AGREEMENT

THIS AGREEMENT is made as of the __________ day of __________, 2013 (this “Agreement”), between,

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“University”),

whose facility is: UNIVERSITY OF CALIFORNIA, SAN FRANCISCO

whose address for notices is: University of California
Minnesota St. Finance Service Center
654 Minnesota Street, 2nd Floor
San Francisco, California 94143-0894

and CM/Contractor:

whose address for notices is: ________________________________

Attn: ________________________________

for the Program: CLINICAL SCIENCES BUILDING (CSB) & UC HALL (UCH) SEISMIC RENOVATION PROGRAM
Project Nos: M2615, M2664, M2670, M3602, M3604, M3605, M3606, M3607, M3608, M3609, M3623 & M3618
University of California, San Francisco
San Francisco, California

University’s Responsible Administrator: Michael Bade
Associate Vice Chancellor-CP and Campus Architect

University’s Representative is: Patti Mitchell, Interim Associate Director

whose address for notices is: 654 Minnesota Street, 2nd Floor
San Francisco, CA 94107-3027

University’s Executive Design Professional: Brad Jacobson
EHDD Architects
500 Treat Avenue, Suite 201
San Francisco, CA 94110
University and CM/Contractor hereby agree as follows:

**ARTICLE 1 WORK**

CM/Contractor shall provide all Work. CM/Contractor agrees to do additional Work arising from changes ordered by the University pursuant to Article 7 of the General Conditions or Contract Amendments ordered by the University pursuant to Article 16 of the General Conditions. The Work will be performed in Phases identified as follows:

Phase 1 – Pre-Construction Services  
Phase 2 – Construction Work

**ARTICLE 2A OPTION – PHASE 1**

The University intends to award Option - Phase 1 (for EACH Project) if, and when, required approvals are received. A Contract Amendment will be issued to include Phase 1 Fees (for EACH Project) to the Contract Sum.

**ARTICLE 2B OPTION – PHASE 2**

The University may (but shall not be required to) elect to require the performance of the Work contemplated under Phase 2 by exercising its options (the “Options”), in writing, directing the CM/Contractor to proceed with performance of the Work under Phase 2. The Options for Phase 2 may be exercised at any time after the Notice to Proceed is issued for Phase 1, but no earlier than the Phase 1 duration less the Design/Construction Overlap Duration, nor later than 1186 days after the completion of Phase 1 (for CSB Projects).

**ARTICLE 3 CONTRACT DOCUMENTS; OTHER DEFINED TERMS; RULES OF INTERPRETATION**

Initially-capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto in the “Definitions” section (Article 1) of the “Instructions to Bidders” provisions herein, or, if not defined therein, then in the “Basic Definitions” section (Article 1.1) of the General Conditions provisions herein. The rules of interpretation set forth in Article 1.3 of the General Conditions provisions herein shall apply to this Agreement.

“Contract Documents” means the Advertisement for Bids (Best Value) (After Prequalification), the Announcement to Prequalified Bidders, Instructions To Bidders, Bid Form, this Agreement, General Conditions, Exhibits, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Contract Amendments, Contract Schedule, and all other documents identified in this Agreement together which form the contract between University and CM/Contractor for the Work. This Agreement and the other Contract Documents together constitute the complete agreement between University and CM/Contractor with respect to the subject matter thereof and supersede any previous agreements or understandings with respect to the subject matter thereof.
ARTICLE 4 COMPENSATION

Subject to the provisions of the Contract Documents, University shall pay to CM/Contractor for the performance of the Pre-Construction Services, the sum of $1,163,066.

If Option Sum – Phase 1 (UC Hall-M2664) is exercised by University, an increase of $1,086,934 for Phase 1 Fee will be added to the Contract Sum. (Refer to Agreement, Article 2A-Option Phase 1).

If the University exercises its Option for Phase 2, the Contract Sum will be increased by the Option for Phase 2 Sum amount.

The “Anticipated Contract Value” for the Work hereunder is $135,587,500. The “Maximum Anticipated Contract Value” for the Work hereunder is $154,470,750. Notwithstanding the preceding sentence and any other provision to the contrary in any Contract Document, the University does not make any representation or warranty of any nature whatsoever (whether expressed, implied or otherwise) that either the Anticipated Contract Value or the Maximum Anticipated Contract Value are or will be accurate or will be reached. The CM/Contractor’s right of recovery shall be limited to the Contract Sum as increased, if at all, pursuant to the provisions of this Agreement.

4.1. Performance Incentive Program

4.1.1 The Performance Incentive Program is used to incentivize and reward the project teams to work together in the best interest of the Project. A not-to-exceed $2,700,000 Performance Incentive for all Projects in the CSB/UCH Program will be implemented to reward CM/Contractor and each of its subcontractors, the Design Professional and certain of its consultants, and the Commissioning Agent (collectively the “Performance Incentive Participants” or PIPs) in the areas of Schedule, Last Planner Plan Percent Complete (“PPC”), Safety Record, and Quality Assurance. Final subcontractor participation shall be determined and memorialized in a Directed Change Order issued by the University prior to the time the University elects Phase 2, but shall include at a minimum, the following disciplines: Mechanical, Plumbing, Electrical, building controls, A/V, fire protection, life safety, telecommunication and data systems]. For the Incentives in Article 4.1.1.-4.1.3, the Performance Incentive Participants shall be paid based upon each established distribution value (“Scheduled Value”) for each Project pursuant to Article 4.1.6.

4.1.2 Schedule Milestone Incentive — The term “Schedule Milestone” shall mean an established date that is part of the Approved Contract Schedule, and each Schedule Milestone Incentive will be established by the University. A “Schedule Milestone Period” shall mean the time from the previous Scheduled Milestone completion through the completion of the current Schedule Milestone. Upon on-time achievement of each of the Schedule Milestones listed on the Contract Schedule, the Performance Amount not to exceed $675,000 will be scheduled for distribution under this component of the Performance Incentive Plan. Incentive Participants shall be eligible for up to 50% of the respective Scheduled Value for that milestone period. These Schedule Milestones
shall be broken down by floor and/or bonded Project during Phase 2, and shall be issued in final form by Directed Change Order by the University on or before the date the University elects Phase 2. Each Schedule Milestone shall include a description that outlines the specific elements of the Schedule Milestone that will be required to make a determination of successful completion. Additional Schedule Milestones and dates for each Schedule Milestone may be added or amended by mutual agreement of the University and CM/Contractor or as provided for in Article 8 of the General Conditions; such modifications will be documented by Change Order executed by the University and CM/Contractor.

4.1.3 Last Planner, Planned Percent Complete (“PPC”) Incentive -- Upon on-time completion of the Schedule Milestone and if the aggregated PPC for all incentive participants is at or above 80% of on-time completion, on or before the required date, of meaningful last planner action items, as evaluated and approved by the University in aggregate for the Program for that Schedule Milestone Period, the Performance Incentive Participants shall be eligible for up to 50% payout between 60% and 70% PPC, 75% between 70% and 80% PPC, and 100% above 80% of the respective Scheduled Value for that Schedule Milestone Period. This amount shall be $675,000, subject to reduction to 50% of the Scheduled Value, depending upon RFI and Submittal performance, as determined by the University. CM/Contractor with the project team shall determine last planner action items and shall be tracked in sufficient detail to assess whether the Work is progressing in accordance with the Approved Contract Schedule and shall be open for review by the University. Last Planner Action Items shall include, but not be limited to, RFIs and Submittals as indicated below. The PPC is calculated by dividing the quantity of action items successfully executed by the total quantity of action items that had been planned. If, in aggregate, the Last Planner Action Items reach a PPC of above 80%, the full 100% of the Scheduled Value shall be payable to the Performance Incentive Participants, less any percentage reduction for not meeting RFI and Submittals revision goals below.

This PPC Incentive shall be issued by Directed Change Order pursuant to 4.1.6 below, at the sole discretion of the University, and based upon an evaluation by the University that the Performance Incentive Participants have worked together to satisfactorily accomplish project tasks.

4.1.4 Safety Record Incentive -- The Safety Record Incentive shall be a catered meal provided by the University for each ongoing month with no recordable injury on site, for the Program Team including Design Professionals, Contractors, Subcontractors and project participants. Safety record will be tracked starting with Notice to Proceed on any Phase 2 Project component and end once Final Completion of the Program is achieved.

4.1.5 Quality Assurance Incentive -- The University has budgeted up to $675,000 towards a Quality Assurance Incentive to reward successful quality control efforts in this regard.
Performance Incentive Participants have worked towards providing a Project that meets all quality requirements in the Contract Documents, including with respect to warranties. The University expectation is that these entities will timely respond to resolve and shall resolve all claims to the satisfaction of the University.

The University has set aside a sum (see above) for the purpose of incentivizing the CM/Contractor and its subcontractors to install the Work of the Program in a manner that insures quality and proper operation of the Projects once they have been turned over to the University for their intended use.

While the University understands and expects that the renovated buildings will have some need for warranty and maintenance callbacks, the proper installation of systems, equipment, goods, and materials can limit the need to call upon these warranties. This incentive shall be earned by demonstrating the following over a 12 month period following substantial completion:

1.) **No systemic or repeated failures**: The University expects that systems, equipment, installations and like items function as they were designed and intended, and do not require repair or maintenance beyond what is outlined in the manufacturer's operation and maintenance documentation provided for a given item. Failures are extremely disruptive to the proper operation of buildings and can lead to loss of revenue and/or impact patient safety. Therefore, the CM/Contractor and its subcontractors are incentivized to properly examine these failures and take step to insure they do not recur. Examples of a failure to meet this criteria would include, but are not limited to:
   a. Major equipment or other systems:
      i. Failing more than once (repeated pipe joint failures due to improper Pro-press or Pull-tee installation method);
      ii. Not functioning optimally due to the same issue (air valve not performing up to specifications due to faulty controllers/actuators);
      iii. Misdiagnosis of primary cause of failure (repeated motor failure because it was not properly leveled to water infiltration issues associated with roofing or exterior skin failures).
   b. Identification that commissioning requirements or quality control measures were bypassed or not completed properly where systemic or repeated issues are discovered. This could include items from major equipment failures to more cosmetic items like flooring failures or peeling paint.

2.) **Timely response & remedy**: The CM/Contractor will respond, when building performance and warranty issues occur, in a timely and efficient manner to minimize impact to facility operations. Timely response shall be dictated by the severity of the performance or warranty issue as determined and communicated by the University. Response shall be defined as personnel on-site, physically present, addressing the issue.
   a. Critical/Patient Impact – immediate response within 4 hours (7:00 am to 5:00 pm M-Su)
   b. Urgent – same day response within 12 hours (7:00 am to 5:00 pm M-Sa)
   c. Priority – response within 36 hours (8:00 to 5:00 pm M-F)
   d. Standard - response within 72 hours (8:00 to 5:00 pm M-F)
In addition to providing timely response, the CM/Contractor and its subcontractors shall provide timely remedy to correct warranty related items. While it is impossible to define "timely" for every eventual case that may present itself, the CM/Contractor shall present a plan for remedy and seek concurrence from the University that the timeliness of the resolution is acceptable. Every effort shall be made to immediately remedy any item.

4.1.6 Distribution of Incentives -- For the Incentives identified in Articles 4.1.1-4.1.3, a Directed Change Order will be processed semi-annually to distribute the Schedule Milestone Incentive and the PPC Incentive. Acceptance of the Directed Change Order will release the University for all direct and indirect costs associated with delays, inefficiencies, hindrances, out-of-sequence work, compressions, accelerations, extensions, and like items caused in whole or in part by the University and its consultants and subconsultants, CM/Contractor or other subcontractors in the performance of the Work up and through the effective date of the change order, except for items specifically identified in a log presented, reviewed and agreed by the University in writing to be unaffected by this release, and attached to the Directed Change Order by the University. This waiver is intended to be enforceable only upon the Performance Incentive Participants and therefore shall not apply to potential pass-through claims submitted to the CM/Contractor by subcontractors not included as one of the Performance Incentive Participants.

For the Incentive identified under Article 4.1.5, the Quality Assurance Incentive, if any, shall be paid to Performance Incentive Participants within 30 days of Final Completion. The University shall place the Quality Assurance Incentive monies into an interest bearing Escrow Account with University having sole signature authority with respect to release or return of said monies.

4.1.7 Energy Consumption

The purpose of this Incentive is to incentivize the achievement of energy performance goals. Under this Incentive, the Performance Incentive Participants (PIPs) can earn rebates for meeting energy goals.

The PIPs are required to participate in the 'Savings by Design' program (see http://www.savingbydesign.com).

The minimum energy efficiency threshold, per University of California Policy, is 20% better than Title 24 Energy Efficiency Standards. The goal for this project is to exceed the UCSF Energy Efficiency Policy as achieved during design and measured FOR TWO YEARS after Final Completion of the Program.

University will incentivize the PIPs as follows:

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<th>Target</th>
<th>Incentive to PIPs</th>
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June 6, 2011
CM/Contractor:AGR
87833-0004/LEGAL27134133.7
PIPs achieve Project Energy Usage less than 33kBtu/GSF/year. 70% of 'Savings by Design' Incentive
PIPs achieve Project Energy Usage less than 20kBtu/GSF/year 100% of 'Savings by Design' Incentive

Payment for achieving energy goals occurs once the performance has been measured and verified and after University has received payment from PG&E. The distribution of the rebate among the PIPs will be determined using the same established distribution values used for the other Incentives. An Example of the incentive payments is shown below.

It is the PIPs responsibility to work with the University to develop the plan to accurately track and measure energy consumption. The means to track and measure energy consumption proposed by the PIPs will be approved by University prior to implementation.

**EXAMPLE:**

**Participants**
The following firms, and individuals from these firms, will be eligible for the performance based Incentive program. The maximum benefit of the Incentives could be as much as the amount shown in the list below. CM/Contractor will be responsible to write checks to its Design Build Subcontractors and individuals within 5 business days upon receipt of the incentive check from UCSF. CM/Contractor will be required to provide proof of all checks written within 5 business days of writing each check. See the table below for the breakdown of incentive amounts for the CM/Contractor and its Design Build Subcontractors. These incentive amounts will be determined during the Pre-Construction Services-Phase 1 Work.

<table>
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<tr>
<th>Scope of Work</th>
<th>Team Member Firms</th>
<th>Incentive Amount</th>
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**ARTICLE 5 CONTRACT TIME**

Phase 1 - CM/Contractor shall commence the Work for Phase 1 on the date specified in the Notice to Proceed for Phase 1 and shall fully complete the Work for Phase 1 in accordance with the Contract Documents within **1216 days (for CSB Projects) and 913 days (for UC Hall-M2664)** days following such commencement date, with such duration of time being referred to herein as the “Phase 1 Time”.

Phase 2 (Program) – The CM/Contractor shall commence the Work for Phase 2 on the date specified in the Notice to Proceed for Phase 2 and shall fully complete the Work for Phase 2 and achieve Final Completion of the Program in accordance with the Contract Documents within **1246 days (for CSB**
Projects) and 700 days (for UC Hall-M2664) days following such commencement date, with such duration of time being referred to herein as the “Phase 2 Time”. Upon issuance of the Notice to Proceed for Phase 2, the Contract Time will be revised to be number of days calculated from the date specified on the Phase 1 Notice to Proceed, as modified by Change Order, to the date of the Notice to Proceed for Phase 2 plus the Phase 2 Time.

By signing this Agreement, CM/Contractor represents and warrants to University that it is reasonable for CM/Contractor to complete the Work within the Contract Time, and agrees to so do.

ARTICLE 6 LIQUIDATED DAMAGES
If CM/Contractor fails to complete the Work within the Contract Time, CM/Contractor shall pay to University, as liquidated damages and not as a penalty, the sum of $10,000 for each day after the expiration of the Contract Time that the Work remains incomplete. After Substantial Completion of the Program, the rate for liquidated damages shall be reduced to the sum of $5,000 per day that the Work remains incomplete until Final Completion. University and CM/Contractor agree that if the Work is not completed within the Contract Time, University’s damages would be extremely difficult or impracticable to determine and that the aforesaid amounts are reasonable estimates of and reasonable sums for such damages. University may deduct or offset any liquidated damages due from CM/Contractor from or against any amounts otherwise due to CM/Contractor under the Contract Documents. This provision shall not limit any right or remedy of University in the event of any other default of CM/Contractor other than failing to complete the Work within the Contract Time. This Article 6 will only apply if the University exercises its Option for Phase 2.

ARTICLE 7 COMPENSABLE DELAY
If CM/Contractor is entitled to an increase in the Contract Sum as a result of a Compensable Delay, determined pursuant to Articles 7 and 8 of the General Conditions, the Contract Sum will be increased by the sum of $[AMOUNT IN FIGURES] per day for each day for which such compensation is payable pursuant to this Agreement.

This Article 7 will only apply (a) if the University exercises its Option for Phase 2, and (b) only to the extent that CM/Contractor fulfills requisites proving entitlement to Compensable Delay damages.

ARTICLE 8 DUE AUTHORIZATION
The person or persons signing this Agreement on behalf of CM/Contractor hereby represent and warrant to University that this Agreement has been duly authorized, executed, and delivered by CM/Contractor.

ARTICLE 9 PHASE 1 TERMINATION
University may terminate the Phase 1 Work for convenience any time upon 5 days’ written notice. In the event of such termination of the Phase 1 Work for convenience, the University shall pay CM/Contractor the reasonable value of CM/Contractor’s Work up to the effective date of termination, not to exceed the Contract Sum for Phase 1.

Article 13.4 of the General Conditions shall not apply to any termination of the Phase 1 Work for convenience; Article 13.4 only shall apply to termination for convenience of the Phase 2 Work.
ARTICLE 10  CM/CONTRACTOR’S REPRESENTATIONS, WARRANTIES AND COVENANTS

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the CM/Contractor hereby represents, warrants and covenants to University as follows:

a. CM/Contractor is committed to developing an integrated and collaborative team approach with the University, University’s Design Professionals and Program Manager for the delivery of this Program.

b. CM/Contractor accepts the relationship of trust and confidence with the University established by the Contract Documents. CM/Contractor shall cooperate with University.

c. CM/Contractor has (i) carefully examined the Program and the Program’s Projects’ sites, to the extent available, and the adjacent areas, (ii) has suitably investigated the nature and location of the Work and (iii) has satisfied itself as to the general and local conditions which will be applicable, including but not limited to: (a) conditions related to site access and to the transportation, disposal, handling and storage of materials; (b) the availability of labor, water, power and roads; (c) normal weather conditions; (d) observable physical conditions at the Projects’ Sites and existing site conditions including: size, utility capacities and connection options of external utilities; (e) the surface conditions of the ground and (f) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.

d. CM/Contractor has thoroughly and adequately reviewed all documentation furnished by University in, or in connection with, the Information Available to Bidders.

e. All labor, services, materials, equipment and furnishings incorporated into or used in the Construction Work shall be (i) of good quality, (ii) new (unless otherwise required or permitted by the Contract Documents) and (iii) free of any and all liens (including mechanic’s and materialmen’s liens), mortgages, deeds of trust, pledges, charges, leases, easements, servitudes, encumbrances, claims, right of others or security interests of any kind or nature whatsoever, including any arising under any conditional sale or other title retention agreement (collectively, “Liens”) If required by the University, CM/Contractor will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings. CM/Contractor shall ensure that no portion of any Project Site or any other property (whether real, personal, mixed or otherwise) of University is encumbered by any Lien of CM/Contractor, any Subcontractor or any other person or entity claiming by, through or under CM/Contractor or any Subcontractor, and University shall indemnify, defend and hold harmless University from any and all claims or any nature whatsoever arising from, relating to or in connection with any such person or entity.

f. The Work will be of good quality, free of defects and will conform to the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents,
including substitutions in design or construction not specifically approved or authorized by the University in advance, may be considered defective.

e. All Program and individual Project construction cost estimates provided by the CM/Contractor for the Work, shall (i) be complete and accurate; (ii) incorporate the cost for the means and methods required to complete the Work; and (iii) incorporate the cost for all schedule constraints shown in the Contract Schedule necessary to complete the work within the Contract Time.