

# **SAMPLE AGREEMENT**

**BY AND BETWEEN**

**UNIVERSITY OF CALIFORNIA  
HASTINGS COLLEGE OF THE LAW**

**AND**

*(INSERT LEGAL NAME OF CONTRACTOR'S COMPANY)*

**FOR**

\_\_\_\_\_

THIS AGREEMENT is made as of the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2014 between the University of California Hastings College of the Law ("Hastings"/"Owner") and \_\_\_\_\_ ("Contractor") for the \_\_\_\_\_ Project with good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 - WORK**

Hastings hereby retains the Contractor to perform the construction work as described more fully herein and in **Exhibit** \_\_\_\_\_ attached hereto and incorporated herein by this reference, hereinafter called the "Work", located at \_\_\_\_\_, SF 94102, the premises more fully defined in **Exhibit** \_\_\_\_\_ attached hereto and hereinafter called "Project."

Contractor shall perform Work in accordance with the requirements of Hastings, and in accordance with the coordination, planning, and overall project management by Hastings' Representative and its contracted Architect. Contractor agrees that the Work shall be performed in a professional, workmanlike manner acceptable to Hastings with due diligence and without delays or interruptions, so that the Work is substantially completed. Contractor further agrees that the Work shall be performed in accordance with **Article 14** of this Agreement. Contractor shall provide the number of employees, materials, and equipment required to perform such Work. Contractor agrees to provide sufficient, safe, and proper facilities during the course of the Work.

## **ARTICLE 2 - CONTRACT DOCUMENTS AND ORDER OF PRECEDENCE**

"Contract Documents" means the complete Invitation To Bid (ITB) Number 45-0166 documents including its Instructions and Conditions, Attachments and Addendum/da, Specifications, Contractor's Response to ITB # 45-0166, Bid Form Sheet, Pricing Sheet, Action Items as applicable, this Agreement and its Exhibits, Contract Schedules, including preliminary performance schedules, Purchase, Delivery and Installation, all written Notices to Proceed, Performance and Payment Bonds, Performance or Project Schedule, Change Orders, all written Notices of Completion, Definitions, and all other documents related to this Agreement of which together form the Contract between Hastings and Contractor and supersedes any previous agreements or understandings. The Contract Documents are only to be modified by a written change order agreed upon between Hastings and Contractor and

duly signed by both parties.

If there is a conflict between any of the documents, the Order of Precedence shall be the negotiated Terms and Conditions under this Agreement, Contractor's Response to ITB # 45-0166 and its Response to Action Items, and Contractor's supporting documentation that were submitted to Hastings on or before the stipulated due date of the Bid process.

### **ARTICLE 3 – TERM**

The term of this Agreement shall be from the date entered above until completion of the Work as specified in **Article 15**, unless terminated by the occurrence of one or more of the following:

- a) Completion of the performance of the Work, which will be performed during regular business hours; or
- b) Completion of the Terms and Conditions Negotiations; or
- c) Receipt by Contractor of Hastings written notice of its intent to terminate this Agreement within ten (10) days, which termination may be for any reason or no reason, in Hastings sole discretion; or
- d) Within twenty-four (24) hours of written notice to Contractor at any time in the event the Work is not being performed to Hastings' satisfaction and otherwise in accordance with this Agreement; or
- e) Within twenty-four (24) hours of written notice to Contractor at any time in the event Hastings and the Contractor are not able to complete the Terms and Conditions Negotiations.

The parties acknowledge and agree that this Agreement is a so-called "at will" independent contractor relationship, terminable upon written notice by Hastings. Upon expiration or termination of this Agreement for any reason, Contractor shall not have any executory obligations to Hastings; and Contractor shall be entitled only to such compensation as shall have accrued to Contractor for fees or expenses actually incurred by Contractor for completed and accepted Work (as defined in Article 4 of this Agreement) provided up to but not including the effective date of termination. Contractor agrees that all Work performed prior to the execution of this Agreement shall be subject to and incorporated into the terms and conditions of this Agreement. Contractor shall not be entitled to any other payments, reimbursements, damages (including consequential or incidental damages), or any other claims whatsoever. Hastings may deduct cost of remedying any deficiencies in the Work from any payments due Contractor.

### **ARTICLE 4 – REMEDIES**

(a) The rights granted to Hastings by Contractor hereunder are irrevocable and without right of rescission by Contractor or reversion to Contractor under any circumstances whatsoever. The expiration or termination of this Agreement on whatever ground and by whomsoever affected shall not affect or impair the ownership of Hastings of the Services or Work or any material theretofore written by Contractor hereunder or any other results, proceeds or benefits of Work theretofore rendered by Contractor hereunder. Contractor agrees to look only to Hastings for all compensation payable to Contractor under this Agreement. Contractor agrees that Contractor shall not make any claim against the Services or Work itself or any of the results and proceeds thereof (the "Proceeds"), or against any third party in connection with any monies payable to Contractor under this Agreement or otherwise. Contractor further acknowledges that Contractor shall have no right to audit the books or records of Hastings in connection with the services or the Work. Hastings' accounting obligation in connection with fees payable hereunder shall be satisfied by sending payment

to Contractor, within thirty (30) business days after Hastings' approval of the Work submitted. Contractor shall be solely responsible for payment of any expenses incurred by Contractor in connection with the Work, and shall be solely responsible for any and all sales taxes or other taxes imposed by any governmental agency with respect to the Work, or Contractor's delivery of the Work to Hastings.

(b) Contractor acknowledges that Contractor has no right, title or interest of any kind in or to the Work. Contractor further agrees and acknowledges the terms of payment set forth in **Article 6**. The Work is not to exceed the schedule values set forth for Phase I and Phase II and that the only amounts which shall become due and owing to Contractor by reason of Contractor's engagement hereunder shall be the actual cost of Work performed by Contractor under this Agreement. Contractor shall have no claim to any remaining balances from the Contract Sum if the actual cost or value of Work performed is less than the Contract Sum. Further, Contractor shall have no claim to any sums derived from the exploitation of any of the secondary rights in or to the Work. Contractor further acknowledges that Contractor's compensation payable hereunder shall not be a lien or claim against the Work or the Proceeds or an assignment or transfer of the Work or any part thereof or of any interest therein. Contractor further acknowledges that Hastings shall have full and exclusive charge, control and discretion with reference to all matters involving the exploitation in any or all media of the Work, and Contractor shall have no voice or control whatsoever in connection herewith.

## **ARTICLE 5 - CONTRACT TIME**

Contractor shall commence the Work on the date specified in the Notice to Proceed, which shall concur with the date of the full execution of this Agreement. Under the terms and conditions in this Agreement, in order for Hastings to take beneficial use, completion of the Work shall be in accordance with the Scope of Work for \_\_\_\_\_ Project and its respective deliverable dates in the Project Schedule referred hereto as Contract Time due for submittal to Hastings for review and written acceptance and approval.

By signing this Agreement, Contractor represents to Hastings that the contract time of 124 calendar days is reasonable for completion that Contractor will complete the Work within the contract time.

## **ARTICLE 6 - CONTRACT SUM AND TERMS OF PAYMENT**

The Contract Sum is \_\_\_\_\_ & 00/100 Dollars (\$\_\_\_\_\_).

Subject to the provisions of the Contract Documents and in consideration of Contractor's satisfactory performance of its services, the terms of payment incorporated in this Agreement shall be for the Work.

Hastings will pay Contractor on the percentage of work completed provided that such work has been reviewed and inspected by Hastings to its full satisfaction and written acceptance. Payment to Contractor is based on a schedule of values with Hastings' approval.

Hastings will pay Contractor within thirty (30) days following Hastings review and approval of a valid and accurate invoice. Invoices shall show Contractor's taxpayer identification number and shall be addressed to Hastings as follows:

David Seward  
Chief Financial Officer

University of California  
Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102

Contractor shall submit an invoice for such Work certifying that the Work has been performed and the goods or supplies delivered.

Contractor shall be solely responsible for payment of any expenses incurred by Contractor in connection with the Work and shall be solely responsible for all sales taxes or other taxes imposed by any governmental agency with respect to the Work, or Contractor's delivery of the Work to Hastings. Contractor shall provide Hastings with substantiation for all invoices in a form and degree of detail as requested by Hastings.

#### **ARTICLE 7 - OVERPAYMENT/OFFSET**

If Hastings makes any overpayment to Contractor for any reason or if Contractor is indebted to Hastings for any reason, Contractor shall pay Hastings for such overpayment or indebtedness on demand, or at Hastings' election, Hastings may deduct and retain for Hastings' own account an amount equal to all or any part of such overpayment or indebtedness from any sums that may be due or become due or payable by Hastings to Contractor, and such deduction or retention shall not be construed as a breach by Hastings; provided, however, that Hastings shall provide Contractor written notice prior to making any such deductions.

#### **ARTICLE 8 – TAX WITHHOLDING**

Contractor shall be solely responsible for withholding and payment of all taxes and contributions for unemployment insurance and employee benefits which may now or hereafter be imposed by the United States, state, or local tax authorities on Contractor or otherwise for the Work; shall comply with all federal and state or local laws on such subjects and all rules and regulations promulgated thereunder, and shall maintain suitable forms, books and records and hold Hastings harmless from the payment of any and all such taxes and contributions or penalties; and shall pay such taxes, excise, assessments or other charges levied by any governmental authority on or because of the services, work, or any equipment, supplies or materials used in the performance or transfer.

#### **ARTICLE 9 – LIQUIDATED DAMAGES**

If Contractor fails to complete the Work within the Contract Time, Contractor shall pay to Hastings as liquidated damages and not as a penalty, the sum of \$500.00 for each day after the expiration of the Contract Time that the Work remains incomplete (complete work is defined as having fully completed the services related to the Work, including, equipment and materials shipping, warehousing, delivery, inspection, and all other labor and activities of the Contractor as described in the Work specification, and a punch list developed). Hastings and Contractor agree that if the Work is not completed within the Contract Time, damages to

Hastings would be extremely difficult or impracticable to determine and that the aforesaid amount is a reasonable estimate of and a reasonable sum for such damages.

Hastings may deduct any liquidated damages from any amounts otherwise due to Contractor under the Contract Documents. This provision shall not limit any right or remedy of Hastings in the event of any other default of Contractor other than failing to complete the Work within the Contract Time. This provision shall not be applicable nor act as a limitation upon Hastings if Contractor abandons the Work. In such event, Contractor shall be liable to Hastings for all losses and damages suffered by Hastings.

The Contractor shall not be held liable for acts of God, war, civil disturbances, or written changes on the project scope from Hastings, which shall cause the Contractor to fail to complete the Work within the specified Contract Time.

## **ARTICLE 10 - ADDITIONAL SERVICES**

At the request of Hastings, Contractor shall perform Additional Services or Work subject to the provisions of **Article 13** of this Agreement.

## **ARTICLE 11 - INDEPENDENT CONTRACTOR**

It is understood and agreed that Contractor is an independent contractor in the performance of each and every part of this Agreement and that the Contractor's employees shall be subject to its control and shall not be deemed, in fact or in law, to be employees of Hastings. Hastings shall have the right to generally oversee and inspect the performance of the Work of the Contractor to insure the satisfactory completion thereof. However, any oversight or inspection by Hastings will be for the College's sole benefit and will not excuse or release Contractor from its obligation to perform its Work properly and in accordance with the terms of the Agreement. Contractor further agrees and acknowledges that: (a) Contractor's relationship with Hastings is not an employment relationship and is strictly and solely that of independent contractor, and that Contractor is not entitled to any benefits or insurance solely reserved for Hastings' employees, on Hastings account; (b) under no circumstances is Contractor entitled to receive from Hastings any benefits or insurance, including without limitation any unemployment, workers compensation or disability benefits, vacation or sick pay; (c) Contractor is solely responsible for determining the method and means by which Contractor will accomplish the Work and otherwise fulfill Contractor's obligations hereunder; and (d) Contractor will be solely responsible for the professional performance of the Work, and will receive no assistance, direction or control from Hastings, but Hastings shall give Contractor conceptual instructions as to the general nature of the Work to be performed hereunder. Contractor shall be solely responsible for obtaining, at Contractor's expense and in Contractor's name, disability, worker's compensation or other insurance as well as licenses and permits usual or necessary for conducting the Work hereunder. Contractor represents that Contractor has the qualification, skills, and ability to perform the Work in a professional manner, without the advice, control or supervision of Hastings and is licensed to perform such services in the State of California. Nothing contained in this Agreement shall be construed to place the parties in the relationship of partners or joint ventures and neither party shall have any right to obligate or bind the other in any manner. Contractor agrees that it will not hold itself out as an authorized agent with power to bind Hastings in any manner.

## **ARTICLE 12 – SUBCONTRACTORS**

Contractor shall not subcontract any part of the Work to be performed by Contractor hereunder without Hastings prior written consent. Any such subcontract provided by Contractor will require Hastings written Notice to Proceed specific to the services and work

required by Hastings. Any such subcontract shall not relieve Contractor of any liability for the full and faithful performance of this Agreement according to its terms and conditions. Hastings shall have the right to condition its approval of any such subcontracting upon satisfactory arrangements for issuance of joint checks payable to Contractor and any subcontracting covering such subcontracted services and/or work. Subcontract agreement forms used by Contractor shall be subject to the approval of Hastings and shall include a provision binding the subcontract to the terms and conditions set forth in this Agreement.

### **ARTICLE 13 – DEVIATIONS FROM SERVICES**

Contractor shall not be entitled to any payment for extra work performed in connection with the Work provided for herein unless such work has been previously authorized in writing by Hastings. Contractor expressly agrees that Hastings may make any alterations Hastings deems proper by adding to, omitting from or deviating from the scope of Work. Contractor shall appraise such alterations in a fair and reasonable manner and advise Hastings of any changes such alterations will have on the amount of Contractor's time, expenses and costs expended in performing the Work as altered. Hastings shall thereafter have the right to approve, modify, or withdraw the alterations. Hastings agrees to pay for any such approved and authorized modified work or services as negotiated and agreed between the parties.

At the request of Hastings, Contractor shall perform additional services not included in the Work ("Additional Services"). Additional Services may only be performed at the request of Hastings and shall not be reimbursable unless evidenced by a written change order duly executed by Hastings. The cost of any Additional Services shall be determined upon further review of the existing scope of work and pricing values submitted by Contractor and as negotiated between both parties.

### **ARTICLE 14 – WORK PERFORMANCE SCHEDULE**

It is understood that time is of the essence of this Agreement, and Contractor is bound by all of the time limits imposed by virtue of this Agreement. Before commencing services, the Contractor shall have prepared and submitted to Hastings for approval a Preliminary Contract Plan and Schedule for performing the Work in the form and within the time limit required by the Specifications. The College Representative(s) will review the Preliminary Contract Schedule with Contractor within the time limit required by the Specifications and in closed coordination with Hastings Representative(s), its consultant, other contractors or subcontractors to obtain the project milestones for completion and updates thereto, which Hastings can provide.

In addition to the Preliminary Contract Plan and Schedule, Contractor shall submit a final contract Project Schedules and any updates or revisions to contract Project Schedules to the Hastings Representative(s), who will determine the acceptability of the contract Project Schedules and any such updates in the form and within the time limits required by the Specifications.

Contractor shall perform and keep current, to the satisfaction of Hastings, a schedule of submittals that is in a form acceptable to Hastings and is made a part of this Agreement, as required by the Specifications.

The Preliminary Contract Plan and Schedule, the Contract Plan and Schedule, and the Updated Contract Plan and Schedule shall meet the following requirements:

1. Must be suitable for monitoring progress of the Work.
2. Must provide necessary data about the timing for Hastings decisions and Hastings

furnished items.

3. Must be in sufficient detail to demonstrate adequate planning for the Work.
4. Must represent a practical plan to complete the Work within the Contract Time.

All materials, equipment, licenses, labor and professional services of any kind necessary for the performance of the Work shall be ordered upon full written acceptance and approval under this Agreement. If Hastings so requests, the Contractor shall submit to Hastings in written form verification that such lead items have been ordered. Contractor shall not be entitled to an extension of time within which to complete the Work if any delay is caused by Contractor's failure to order materials sufficiently.

Hastings review of the form and general content of the Preliminary Contract Plan and Schedule, the Contract Plan and Schedule, and the Updated Contract Plan and Schedule is for the purpose of determining if the above-listed requirements have been satisfied.

Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of the Work activities conform to the current accepted Contract Plan and Schedule.

Contractor shall continuously obtain from its subcontractors information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Plan and Schedules, and shall monitor the progress of the Work and the delivery of equipment.

Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of subcontractors, regardless of tier.

Contractor shall cooperate with Hastings and its representative(s) in the development of Contract Plan and Schedule and Updated Contract Plan and Schedules. Hastings acceptance of or its review comments about any schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Work with the Contract Time. Verbal acceptance or agreement of or review comments about any schedule shall not transfer responsibility for any schedule to Hastings and its representative(s) nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule.

If a schedule showing the Work completed in less than the Contract Time is approved in writing, Contractor shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the completion of the Work beyond the expiration of the Contract Time. Failure of Hastings Representative(s) to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve the Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

The Work to be performed under this Agreement shall commence upon written authorization to proceed and be substantially completed within the time frame established between Hastings and Contractor. Contractor shall perform the Work in accordance with the current accepted Contract Plan and Schedule.

## **ARTICLE 15 – CONDEMNATION OF WORK**

In its sole and absolute discretion, Hastings has the right to reject any portion of the Work that it determines to be unsound, defective, or otherwise not in accordance with the terms and conditions of the Agreement. However, Hastings shall exercise judgment in evaluating the Work provided by Contractor and the Work produced before rejecting such Work. Contractor shall not be entitled to compensation for any Work that has been rejected.

During the work and/or for a period of one (1) year following the date of final completion of the Work and Acceptance of the System, or any longer period agreed to between Contractor and Hastings, Contractor shall within ten (10) calendar days after receipt of notice from Hastings 1) promptly correct any defective work to Hastings' satisfaction; 2) replace all rejected materials or Work; or 3) replace any other property which is damaged by the correction of said Work. "Defective Work" means any work or portion thereof which is defective or otherwise does not conform to the requirements of the Contract Documents.

## **ARTICLE 16 – LIMITED WARRANTY AND EXCLUSIVE REMEDIES**

Contractor's limited warranty and exclusive remedies will be described in its proposal applicable to the performance of the Work being provided and will be made part of this Agreement.

## **ARTICLE 17 – CONTRACTOR'S REPRESENTATION**

Contractor shall designate its team with a primary contact to perform and manage the performance of the Work who shall be physically available at all times during working hours, with whom Hastings may communicate, and who may not be changed without Hastings' written request or approval. If any of Contractor's representation for Hastings leave Contractor's employ, or otherwise become incapacitated, or if Contractor is otherwise in breach of this **Article 17**, such breach shall be deemed to be a material breach of this Agreement and shall render this Agreement immediately terminable by Hastings in Hastings' sole discretion. A list of Contractor's representation will be contained in a form acceptable to Hastings and is made a part of this Agreement.

Without superseding, limiting or restricting any other representation or warranty set forth herein, or implied by operation of law, Contractor accepts the relationship with Hastings established by the Contract Documents and will cooperate to fulfill its terms; has carefully examined the project sites and to the extent available, adjacent sites and has satisfied itself as to the general and local conditions; has reviewed documentation provided by Hastings; and, affirms that all materials, equipment, labor, and professional services of any kind for the performance of the Work shall be of good quality and that Work will be of good quality, free of defects and will conform with the requirements of the Contract Documents.

## **ARTICLE 18 - COORDINATION**

To coordinate management of this Project, Hastings shall designate key personnel. Hastings representative(s) shall promptly obtain from Hastings Chief Financial Officer, David Seward, or shall promptly notify Hastings Chief Financial Officer of any decisions or recommendations required to carry out this Agreement to avoid unreasonable delay in the progress of the Contractor's Work in accordance with the project schedule(s). Hastings will notify the Contractor, in writing, of the appointment of any replacement representation for Hastings, whether its employee, consultant or contractor, to fulfill the obligation described in this paragraph. Contractor expressly agrees that Hastings' Representative(s) or such other person identified by Hastings pursuant to this **Article 18** are the only persons authorized to



provide approvals, instructions or any such communication with respect to Contractor's duties hereunder.

Contractor is to immediately inform Hastings' Primary Representative(s) of any unusual conditions or events that relate to, or may affect the Work to be performed under this Agreement. Contractor agrees to meet on a regular basis with Hastings Representative(s) to review the progress of the Work to be performed by Contractor and any unanticipated problems or issues.

## **ARTICLE 19 – EXAMINATION OF RECORDS**

Hastings and auditors of the State of California shall have, during the term of this Agreement and for a period of three (3) years following its termination, access at all reasonable times to all of the Contractor's and the subcontractor's personnel, accounts and records of all description, including but not limited to computer files, pertaining to this Agreement to verify or review the quantity, quality, work program and progress of the work, amounts claimed by the Contractor, estimates of cost for fixed rates including those applicable to any proposed Additional Services, and for any other reasonable purposes.

The Contractor's and subcontractor's accounts shall be kept in accordance with generally accepted accounting principles and shall be kept in such a manner and in sufficient detail to clearly disclose the nature and amounts of the different items of service and cost pertaining to the Agreement. These documents must contain adequate justification of the charges made to Hastings.

The Contractor and subcontractors shall preserve all such accounts and records for a period of three (3) years after the term of this Agreement. Hastings shall have the right to reproduce any such accounts and records.

The Contractor shall include the necessary provisions in subcontractors' agreements to ensure the subcontractors comply with this provision.

## **ARTICLE 20 – LIABILITY AND INDEMNITY**

The Contractor shall indemnify, defend and hold harmless Hastings, its officers, agents, consultant(s), employees and affiliates, and the State of California (collectively, "Indemnified Parties") from and against any and all claims, damages, liabilities, costs, losses, expenses (including attorney's fees), liens, demands and causes of action of any kind or character, including, without limitation, the amount of any judgment, penalty, interest charge, and fee (collectively, "Claims") to the extent that such claims, costs or expenses arise out of any breach of this Agreement by the Consultant, or have arisen out of, been caused by or to be in connection with any of the Contractor's services and work or duties hereunder, any act or omission of the Contractor, its agents and employees, or any patent or copyright infringement arising out of the performance of this Agreement.

The Contractor shall indemnify Hastings, its officers, agents, consultant(s), employees and affiliates, and the State of California against all liabilities, claims and demand for damages for death, personal injury or property damage, together with any costs and legal fees directly or indirectly resulting therefrom to the extent that such claims arise out of or are caused by any act or omission of the Contractors, its agents, or employees. The Contractor shall use proper care and caution in the performance of the Work so as not to cause damage to any

adjoining or adjacent property, and the Contractor shall indemnify and hold Hastings harmless from and against any losses, liabilities, claims or demands due to damage to such adjacent property.

The Contractor shall defend, indemnify, hold harmless and save Hastings, its officers, agents, consultant(s), employees and affiliates, and the State of California harmless from all Claims, relating to mechanics' liens, stop notices and the like ("Liens") and any claims of rights to enforce same, against the Project or the improvements to be erected thereon arising out of any work or services to be performed or labor or materials to be furnished under this Agreement. Contractor shall promptly cause any such Liens placed upon the Project to be discharged, either by payment or by providing a satisfactory bond in conformity with statutory requirements. Neither final payment by Hastings nor acceptance of the improvements erected hereunder shall constitute a waiver of this indemnity, and if any Lien or claim for Lien shall at any time be filed, the Contractor shall promptly reimburse Hastings for all costs incurred by Hastings or that it may be compelled to pay in discharging such lien or satisfying such claim, including all legal fees.

Contractor agrees and represents that (a) with the exception of any materials provided by Hastings, the Work and all elements thereof, including, without limitation, any materials provided to Hastings, do not violate any applicable law, including, without limitation, copyright, propriety rights or other rights of any person or entity and no third party has any rights, title or interest therein or thereto; (b) Contractor has the full right, power and authority to enter into and perform this Agreement and to make and grant all of the rights herein granted to Hastings, and will not do or authorize any acts which would render Hastings liable for any damages, claims, costs or expense, or which in any way might jeopardize the goodwill or intellectual property rights of Hastings; and (c) Contractor will perform the Work in accordance with all Hastings safety and security requirements.

## **ARTICLE 21 - INSURANCE**

Within five (5) days after the full execution of this Agreement, Contractor will furnish Hastings with copies of the Contractor's insurance policies reflecting that it has obtained insurance in the amounts and of the types specified below.

### **A. Contractor's Liability Insurance:**

Contractor shall purchase and maintain such insurance as will protect Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by Contractor or by any subcontractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts any other may be liable:

1. Claims under Worker's Compensation, disability benefits, and other similar employee benefit acts;
2. Claims for damage because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
4. Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly

related to the employment of such person by the Contractor, or (2) by any other person;

5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle.

Insurance covering claims for damages to persons or property required above shall be in the amounts stipulated by Hastings:

Bodily Injury Liability	Each Person:	\$2,000,000.00
	Each Accident or Occurrence:	\$2,000,000.00
Property Damage Liability	Each Accident or Occurrence:	\$2,000,000.00
	Aggregate:	\$2,000,000.00

and shall be furnished in the types specified, as follows:

1. Coverage for Workmen's Compensation as required by California State law governing Worker's Compensation.
2. Contractor's Liability Insurance issued to and covering the liability for damage imposed by law upon the Contractor and each subcontractor with respect to all Work performed by them under the Agreement (All Contract Documents).
3. Contractor's Protective Liability Insurance issued to and covering the liability for damages imposed by law upon the Contractor with respect to all Work under the Agreement (Contract Documents) performed for the Contractor by subcontractors.
4. Contractor's Protective Liability Insurance issued to and covering the liability for damages imposed by law upon Hastings or the Contractor with respect to all Work performed for Hastings or the Contractor by third-part personnel or supervisory personnel employed by Hastings under separate contracts.
5. Completed Operations Liability Insurance issued to and covering the liability for damages imposed by law upon the Contractor and each subcontractor arising between the date of final cessation of the Work and the date of final acceptance thereof out of that part of the Work performed by each.
6. Comprehensive Automobile Insurance shall be carried in the amount stipulated by Hastings of \$1,000,000 for bodily injury and \$1,000,000 for property damage, each occurrence. All liability and property damage insurance required hereunder shall be Comprehensive General and Automobile Bodily Injury and Property Damage form of policy.
7. Errors and Omissions coverage, with a level of coverage not less than \$2,000,000.00

8. The Contractor shall in addition, and in the amounts required under the above, obtain protective Liability Insurance issued to and covering the liability for damages imposed by law upon Hastings with respect to all operations under the Contract Documents by the Contractor or its subcontractors, including omissions and supervisory act by Hastings.
  9. Hastings College of the Law shall be named as the additional insured.
- B. Comprehensive Risk Policy Option: In lieu of the several policies specified for Contractor's Liability Insurance, a comprehensive liability and property damage insurance policy inclusive of all the insurances and requirements herein set forth, with umbrella coverage of an amount stipulated by Hastings at \$2,000,000.00 will be acceptable.
- C. Subcontractors' Insurance: Before permitting any of Contractor's subcontractors to perform any Work under this Contract, Contractor shall either (1) require each subcontractor to procure and maintain, during the life of the subcontracts, Subcontractor's Public Liability and Property Damage Insurance of the types and in amounts as may be applicable to the Work, or (2) insure the activities of subcontractors in Contractor's own policy.
- D. Builder's Risk Insurance
1. Contractor shall procure and maintain, for the duration of the work of this Project, all-Risk Builder's Risk Insurance, including the perils of fire, extended coverage (loss due to vehicles, explosion, wind, flood, riot, etc.), vandalism and malicious mischief, and special extended coverage (loss due to falling objects collapse, water damage from faulty or leaking systems, etc.) in the full amount of the Contract Sum plus the cost of authorized extras.
  2. Said amount of insurance coverage shall be considered to cover the insurable value of the work under this Contract, which is considered not to exceed one hundred percent (100%) of the amount of this Contract and authorized extras.
  3. Any self-insured retention under this insurance shall not exceed \$5,000.00.
  4. Such policy shall not insure any tools or equipment or temporary structures erected at the site and belonging to any person or persons, or their subcontractors who are obliged by contract with Hastings to do Work on the Project.
  5. Such insurance shall be placed jointly in the names of Hastings and Contractor. Contractor shall furnish Hastings with certification of said insurance prior to commencement of any Work.
  6. Any proceeds obtained from insurance provided for by the Builder's Risk Insurance shall be paid to and held by Hastings as trustee. Hastings shall have the right to withhold payment of such proceeds until such time as the Work destroyed or damaged and covered by such insurance shall be

reconstructed, and shall pay such proceeds on an installment basis similar to that provided for by progress payments covering the original Work.

7. Contractor's insurance shall contain a clause that Hastings College of the Law shall be held harmless for the Contractor's equipment on the premises.

E. Certificates of Insurance:

1. Certificates of Insurance acceptable to Hastings shall be filed with Hastings within five (5) days from full execution of Agreement and before starting the Work at the Project sites. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled or restrictive amendment will not take into effect until at least sixty (60) days prior written notice has been given to Hastings. Contractor shall not permit any of its subcontractors to start Work until all required insurance has been obtained and certificates with the proper endorsements have been filed with the Contractor.
2. Contractor shall furnish a Certificate of Insurance to Hastings as evidence of the required coverage within five (5) days from full execution of the Agreement.
3. Such insurance policies shall have Hastings named additional insured.
4. All insurance required under this Agreement is to be provided by carriers with a Best rating A-10 or better. Carriers must also be California-admitted companies listed as such by the Insurance Commissioner for the State of California.
5. In addition, Hastings in its sole and absolute discretion may require Contractor to carry professional liability or malpractice insurance based upon the type of service Contractor has agreed to provide Hastings.
6. Failure of the Contractor to comply with the foregoing insurance requirements shall in no way waive Hastings' rights hereunder.
7. The insurance policies required in this Agreement shall be kept in force for the periods specified below:
  - i. Applicable Worker's Compensation Insurance shall be kept in force until the Contractor's services and work have been fully performed and accepted by Hastings in writing.
  - ii. Comprehensive General Liability Insurance and Comprehensive Automobile Liability insurance shall be kept in force until receipt of final payment by the Contractor.
  - iii. The Contractor's Professional Liability Insurance shall be kept in force for five (5) years after final payment for construction of the Project.

F. Owner's Liability Insurance: Hastings, at its option, may purchase and maintain such liability insurance as will protect the school against claims which may arise from operations under this Contract. Purchasing and maintaining such insurance, however, will not relieve the Contractor from purchasing and maintaining the insurance herein before specified.

## **ARTICLE 22 – PAYMENT AND PERFORMANCE BONDS**

Contractor shall furnish labor and materials Payment and Performance Bonds and shall be 100% of the negotiated Contract Sum. The Payment and Performance Bonds shall be in the amount of the Contract Sum. The Payment and Performance Bonds shall be in effect on the date the Contract is signed by Hastings and shall be submitted to Hastings within five (5) working days from full execution of this Agreement.

Contractor shall promptly furnish such additional security as may be required by Hastings to protect its interests and those interests of persons or firms supplying labor or materials to the Work.

Surety companies used by Contractor shall be an admitted surety insurer, (as defined in the California Code of Civil Procedure Section 995.120), on the date of the Contract signed by Hastings for full execution.

The premium for the Payment and Performance Bonds shall be paid by Contractor.

## **ARTICLE 23 - EXCUSABLE DELAYS AND EXTENSIONS**

Contractor shall not be held responsible for delays in the performance of this Agreement caused by strikes, lockouts, labor disturbances, acts of government, acts of nature (e.g. earthquake) or other causes similar to the foregoing which are beyond the control of and are not the fault of Contractor. Provided, however, that Contractor shall, within five (5) days after the occurrence of cause or causes of delay, request an extension of time from Hastings Chief Financial Officer, David Seward. Such request shall be made in writing and shall state in detail the reasons for the delay, which will prevent timely performance. If Hastings finds that such cause or causes of delay exist, it may either grant Contractor an extension of time equal to the delay resulting from such cause or causes, or, at its option, terminate this Agreement.

## **ARTICLE 24 - COMPENSABLE DELAYS**

If Contractor is entitled to an increase in the Contract Sum as a result of the rate to be paid to Contractor for compensable delays caused by Hastings, the Contract Sum will be increased by an amount equal to the number of days for which such compensation is payable.

## **ARTICLE 25 – INCIDENTAL AND CONSEQUENTIAL DAMAGES**

Hastings shall not be liable for incidental or consequential damages including but not limited to, loss of profits, commitments to subcontractors, rental or lease agreement(s), and personal service contracts, unless expressly authorized in writing by Hastings. The Contractor shall not be entitled to any damages or additional compensation as a result of any delay by Hastings in the performance of any of its obligations.

## **ARTICLE 26 – NOTICE OF HAZARDOUS MATERIALS**

The California Health and Safety Code requires businesses to provide warnings prior to exposing individuals to materials listed by the Governor as chemicals “known to the State of California to cause cancer or reproductive toxicity”. The Contractor acknowledges that such chemicals may be present on the Project site. Accordingly, in performing its Work, hereunder, the Contractor and its subcontractors and their employees, agents and consultants may be exposed to chemicals on the Governor’s list. The Contractor shall be solely responsible for notifying its employees, agents and subcontractors that services performed hereunder may result in exposure to chemicals, as required under Proposition 65.

Contractor further acknowledges that other hazardous materials, including but not limited to lead paint and asbestos, may be present on the Project sites.

## **ARTICLE 27 – TOXIC MATERIALS**

Hastings acknowledges that the Contractor has no expertise or professional training in the treatment or removal or encapsulation of toxic materials or soils that are contaminated with toxic materials. Hastings recognizes that toxic materials may be present at the Project sites and if such are encountered, shall contract with soils and hazardous materials consultants to prepare and implement a soil management plan to deal with such materials. Contractor will comply with any and all conditions imposed by a soil management work plan, if any, as may be developed by Hastings’ hazardous materials consultant and Contractor shall modify or prepare the appropriate health and safety plan for its workers. Further, Contractor shall conform with any and all other work plans as may be required by any governmental regulations affecting the Project.

## **ARTICLE 28 – CONFIDENTIALITY; ADVERTISING OR PUBLICITY**

Contractor acknowledges and agrees that pursuant to this Agreement, Contractor may have access to proprietary information of Hastings, including, without limitation, information and material concerning or pertaining to businesses, methods, plans and/or projects of Hastings or of its related subsidiary, affiliated companies or businesses or of their respective officers, directors, employees, shareholders, independent contractors or business contacts (collectively referred to as “Owner Information”). Contractor agrees that such information is confidential and proprietary to Hastings and that Contractor shall not use, copy, or disclose any Owner Information in whole or in part in any manner or to any person, firm, enterprise, organization or corporation other than Hastings unless authorized in advance in writing by Hastings. Contractor agrees and acknowledges that Hastings’ sole purpose in disclosing Owner Information to Contractor or allowing Contractor access to Owner Information is to aid Contractor in performing the Work. Contractor shall receive and hold such information in the strictest confidence, and acknowledges, represents, and warrants that Contractor will use its best efforts to protect the confidentiality of Owner Information. Contractor’s obligation, as set forth above, shall not apply to any Owner Information which: (a) is or become publicly known through no wrongful act of Contractor; (b) is rightfully received from a third party without restriction and without breach of this Agreement; or (c) is the minimum necessary to comply with any valid order of a court of competent jurisdiction and only if such disclosure is subject to a protective order restricting the disclosure of Owner Information in a form acceptable to Hastings.

Contractor will acquire no right to use, and will not use without Hastings’ prior written consent, Owner Information, including without limitation names, sensitive data, codes, classified phone numbers, characters, artwork, designs, trade names, copyrighted materials, trademarks or service marks of Hastings, its parent, related or subsidiaries or affiliations,

employees, or directors: (a) in any resume, portfolio, advertising, publicity or promotion; (b) to express or to imply any endorsement of the Work; or (c) in any manner other than in accordance with this Agreement.

To the extent that Contractor or any employees of Contractor have executed or will execute any Non-Disclosure Agreements (NDAs) with Hastings regarding the disclosure and use of Owner Information, the terms of such NDAs are hereby incorporated by reference to the extent such terms are not in conflict with the terms and conditions of this Agreement.

## **ARTICLE 29 – DELIVERY OF MATERIALS**

Upon Hastings written request or upon expiration or termination of this Agreement for any reason, Contractor will immediately deliver to Hastings and not to anyone else:

- a. Copies of any and all tangible results and proceeds of the Work hereunder, including, without limitation, all writings, services, drawings, models; and
- b. Any and all originals and copies of Owner Information and all documents and materials Contractor has received containing Owner Information which are in Contractor's possession or control at that time, including, without limitation, any and all writings, designs, blueprints, drafts, notes, scripts, memoranda, specifications, devices and documents, summaries, records, descriptions, modifications, negatives, drawings, adaptations, and other documents or materials, whether in art form, in writing or in machine-readable form, prepared by Contractor or prepared under Hastings' direction or at Hastings' request; and Contractor agrees that Contractor will not retain originals or copies of any such materials or discuss or record in any manner such materials or disclose Contractor's relationship with or engagement by Hastings or any of its officers, directors, employees or affiliated or related entities without first obtaining Hastings' written consent to do so.

## **ARTICLE 30 – OWNER PROVIDED INFORMATION**

Contractor shall identify to Hastings a list of inspections and system tests required by Hastings or which, in the opinion of the Contractor, should be conducted during and after the completion of the Work. If the Contractor identifies additional inspections or testing's, surveys or studies not previously requested or required by Hastings, the results of which, in its professional opinion, are required as a basis for a responsible and proper design, the Contractor shall so notify Hastings in writing. The Contractor acknowledges that its performance of the Work takes into account the results of all such inspections, tests, surveys, or studies, made available to Contractor and the Contractor is responsible for the accurate application of this information as it affects the Project in relation to the construction renovation, labor, purchase of materials and its installation.

## **ARTICLE 31 – ORDERLY WORK**

The Contractor acknowledges and accepts the occurrence of concurrent work performed by others in and around the Project sites. The Contractor is responsible for coordinating its Work with that of other contractors, consultants or workers to provide orderly and efficient execution of services or the Work.

The Contractor shall at all times keep the work area in a neat and orderly condition. The Contractor is responsible for removing from the Project sites all debris resulting from its work.



Contractor further agrees that a request for staging area(s) will be coordinated with Hastings' Facilities Manager. Due to limited areas on Project sites and due to security as well as safety issues, Contractor shall comply with all rules and regulations set forth by Hastings in the use of temporary staging area(s) assigned to Contractor. Any deviation from Hastings' instructions may require Hastings to refuse Contractor any use of a temporary staging area.

#### **ARTICLE 32 – ACCESS TO SITES**

Hastings will allow the Contractor reasonable access to the Project sites and to any other location at which work for the Project is being carried out. Contractor will comply with the conditions imposed by any Health and Safety Plan and any codes affecting the Project. Contractor will also comply with any access conditions imposed by the City of San Francisco, as well as those conditions imposed by Hastings, and prior to entry in the Project sites. If requested by Hastings, Contractor will execute any appropriate access agreements.

#### **ARTICLE 33 – COMPLIANCE WITH LAWS**

This Agreement shall be governed by the laws of the State of California; specifically In the performance of the Work, Contractor shall comply, and shall require each of its subcontractors to comply, with the requirements of any and all applicable laws, statutes, most recent building codes, ordinances, regulations, rules and lawful orders of any governmental body having jurisdiction over Contractor, Hastings, Project sites and the performance of the Work under this Agreement (including, but not limited to, the notice requirements of Proposition 65). Contractor further agrees to indemnify, save and hold Hastings harmless and defend from and against any cost, expense, attorney's fees, citation, fine, penalty and liability of every kind and nature which might be imposed by reason of any asserted or established violation of any such laws, order, rules and/or regulations. Contractor further agrees to take adequate precautions for the safety and protection of persons and property in all areas of the Work.

#### **ARTICLE 34 – GOVERNING LAW**

Regardless of where or in what sequence this Agreement is executed, it shall be deemed to be made and entered into in the State of California and shall be governed by, and construed in accordance with, California law. Any claim between Hastings and Contractor arising under or relating to this Agreement shall be brought in the Superior Court for San Francisco County, if under state law, or in the U.S. District Court for the Northern District of California, San Francisco Division, if under federal law or federal and state law. Service of process and any and all notices which may be required to be served on any party to any action relating to or arising out of this Agreement may be made by certified mail, return receipt requested, addressed to the parties at the addresses set forth herein, or by such other method agreed to by the parties in writing.

#### **ARTICLE 35 – DUE AUTHORIZATION**

Contractor agrees that the person or persons signing this Agreement on behalf of Contractor hereby represent and warrant to Hastings that this Agreement is duly authorized, signed, and delivered by Contractor.

#### **ARTICLE 36 - TERMINATION CLAUSE**

In the event Contractor fails to carry out or comply with any of the terms and conditions of this Agreement, Hastings reserves the right to demand correction of any breach or default within ten (10) calendar days of notice to Contractor. In the event Contractor fails to correct

the failure or default within the specified ten (10) day period, Hastings may terminate the Agreement without additional notice. Failure to terminate this Agreement is not to be deemed a waiver of the breach or default. Upon termination, Hastings shall compensate Contractor for Work rendered within thirty (30) days of termination of this Agreement.

#### **ARTICLE 37 - ENFORCEMENT OF AGREEMENT**

Any controversy or claim arising out of or relating to this Agreement, or a breach thereof, shall be settled by final and binding arbitration in San Francisco, California, heard before an arbitrator selected by both parties or pursuant to a strike off, in accordance with the American Arbitration Association Commercial Arbitration rules. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction. Any provisional remedy that would be available from a court of law shall be available from the arbitrator, to the parties of this Agreement pending arbitration.

The arbitrator shall determine which is the prevailing party and shall award that party its costs and fees. Costs and fees mean all reasonable pre-award expenses of arbitration, including the arbitrator's fees, administrative fees, witness fees and attorneys' fees.

#### **ARTICLE 38 – NOTIFICATION**

All notices required or permitted under this Agreement shall be in writing and may be served by depositing the same in the United States mail, postage prepaid and registered, and addressed to the parties at the addresses set forth below, or to such other address as either party may designate in writing from time to time.

If to Hastings:

David Seward, CFO  
University of California  
Hastings College of the Law  
200 McAllister Street  
San Francisco, CA 94102  
(415) 565-4710

If to Contractor:

\_\_\_\_\_  
(Insert legal name of owner)  
(Insert legal name of company  
address)

(        ) \_\_\_\_\_

Any change of address and other primary contact information of Contractor shall immediately be communicated in writing to Hastings.

#### **ARTICLE 39 – NONDISCRIMINATION**

During the performance of this Agreement, Contractor shall not discriminate unlawfully against any employee or applicant for employment on the basis of race, religion, color, national origin, ancestry, physical or mental disability, medical condition (cancer-related or genetics), marital status, age, sex or sexual orientation.

#### **ARTICLE 40 – DRUG-FREE WORKPLACE CERTIFICATION**

Contractor certifies compliance with Government Code Section 8355 by signing and incorporating the attached Drug Free Workplace Certification Exhibit into the Agreement.

#### **ARTICLE 41 – LABOR CODE PROVISIONS - GENERAL PREVAILING WAGE RATE**

Contractor shall comply with the provisions of applicable California law including but not limited to Sections 1770, et seq, of the Labor Code of the State of California attached hereto as **Exhibit** \_\_\_\_\_.

## ARTICLE 42 – CONFLICT OF INTEREST

- A. Contractor shall not hire any employee of Hastings to perform any service covered by this Agreement.
- B. Contractor affirms that to the best of Contractor's knowledge, there exists no actual or potential conflict between Contractor's family, business or financial interests and the Work under this Agreement and in the event of any change in such circumstances will inform Hastings of any questions regarding possible conflicts of interest that may arise as a result of such change in circumstances.

## ARTICLE 43 – NON-ASSIGNMENT

This Agreement is not assignable or delegable by either party.

## ARTICLE 44 – NON-RESPONSIBILITY OF THE REGENTS

The Regents of the University of California, a public corporation, is not a party to nor is it financially responsible under this Agreement.

## ARTICLE 45 – ENTIRE AGREEMENT

This Agreement and the exhibits hereto, constitute the entire agreement between the parties and no party shall be liable or bound to the other in any manner except as set forth in this Agreement.

THIS AGREEMENT is entered into by Hastings and Contractor as of the date set forth above.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

HASTINGS COLLEGE OF THE LAW:

(Insert legal name of company.)

200 McAllister Street

San Francisco, California 94102

\_\_\_\_\_  
(Street No., Street Name, & Suite No.)

\_\_\_\_\_  
(City, State & Zip Code)

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Signature)

David Seward

Chief Financial Officer

\_\_\_\_\_  
(Printed Name)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Approved As to Form:

California Contractor's License(s):

\_\_\_\_\_  
Elise K. Traynum  
General Counsel

\_\_\_\_\_  
(Name of License)

*(Classification and License Number)*

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*(Expiration Date)*