☐ FOUNDATION OF CALIFORNIA STATE UNIVERSITY MONTEREY BAY ☐ UNIVERSITY CORPORATION CSU MONTEREY BAY ☐ OTTER STUDENT UNION CSU MONTEREY BAY

Check the correct contracting entity.

Independent Contractor Services Agreement

This Service Agreement (hereinafter "Agreement") is made by and between the entity checked above, each of which is, a California 501(c)(3) corporation (hereinafter "Auxiliary") and the person named herein on the signature page, (hereinafter "Contractor").

Auxiliary hereby retains Contractor to provide the services described below on the terms and conditions set forth below:

1) **Scope of Work.** The Contractor will provide the Auxiliary with the following services ("Services" or "Activity") as described in noted in Exhibit A-Scope of Work.

2) **Period of Performance.** This Agreement covers the period noted in Exhibit A-Scope of Work, unless terminated earlier under the provisions of this agreement.

3) **Compensation.** Auxiliary agrees to reimburse Contractor in accordance with fees for services and expenses as set forth in the Exhibit A-Scope of Work.
   a) **Invoices.** Contractor shall submit detailed invoices for all services rendered.
   b) **Costs.** Contractor shall be responsible for all costs and expenses incident to the performance of services for Auxiliary as outlined in Exhibit A-Scope of Work, including but not limited to, all costs of equipment provided by Contractor, all employee, agent, and subcontractor costs, all fees, fines, licenses, bonds, or taxes required or imposed against Contractor or Contractor's employees, agents or subcontractors and all other of Contractor's costs of doing business.
      i) Unless otherwise specified herein, Auxiliary shall not be responsible for any expenses incurred by the Contractor in the performance of services under this Agreement. If the Auxiliary agrees to reimburse any costs, the costs must be reasonable and will be reimbursed at actual costs, and only for expenses for which receipts are submitted. Travel expense reimbursement is per Auxiliary policy and procedures, unless otherwise agreed. All expenses and purchases will be expended per Auxiliary policy and procedures.
   c) **Tools.** Contractor will supply all tools and instruments required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from Auxiliary.

4) **Performance.** The Contractor shall perform all Services required under this Agreement in accordance with the highest standards of the Contractor's profession and to the satisfaction of the Auxiliary. The Contractor shall perform all work in accordance with all laws and regulations and shall obtain any permits or licenses required. The Contractor shall not be paid for any work found by the Auxiliary to be unsatisfactory.

5) **Personnel.** Personnel supplied by Contractor will not for any purpose be considered employees or agents of the Auxiliary. Contractor assumes full responsibility for the actions of such personnel while performing services pursuant to this Contract and shall be solely responsible for their supervision, daily direction, control, and the like.

6) **Independent Contractor.** The parties intend that an independent-client relationship will be created by this Agreement. The conduct and control of the Services will lie solely within the purview of the Contractor. The Contractor is not to be considered an agent or employee of the Auxiliary or California State University Monterey Bay ("CSUMB") for any purpose, and no joint venture or principal-agent relationship exists. The Contractor and employees of the Contractor are not entitled to any of the benefits that the Auxiliary or CSUMB provides its employees. If appropriate, the Auxiliary will report all fees paid to the Contractor to the IRS on Form 1099. Auxiliary will not pay or withhold income taxes or other payroll taxes of any kind on behalf of the Contractor or its employees or subcontractors. Contractor shall have only the authority expressly granted by this Agreement. Except as expressly provided in this Agreement, Contractor is not authorized to enter into any contract, lease or

other arrangement in Auxiliary's or CSUMB's name, or for Auxiliary's or CSUMB's account or by which Auxiliary or CSUMB would be legally bound or held liable.

7) **Services Standards.** Contractor affirms that Contractor has the appropriate skill and experience to provide the Services requested by Auxiliary. Contractor shall perform the work diligently and consistent with professional skill and care and the orderly progress of the Services. Time is of the essence in this Agreement. Contractor's Services will be performed to Auxiliary's reasonable satisfaction and be in accordance with sound professional practices and standards. Contractor's Services will be performed in strict compliance with all federal, provincial/state and local laws, regulations and ordinances.

8) **Termination.**
   a) **Termination by Auxiliary.** Excluding Force Majeure events (See section 13, g) Auxiliary may terminate this Agreement at any time without cause, upon submitting notice of termination to Contractor. Upon notice of termination, Contractor shall not commence new work, but shall complete any work previously approved by Auxiliary. Auxiliary will be responsible for the cost of that work as well as any work or expenses incurred by the Contractor through the termination date and, for which Auxiliary shall pay within 30 days of receipt of approved invoices for such work. In addition, if the Contractor defaults in performance of the Contractor's Services under this Agreement, the Auxiliary may immediately terminate this Agreement by written notice to Contractor. Should termination occur as a result of Contractor's default, the Auxiliary shall be entitled to damages from Contractor resulting from Contractor's default and shall be entitled to offset any amounts payable to Contractor for Services satisfactorily completed against such damages.

   b) **Termination by Contractor.** Excluding Force Majeure events (See section 13, g) The Contractor may terminate this Agreement at any time without cause upon thirty (30) days' written notice to the Auxiliary. The obligations imposed by Sections 9 Confidentiality and Section 10 Indemnification of this Agreement, as well as any licenses granted, hereunder shall survive termination under this Agreement.

9) **Confidentiality**. All data and information submitted or made available to Contractor by Auxiliary, University or any other person while working on this project, unless otherwise publicly available, and all data and information and other work developed by Contractor under this Agreement ("Confidential Information") shall be utilized by Contractor in connection with this Agreement only. Except as required otherwise by law, such Confidential Information shall not be made available by Contractor to any other person without the prior written consent of Auxiliary, which consent shall not be unreasonably withheld.

10) **Indemnification.** Contractor shall hold harmless, defend at its own expense, and indemnify the University Corporation at Monterey Bay, Otter Student Union, Foundation of California State University Monterey Bay, the State of California, the Trustees of The California State University, California State University, Monterey Bay, and employees, officers, directors, volunteers and agents (collectively "Auxiliary"), against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the Auxiliary's sole negligence or willful acts.

11) **Insurance.** Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.
   a) **Commercial General Liability (CGL)**: Insurance from an insurance carrier satisfactory to Auxiliary, which insurance shall include protection against claims arising from personal injury, including death resulting therefrom, and damage to property resulting from any actual occurrence arising out of performance of this Agreement. The amount of insurance shall not be less than single limit coverage applying to bodily and personal injury including death resulting therefrom, and property damage or a combination thereof in an amount not less than $1,000,000 per occurrence, and $2,000,000 aggregate.

b) **Automobile Liability**: Business Auto insurance is required on Contractor-owned or operated commercial vehicles or any business-owned, rented or operated vehicles of Contractor and used on the CSUMB campus. Contractor will provide proof upon request of automobile insurance for ownership, maintenance and/or use of Automobiles, including coverage for uninsured and underinsured motorists if the work includes the use of a personal automobile, with limit no less than **$1,000,000** per accident for bodily injury and property damage.

c) **Workers' Compensation**: In accordance with the provisions of Section 3700 of the California Labor Code, Contractor shall be insured against liability for Workers' Compensation or hold self-insurance for health insurance and provide proof upon request to Auxiliary. Contractor agrees to comply with such provisions before commencing any work under this Agreement.

d) **Additional Insured.** Unless otherwise waived in writing by Auxiliary, Contractor is required to provide an additional insured endorsement for the General Liability policy, and if Business Automobile insurance is required, for the business insurance coverage. The additional insureds are to be named as follows:

   i) University Corporation at Monterey Bay, Otter Student Union, Foundation of California State University Monterey Bay, the State of California, the Trustees of The California State University, California State University, Monterey Bay and employees, officers, directors, volunteers and agents (collectively "Auxiliary") with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations.

12) Rights in Work Product. Originals of all drawings, specifications, reports, records, software, documents and other materials whether in hard copy or electronic form ("Documents and Materials") that are prepared by Contractor, its employees, subcontractors or agents in the performance of this Agreement, shall be the property of Auxiliary and shall be delivered to Auxiliary upon the termination of this Agreement, or upon the earlier request of Auxiliary. Contractor shall have no claim for further engagement or additional compensation as a result of the exercise by Auxiliary of its full rights of ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. The Documents and Materials prepared by Contractor in the performance of services under this Agreement shall not be released publicly without the prior written approval of Auxiliary or as required by law.

13) General Terms.

a) **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of California applicable in agreements made and performed or to be performed entirely within the State of California. Jurisdiction of any dispute arising from this Agreement shall be in the County of Monterey, California.

b) **Severability.** If any provision of this Agreement is held invalid or in conflict with applicable laws, the remainder of the Agreement shall continue to be in full force and effect. The parties agree to promptly negotiate in good faith to modify such invalid provision consistent with the intent and spirit of this Agreement.

c) **Nonwaiver.** Failure of either party to exercise any of its rights under this Agreement on one occasion shall not waive its right or exercise the same on another occasion.

d) **Subcontracting.** The rights or duties of this Agreement may not be assigned or delegated by Contractor, nor may Contractor retain subcontractors, without the prior written consent of Auxiliary. The subcontractors and their employees shall function as subcontractors to Contractor, not as parties to any contract with Auxiliary for the work described herein.

e) **Assignment.** This Agreement may not be assigned without the prior written consent of the Auxiliary.

f) **Modifications.** No modification of any of the terms or conditions of this order, including, but not limited to, delivery, price, quality, quantities, and specifications, will be effective without the prior written consent of the Auxiliary and signed by authorized representatives of the parties.

g) **Force Majeure.** Neither the Contractor nor Auxiliary shall be liable for termination or the failure to appear, present or perform if such termination or failure is caused by a Force Majeure event directly affecting either Party.

   Force Majeure shall mean acts of a public enemy; fires; floods; explosions; incidences of disease or illness that reach epidemic, endemic, or pandemic proportions; quarantine restrictions; freight embargos; strikes; boycotts; obstructive actions by labor organizations; demonstrations; riots; earthquakes; tidal waves; landslides; tsunamis; tornados; named storms; and other acts of God not attributable to the fault,

negligence, or willful misconduct of the Party claiming Force Majeure, is outside of the reasonable control of such Party, and could not have been prevented through the exercise of due care and reasonable diligence by the Party claiming Force Majeure.

h) **Authority.** Auxiliary and Contractor each represent that the person executing and delivering this Agreement on behalf of Auxiliary and Contractor, respectively, has full power and authority to do so and that this Agreement is binding.

i) **Audits.** CONTRACTOR shall maintain appropriate accounting records sufficient to properly document costs claimed as incurred in the performance of this Agreement and shall make such records available, upon request, to authorized Auxiliary and its agents and/or auditor(s)/official(s) for audit purposes. Said records shall be retained and kept available by CONTRACTOR for a period of not less than three (3) years after final payment by Auxiliary, or until audit and resolution of any exceptions resulting there from, whichever occurs first.

j) **Venue and Law.** The laws of the State of California will govern this Agreement. Should either party institute legal suit or action arising out of this Agreement, it is stipulated that the venue of such suit or action shall be in Monterey County, California.

k) **Electronic signatures and approvals.** Any invoice, requests, approval or consent specifically provided for or permitted to be given under this Agreement must be in writing. Email is an acceptable form of writing. Documents will be considered signed by an original signature when the signature is delivered by facsimile transmission or scanned into an electronic file and transmitted by email or facsimile.

l) **Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous communications, representations or agreements regarding this subject, whether written or oral, between the parties. The provisions of Exhibit A and other exhibits supersede any conflicting provisions in the Agreement.

m) **Pandemic/Epidemic Protocols.** Please be aware that any Contractor providing services on a University or University Auxiliary facility during a declared pandemic or epidemic shall abide by the Covid-19 Protocol Verification for Service Providers and Independent Contractors as last revised or updated periodically at: https://drive.google.com/file/d/1EKOpSe04woBX7Z329_Ki2mDo-J8gI1Ot/view?usp=sharing.

IN WITNESS whereof, the parties have caused this Agreement to be executed as of the day and year signed below.

Contractor
Name_____
Signature_____

Title_____
Address_____
_____
Email_____
Phone_____
Date _____

Concurrence:
(Dept/Name requesting Services)
_____

Signature_____
Title_____
Date:_____

Auxiliary Name_____

Signature_____
Name_____
Title_____
Address_____
Date _____

Chartstring: _____

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Check the correct contracting entity.

Exhibit A- Scope of Work

1. Term Period of Work under this Agreement: _____ to _____
2. Description of Scope of Work:

3. Compensation terms for the Work (hourly, flat rate); (maximum compensation?)

4. Any other terms:

Attach Proposal/other documents if available.