7. The Agreement term identifies the time period that Service Order Authorizations may be issued under this Agreement. Once authorized, work started shall be completed under this Agreement irrespective of the Agreement Term unless otherwise terminated in writing by the trustees.

4.0. The Peer Review:

4.1. The Service Provider is authorized to begin the peer review only after receipt of the Service Order Authorization.

4.2. **Taking into consideration the phase of project development, the Service Provider shall prepare at each design phase of the project a peer review letter with an opinion of the project's compliance with the peer review standards identified within this section.**

4.3. Submittal materials for a peer review will vary by phase. These materials are identified in the Submittal Requirements and Procedure Guide for CSU Capital Projects or its successor edition, posted online at <http://www.calstate.edu/cpdc/ae/guidelines.shtml>

*At the Service Provider's discretion, reviews may be supplemented by a phone conversation or in-person discussions with the Engineer-of-Record. This may be particularly beneficial at the initiation of the project to clarify requirements and at the schematic phase where submittals are largely narrative. By the construction document phase, submittals will typically include comprehensive and complete plans, specifications, engineering calculations, and soils investigation reports.*

4.4. The Service Provider shall review the submittals prepared by the Architect/Engineer for the project for general completeness prior to starting a detailed peer review. If the submittal is determined to be incomplete such that the review cannot be prudently performed, the Service Provider shall seek direction from the campus project manager. If the campus elects to proceed with the review, the review shall occur as described in Section 10.0.c.

4.5. For each peer review the Service Provider shall consider all aspects of the proposed design of a project including, but not limited to:

- a. Local site conditions, exposure to seismic ground motion and seismic failure, and vulnerability of the structural system;
- b. Compatibility of proposed building assemblies to sustain deformation without destructive interference;
- c. In the case of existing structures, the condition of building assemblies;
- d. Configuration of building plan and elevations;
- e. Continuity of load path of structural elements and connections to carry *gravity loads* to the foundations and from foundations into the ground;

- f. Continuity of load path of structural elements and connections to carry *seismic inertial loads* from diaphragms to lateral-load resisting shear elements to foundations and from foundations into ground;
- g. Redundancy of lateral load resisting elements;
- h. Behavior of the elements and connections of the design under reversing lateral loads, and the post-yielding behavior (ductility) of the element, if it should occur, and its impact on system performance and reliability.
- i. The anticipated seismic performance of significant non-structural architectural elements and equipment;
- j. General compliance with the structural and seismic provisions of the **California Building Standards Code (CBC)** in Title 24 of the California Code of Regulations, as adopted and published by the California Building Standards Commission;

*Notes: A specific "code compliance" check for the project is performed by others. The peer reviewer is expected to address general issues during the development of the design that could lead to adverse code compliance reviews for seismic performance.*

*CSU projects are considered under the control of the building official from the date of Trustee schematic approval of a project. The code edition in effect at that time shall (by policy) govern. Campus requests for administrative exception to this require approval by the Senior Building Official at the Office of the Chancellor. The Service Provider shall prominently identify the code editions upon which compliance was gauged in all review correspondence.*

- k. Compliance with the current edition of the **CSU Seismic Requirements** posted online at: <http://www.calstate.edu/cpdc/ae/guidelines.shtml>
- l. Compliance with acceptable professional practice standards including completeness of submittals and cooperation of the Engineer-of-Record with the peer review process; and
- m. Conditions reported during construction that may materially degrade the seismic performance and reliability of the constructed building.

#### 5.0. Timing of Reviews:

- 5.1. The Service Provider shall provide a peer review letter at each of the following points in the project development:

**Schematic Phase**  
**Preliminary Phase**  
**Construction Document Phase**

- 5.2. For design-build projects review letters shall be provided at the following points:

**Schematic Design-Build Request for Proposal (RFP) package**

**Design-Build Preliminary Phase**

*The preliminary phase seismic peer review submittal is optional on the part of the design-build team. If requested it shall be reviewed as a part of the peer review work at no additional cost.*

**Design-Build Construction Document Phase**

**6.0. Distribution of Peer Review Letters:**

The Service Provider shall distribute peer review letters as follows:

- 6.1. Back check correspondence, 'Schematic Phase Recommendation of Approval' and 'Preliminary Phase Recommendation of Approval' letters to the campus project manager with copies to the project architect and project engineer.
- 6.2. 'Recommendation of Construction Document Phase Approval' letters to the campus with copies to the project architect, project engineer, and to CPDC.
- 6.3. 'Recommendation of Deferred Submittal Approval' letters to the campus project manager with copies to the project architect and project engineer.
- 6.4. The Service Provider shall retain submittal materials from the most recent phase until the completion of the next design phase or actual construction of the project.

**7.0. Response Time for Reviews:**

- 7.1. The Service Provider shall endeavor to complete peer reviews within fourteen (14) calendar days from receipt of a peer review submittal for projects with a construction value up to \$10,000,000 and within twenty-one (21) days for projects with a construction value greater than \$10,000,000. The service provider shall advise the campus if a review delay is foreseen.
- 7.2. Prior to starting work on each phase of a peer review, the Service provider shall contact the campus project manager with a revised time estimate if they believe they may not be able to meet the above schedule duration for completion of an initial review. In such instances the campus may request reassignment of the peer review to a different Service Provider. CPDC will evaluate the request, and if it concurs, coordinate the reassignment with the Chair of the Seismic Review Board. In this event the Service Provider shall forward the submittal package as directed by CPDC and be paid only for work completed to date.

**8.0. Back-Check Reviews:**

The Service Provider shall:

- a. Perform up to two (2) follow up reviews of the revised original submittal documents (a back-check review) to establish that the revised submittal resolves initial peer reviewer comments.
- b. Provide back-check review comments in letter format.
- c. Perform back-checks within approximately seven (7) to fourteen (14) days from receipt of the back-check submittal from the Architect/Engineer. The Service Provider shall advise the campus project manager if additional time is needed.
- d. The Service Provider shall contact the campus project manager and discuss the project's status if the Service Provider proposes more than two back-check reviews in any one phase during the course of the project.

**9.0. Resolution of Back-Check Review:**

- 9.1. Upon satisfactory resolution of peer review comments, the Service Provider shall prepare and issue a 'Recommendation of Schematic Approval' or 'Recommendation of Preliminary Approval' letter expressing the Service Provider's opinion of substantial compliance with CSU Seismic Requirements to the campus project manager.
- 9.2. At the conclusion of the Construction Document phase peer review, the Service Provider shall:
  - a. Issue a final 'Recommendation of Construction Document Approval' letter;
  - b. Stamp the cover sheet of each construction document volume (i.e. each bound plan sheet set, each bound volume of specifications, and each bound volume of the structural calculations):

**'Seismic Peer Reviewed'**  
**[Name of Service Provider Firm]**

Provide an original signature and date (mm/dd/yy) below this stamp.

*Note: a special stamp is issued to each peer reviewer for this purpose.*

*The Service Provider, at its discretion, may provide additional stamping of specific sheets within the plan set;*

- c. Indicate on the cover sheet any deferred submittals required prior to the completion of construction;
- d. Coordinate with the campus project manager for the routing of the stamped plan documents, whether with the 'approval' letter to the campus or to another entity for their stamping; and

- e. Accommodate reasonable advance requests by the campus project manager to defer stamping (or re-stamp) to accommodate the compilation of a conforming Construction Document set so that all approvals from various groups are present on the final construction set(s).

**10.0. Materially Deficient/Incomplete Documents [Rejection of Plans]:**

If plans and specifications submitted for review are determined by the Service Provider to be deficient or incomplete such that the review cannot be prudently performed the Service Provider shall:

- a. Halt review at the earliest opportunity and seek direction from the campus project manager to establish an appropriate course of action.
- b. If the campus decides to reject the submittal, the Service Provider shall issue a letter describing the initial findings with a recommendation of 'Reject as Incomplete' and await a revised submittal from the project Architect/Engineer.
- c. If the campus elects to continue with the review the Service Provider shall issue a letter to the campus and a copy to CPDC confirming the campus decision to continue the review of the deficient set.

**11.0. Deferred Submittals**

- 11.1. Deferred submittals (i.e., custom manufactured assemblies required as a part of the project that require peer review during the construction of the project) may be allowed at the discretion of the campus. The Service Provider shall confirm acceptance of proposed deferred items with the campus project manager as a part of the review and require that deferred submittals be listed in division one of the project specifications as a peer review comment. The presence of deferred submittals shall be identified in the final 'Recommendation of Construction Document Approval' letter and on the cover sheet of the plans.
- 11.2. Each deferred submittal requires a peer review and 'Recommendation of Deferred Submittal Approval' letter during the project's construction phase. Review of individual deferred submittal items shall be provided as a part of the original Service Order Authorization.
- 11.3. The Service Provider shall notify CPDC if they suspect that deferred submittals identified in the final 'Recommendation of Construction Document Approval' letter are not being submitted during the construction phase.

**12.0. Partial Projects**

- 12.1. **Partial Projects** peer reviews for infrastructure, foundation, shell, tenant improvements, or other increments of construction may be authorized at the discretion of the campus. The Service Provider shall perform a Partial Permit

review only when a complete dedicated set of plans and specifications clearly defining the work is provided by the Architect/Engineer for the project (i.e., a foundation submittal must be a freestanding submittal with foundation load values assigned and not a part of a work in progress where the peer reviewer is asked to infer these values from a still incomplete design). Specifications and supporting calculations must be complete and tailored to the work proposed.

12.2. A Partial **Projects** review shall be considered an individual peer review and shall be authorized by a separate Service Order Authorization.

**13.0. Peer Review Dispute Resolution:**

An Architect/Engineer may request a hearing before the Seismic Review Board to resolve a contested peer review issue. CPDC shall schedule hearing requests. At the hearing the Service Provider shall document the basis for the disagreement with the Architect/Engineer and participate in the resolution process with the Architect/Engineer by the Seismic Review Board.

**14.0. Extra Services**

14.1. The request and authorization of extra services requires judgment and discretion on the part of the Service Provider and the campus project manager respectively. Work in the areas specified below shall generally be considered a part of the review and will rarely justify authorization as an extra service.

- a. In person meetings to clarify or resolve peer review comments or confirm acceptable alternative solutions.
- b. Additional reviews required due to repackaging of documents (overbids or major reassessments of design direction)
- c. Field review requested by the campus project manager during construction (this would be a rare occurrence).

14.2. The campus project manager must authorize extra services in writing as a separate Service Order Authorization prior to the Service Provider commencing extra service work under this agreement.

**15.0. Reimbursable Expenses**

15.1. The following items are reimbursable:

- a. Shipping charges when a project is re-assigned
- b. Reasonable travel expenses when requested by the campus project manager.

15.2. The following items are not reimbursable:

Shipping charges, phone calls, faxes, consumables, etc occurring in the course of providing plan review services under this agreement.

16.0. Peer Review Fees:

The peer review fee is derived from the then current standard project Architect/Engineer fee as calculated from the CSU Architect/Engineer Lump Sum Fee Formula posted online at: [http://www.calstate.edu/cpdc/Suam/Appendices/Appendix\\_C.shtml](http://www.calstate.edu/cpdc/Suam/Appendices/Appendix_C.shtml)

Peer review fees shall be calculated as follows:

- a. **Where project A/E design fees are less than \$25,000**  
The peer review fee is 0.05 times the standard design fee provided that the minimum peer review fee shall be no less than \$500.
- b. **Where project A/E design fees are between \$25,000 and \$100,000**  
The peer review fee shall be \$1,250 plus 0.03 times the excess of the design fee over \$25,000.
- c. **Where project A/E design fees are between \$100,000 and \$500,000**  
The peer review fee shall be \$3,500 plus 0.02 times the excess of the design fee over 100,000.
- d. **Where project A/E design fees are over \$500,000**  
The peer review fee shall be \$11,500 plus 0.01 times the excess of the design fee over \$500,000.
- e. **For design-build projects (for purposes of this Agreement CM at Risk projects are not considered design-build projects)**  
In recognition of the additional coordination required, the total peer review fee shall be 110% of the above calculated peer review fees.

*Standard CSU A/E design fees can be calculated by downloading and entering the project budget and building type fields into a blank B-2 Schedule of Lump Sum Fees for Architect/Engineer Basic Services Exhibit. These exhibits are posted online at: [http://www.calstate.edu/cpdc/ae/ae\\_contracts.shtml](http://www.calstate.edu/cpdc/ae/ae_contracts.shtml)*

*The A/E design cost basis is identified and calculated in the project budget [[CPDC form 2-7] located under Required Additional Services: Agency Code Approvals on pages 2 and 3].*

17.0. Payment and Invoicing:

Payments for services and reimbursables shall be made in arrears for work completed to the satisfaction of the trustees upon presentation of a written statement not exceeding amounts previously authorized.

17.1. Payments will be authorized at the following milestone points:

**50% of the Service Order Authorization amount** at the conclusion of the preliminary phase review (or upon receipt of the construction document phase submittal for design-build projects).

**50% of the Service Order Authorization amount** at the conclusion of the construction document review.

17.2 Invoicing for services and reimbursables shall:

- a. Be sent to the campus project manager named in the Service Order Authorization.
- b. Identify campus, project name, and project reference number
- c. Reference the Service Order Authorization number for the work
- d. Describe the phase of work completed
- e. Reference only a single project per invoice.

### Rider B - Agreement General Provisions

1. Trustees agree to pay for the services and materials to be furnished by Service Provider as provided by this Agreement. Payment in arrears shall be made upon Service Provider's completion of the services required by this Agreement to the satisfaction of the Trustees and upon Service Provider's submission of billings as shall be prescribed by the Trustees.
2. Service Provider, in the performance of this Agreement, is an independent contractor and is not an employee, agent, or officer of the Trustees.
3. Trustees may cancel this Agreement should Service Provider fail to perform as herein provided. In the event of such cancellation, Trustees shall be relieved of the obligation to make any payment to Service Provider and Trustees may proceed with the work in any manner the Trustees deem proper.
4. Trustees may terminate this Agreement either upon giving fifteen (15) days written notice or upon the immediate notice with payment of \$25.00 to Service Provider. Payment shall be complete by mailing payment to Service Provider at the address appearing on the face of this Agreement. In the event of such termination, Service Provider shall be paid only for the work satisfactorily completed.
5. Service Provider shall not assign benefits or delegate duties under this Agreement in whole or in part without the prior written approval of the Trustees. Thus, Service Provider may not assign any moneys due or to become due hereunder without the written consent of Trustees.
6. 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.
7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. Oral understandings or other agreements not incorporated herein shall not be binding.
8. Trustees may issue a written order with respect to the services to be performed under this Agreement at any time before the completion of the services. Trustees shall pay Service Provider an amount for such services as provided in this Agreement, or if not so provided, Trustees shall pay Service Provider a reasonable amount, which shall be agreed upon by the parties.
9. Any notice, which may be proper or necessary for either of the parties hereto to serve on the other, in case of Trustees, may be served effectually upon Trustees by delivering it in writing, addressed to the Trustees of the California State University, attention of the official executing this Agreement for Trustees, at 401 Golden Shore, Long Beach, CA 90802, or by depositing it in a United States mail deposit box with first class postage thereon fully prepaid and addressed to Trustees at the above-mentioned address. In the case of Service Provider, notice may be served effectually upon Service Provider by delivering it in writing to Service Provider at the address appearing on the first page of this Agreement or depositing it in a United States mail deposit box with first class postage thereon fully prepaid, and addressed to Service Provider at the Service Provider's above-mentioned address. Any notice may also be served effectually by delivering or mailing it, as in this section provided, addressed to Trustees or Service Provider at any other place or places which Trustees or Service Provider, by written notice served upon the other, may designate, provided, however, that nothing herein shall preclude the giving of notice by personal service.
10. In the performance of this Agreement, the Service Provider will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status. The Service Provider will take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, national origin, physical handicap, medical condition, or marital status as prohibited by the California Fair Employment and Housing Act (Government Code Section 12900 *et seq.*).
11. Service Provider shall not utilize any information, not a matter of public record, which is received by reason of this Agreement, for pecuniary gain not contemplated by the terms of this Agreement, regardless of whether Service Provider is or is not under contract at the time such gain is realized (Education Code Section 89006).
12. The report, survey, or other product developed by Service Provider pursuant to this Agreement is the property of Trustees, and shall not be used in any manner by Service Provider unless authorized by Trustees.

13. In executing this service agreement, Service Provider swears, under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against Service Provider within the immediately preceding two-year period because of Service Provider's failure to comply with an order of a federal court which orders Service Provider to comply with an order of the National Labor Relations Board. Trustees may rescind this contract if Service Provider falsely swears to this statement (Public Contract Code Section 10296).
14. If the Agreement exceeds \$10,000, the contracting parties shall be subject to the examination and audit of the State Auditor of the State of California for a period of three years after final payment under the Agreement. This examination and audit shall be confined to those matters connected with the performance of this contract, including, but not limited to, the cost of administering this Agreement (Government Code Section 8546.7).
15. The Service Provider hereby certifies compliance with Government Code Sections 8355, 8356, and 8357 in matters relating to providing a drug-free workplace. In accordance with Government Code Section 8355, the Service Provider shall:
  - 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:
    - (1) The dangers of drug abuse in the workplace,
    - (2) The Service Provider's policy of maintaining a drug-free workplace,
    - (3) Any available counseling, rehabilitation, and employee assistance programs, and
    - (4) Penalties that may be imposed upon employees for drug abuse violations;
  - C. Require that each employee engaged in the performance of the Agreement be given a copy of the statement required by subpart A, and require that each employee, as a condition of employment on the Agreement, agree to abide by the terms of the statement.
16. Responsive to direction from the State Legislature (Public Contract Code Section 10115 *et seq.*), the Trustees are seeking to increase the statewide participation of disabled veteran business enterprises in contract awards. To this end, Service Provider shall inform the Trustees of any contractual arrangements with consultants or suppliers that are certified disabled veteran business enterprises.
17. If the Service Provider is a natural person, the Service Provider certifies by signing this Agreement that s/he 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), State of California Governor's Executive Order W-135-96.
18. If the Service Provider is a corporation, the Service Provider certifies and declares by signing this Agreement that it is eligible to contract with the State of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code Section 10286 *et seq.*).
19. The Service Provider shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.
  - A. Service Provider shall obtain and maintain the following policies and coverage. The insurance furnished by the Service Provider under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated on the Cover Page of this Agreement:
    - (1) Comprehensive or Commercial Form General Liability Insurance: on an occurrence basis, covering work done or to be done by or on behalf of the Service Provider and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work. Limits of Liability:

\$2,000,000.00	General Aggregate
\$1,000,000.00	Each Occurrence—combined single limit for bodily injury and property damage.
    - (2) Business Automobile Liability Insurance: on an occurrence basis, covering owned, scheduled, hired, and non owned automobiles used by or on behalf of the Service Provider and providing insurance for bodily injury, property damage, and contractual liability. Limits of Liability:

\$1,000,000.00	Each Accident—combined single limit for bodily injury and property damage.
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    - (3) Workers' Compensation: including Employers Liability limits of \$1,000,000.00 and other limits as required under California law.

- (4) **Errors and Omissions Insurance:** on an occurrence basis is preferred, covering work done or to be done by or on behalf of the Service Provider and providing insurance for errors and omissions in the amount of \$1,000,000.00 each occurrence. At a minimum, Service Provider shall obtain and maintain errors and omissions insurance on a claims-made basis for no less than \$1,000,000.00 each claim and \$2,000,000.00 annual aggregate, and certification of coverage shall be submitted to the Trustees upon signing of this Agreement. If the total contract amount exceeds \$1,000,000, Service Provider shall renew and keep such insurance in effect for at least five (5) years after the recordation of the notice of completion.
- B. Service Provider shall submit to the Trustees certificates of insurance and original endorsements to the policies of insurance required by the agreement as evidence of the insurance coverage. The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation of coverage without thirty (30) days written notice to the Trustees, as specified in Section 19-C (3). Renewal certifications and endorsements shall be timely filed by the Service Provider for all coverage until the work is accepted as complete. The Trustees reserve the right to require the Service Provider to furnish the Trustees complete, certified copies of all required insurance policies. The Service Provider shall notify the Trustees in writing of any material change in insurance coverage.
- C. 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 shall be covered as additional insureds.
  - (2) For any claims related to the work, the Service Provider'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 Service Provider'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 party, 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. Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of no less than A:VII or equivalent carrier otherwise acceptable to the Trustees.
- E. Miscellaneous.
  - (1) Any deductible under any policy of insurance required in this Article shall be Service Provider's liability.
  - (2) Acceptance of certificates of insurance by the Trustees shall not limit the Service Provider's liability under the agreement.
  - (3) In the event the Service Provider does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The Service Provider shall pay the cost of the insurance and, if prompt payment is not received by the insurance carrier from the Service Provider, the Trustees may pay for the insurance from agreement sums otherwise due the Service Provider.
  - (4) If the Trustees are damaged by the failure of Service Provider to provide or maintain the required insurance, the Service Provider shall pay the Trustees for all such damages.
  - (5) The Service Provider's obligations to obtain and maintain all required insurance are non-delegable duties under this agreement.
20. The Service Provider agrees to hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees representatives, and agents of each of them from any and all claims, damages, losses, causes of action and demands, and all costs and expenses incurred in connection therewith, resulting from or in any manner arising out of or in connection with any negligent act or omission or willful misconduct on the part of the Service Provider, its officers, agents, and employees, in the performance of this Agreement. This provision shall survive the expiration or termination of this Agreement.
21. In accordance with Labor Code Section 1720, Service Provider must pay employees the minimum prevailing rate wages for inspection, surveying, or similar work during the design, preconstruction, and construction phases of a public works project.

End of Page 3