

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

FIXED PRICE PROFESSIONAL SERVICES AGREEMENT NO.

THIS FIXED PRICE PROFESSIONAL SERVICES AGREEMENT NO. _____ is made effective this ___ day of ____, 2017 by and between the **ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.** an Arizona non-profit corporation, located at 950 North Cherry Avenue, Tucson, Arizona 85719 hereinafter referred to as "AURA" and _____, with offices located at _____, hereinafter referred to as the "Contractor," collectively referred to as "the Parties."

Recitals:

A. Under Cooperative Agreement AST 1546092, with funding from Cooperative Support Agreement AST 1421197, CFDA #47.049, between AURA and the United States of America represented by the National Science Foundation (NSF), now in full force and effect, AURA, which operates the National Optical Astronomy Observatory (NOAO), an AURA Center, and is engaged in the management, operation and maintenance of observatories and related activities for research in the field of astronomy, and desires to enter into a Professional Services Agreement with the Contractor.

B. AURA desires to contract with Contractor to make available their services, as specified in this document, in support of efforts by AURA in those areas where the Contractor has special professional and/or technical skills.

C. Contractor has the personnel and is willing to contract with AURA and to provide such services and to perform them in accordance with the terms and conditions of this Agreement.

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

ARTICLE 1. SCOPE OF WORK

- a. Contractor shall provide all professional services, labor, materials, equipment, supplies, transportation and supervision necessary to provide landscaping services to maintain the NOAO facility grounds in Tucson, Arizona in accordance with the terms of the Scope of Work and Technical Specifications set forth in Attachment A.
- b. The Work shall be performed in accordance with: (i) the terms and conditions of this Professional Services Agreement and (ii) the AURA General Provisions set forth in Attachment B ("General Provisions"), and (iii) the Scope of Work/Technical Specifications set forth in Attachment A. The Attachments immediately referred to above are attached to this Agreement and the provisions of such attachments are hereby incorporated by reference into this Agreement.

ARTICLE 2. PERIOD OF PERFORMANCE

The period of performance for this Fixed Price Professional Services Agreement shall commence _____ and shall continue through _____ inclusive ("Period of Performance"); the Period of Performance shall be extended beyond that date only by written mutual agreement signed by both Parties.

ARTICLE 3. CONTRACT SUM

AURA shall pay Contractor for performance and completion of the Scope of Work described in Article 1 above, the fixed price sum of _____.

If required, AURA will issue additional contract/change order sum as applicable.

ARTICLE 4. BUDGET

N/A

ARTICLE 5. PAYMENTS

a. The Contractor shall invoice AURA on a monthly basis and shall be paid upon submission of proper invoice or vouchers, the prices stipulated herein, for work performed, delivered and/or rendered and accepted less deductions, if any, as provided herein.

b. Only a complete invoice shall be processed for payment. To be considered complete, the invoice shall include: (1) reference the Contract number (N80684C); (2) date of invoice; (3) the invoice number; (4) dollar amount due for AURA, (5) an itemized description of the services performed, (6) the time period covered by the invoice; and (7) the phone number/email of the person who can be contacted with questions regarding the invoice.

c. Each invoice presented for payment must bear the following certification:

"We acknowledge that the above statement is just and correct to the best of our knowledge and belief; that payment therefore has not been received; the funds expended are reasonable, allowable and allocable; the costs are in compliance with the terms and conditions of this agreement; that this statement has been prepared from the books of account and records of the Contractor; and unencumbered title to the materials provided and work completed rests in the Contractor."

By Example
Signature

Name: _____

Title: _____

Invoices should be mailed or sent via email to:

AURA, Inc.
Attn: Sherri Abney
Contracts Office
950 North Cherry Avenue
Tucson, AZ 85719
Email to: sabney@aura-astronomy.org

d. Payment shall be made within thirty (30) days after AURA's receipt of Contractor's proper invoice.

ARTICLE 6. AURA ADMINISTRATIVE AND TECHNICAL REPRESENTATIVES

a. The Contracts Officer(s) (CO) are the only personnel authorized to approve changes to this Agreement and to perform post-award functions in administering and enforcing this Professional Services Agreement on behalf of AURA.

b. The AURA CO assigned to this Agreement is Regina "Gina" Logan. Any questions relating to the terms and conditions of this Agreement should be brought to her attention at (520) 318-8265 or by email to glogan@aura-astronomy.org.

c. The CO may appoint, by written notification to the Contractor, a Technical Representative to act on behalf of AURA for purposes of administering, and providing direction to the Contractor related to the detailed technical aspects of the Work. In no event, however, shall AURA be bound by any understanding, agreement, modification, change order, or other matter deviating from the provisions of this Agreement unless formalized by appropriate written contractual documents executed by the CO. Technical direction by the Technical Representative is only valid if: (1) it is issued in writing and is consistent with the description of the work contained in the Statement of Work; (2) it does not constitute a new assignment of work nor change the express terms, conditions or specifications of this Contract; and (3) it does not constitute a basis for any increase in the Contract Agreement Sum or extension of time for completion of the Work.

d. Karen Ray shall serve as the Technical Representatives (TR) to act on behalf of AURA for the purposes of administering and providing direction to the Contractor related to the detailed technical aspects of the work and to provide advice and responses to requests for information that do not alter the terms of this Agreement. Any questions regarding the technical performance of this Agreement should be directed to Karen Ray, 520-318-8212, or to her attention at ray@noao.edu

e. The person executing this Agreement on behalf of AURA hereby warrants and represents that he/she has authority to enter into this Agreement on behalf of AURA.

ARTICLE 7. CONTRACTOR'S CONTRACTUAL AUTHORITY - ADMINISTRATIVE AND TECHNICAL REPRESENTATIVES

a. Promptly upon execution of this agreement by the Contractor, Contractor shall appoint a Project Manager acceptable to AURA who shall be: (1) the primary contact for Contractor in all matters related to this Agreement; (2) responsible for the administration, coordination, and supervision of the agreement and Work by Contractor; and (3) authorized to act on behalf of, sign for, and accept responsibilities on behalf of Contractor. Contractor shall notify AURA of such appointment in writing and shall not replace the Project Manager without the prior written consent of AURA.

b. The person executing this Agreement on behalf of Contractor hereby warrants and represents that he or she has authority to enter into this Agreement on behalf of Contractor.

ARTICLE 8. CHANGES

a. AURA may at any time, through a written change notice to this Agreement, make changes within the scope of work or period of performance of this Agreement. Contractor's and AURA's contractual representatives shall negotiate an equitable adjustment in the terms of this Agreement to cover any such change, if appropriate. No payment for extras shall be made except as specifically authorized by a written Amendment to this Agreement.

b. Nothing in this Agreement, including the statement of work or the quality of the services provided, may be modified except by means of a written amendment or change order signed by both Parties. Verbal agreements to modify or add work are void.

ARTICLE 9. DELAYS

Contractor shall notify AURA in writing, by email or facsimile, within five (5) working days from notification of any delay in the performance of specified services, and shall specify in writing to AURA the proposed revised delivery date as soon as practicable after notice of delay. Such notification shall not be construed as repudiation by Contractor of its obligations under this Agreement. Contractor shall not be liable for delays in performance or delivery due to causes beyond its reasonable control, and not otherwise due to its fault or negligence. In the event of such delay, the date of performance or of delivery shall be extended for a period equal to the time lost by reason of said delay on written approval of AURA, which shall not be unreasonably withheld.

ARTICLE 10. SUSPENSION OF THE WORK

Performance of the Work under this Agreement may, upon written notice to Contractor, be suspended by AURA in the event funding for this project is suspended or delayed. Such suspension by AURA shall be considered temporary and in no way, shall be deemed to be a termination. Contractor shall be compensated for work completed up to the date and time of suspension.

ARTICLE 11. PRESENCE ON AURA PREMISES

a. The Contractor agrees that all persons working for or on behalf of the Contractor whose duties bring them upon AURA's premises shall obey all the rules and regulations that are established by AURA and shall comply with the reasonable directions of AURA's officers.

b. The Contractor shall be responsible for the acts of its employees, subcontractors, or agents while on AURA's premises. Accordingly, the Contractor agrees to take all measures necessary to prevent injury and/or loss to persons or property located on AURA's premises. The Contractor shall be responsible for all damages to persons or property caused by the Contractor, subcontractors, or any of its agents or employees. The Contractor shall promptly repair, the specifications of AURA, any damage that it, its subcontractors or its employees or agents may cause to AURA's property or equipment. If the Contractor fails to repair such damage, AURA may repair or have repaired the damage and the Contractor shall reimburse AURA promptly for the cost of the repair.

c. Contractor shall comply with the Occupational Safety and Health Act of 1970 (OSHA), including all applicable OSHA regulations.

d. The Contractor agrees that, in the event of an accident of any kind, the Contractor will immediately notify Tammy Lavoie, Risk Manager, at (520)318-8211. Or tlavoie@noao.edu and thereafter furnish a full written report of such accident.

e. The Contractor shall perform the services described in the Agreement without interfering in any way with the activities of AURA.

ARTICLE 12. QUALITY OF SERVICES

The Contractor agrees to perform the Work in accordance with those standards of professional care, skill, and diligence normally provided in the performance of similar services and work.

ARTICLE 13. USE OF AURA'S FACILITIES

The Contractor and its subcontractors, employees, or agents shall have the right to use only those facilities of AURA that are necessary to perform services under this Agreement and shall have no right of access to any other AURA facilities.

ARTICLE 14. CONDITIONS AFFECTING THE WORK

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local condition which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to AURA. AURA assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to execution of this Agreement, unless such understanding or representations by AURA are expressly stated.

ARTICLE 16. PROTECTION OF STRUCTURES, UTILITIES, AND IMPROVEMENTS

The Contractor will protect from damage all existing structure, improvements or utilities at or near the site of the work, the location of which is made known to him, and will repair or restore any

damage to such facilities resulting from failure to comply with the requirements of this Agreement or the failure to exercise reasonable care in the performance of the work.

ARTICLE 17. CLEANING UP

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste material or rubbish and upon completion of the work remove any rubbish from the premises and all tools, equipment and materials not the property of AURA. Upon completion of the work, the Contractor shall leave the premises in a clean, neat and workmanlike condition.

ARTICLE 18. INDEPENDENT CONTRACTOR

a. In performing the Work under this Agreement, the Contractor shall be deemed an independent contractor and shall not act as nor be an agent or employee of AURA. As an independent contractor, the Contractor will be solely responsible for determining the means and methods for performing the Work described in Article 1, and shall have complete charge and responsibility for persons employed by Contractor and engaged in the performance of the specified work.

b. All of Contractor's activities will be at its own risk and is hereby given notice of this responsibility for arrangements to guard against physical, financial, and other risks as appropriate. Contractor shall observe and abide by all applicable laws and regulations, including, but not limited to, those of AURA relative to conduct on AURA's premises as may be applicable.

ARTICLE 19. LAWS AND REGULATIONS

Each party expressly agrees to abide by any and all applicable federal, state and local laws, regulations and ordinances governing their obligations under this Agreement, including without limitation, and to the extent applicable, state and federal rules governing non-discrimination, immigration, Title 7 of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973 and the Occupational Safety and Health Act of 1970, Executive Order #11246, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) and the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as may be from time to time modified or amended.

ARTICLE 20. APPLICABLE LAW

- a. This agreement shall be governed, interpreted and construed in accordance with the laws of the State of Arizona without regard to its conflict of law rules.
- b. The work performed by the Contractor must comply with applicable Arizona State law, Pima County ordinances, Tucson City ordinances, applicable federal law and any other laws and/or ordinances which may be applicable to the work to be performed.

ARTICLE 21. INDEMNIFICATION AND INSURANCE

- a. Contractor shall at all times keep AURA free and clear from all claims, liens, and encumbrances asserted by any person or other entity for any reason whatsoever arising from the furnishing of goods and services under this Agreement. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless AURA, its directors, officers, employees, agents, representatives and affiliates (hereinafter collectively referred to as "Indemnified Parties"), from and against any and all claims, demands, actions or causes of action, costs, damages, liabilities, injuries, expenses, or losses of any nature whatsoever to which any of the Indemnified Parties may become subject under any theory of liability whatsoever ("Claims") insofar as such Claims (or actions in respect hereof) arise from, are connected with or are related to: (i) any inaccuracy in or breach of any of Contractor's representations and warranties set forth in this Agreement; and the work performed under this Agreement. (ii) any intentional misconduct, negligent acts, errors, mistakes or omissions of Contractor, its officers, employees, agents or any tier of subcontractor in performing the obligations and the work covered by this Professional Services Agreement. To the fullest extent permitted by law, AURA shall be responsible for its own negligent acts, omissions and mistakes, and that of its employees and sub-consultants. Although Contractor shall defend AURA, in the event of a final determination of joint negligence or other breach of duty between Contractor and AURA, Contractor's total indemnity liability to AURA shall be the percentage determined to be Contractor's share of liability. Every obligation of this indemnification paragraph shall survive the completion of the services hereunder and the termination of this Agreement.
- b. Accordingly, AURA shall promptly notify the Contractor in writing of any claim or action brought against AURA for which the Contractor may be responsible. On such notification, the Contractor shall promptly take over and defend any such claim or action.
- c. AURA shall have the right and option to represent itself in defense of any such claim or action at any time if AURA, in its sole discretion, determines that its rights are not being appropriately defended by Contractor.
- d. The Contractor shall at its own expense, during the course of this Agreement, maintain in force at all times the following minimum limits of insurance.

- ☐ Workers' Compensation: Statutory limits
- ☐ Comprehensive General Liability: \$1,000,000 each occurrence/
\$1,000,000 annual aggregate
(Including contractual liability)

Contractor will also provide the following coverage:

- Automobile Liability: Bodily Injury \$1,000,000 each occurrence
- Property Damage \$1,000,000 each occurrence

e. These coverage amounts shall in no way limit the Contractor's obligations or liability under this agreement.

f. Certificate of Insurance or self-insurance evidencing coverage shall be delivered to AURA within fifteen (15) days following the date that the Contractor receives a fully executed original or copy of this Agreement. The certificate of insurance shall not be cancelled, materially changed, or allowed to expire until forty-five (45) days after prior written notification has been given to AURA.

ARTICLE 22. TERMINATION

- a. AURA shall have the right to terminate performance under this Agreement at any time for its convenience. If termination is for convenience, the party that wishes to terminate the agreement shall notify the other party at least thirty (30) days in advance of the effective date of termination specified in such notice. On said termination, Contractor shall be paid for all services satisfactorily rendered in accordance with Scope of Work.
- b. Either party shall have the right to terminate performance under this Agreement at any time for the other party's default by notifying such party in writing. If termination is for default, the defaulting party shall have thirty (30) days, or such longer period as the non-defaulting party may authorize in writing, after the receipt of written notice of the nature of the default to correct the same, before such termination is given by the non-defaulting party.

ARTICLE 23. FORCE MAJEURE

Neither Contractor nor AURA shall be liable for failure to fulfill its obligations herein or for delays in performance or delivery, as applicable, due to causes beyond its reasonable control, including, but not limited to: acts of God, natural disasters, acts or omissions of other parties, acts or omissions of civil or military authority, Government shut downs (total or partial), the termination, lapse or delay in government funding, changes in governmental priorities, changes in law, material shortages, fire, strikes, floods, epidemics, quarantine restrictions, riots, war, acts of terrorism (hereinafter collectively or singularly referred to as force majeure event). Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this contract must immediately notify the other party giving full particulars of the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its or their performance of the contract and to

fulfill its or their obligations under the contract. Upon completion of the event of force majeure, the party affected must as soon as reasonably practicable recommence performance of its obligations under this contract. An event of force majeure does not relieve a party from liability for an obligation that arose before the occurrence of that event. In the event the force majeure event exists for a year or more, either party hereto may seek to terminate this Agreement without further liability.

ARTICLE 24. LAWS AND REGULATIONS

Each party expressly agrees to abide by any and all applicable federal, state and local laws, regulations and ordinances governing their obligations under this Agreement, including without limitation, and to the extent applicable, state and federal rules governing non-discrimination, immigration, Title 7 of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973 and the Occupational Safety and Health Act of 1970, and Executive Order #11246, as may be from time to time modified or amended.

ARTICLE 25. ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. All matters within the scope of the Federal Arbitration Act of the United States (9 U.S.C. §§1 et seq.) shall be governed by it. The place of arbitration shall be Tucson, Arizona. The arbitrator shall have the right to award or include in its award any relief which it deems proper in the circumstances, including without limitation, money damages (with interest on unpaid amounts from date due), specific performance, and injunctive relief provided that the arbitrators shall not have the authority to award exemplary, punitive or special damages. The award and decision of the arbitrator shall be conclusive and binding upon all parties hereto and judgment upon the award may be entered in any court of competent jurisdiction. Notwithstanding anything to the contrary contained herein, each party hereto shall have the right in a proper case to obtain temporary restraining orders and temporary or preliminary injunctive relief from a court of competent jurisdiction, provided, however, that the parties agree to contemporaneously submit their dispute for arbitration on the merits as provided herein.

Both parties shall share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.

ARTICLE 26. SMALL AND SMALL DISADVANTAGED SUBCONTRACTING

It is AURA Policy that small business concerns and small socially and economically disadvantaged business concerns be given the maximum practicable opportunity to compete for Subcontracts in

order to assure maximum small business participation consistent with fulfilling AURA's contractual obligations in an efficient and economical manner.

ARTICLE 27. NON-EXCLUSIVE CONTRACT

Nothing in this Agreement shall be construed as granting Contractor exclusive rights to perform the Work to be provided under this Professional Services Agreement. AURA reserves the right to perform the same or similar work itself or to contract with others for the same or similar work.

ARTICLE 28. ASSIGNMENT

This Agreement shall inure to the benefit of and shall be binding upon the respective successors and assigns of the parties hereto, but may not be voluntarily assigned in whole or in part by either party without the prior written consent of the other, except that this Agreement may be assigned to the National Science Foundation or to a third party should a successor to AURA for the management of the National Optical Astronomy Observatory (NOAO) be selected by the National Science Foundation without the prior approval of Contractor.

ARTICLE 29. AUDIT AND AVAILABILITY OF RECORDS

AURA is responsible for ensuring that the Contractor is in compliance with applicable laws and regulations and other award conditions. Financial reports, supporting documents, statistical records and other records pertinent to this Agreement, shall be retained by Contractor for a period of three (3) years from the date of final payment and records related to audits, appeals, litigation or the settlement of claims arising out of performance of this Agreement shall be retained by Contractor until such audits, appeals, litigation or claims have been resolved. Notwithstanding any other conditions of this Agreement, the records and financial statements of Contractor shall be made available upon request, at Contractor's regular place of business, for examination by AURA or their duly authorized representative(s).

ARTICLE 30. SURVIVAL

The terms, conditions, representations, indemnifications and warranties contained in this Agreement shall survive the termination of this Agreement and acceptance of the Work.

ARTICLE 31. ORDER OF PRECEDENCE IN THE EVENT OF CONFLICTS

a. The intent of this Agreement is to include all items necessary for the proper execution and completion of the Work, so that the provisions of each document comprising this Agreement shall be construed in a manner consistent with the provisions of the other documents. The various documents comprising this Agreement are complementary, and what is required by any one shall be as binding as if required by all.

b. In the event of conflict among the provisions of any of the documents comprising this Agreement, interpretation of this Agreement shall be governed in the following descending order of priority: (1) The articles of this Agreement; (2) the AURA General Provisions for Fixed Price Services Contract incorporated by reference (Attachment B); (3) the Federal Standards and

Requirements set forth in the National Science Foundation Cooperative Agreement Financial & Administrative Terms and Conditions; and (4) the attached Scope of Work.

ARTICLE 32. SEVERABILITY

The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. The failure by either party to enforce a right hereunder promptly shall not be deemed a waiver of such right, and no waiver of right under a provision shall constitute a waiver of any other right under such provision or any other provision.

ARTICLE 33. ENTIRE AGREEMENT

This Agreement, together with any addenda and amendments relating hereto constitutes the entire agreement of the Parties, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between the Parties other than as set forth herein. Any amendments, alterations or modifications to this Contract must be in writing and signed by the Parties of this agreement to be effective.

ARTICLE 34. INTEGRATION

This Agreement, together with any addenda and amendments relating hereto, sets forth the entire understanding between the parties and supersedes all prior or contemporaneous agreements, representations and understandings between the parties with respect to the subject matter of this Agreement. This Agreement may only be amended in a writing signed by both parties hereto.

ARTICLE 35. NOTICES

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered: (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

For AURA:

Gina Logan
Senior Contracts Officer
AURA Inc.
950 North Cherry Avenue
Tucson, AZ 85719
Phone: 520.318.8265
Fax: 520.318.8456
Email: glogan@aura-astronomy.org

For CONTRACTOR:

or to such other address as either party may from time to time specify in writing to the other party.

Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip.

(The remainder of this page is left intentionally blank.)

SAMPLE

IN WITNESS, WHEREOF, the parties hereto have executed this agreement on the dates set forth below to be effective on the date first set forth above.

ASSOCIATION OF UNIVERSITIES FOR RESEARCH IN ASTRONOMY, INC.

Regina "Gina" Logan, Senior Contracts Officer

Dated: _____

CONTRACTOR

Signature of Officer Authorized to Bind the Company

Printed Name of Officer

Printed Title of Officer

Dated: _____