

CONTRACT GENERAL CONDITIONS

**FOR DESIGN-BUILD
(MAJOR CAPITAL OUTLAY) PROJECTS**



THE CALIFORNIA STATE UNIVERSITY

Prepared by:
OFFICE OF THE CHANCELLOR
CAPITAL PLANNING, DESIGN AND CONSTRUCTION

(www.calstate.edu/cpdc/cm)

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31.00 - DEFINITIONS

Addendum: A document issued by the Trustees during the bidding period that may modify or supersede portions of the Contract documents.

Architect: A California-licensed architect, employed by the Design-Builder, who is responsible for all engineering and architectural services to be performed in connection with the project. For projects on which an engineer or landscape architect is commissioned instead of an architect, the term “Architect” shall mean the design professional so commissioned for the project.

Bid Date: The date on which bid proposals for a project are submitted; same as proposal due date.

Bidder: Any individual or business entity acting directly or through an authorized representative that submits a proposal for the work. “Bidder” and “Proposer” are synonymous.

Campus: The California State University campus on which the project is located.

Capital Planning, Design and Construction: Department within Business and Finance, a division in the Office of the Chancellor of the California State University, responsible for all major capital outlay projects.

Change Order: A written agreement entered into after the award of the Contract that alters or amends the executed contract.

Construction Administrator: The person designated by the Trustees to manage the construction phase of the project, and authorized to approve changes to the contract.

Construction Inspector: The Inspector on the project site who works under the direction of the Construction Administrator.

Construction Schedule – The Design-Builder’s time use plan for completing the Work within the Contract Time.

Contract: The Contract Documents which collectively represent the entire agreement between Trustees and the Design-Builder, and which supersede any prior negotiations, representations, or agreements, either written or oral.

Contract Documents: The Request for Proposal (RFP), Cost Proposal Form, bonds, insurance certificates, Plans, Specifications, Addenda, agreement, Contract General Conditions, Supplementary General Conditions, Special Conditions, and Change Orders.

Contract Time – The period of time, set out in calendar days, established in the Contract Documents within which the Work must be completed. The Contract Time may be adjusted by time extensions through Change Orders.

Design-Builder: The individual or business entity that has entered into this Contract with Trustees.

Engineer: A California-licensed engineer employed by the Design-Builder or Architect, who is responsible for engineering services. There may be more than one engineer, depending on the work required, (*i.e.*, civil, structural, electrical, geotechnical, mechanical).

Executive Dean: University official who oversees the capital outlay process.

Field Instruction: A written communication to the Design-Builder. The field instruction may reject work or issue coordination communications under the signature of either the Construction Inspector or Project Manager, but when it directs additional work or work under dispute, it must be issued under authority of a Construction Administrator.

Plans: The drawings prepared by the Design-Builder and approved by the Trustees, which include elevations, sections, details, material and equipment schedules, diagrams, information, notes, or reproductions of any of these, and which show the location, character, dimension, or details of the work.

Prevailing Wages: The general prevailing rate of wages identified by the Director of the Department of Industrial Relations of the State of California pursuant to section 1770 of the Labor Code.

Progress Schedule – The periodically updated Construction Schedule that reflects the actual progress of the work and impacts on the work thereby maintaining a current projected date of completion. Impacts on the work include, but are not limited to, anticipated delays, re-sequencing of tasks, and Change Orders.

Project: The total work required by the Contract.

Project Manager: The on-site representative of the Construction Administrator, but without the authority to approve changes to the contract.

Project Schedule – The time use plan for completing the entire project from selection of service providers through occupancy. Major tasks included in the Project Schedule are consultant selection and award, design, code approvals, bid and award, construction, move-in, and closeout.

Proposal: The technical and cost proposal packages submitted by the proposers on the bid date.

Proposer: Any person or business entity acting directly or through an authorized representative who submits a Proposal for the work. “Proposer” and “Bidder” are synonymous.

Request For Proposal (RFP): The documents submitted by the Trustees to the Proposers describing and specifying the requirements of the work/project.

Site: The area specified in the Contract Documents for the project and the area made available for the Design-Builder’s operation.

Specifications: The instructions and requirements that complement the plans and describe the manner of performing the work or the quantities, qualities, and types of materials to be furnished.

State: State of California.

Subcontractor: Any individual or business entity that contracts with Design-Builder to furnish either labor and materials or equipment, or labor only.

Superintendent: The representative of the Design-Builder at the construction site who is authorized to receive instructions from the Trustees, and who is authorized to direct the performance of the work on behalf of Design-Builder.

Supplier or Vendor: Any individual or business entity that contracts with the Design-Builder to provide materials or equipment.

Trustees: The Trustees of the California State University and their authorized representatives who act on behalf of the Trustees. The Trustees are the legally constituted governing body of the California State University system (see Education Code section 66600 *et seq.*) which have full power and responsibility in the construction and development of any state university campus and any buildings or other facilities with improvements connected with the California State University (see Education Code section 66606).

University: The California State University campus, on which the project is located, and the University President and other University officers and employees acting within the scope of their duties.

University Building Official: The Trustees’ representative who shall have responsibility for enforcement of all applicable codes, standards and related responsibilities so assigned in Title 24.

Work: That which is to be constructed or done under the Contract, including the furnishing of all labor, materials, and equipment.

32.00 - PROPOSALS

32.01 Duty to Carefully Examine These Instructions

Prospective proposers for this project shall examine carefully the instructions contained herein and be cognizant of and

satisfied with the conditions that must be satisfied before submitting a proposal, and to the conditions that affect the award of the contract.

32.02 Competence of Proposers

- a. License. No bidder may bid on work for which it is not properly licensed. The Trustees shall disregard any proposal received from a proposer who is not properly licensed (Business and Professions Code section 7028.15). Nor will the Trustees award a Contract to a proposer who does not possess the appropriate contractor's license, which is that specified in the Request for Proposal. Joint venture proposers must individually possess a current license when submitting the proposal, and the joint venture must possess a joint venture license at time of award (Public Contract Code section 3300).
- b. Prequalification Rating. The Trustees shall issue cost proposal packages only to proposers who have prequalified with the Trustees. To prequalify, a proposer must file a statement of financial condition and previous experience in performing public works on a standard questionnaire form obtained from the Trustees. Proposers shall verify under oath, the completed questionnaire, including the financial statement. The completed forms must be filed at least five days prior to the date for opening proposals and approved not less than one day prior to the date set for opening proposals.

Proposers may procure standard questionnaire forms from: The California State University, Office of the Chancellor, Capital Planning, Design and Construction, Attn: Prequalification Coordinator, at the following address: 401 Golden Shore, Long Beach, California, 90802-4210. Forms are also available on the Internet at www.calstate.edu/cpdc, under 'Construction Management' (Public Contract Code sections 10760-10763).

The Trustees will review the proposer's statement of experience and financial condition upon receipt, check references, and notify the proposer of the rating that has been established based on the information contained in the statement. The prequalification rating will be the maximum amount of a contract or contracts that the proposer may undertake with the Trustees. The Trustees shall disregard any proposal received either from a proposer that is not currently prequalified, or from a proposer that is prequalified but the rating is not high enough to accommodate its bid. Although this prequalification permits participation in the submitting of a proposal for the project, it does not mean that the proposer satisfies the requirements of being a "responsible" bidder. This determination occurs later in the process (see Article 32.09, Failure to be a Responsible Bidder).

If two or more prospective proposers desire to bid as a joint venture on a single project, they must file an affidavit of joint venture with the Trustees five days prior to the date and time set for opening cost proposals, on a form obtained from the Trustees. The affidavit of joint venture will be valid only for the specific project for which it was filed. Each party to the joint venture must be prequalified, as provided herein, one day before the time set for opening cost proposals.

- c. Project Architect. The proposer is required to employ an architect licensed in California for services during the planning and construction phases. The proposer shall be responsible for complete design and construction of the project.
- d. Proposer Qualifications. Each proposer must include in its proposal a written certificate which indicates that the proposer has read and understands the provisions of the Contract, and that if selected, the proposer shall comply, and assure that any contractors or subcontractors employed by the proposer shall comply with the requirements of the Contract Documents. Proposer must demonstrate its ability to provide licensed architectural, engineering, and Contract services associated with the development of this project, including, but not limited to the preparation of all drawings and specifications; conducting of surveys, tests, and investigations; consulting; and technical supervision, project management, and all other planning and design requirements of the project. It is understood fully that the proposer has the sole responsibility for the design, accuracy of details, dimensions, construction, compliance with codes, programmatic requirements, and the structural, electrical, mechanical, and plumbing integrity of all buildings and other improvements to real property which are included in the project.

32.03 Necessity for Careful Examination of Site, Plans, Specifications

Proposer shall carefully examine the project site. The proposer shall also investigate and be satisfied as to:

- the conditions to be encountered,
- the character and quantity of surface and subsurface materials or obstacles to be encountered,

- rights of way and easements at or near the site,
- the work to be performed, and
- the materials to furnish as required by the RFP (see Article 35.11, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.).

Proposer certifies that Proposer has complied with the requirements of this provision by the submission of its proposal.

Any failure by the proposer to acquaint itself with information that is available, or with reasonable investigation may be available, will not relieve it from responsibility to properly estimate the difficulty or cost to perform the work. Such examination does not require independent underground soils borings unless required elsewhere.

- a. Subsurface Investigations. Where the Trustees have made investigations of subsurface conditions, and has made that information available to proposers, such information is limited in scope to that which has been actually encountered in the investigations, and is included only for the convenience of the proposer.

The Trustees assume no responsibility whatsoever with respect to the sufficiency or accuracy of borings, or of the log of test borings, or other preliminary investigations, or any interpretation of the above. There is no guarantee or warranty, either expressed or implied, that the conditions indicated are representative of those that exist throughout the site, or that unforeseen conditions or developments may not occur. Making such information available to proposers is not to be construed in any way as a waiver of this provision. Proposers must satisfy themselves through their own investigations as to the actual conditions to be encountered.

- b. Differing Site Condition. During the progress of the work, if the Design-Builder encounters a subsurface or latent condition at the site that is substantially different from those indicated in the RFP or made available for examination, a differing site condition may exist. The Design-Builder shall immediately notify the Construction Administrator in writing of the differing site condition. The Construction Administrator shall investigate the assertion of a differing site condition by collecting the facts and applying the facts to the appropriate provisions of the Contract Documents. If the Construction Administrator in the exercise of reasonable discretion determines that a differing site condition exists and that the differing site condition directly results in extra work, the Design-Builder shall be entitled to a change order which shall compensate the Design-Builder for the extra work.

32.04 Clarification During Bidding

The proposer shall examine the RFP documents in preparing the bid and shall report to the Construction Administrator any omissions, discrepancies, or apparent errors found in the RFP. Before the date of bid opening, the proposer shall submit a written request for clarification to the Construction Administrator who may give such clarification in the form of an addendum to all proposers if time permits. Otherwise, in estimating the cost of the project, the proposer shall consider that any conflicts shall be governed by Article 36.01, Interpretation of Contract Requirements.

Proposers are advised that the time period for submitting a proposed product as “an equal” is no later than 35 days after the award of Contract, unless otherwise specified in the Supplementary General Conditions (Public Contract Code section 3400) Refer to Article 36.04-c, Alternatives or Equals.

Only the Construction Administrator is authorized to answer questions or prepare addenda relative to the project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

32.05 Proposal Documents

Each proposal will consist of two separate submittals, the Cost Proposal and the Technical Proposal. To assure that all Technical and Cost Proposals are reviewed and evaluated in strict confidence and solely on merit, the Trustees shall issue an identification number to each proposer. This number ONLY shall appear on the drawings (including outside wrappings) and other materials that constitute the Technical Proposal. No other identification of the proposer or proposer’s architect or engineer shall be shown. Cost Proposals shall bear the proposer’s name and shall be signed. The outside of all proposal envelopes must have the identification number only.

- a. Cost Proposal Forms. Following a request from a prequalified proposer, the Trustees will furnish a cost proposal package, which when completely filled out and executed, may be submitted as a proposal, along with the technical proposal. Cost proposals not presented using the furnished cost proposal package shall be disregarded (Public Contract Code section 10764). The cost proposal package is not transferable to another proposer, and must be

submitted in the same name as is used on the proposer's license and prequalification.

The cost proposal package contains a standard cost proposal form which shall be used for the proposer's proposal. Each cost proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the proposer or the proposer's duly authorized representative, with its complete address and telephone number. If an individual makes the proposal, the individual's name, postal address, and telephone number must be shown. If made by a partnership, the proposal shall have the signature of all partners, or an affidavit signed by all partners empowering one partner as an agent to act on their behalf, and shall include the address and telephone number of the partnership. A proposal submitted by a corporation shall show the name of the state in which the corporation is chartered, the name of the corporation, its address and telephone number, and the title of the person who signs on behalf of the corporation. The corporation also shall submit a certified copy of corporate board action that identifies and authorizes the person who may sign and submit bids and proposals for the corporation. The Trustees shall reject as nonresponsive any proposal submitted that is not signed by the proposer or by the proposer's duly authorized representative.

- b. Listing of Subcontractors. The Proposer shall solicit a minimum of three qualified subcontractors in a manner most appropriate to obtain competitive bidding. Identify in the subcontractor solicitation the construction budget for that trade, and clearly state the amount of bonds required by the subcontractors, and whether the prime or the subcontractor will be responsible for the cost of the bonds (Public Contract Code section 4108). The Proposer shall list the subcontractors who will perform work on the project in excess of one-half of one percent.

As soon as each subcontractor is selected, the Proposer shall submit it to the Trustees by adding it to and resubmitting the Expanded List of Subcontractors form, which contains the name, address and the portion of work to be done by each subcontractor performing in excess of one-half of one percent of the work (Public Contract Code section 10708). If Proposer claims the non-small business preference, the Proposer shall list all subcontractors certified as California small businesses and indicate the dollar amount of the small business subcontract bids on the Expanded List of Subcontractors form, and the total of these subcontracts shall be at least 25% of the net bid price.

Once the subcontractors are listed, the subcontractors shall have the rights provided in the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*).

- c. Proposer's Security. All cost proposals shall be presented under sealed cover and shall have enclosed an amount equal to at least ten percent of the total amount proposed, including alternatives (if additive), as bid security. The security may be a cashier's check, or a certified check made payable to the Trustees, or a bidder's bond. No proposal shall be considered unless one of these forms of bid security is enclosed therewith (Public Contract Code section 10765). If the security is a bond, it shall be executed by a corporation authorized as an admitted surety to issue security bonds in the State of California, and it shall be executed on the form prescribed by the Trustees.
- d. Proposal Checklist. In order to meet the minimum qualifications, the Proposer must complete and submit all documents stipulated in the Proposal Checklist, found in this RFP.

32.06 Proposal Regulations

- a. Submission of Proposals. Proposals shall be submitted to the office indicated in this RFP. It is the Proposer's responsibility to ensure that its proposal is received in the proper time. Delays in timely receipt of the proposal caused by the United States or the Trustees' mail system, independent carriers, acts of God, or any other cause shall not excuse late receipt of the proposal. The Trustees shall return unopened any proposal received after the time specified in the RFP or in any addendum (Public Contract Code sections 4104.5 and 10766).

All proposals shall be submitted under sealed cover, shall be identified plainly as a proposal for the project being proposed, and shall be addressed as directed in this RFP. The Trustees will disregard proposals not marked properly.

- b. Withdrawal of Proposals. Any proposal may be withdrawn at any time prior to the time fixed in the public notice for the opening of proposals, but only by a written request from the proposer or its authorized representative filed with the Trustees. A request to withdraw a bid that is communicated orally, or by the use of telegram or telephone is not acceptable. The withdrawal of a proposal shall not prejudice the right of a proposer to file a new proposal. This paragraph does not authorize the withdrawal of any proposal after the time of the public notice for the opening of

proposals (Public Contract Code section 10767).

- c. Public Opening of Proposals. Proposals will be publicly opened and read at the time and place indicated in this RFP. Proposers or their agents are invited to be present.
- d. Rejection of Irregular Proposals. Proposals may be rejected if they show any alterations of forms, additions not called for, conditional proposals, incomplete proposals, unsigned proposals, erasures, or irregularities of any kind. If the proposal amount is changed after the amount has been inserted, the change shall be initialed.
- e. Power of Attorney or Agent. When an agent signs the proposal, a power of attorney shall either be on file with the Trustees before the opening of proposals, or be submitted with the proposal. Failure to submit a necessary power of attorney may result in the rejection of the proposal as irregular and unauthorized. A power of attorney is not necessary in the case of a general partner of a partnership.
- f. Waiver of Irregularities. Trustees reserve the right to waive minor irregularities in proposals submitted.

32.07 Competitive Bidding

If more than one proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such proposals may be rejected. A party who has quoted prices on materials or work to a proposer is not thereby disqualified from quoting prices to other proposers, or from submitting a proposal directly for the materials or work.

All proposers are hereby notified that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this Contract may render void any Contract awarded under such circumstances. The proposer, by act of submitting a proposal, certifies that in the preparation of the proposal, no bid was received by the proposer from a bid depository, which depository, as to any portion of the work, prohibits, or imposes sanctions for, the obtaining by the proposer, or the submission to the proposer by a subcontractor or vendor or supplier of goods and services, of a bid outside the bid depository. The certification shall constitute a warranty, the falsity of which shall entitle the Trustees to pursue any remedy authorized by law and shall include the right at the option of the Trustees of declaring any Contract made as a result thereof to be void (Business & Professions Code section 16600 *et seq.*).

32.08 Mistake in Proposal

As required by Public Contract Code section 5100 *et seq.*, a proposer shall not be relieved of a proposal without consent of the Trustees, nor shall any change be made in a proposal because of mistakes. However, a proposer may pursue relief of its proposal in accordance with section 5100 *et seq.* of the Public Contract Code.

32.09 Failure to be a Responsible Bidder

In order to be considered for award of a Contract, a proposer must be a responsible bidder (Public Contract Code section 10780). To be responsible, a proposer, in the judgment of the Trustees, must be sufficiently trustworthy and possessed of the requisite quality, fitness, capacity and experience to satisfactorily perform the work (Public Contract Code section 1103). Should the Trustees question the proposer's responsibility, the proposer shall be given an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility. The hearing shall be informal, and may be conducted in whole or in part in writing by an individual appointed by the Trustees to hear the matter. A decision concerning the proposer's responsibility shall be mailed to the proposer within ten calendar days of the conclusion of the hearing.

32.10 Small Business Five Percent Proposal Advantage

- a. Preference for Small Businesses. In accordance with Government Code section 14835 *et seq.*, and California Code of Regulations, Title 2, section 1896 *et seq.*, the Trustees shall give a small business bid advantage of five percent up to a maximum of \$50,000 to contracting firms that have been certified as a "Small Business" by the Office of Small Business & DVBE Services, in the Procurement Division of the Department of General Services. To receive the five percent advantage, certified small businesses shall:
 - (1) submit with the proposal a completed form "Request for Small Business Five Percent Preference Certification,"
 - (2) be certified Small Business upon verification in accordance with section 1896.2, having applied for certification no later than 5:00 PM on proposal due date,
 - (3) submit a timely and responsive proposal,
 - (4) be determined to be a responsible proposer.

- b. Preference for Non-small Businesses. The application of the five percent small business bidding preference is also extended to any non-small business that commits to subcontracting at least 25% of its net proposal price to California certified small businesses and/or microbusinesses. To receive this preference the non-small business must satisfy the following criteria:
- (1) indicate in its proposal its commitment to subcontract at least 25% of its net proposal amount with one or more small businesses [submit the Request for Small Business Bidding Preference form],
 - (2) submit a timely and responsive proposal,
 - (3) be determined to be a responsible proposer, and
 - (4) submit the California certified small businesses on the Expanded List of Subcontractors and specify the dollar amount of each small business subcontractor's bid thereon.
- c. Trustees' Reporting of Small Business Participation. Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of certified small businesses in contract awards. To this end, the successful Proposer shall inform the Trustees of any contractual arrangements with subcontractors, consultants or suppliers that are certified small businesses.

32.11 California Company; Reciprocal Preference Against Nonresident Contractors; Certification

The Trustees shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts. The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

Each proposer shall certify at the time of proposal opening that the proposer qualifies as a "California company," which means a business entity licensed in California on the date of bid opening and which is one of the following:

- a. a business entity with its prime place of business in California,
- b. an out-of-state contractor whose state does not provide a local contractor preference, or
- c. an out-of-state contractor that has paid at least \$5,000 in sales or use taxes in the immediately preceding five years.

If the proposer does not qualify as a California company, then it shall indicate the name of the state in which its principal place of business is, and the amount of the local contractor preference in that state (Public Contract Code section 6107).

32.12 Disabled Veteran Business Enterprise (DVBE) Participation Requirement and Incentive

California state law requires that its state agencies make efforts to achieve a goal of three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Once the successful proposer begins competitive bidding selection of subcontractors (see Article 32.05-b), the Proposer shall make a good faith effort to attain these participation goals and shall inform the Trustees of any consultant, supplier or subcontractor as described hereinafter.

a. Special Definitions

- (1) "Disabled veteran" as used herein, means a veteran of the military, naval or air services of the United States with at least a ten percent service-connected disability who is a resident of the state of California.
- (2) "Disabled veteran business enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the Office of Small Business & DVBE Services and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the Contract requirements:
 - (a) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:
 - (i) (A) is responsible for the execution of a distinct element of the work of the contract;
 - (B) carries out the obligation by actually performing, managing, or supervising the work involved;
 - (C) performs work that is normal for its business services and functions.
 - (ii) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.
 - (b) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

- (3) (a) “Disabled veteran business enterprise” (DVBE) as used herein, means a business concern certified by Small Business & DVBE Services as meeting all of the following:
- (i) The business is at least 51 percent owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture’s management and control and earnings are held by one or more disabled veterans.
 - (ii) One or more disabled veterans manage and control the daily business operations. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
 - (iii) A sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm or other foreign-based business.
- (b) Notwithstanding subdivision (3)(a), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

b. Goal Attainment or “Good Faith Effort”

In order to satisfy and be responsive to this requirement, the proposer must either meet the DVBE Participation Goal or document a “Good Faith Effort” to meet that goal as follows:

- (1) DVBE Participation Goal Attainment. The three (3) percent DVBE Participation Goal is attained when:
 - (a) The proposer is not a DVBE and is committed to use DVBEs for not less than three (3) percent of the Contract dollar amount; or
 - (b) The proposer is a DVBE and committed to performing not less than three (3) percent of the Contract dollar amount with its own forces or in combination with those of other DVBEs.
- (2) Good Faith Effort. The proposer shall achieve a “Good Faith Effort” to meet the DVBE goal by doing all of the following five items.
 - (a) Contact the Trustees’ DVBE Program Advocate at the telephone number provided in the RFP to identify potential DVBEs. This telephone call will initiate the provision of information to the proposer.
 - (b) Contact other state and federal government agencies and local DVBE organizations to identify potential DVBEs for this contract.
 - (c) Advertise in trade paper and papers focusing on DVBEs with sufficient lead time to fully entertain and consider responding bids.
 - (d) Send solicitation to potential DVBE subcontractors and suppliers for this Contract with sufficient lead time to fully entertain and consider responding bids.
 - (e) Consider responding as a DVBE for participation in this contract.

c. Documentation Requirements. The proposer must document its effort to either meet the DVBE participation goal requirement or make a good faith effort to meet it. Proposers who propose goal attainment are encouraged to submit documentation for making a “Good Faith Effort” also. This will ensure against the possibility that the Trustees will not agree that goal attainment has, in fact, been met.

The proposer’s efforts to meet the Contract DVBE Participation Goal and/or make a “Good Faith Effort” to meet the goal must be sincere, and the documentation must be sufficient to reasonably demonstrate that sincerity to the Trustees. Final determination of DVBE Participation Goal attainment or a “Good Faith Effort” by the proposer shall be at the Trustees’ sole discretion.

- (1) Required Documentation. The DVBE documentation forms that must be completed are listed below, and instructions for completing the required forms correctly are included to assist the proposer. The DVBE forms can be found in the Sample Forms portion of this RFP.

- (a) DVBE Transmittal Form. Proposers must fill out and attach the DVBE transmittal form as a cover sheet to the required documents and submit it and the additional required documentation on the forms provided and submitted with the DVBE Transmittal Form.
 - (b) Summary of Disabled Veteran Owned Business Participation (Attachment 1). Whether DVBE Participation Goal Attainment or the “Good Faith Effort” alternative is chosen, Attachment 1, Summary of Disabled Veteran Owned Business Participation, must be completed showing the type of work and company proposed for DVBE participation, their subcontractors (if any), and other related information. If no participation is achieved, the proposer is to state “N/A” or “None” on the first line of the form. Complete the form providing the information as follows:
 - (i) Company Name: list the name of the company proposed for DVBE participation. If the proposer is a DVBE, its name must also be listed to receive participation credit.
 - (ii) Nature of Work: identify the proposed work or service to be provided by the listed company.
 - (iii) Contracting With: list the name of the department or company with which the company listed is contracting.
 - (iv) Tier: the contracting tier should be indicated with the following level designations:
 0 = Proposer;
 1 = First tier subcontractor/supplier;
 2 = Second tier subcontractor/supplier of first tier subcontractor/ supplier;
 3 = Third tier subcontractor/supplier of second tier subcontractor/ supplier; etc.
 - (v) Claimed DVBE Value: the total dollar amount of the value claimed by a disabled veteran business enterprise.
 - (vi) Percentage of Contract: compute the percentage (%) the claimed DVBE value is of the total Contract dollar amount.
 - (vii) DVBE Certification: The proposer must include one copy of the DVBE certification letter from Small Business & DVBE Certification Services for each DVBE firm listed on the Summary of Disabled Veteran Owned Business Participation.
 - (c) Bidder’s Certification (Attachment 2). The proposer must sign and include the Bidder’s Certification, certifying that each firm listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.
 - (d) Documentation of Good Faith Effort (Attachment 3, 3 pages). Proposers must submit documentation to support their contacts with the Trustees, other state and federal governmental agencies, and other organizations that helped identify or provided a list of interested DVBEs for this Contract. A list of dates, times, (if known), organizations contacted, and contact names and phone numbers must be provided to corroborate these contacts.
- (2) Time Frame for Submitting Documentation. The DVBE participation documentation must be submitted once the major subcontractors have been selected, after the end of the design phase, and prior to starting construction. Because design-build contracts are different from conventional design-bid-build contracts, the goal attainment is not known at the time of award. Failure of a proposer to either achieve the goals or perform a good faith effort will therefore be reflected in the Contractor Evaluation, refer to Article 39.07.
- d. Use of Listed DVBE. The successful proposer must use the listed DVBE subcontractors unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act (reference Articles 32.05-b, Listing of Subcontractors, and 35.04, Substitution of Subcontractors).
 - e. Trustees’ Reporting of DVBE Participation. Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of disabled veteran business enterprises in contract awards. To this end, the successful Proposer shall inform the Trustees of any contractual arrangements with subcontractors, consultants or suppliers that are certified disabled veteran business enterprises.
 - f. Additional DVBE Information Sources. For more information regarding DVBE certification, copies of directories or for general DVBE information, contact:
 - State of California, Department of General Services, Procurement Division
 - Small Business & DVBE Services Branch
 - P.O. Box 989052, West Sacramento, CA 95798-9052 (mailing address)
 - 707 Third Street, First Floor, Room 400, West Sacramento, CA 95605 (physical address)
 - Telephone number: (800) 559-5529 or (916) 375-4940; Fax number: (916) 375-4950

- g. Incentives: In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), the Trustees may grant a bid incentive to Proposers that meet or exceed the three percent DVBE participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The minimum incentive a qualifying Proposer may receive is three percent, and the combination of preferences with a DVBE incentive may not exceed ten percent or \$100,000, whichever is less. A non-small business cannot displace a California certified small business from the top ranked position due to application of preferences or incentive. If the Trustees grant a bid incentive to a Proposer that meets or exceeds the three percent DVBE participation requirement, the Trustees will provide details for this incentive in the Request for Proposals.

33.00 - AWARD AND EXECUTION OF CONTRACT

33.01 Award of Contract

If the Trustees deem the acceptance of a proposal or proposals is not in the best interests of the State, the Trustees may reject all proposals (Public Contract Code section 10785). If a Contract is awarded, it shall be to the proposer whose proposal complies with all the requirements prescribed and whose proposal is determined to be the best among the submitted proposals. Such award shall be made in accordance with the timetable contained in this RFP, under Information for Proposers.

33.02 Return of Proposer's Security

Proposer's security of the second and third best proposers may be withheld from such proposers until the Contract has been finally executed. The cashier's checks and certified checks submitted by all other unsuccessful proposers shall be returned to them within ten days after the Contract is awarded, and bidder's bonds shall be of no further effect (Public Contract Code section 10784).

33.03 Contract Bonds

The successful Proposer shall furnish in four duplicate counterparts, two surety bonds in the form prescribed by Trustees. Each bond shall be in an amount equal to 100% of the awarded Contract price and executed by an admitted surety insurer licensed in California and listed in the latest published United States Department of the Treasury list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." (Reference the California Department of Insurance web site: <http://www.insurance.ca.gov/license-status/>, and the US Department of the Treasury web site: <http://www.fms.treas.gov/c570/c570.html>.) One of the surety bonds shall guarantee faithful performance of the Contract by the Design-Builder, and the other shall secure payment of laborers, mechanics, and materialmen employed on the project. Such bonds are subject to the approval of the Trustees. Contract bonds shall be returned to the Trustees with the signed agreement documents, and shall remain in full force and effect during the term of the Contract including the one-year guarantee period, unless a longer bond period is stipulated in the Contract Documents (see Article 39.06, Guarantee; and Public Contract Code sections 10821-10824).

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the Contract, including determinations made under Article 38.01, Claims, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Whenever the Trustees have cause to believe that the surety has become insufficient, the Trustees may demand in writing that the Design-Builder provide such further bonds or additional surety, not exceeding that originally required, as in the Trustees' opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to Design-Builder, or any assignee of Design-Builder, until the further bonds or additional surety has been furnished (Public Contract Code section 10825).

33.04 Execution of Contract

The Contract shall be signed by the successful Design-Builder in four duplicate counterparts and returned to Trustees, together with the Contract bonds and certificates evidencing the required insurance coverage (see Article 35.06, Design-Builder's Insurance), within ten days of receipt from Trustees, not including Saturdays, Sundays, or legal holidays. No Contract will be binding on Trustees until it has been executed by Design-Builder and Trustees and approved by the attorney appointed according to law and authorized to represent the Trustees (Public Contract Code section 10820).

When the Contract has been fully executed, the Trustees will issue to the Design-Builder a Notice to Proceed. The Design-Builder may not begin work before receiving the Trustees' written Notice to Proceed. Any work performed by Design-Builder before receiving the Notice to Proceed shall be considered as having been done at Design-Builder's own risk.

33.05 Failure or Refusal to Execute Contract

Failure or refusal by the proposer to execute the Contract within the time set forth in Article 33.04, Execution of Contract, will be just cause for the rescission of the award and for the forfeiture of proposer's security. Failure or refusal to file acceptable bonds within the time set forth in Article 33.04 constitutes a failure to execute the Contract. If the successful proposer fails or refuses to execute the Contract, the Trustees may award a Contract to the second best proposer.

34.00 - DESIGN REQUIREMENTS

34.01 Scope of Work

The Design-Builder shall furnish architectural, landscape architectural, and engineering services for the preparation of Construction Documents necessary to complete the project in accordance with the requirements of the Contract Documents. From the Trustees-approved Construction Documents, which are developed from the Trustees-accepted Design-Builder's Technical Proposal, the Design-Builder shall furnish all labor, materials, equipment, services, and transportation necessary to complete construction of the project, including site work, structures, utilities, and landscaping.

34.02 Intent of the Contract Documents

The intent of the Contract Documents is to provide the Trustees with full, complete, and accurate project documentation, giving such directions as will enable any competent mechanic or other builder to carry them out, resulting in a project that is complete in all respects. The Construction Documents shall identify that all items necessary or reasonably required to produce a complete and operational project shall be provided.

34.03 Laws and Codes

a. Codes. The Construction Documents and resulting construction shall comply with all laws, ordinances, rules and regulations of the state of California, including:

- (1) The California Building Standards Code (CBC), in Title 24 of the California Code of Regulations, as adopted and published by the California Building Standards Commission, including:
 - o Part 2 – California Building Code
 - o Part 3 – California Electrical Code
 - o Part 4 – California Mechanical Code
 - o Part 5 – California Plumbing Code
 - o Part 6 – California Energy Code
 - o California Fire Code.
- (2) Compliance with the Department of State Architect, Access Compliance Unit's accessibility regulations in the California Code of Regulations Title 24 (Parts 2 and 3).
- (3) Compliance with the Office of the State Fire Marshal, fire and life safety regulations, including the most recent editions of NFPA 101, Life Safety Code and NFPA Fire Protection Handbook.
- (4) Compliance with the California State University Seismic Review Board seismic project peer review comments.

Codes and specifications incorporated by reference shall be those of the latest edition at the time of receiving proposals, unless otherwise specified, see Article 34.08, Standard Specifications.

b. Plan Review Related Appointments by Trustees.

- (1) Campus Deputy Building Official. The Trustees will designate a Campus Deputy Building Official who shall have the responsibility to enforce building codes, standards and related responsibilities.
- (2) Plan Check Service Provider. The Trustees shall appoint a plan check service provider for the project from the Trustees' approved list of such firms. The selected service provider will review the project plans and specifications for adherence to applicable codes and standards, providing an assessment of code compliance to the Campus Deputy Building Official. The service provider is solely responsible to the Trustees in the provision of these services.

- (3) Seismic Peer Reviewer. Per the Trustees' Seismic Policy, the California State University Seismic Review Board shall appoint a seismic peer reviewer for the project.
- (4) Materials Testing and Inspection Services. The Trustees shall appoint a firm(s) to provide materials testing and inspection services during construction. The testing and inspection services firms are solely responsible to the Trustees for observation of construction, determination of adherence to the Contract Documents (including approved plans and specifications) and compliance with the applicable codes and standards.

- c. Plans and Specifications – Miscellaneous Requirements. The plans and specifications shall identify the design codes, standards, and requirements used for the development of the plans, including the edition and applicable sections.

The Construction Documents shall include a quality control program and an implementation plan to ensure that the completed project complies with the approved project criteria. The design professional-of-record shall specify within the Construction Documents all tests and inspections that are required by the building code and those that are appropriate to achieve compliance with the Contract. The Design-Builder shall retain the design professional-of-record to provide in a professional capacity, timely construction administration services. These services shall include shop drawing review, response to requests for information regarding the Construction Documents, and periodic visits to the site to observe the quality of the work.

The final, approved-for-construction set of Construction Documents shall be signed and stamped by the respective California-licensed professionals who prepared the documents, certifying their compliance with codes, standards, practices and regulations. The design professionals-of-record shall retain full responsibility for the design.

- d. Plan Check Review. The Design-Builder shall submit to the Trustees three (3) copies of the completed plans and specifications and two (2) copies each of the structural calculations and soils report, for code review. The Design-Builder shall coordinate, monitor and secure all required review approvals. The Trustees will provide contact information for the individual review agencies and support in status inquiries for the project reviews. When submitting these documents, the Design-Builder must allow sufficient time to conduct the reviews and to correct identified deficiencies before construction. The minimum review time for the completed design documents to be reviewed is 31 calendar days for construction projects with an estimated cost exceeding \$10 million, and 21 calendar days for projects less than \$10 million. These durations may vary. The Design-Builder shall allocate appropriate additional time for resolution of back check review comments for all reviews.

The Design-Builder is encouraged to seek guidance and clarification of project-specific code compliance issues from the respective agencies and/or assigned plan review firm.

The Trustees shall pay all plan check fees and seismic peer review fees associated with the project, either directly or as a reimbursable item. These fees are not included as a part of this Contract.

The Design-Builder shall incorporate changes, if any, resulting from plan reviews, and/or Campus Deputy Building Official code determinations into the final design without additional cost to the Trustees. Such final drawings and specifications shall be resubmitted to the Trustees for approval.

The final authority for code interpretations shall be as follows for:

- exiting and fire-life-safety issues, The Office of the State Fire Marshal
- access compliance issues, the Division of the State Architect Access Compliance Unit
- all other items, code issues shall be issued by the Campus Deputy Building Official, with the Building Official of the California State University at the Office of the Chancellor, as the final authority.

- e. Seismic Safety Structural Peer Review. The Design-Builder shall direct its design team to interact with the appointed Seismic Safety Peer Reviewer at the beginning of the design process, as required by Trustees' policy, and continue at regular intervals during the design process and during construction as required. The Design-Builder shall submit one (1) set at each submittal point within the peer review process. Seismic Peer Review comments shall be resolved before the start of construction.

In the event that there are disputes over interpretation of the Trustees' seismic safety policy, the full CSU Seismic Review Board shall make a final determination under the authority of the Building Official of the California State University, at the Office of the Chancellor.

- f. Access Law Compliance. For all new, alteration or remodeling projects, the Trustees must be in compliance with access requirements. Compliance must be certified by the State of California, Department of General Services, Division of the State Architect. The appointed plan review firm will coordinate the access compliance submittal.

The Design-Builder shall supply one (1) copy of the Construction Documents (structural calculations are not required) for certification of access compliance (Government Code section 4450 *et seq.*). The Design-Builder shall incorporate any modifications required in the Construction Documents without additional cost to the Trustees. Access compliance review and certification can take six to eight weeks or more. The Trustees will consider administrative appeals in the event that Access Compliance review extends beyond eight weeks when due to reasons outside the control of the Design-Builder.

- g. State Fire Marshal. Design-Builder shall submit one (1) copy of the Construction Documents (structural calculations are not required) for review and approval by the State Fire Marshal for compliance with all pertinent statutes and regulations, including Titles 19 and 24, California Code of Regulations. The Design-Builder shall incorporate modifications required in the Construction Documents without additional costs to the Trustees. State Fire Marshal plan reviews take approximately four weeks. This duration may increase on projects with complex code issues.

During construction, the State Fire Marshal will conduct periodic field reviews of the construction. Notwithstanding State Fire Marshal stamped and approved plans, the State Fire Marshal has the authority to require corrections to secure code compliance, based on their field review inspection findings. These corrections, when ordered by the State Fire Marshal to achieve code compliance, shall be provided by The Design-Builder without additional costs to the Trustees.

- h. Plan Approval by Campus Deputy Building Official. Plans for construction require the express written approval of the responsible Campus Deputy Building Official. The Campus Deputy Building Official will require resolution of building code, accessibility, Fire Marshal and Seismic Peer Review issues as a prerequisite to the approval of documents for construction.

The Design-Builder shall address all review comments and appropriately reserve project schedule time for their completion. Delays in meeting the schedule are the responsibility of the Design-Builder, not the Trustees.

Changes, alterations, substitutions, or modifications made to approved plans during construction that affect code compliance must be approved in writing by the Campus Deputy Building Official.

Design-Builder shall incorporate without additional cost to the Trustees any changes, alterations, substitutions, or modifications made to the approved plans that are required during construction to satisfy code requirements, including those not previously identified in the approved plans, or to properly implement the approved plans, or where observed workmanship and/or discovered conditions so require.

The Campus Deputy Building Official will issue a certificate of completion when satisfied that the approved plans have been implemented and that all inspection and technical code and standards compliance issues identified during construction have been satisfactorily resolved.

34.04 Trustees' Review of Construction Documents

The Design-Builder shall submit to the Trustees for approval Construction Documents necessary to construct the project, including drawings and detailed specifications for site layout, utilities, and landscaping. It is required that these Construction Documents be prepared either directly by a California licensed architect, or under its supervision, and shall be signed or sealed by the architect (or respective engineer), responsible for the preparation thereof.

During the course of the development of the Construction Documents, the Trustees will review the Construction Documents and respond with desired corrections/adjustments.

The Design-Builder shall check the review response of the Trustees to ascertain if notations result in a claim for extra cost and shall notify Trustees in writing of any such claim before proceeding with work. Proceeding with the work included without prior notification constitutes waiver of claim for any extra cost. The Design-Builder shall coordinate with the Trustees to then identify any scope revisions and associated costs.

The Design-Builder shall promptly make code/peer review corrections and agreed scope revisions (if any) to the Construction Documents and resubmit them to the Trustees for approval. Such review does not constitute approval or acceptance of variations from the Contract Documents, as modified and detailed in the Technical Proposal, unless such variations specifically have been identified with special emphasis in writing by the Design-Builder and specifically have been approved in writing by the Trustees.

34.05 Partial Permit Approvals

Review and approval of Construction Documents must be obtained from the Trustees before start of construction. The Trustees will consider design submissions for site development and, if found satisfactory, will allow the Design-Builder to proceed with earthwork, caissons, foundations, and other elements of site development while completing final Construction Documents for the balance of the work.

The Design-Builder is responsible for final approvals per Articles 34.03 and 34.04, and approval of portions of the work by the Trustees does not relieve the Design-Builder of responsibility for construction should changes be required due to items disapproved or changed due to plan check. The responsibility for a totally integrated design in accordance with the Contract Documents will remain with the Design-Builder.

34.06 Submittals

The Design-Builder shall submit shop drawings, samples, material lists, and manufacturer's equipment brochures setting forth in detail the work as it is to be performed by the Design-Builder. Submittals shall be made in accordance with Article 36.04. The Design-Builder shall secure Trustees' written approval of submittals prior to use of the materials for the work.

34.07 Divisions of the Performance Specifications

The performance specifications are divided into sections for convenience. The actual limitations of work in the various trades and/or sections of the specifications remain the responsibility of the Design-Builder.

34.08 Standard Specifications

Standard specifications such as ASTM, ANSI, AASHTO, AWWA, AISC, Commercial Standards, Federal Specifications, NBFU, NEMA, UL, and the like, incorporated in the requirements by reference, shall be those of the latest edition at the time of receiving proposals, unless otherwise specified.

34.09 Layout of the Work

The Design-Builder shall employ, at its own expense, a California-registered civil engineer or California-licensed land surveyor to layout the work of the project and shall establish all reference points and elevations required for the construction. Reference points for the construction shall be set in accordance with layout control points identified in the Request for Proposal.

The Design-Builder shall prepare surveys and design for excavations and shorings required for the project.

The Trustees have the right, but not the obligation, to check the location and elevation of such stakes and reference points and/or to check work constructed from such stakes or reference points. Work that is not correctly located shall be rejected.

The Design-Builder shall provide to the Trustees the record survey and a copy of the closure data of the layout of the project showing the ties to the University layout control points. The information shall be provided in the form of a Mylar print and a CD-ROM containing "PDF" and "CAD" files of the same.

34.10 Ownership and Use of Documents

The Design-Builder agrees and shall secure like agreement from the project Architect/Engineer that designs, drawings, specifications, electronic equivalents and other technical data produced in the performance of this Agreement become the property of the Trustees.

The Trustees grant the Design-Builder and the project Architect/Engineer the right to reuse aspects (i.e. details and design elements) of the design developed for this project in other designs for other future projects including those with other clients.

The Design-Builder agrees that the Trustees shall have access at reasonable times to inspect and make copies of notes, designs, drawings, specifications, electronic files, calculations and other technical data pertaining to the work performed under this Contract.

- a. Use of Documents. The Trustees retain the right to utilize documents prepared under the Agreement regardless of whether the Agreement is terminated or the project is suspended or abandoned. This right allows the Trustees to use these documents in the future for the same project, a modified version of it, or for one that is similar.
- b. Reuse of Documents. Reusing the documents on another project without the approval of the Design-Builder relieves the Design-Builder of liability resulting from their use.

35.00 - CONDUCT OF THE CONSTRUCTION WORK

35.01 Laws to be Observed--Generally

- a. The Design-Builder shall observe all state and federal laws that affect the work under this Contract. The Design-Builder shall hold harmless, defend and indemnify the Trustees against any claim arising from the violation of any law, whether by itself or its agents, employees, or subcontractors. If a conflict arises between the provisions of this Contract and a law, the Design-Builder immediately shall notify the Trustees' Construction Administrator in writing. "Law" as used in this paragraph includes statutes and regulations adopted, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.
- b. In executing this Contract, the Design-Builder swears, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Design-Builder within the immediately preceding two-year period because of the Design-Builder's failure to comply with an order of a federal court which directs the Design-Builder to comply with an order of the National Labor Relations Board. The Trustees may rescind this Contract if the Design-Builder falsely swears to this statement (Public Contract Code section 10296.)
- c. The Design-Builder acknowledges the policy of the state of California regarding the importance of child and family support obligations expressed in Public Contract Code section 7110(a). The Design-Builder acknowledges that to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the State's Employment Development Department.
- d. The contracting parties shall be subject to examination and audit by both the Trustees (or designee) of the California State University and the Auditor General of the State of California at any time during construction and for a period of three (3) years after final payment of the Contract (Government Code section 8546.7). Such examination and audit shall include access to the Design-Builder and the subcontractor records as delineated in the following:
 - (1) The Design-Builder's records which shall include but not be limited to accounting records (hard copy, as well as electronic data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful proposers, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the Trustees/Auditor General to substantiate charges related to this Contract (all foregoing hereinafter referred to as "records") and shall be open to inspection and subject to audit and/or reproduction to adequately permit evaluation and verification of (a) the Design-Builder's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Design-Builder or any of his payees. The Design-Builder is required to have as part of the records the following reports: a detailed cost ledger reflecting total charges against the project which present an itemization by invoice and labor costs by cost codes; a summary report identifying total project costs by cost codes; and a subcontractor history report including each subcontract amount and change orders issued thereto.

- (2) Inspection and copying from time to time and at reasonable times and places any and all information, materials and data of every kind and character, including but not limited to records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract document. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract.
- (3) The Trustees/Auditor General shall be allowed to interview any of the Design-Builder's employees, pursuant to the provisions of this article throughout the term of this Contract and for a period of three years after final payment or longer if required by law.
- (4) The Design-Builder shall require all subcontractors, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between the Design-Builder and payee. Such requirements will also apply to subcontractors and sub-subcontractors, etc. The Design-Builder will cooperate fully and will cause all related parties and all of the Design-Builder's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making any and all such information, materials and data available to Trustees/Auditor General from time to time, whenever requested, in an expeditious manner.
- (5) The Trustees/Auditor General shall have access to the Design-Builder's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Contract, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.
- (6) If an audit inspection or examination in accordance with this Article discloses overcharges (of any nature) in excess of one-half of one percent (.5%) of the total Contract billings by the Design-Builder to the Trustees, the Design-Builder shall reimburse to the Trustees the reasonable actual cost of the Trustees/Auditor General audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Design-Builder's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 calendar days) from presentation of the Trustees/Auditor General findings to Design-Builder.
- (7) If an audit discloses overcharges on change orders, where a Design-Builder has submitted costs and has received payment of costs for a subcontractor's work, but has not passed on such payment to the subcontractor (including mark-up charged), and the Design-Builder's records do not reflect offsetting back charges, the Design-Builder shall reimburse the Trustees for such overcharges upon receipt of a request from the Trustees.

e. If the Design-Builder is a natural person, the Design-Builder certifies in accepting this Contract that it is a citizen or national of the United States or otherwise qualified to receive public benefits under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 110 STAT. 2105, 2268-69).

g. Declaration of Eligibility to Contract with the State. If the Design-Builder is a corporation, the Design-Builder certifies and declares by signing the Agreement that it is eligible to contract with the state of California pursuant to the California Taxpayer and Shareholder Protection Act of 2003 (Public Contract Code section 10286 *et seq.*).

35.02 Laws to be Observed--Regarding Labor

a. Nondiscrimination

- (1) During the performance of the Contract, the Design-Builder and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. The Design-Builder shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- (2) The Design-Builder shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 *et seq.*), the regulations promulgated thereunder (California Code of Regulations, Title 2, sections 7285 *et seq.*) and the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2, sections 11135-11139.5 of the Government Code.
 - (3) The Design-Builder shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information, and its facilities as said Department or Trustees shall require to ascertain compliance with this clause.
 - (4) The Design-Builder and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 - (5) The Design-Builder shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the agreement (Title 2, California Code of Regulations section 8107).
- b. Hours of Labor. Eight (8) hours of labor constitutes a legal day's work. The Design-Builder or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by the Design-Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and forty hours in any one calendar week, in violation of the provisions of the Labor Code—sections 1810 to 1814, thereof, inclusive Notwithstanding the provisions of Labor Code sections 1810 to 1814, work performed by employees of the Design-Builder or any subcontractor in the execution of the Contract in excess of eight hours per day and forty hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay as provided in Labor Code section 1815.
- c. Prevailing Wage
- Design-Builder represents and warrants that the Contract Amount includes sufficient funds to allow Design-Builder and all subcontractors to comply with all applicable laws and contractual agreements. Design-Builder shall defend, indemnify and hold the Trustees of the California State University, the University, its officers, employees and agents harmless from and against any and all claims, demands, losses, liabilities, and damages arising out of or relating to the failure of Design-Builder or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Design-Builder agrees to pay any and all assessments, including wages, penalties and liquidated damages (those liquidated damages pursuant to Labor Code section 1742.1) made against the Trustees in relation to such failure.
- (1) The Work under this Contract is a public works project (see definition of public works, Labor Code section 1720) and must be performed in accordance with the requirements of Labor Code sections 1720 to 1815 and Title 8 California Code of Regulations sections 16000 to 17270, which govern the payment of prevailing wage rates on public works projects. The prevailing wage rates set forth are the minimum that must be paid by the Design-Builder on a public works contract. Nothing herein contained shall be construed as preventing the Design-Builder from paying more than the minimum rates set forth. No extra compensation whatsoever will be allowed by the Trustees due to the inability of the Design-Builder to hire labor at minimum rates, nor for the necessity for payment by the Design-Builder of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Design-Builder's own satisfaction in preparing the bid.
 - (2) If it becomes necessary to employ crafts other than those listed, the Design-Builder shall notify the Trustees immediately, and the Trustees will ascertain additional prevailing rates and the rates thus determined shall be applicable as minimum from time of initial employment.
 - (3) Pursuant to Labor Code section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work for each craft needed in execution of the Contract as set forth in the RFP. The Trustees shall furnish the Design-Builder a copy of the prevailing rates, which the Design-Builder shall post at the job site.

- (4) The Design-Builder and any subcontractor under the Design-Builder shall comply with Labor Code section 1775. The Design-Builder shall include provisions in its contract with its subcontractors which will require compliance with Labor Code section 1775. As required by section 1775(b) the Design-Builder shall include a copy of the provisions of sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the contract between the Design-Builder and the subcontractor. The Design-Builder shall monitor its subcontractors' compliance with the prevailing wage law as required by section 1775(b). In accordance with section 1775, the Design-Builder and any subcontractor under the Design-Builder shall forfeit as a penalty to the State not more than \$50 for each calendar day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in section 1775(b), by any subcontractor under it. In addition to this penalty, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Design-Builder or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the Design-Builder is not liable for any penalties under section 1775(a) unless the Design-Builder had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Design-Builder fails to comply with the requirements of section 1775(b).
 - (5) In accordance with Labor Code section 1776, the Design-Builder and subcontractors shall keep an accurate payroll record on forms provided by the Division of Labor Standards Enforcement (or shall contain the same information as the forms provided by the division). The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division, and the printouts are verified in the manner specified herein. Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and actual per diem wages paid to each journeyman, apprentice or worker employed in connection with the public work. Each payroll record shall contain verification by written declaration under penalty of perjury that the information contained in the payroll record is true and correct and that the Design-Builder and subcontractors have complied with the requirements of Labor Code sections 1771, 1811 and 1815 for any work performed by its employees on the project. The Design-Builder's and subcontractor's payroll records shall be available for inspection at all reasonable hours, and a certified copy shall be made available upon request to the employee or his or her authorized representative, the Trustees, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards. Upon receipt of written notice from the Trustees, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, and within ten days of that receipt, the Design-Builder shall file with the requesting entity a certified copy of the payroll records. Should the Design-Builder or subcontractor fail to comply within the ten-day period, the Design-Builder or subcontractor shall forfeit \$25 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. The Design-Builder is not subject to a penalty assessment due to the failure of a subcontractor to comply with this section.
 - (6) The Design-Builder is required to submit a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers and all subcontractors. Additional weeks of certified payroll records may be required at the discretion of the Trustees.
 - (7) Consistent with Public Contract Code section 6109, the Design-Builder is prohibited from performing a portion of work with a subcontractor who is debarred pursuant to Labor Code section 1777.1 or 1777.7.
- d. Workers' Compensation. The Design-Builder shall be required to secure payment of Workers' Compensation to its employees in accordance with Labor Code section 3700 and shall file with the Trustees prior to performing the work the certification required in Labor Code section 1861 (refer also to Article 35.06-a (1), Policies and Coverage).
 - e. Apprentices. If the Design-Builder or any subcontractor employs workers on the project in any apprenticeable craft, it shall apply to the joint apprenticeship committee administering the apprenticeship standards for the craft in the area of the work for a certificate approving the Design-Builder or subcontractor for the employment and training of apprentices. The Design-Builder or subcontractor shall employ the number of apprentices or the ratio of apprentices

to journeymen specified in the certificate unless the conditions set out in Labor Code section 1777.5 excuse it from this requirement.

Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which they are employed and shall be employed only in the work of the craft or trade to which they are indentured. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship agreements under which a person is training.

The Design-Builder, or subcontractor employing journeymen or apprentices in any apprenticeable craft or trade, shall contribute to the fund or funds set up in the area of work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 *et seq.*, before commencement of work under this Contract, the Design-Builder and each subcontractor must contact the Division of Apprenticeship Standards, 455 Golden Gate, 10th Floor, San Francisco, California, 94102, or one of its branch offices to ensure compliance and understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the Design-Builder.

- f. Education, Counseling, and Training Programs. All educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs, under this Contract, shall be open to all qualified persons, without regard to race, sex, color, religion, national origin or ancestry. Such programs shall be conducted to encourage the fullest development of the interests, skills, aptitudes, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall also be encouraged with a view toward involving larger numbers of participants from these segments of the labor force where the need for upgrading levels of skills is the greatest.
- g. Occupational Safety and Health. The Design-Builder shall comply with all the provisions of the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. section 651 *et seq.*) and all rules, regulations, and orders adopted pursuant thereto. The Design-Builder shall comply with all the provisions of the California Occupational Safety and Health Act of 1973 (Labor Code section 6300 *et seq.*) and all rules, regulations and orders adopted pursuant thereto. These laws provide for job safety and health protection for workers.

The Design-Builder shall obtain copies of such safety orders as are applicable to the type of work to be performed and shall be governed by their requirements in all construction operations. The Design-Builder shall fully inform each subcontractor and materials supplier as to the requirements of the applicable safety orders.

- h. Assignment of Rights Relating to Federal and State Anti-Trust Actions. The Design-Builder and all subcontractors shall be bound by the provisions of Public Contract Code section 7103.5 as follows: in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Design-Builder or subcontractor offers and agrees to assign to the Trustees all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (Chapter 2, (commencing with section 16700) or Business and Professions Code Division 7, Part 2), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the Trustees tender final payment to the Design-Builder, without further acknowledgment by the parties.

35.03 Environmental Requirements

- a. Air and Water Pollution Control. The Design-Builder shall comply with all air and water pollution control rules, regulations, ordinances and statutes that apply to the work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of section 11017 of the Government Code. The Design-Builder must be eligible to perform work for the State, and is deemed eligible if not found to be in violation of any order, resolution, or regulation relating to air or water pollution adopted in accordance with Government Code section 4477.

In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the project, shall comply with the applicable material requirements of the Air Quality Management District (AQMD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements.

Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.

A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable AQMD rules. Exposed soil surfaces shall be sprayed with water at least daily and as needed to mitigate dust (see also Article 35.08-c, Protection of Facilities).

Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

- b. Sound Control Requirements. The Design-Builder shall comply with all sound control and noise level rules, regulations and ordinances which apply to the work. In the absence of any such rules, regulations and ordinances, the Design-Builder shall conduct its work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to the Trustees' requests to reduce noise levels.

Each internal combustion engine, used for any purpose on the project or related to the project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

Loading and unloading of construction materials will be scheduled so as to minimize disruptions to University activities. Construction activities will be scheduled to minimize disruption to the University and to University users.

- c. Environmental Clearances. The Design-Builder shall provide to state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this project. The Design-Builder shall comply with the provisions, including giving notices during construction when so required. The Design-Builder shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 35.15-g, Adjustment of Contract Time Due to Reasons Beyond Trustees' Control, if the Design-Builder demonstrates to the satisfaction of the Trustees that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.
- d. Source of Aggregates. The Public Contract Code section 10295.5 requires that no State agency shall purchase or utilize sand, gravel, aggregates, or other minerals unless the source is on an eligible list identifying operations that have met certain requirements of the Surface Mining and Reclamation Act of 1975 (Public Resources Code section 2710 *et seq.*). Accordingly, the Design-Builder shall submit to the Trustees documentation that it is complying with the requirements of this law in purchasing these materials.
- e. Archaeological Finds. If the Design-Builder discovers any artifacts during excavation and/or construction, the Design-Builder shall stop all affected work and notify the Trustees, who will call in a qualified archaeologist designated by the California Archaeological Inventory to assess the discovery and suggest further mitigation, as necessary.

If the Design-Builder discovers human remains, the Design-Builder shall notify the Trustees who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the Trustees shall contact the appropriate tribal representatives to oversee removal of the remains.

- f. Integrated Waste Management. Pursuant to the State Agency Integrated Waste Management Plan (Public Resources Code, Division 30, Part 3, Chapter 18.5), the California State University shall divert 50% of all solid waste generated in construction activities from landfill disposal or transformation facilities through source

reduction, recycling and composting. Design-Builder shall report all source reduction, recycling and composting relative to this project to the Trustees. Refer to Contract Documents for further requirements.

35.04 Substitution of Subcontractors

Once the subcontractors have been listed (refer to Article 32.05-b) the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*) apply to any proposed substitution of subcontractors.

- a. Bond Requirements. It is the Trustees' interpretation of section 4108 of the Public Contract Code that the Design-Builder must clearly advertise the specific bond requirements for the project, including the requirement of a bond, the kind of a bond, and the amount of the bond, in order to be eligible to substitute a subcontractor under section 4107(a)(4) of the Public Contract Code.
- b. Substitution of a Small Business Subcontractor. After award of the Contract based in part on the application of the Non-Small Business Subcontractor preference, the Design-Builder shall use the listed small business subcontractor(s) and/or suppliers unless a substitution is requested in writing to the Trustees, and the Trustees approve the substitution in writing before the commencement of any work. The substitution request must include at least the following:
 - (1) An explanation of the reason for the substitution.
 - (2) The Design-Builder must substitute a small business with another small business. If the small business substitution cannot occur, the Design-Builder must include a written justification and the steps that were taken to try to acquire a new small business subcontractor and how that portion of the Contract will be fulfilled.
 - (3) A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall Contract that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the Contract pursuant to California Code of Regulations section 1896.6.

Any substitution of subcontractors shall be performed in accordance with the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*). Failure of the Design-Builder to subcontract with the small business listed on its bid proposal or to follow these substitution requirements may be grounds for the Trustees to notify the Department of General Services to impose sanctions pursuant to Government Code section 14842.5 or Code of Regulations section 1896.16. In the event such sanctions are to be imposed, the Design-Builder shall be notified in writing and entitled to a hearing pursuant to Code of Regulations sections 1896.18 and 1896.20.

- c. Subcontractor Status Report. When requested by the Construction Administrator, the Design-Builder shall submit a Subcontractor Status Report, which will be compared with the Expanded List of Subcontractors. If any subcontracts are still outstanding at the time of submittal, a follow-up request will be made. If any listed firms have been substituted without approval by the Trustees in accordance with section 4107(a) of the Public Contract Code, or if subcontractors are added and perform work in excess of one-half of one percent of the base Contract, penalties are applicable per section 4110 of the Public Contract Code.

35.05 Delegation of Performance and Assignment of Money Earned

The performance of all or any part of this Contract may not be delegated without the written consent of the Trustees. Consent will not be given to any proposed delegation which would relieve the Design-Builder or its surety of their responsibilities under the Contract.

The Design-Builder may assign moneys due or to become due under the Contract, only upon written consent of the Trustees. Assignments of moneys earned by the Design-Builder shall be subject to proper retention in favor of the Trustees and to all deductions provided for in the Contract and such moneys shall be subject to being used by the Trustees for the completion of the work in the event the Design-Builder is in default.

35.06 Design-Builder's Insurance

- a. The Design-Builder shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Trustees.

- (1) Policies and Coverage.
 - (a) Design-Builder shall obtain and maintain for the term of the Contract the following policies and coverage:
 - (i) Comprehensive or Commercial Form General Liability Insurance on an occurrence basis, covering work done or to be done by or on behalf of the Design-Builder and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the work.
 - (ii) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Design-Builder and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
 - (iii) Worker's Compensation including Employers Liability Insurance as required by law.
 - (iv) Errors & Omissions Insurance on an occurrence basis, covering work done or to be done by or on behalf of the Design-Builder and providing insurance for errors and omissions, shall be secured and maintained.
 - (b) The Design-Builder also may be required to obtain and maintain the following policies and coverage:
 - (i) Environmental Impairment Liability Insurance may be required should the work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.
 - (ii) Other Insurance may be required by agreement between the Trustees and the Design-Builder.
- (2) Verification of Coverage. The Design-Builder shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty (30) days written notice to the Trustees. Renewal certifications and endorsements shall be timely filed by the Design-Builder for all coverage until the work is accepted as complete pursuant to Article 39.01, Acceptance. The Trustees reserve the right to require the Design-Builder to furnish the Trustees complete, certified copies of all required insurance policies. The Design-Builder shall submit certification of coverage for errors and omissions insurance to the Trustees upon signature of this agreement.
- (3) Insurance Provisions. Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 35.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.
 - (a) For the general and automobile liability policies, the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
 - (b) For any claims related to the work, the Design-Builder's insurance coverage shall be primary insurance as respects the State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the State of California, the Trustees of the California State University, their officers, employees, representatives, volunteers, and agents shall be in excess of the Design-Builder's insurance and shall not contribute with it.
 - (c) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Design-Builder or the insurance carrier, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Trustees.
 - (d) The State of California, the Trustees of the California State University, the University, their officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- (4) Amount of Insurance.
 - (a) For all projects, the insurance furnished by Design-Builder under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
 - (i) Comprehensive or Commercial Form General Liability Insurance — Limits of Liability

- \$10,000,000.00 General Aggregate
 - \$10,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage.
 - (ii) Business Automobile Liability Insurance - Limits of Liability
 - \$10,000,000.00 Each Accident - combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.
 - (iii) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.00.
 - (iv) Errors & Omissions Insurance shall be secured and maintained for no less than \$1,000,000.00 per occurrence.
- (b) For projects involving hazardous materials, the Design-Builder shall provide additional coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:
 - (i) Environmental Impairment (pollution) Liability Insurance - Limits of Liability
 - \$10,000,000.00 General Aggregate
 - \$5,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage, including clean up costs.
 - (ii) In addition to the coverage described in 35.06-a (4) (a) (ii), Business Automobile Liability Insurance, the Design-Builder shall obtain for hazardous material transporter services:
 - (A) MCS-90 endorsement
 - (B) Sudden & Accidental Pollution endorsement — Limits of Liability*
 - \$2,000,000.00 Each Occurrence
 - \$2,000,000.00 General Aggregate

*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With the Trustees' approval, the Design-Builder may delegate the responsibility to provide this additional coverage, as described in this Article 35.06-a (4) (b) above, to its hazardous materials subcontractor. When the Design-Builder returns its signed project construction phase agreement to the Trustees, the Design-Builder shall also provide the Trustees with a letter stating that it is requiring its hazardous materials subcontractor to provide this additional coverage, if applicable. The Design-Builder shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in Article 35.06-a: (2) Verification of Coverage and (3) Insurance Provisions. Further, this letter will provide that the subcontractor's certificate of insurance will be provided to the Trustees as soon as the Design-Builder fully executes its subcontract with the hazardous materials subcontractor.

- (5) Acceptability of Insurers. Insurers shall be licensed by the state of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the Trustees.
- (6) Subcontractor's Insurance. The Design-Builder shall ensure that all subcontractors on this project are covered by insurance of the types required by this Article, and that the amount of insurance for each subcontractor is appropriate for that subcontractor's work. The Design-Builder shall not allow any subcontractor to commence work on its subcontract until the insurance has been obtained.
- (7) Miscellaneous.
 - (a) Any deductible under any policy of insurance required in this Article shall be the Design-Builder's liability.
 - (b) Acceptance of certificates of insurance by the Trustees shall not limit the Design-Builder's liability under the Contract.
 - (c) In the event the Design-Builder does not comply with these insurance requirements, the Trustees may, at its option, provide insurance coverage to protect the Trustees. The cost of the insurance shall be paid by the Design-Builder and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Design-Builder.
 - (d) If the Trustees are damaged by the failure of the Design-Builder to provide or maintain the required insurance, the Design-Builder shall pay the Trustees for all such damages.

- (e) The Design-Builder's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.
- b. Trustees' Course of Construction ("Builder's Risk") Property Insurance. Trustees shall insure or self-insure all work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God, as defined in Public Contract Code section 7105. The term, Acts of God, as defined in Public Contract Code section 7105, means earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves. Trustees shall issue to the Design-Builder a "Summary of Coverage" provided under this Article 35.06-b, upon request of the Design-Builder.
 - (1) Design-Builder shall be responsible for paying a deductible of \$25,000 per occurrence in the event of loss, except that the Design-Builder shall be responsible for paying a deductible of \$50,000 per occurrence in the case of water damage or \$100,000 per occurrence in the case of flood or "Acts of God" (as defined in Public Contract Code section 7105).
 - (2) Design-Builder shall not be liable for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) in excess of the \$100,000 deductible, if the loss does not involve Design-Builder negligence and if the work damaged is built in accordance with the Contract and applicable building standards.
 - (3) The proceeds under the Course of Construction Property Insurance taken out by the Trustees will be payable to the Trustees and Design-Builder as their respective interests, from time to time, may appear.
 - (4) Trustees' Course of Construction Property Insurance shall provide limited coverage for materials in transit, and full coverage for materials at the project site and full coverage for materials stored off site; however, the Design-Builder is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. Design-Builder shall advise the Trustees whenever the total value of materials in transit exceeds \$1,000,000 at any time, and whenever the total value of materials stored off site exceeds \$1,000,000 at any time.
 - (5) Nothing in this Article 35.06-b shall be construed to relieve the Design-Builder of Design-Builder's responsibilities referred to under Article 35.06-a.
 - (6) Insurance policies referred to in this Article 35.06-b shall include the following:
 - (a) Provide that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by the Design-Builder.
 - (b) Insurer shall waive of subrogation against the Design-Builder.

35.07 Indemnification

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 35.06.

- a. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them, from and against all claims, damages and losses arising out of, resulting from, or relating to: (1) the failure of the Design-Builder to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner or contrary to the provisions of the Contract; (2) the inaccuracy of any representation or warranty by the Design-Builder given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the Trustees arising out of any alleged act or omission of the Design-Builder or any other subcontractor, or anyone directly or indirectly employed by the Design-Builder or any subcontractor.
- b. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses arising out of, resulting from, or relating to the negligent acts or omissions or willful misconduct of the Design-Builder, a subcontractor, or anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in Article 35.07-c, following. Such obligation shall, however, apply in proportion to and to the

extent that any such losses result from the negligent acts or omissions by an employee of the Design-Builder, a subcontractor, or a person indirectly employed by the Design-Builder or a subcontractor, or anyone for whose acts either may be liable.

- c. In claims against any person or entity indemnified under this Article made by an employee of the Design-Builder or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Design-Builder or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- d. The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- e. The Design-Builder shall hold harmless, defend, and indemnify the State of California, the Trustees of the California State University, the University, and the officers, employees, representatives and agents of each of them from and against all claims, damages and losses resulting from any claim of damage made by any separate contractor of the Trustees against the Trustees arising out of any alleged acts or omissions of the Design-Builder, a subcontractor, anyone directly or indirectly employed by either the Design-Builder or subcontractor, or anyone for whose acts either the Design-Builder or subcontractor may be liable.

Trustees shall cause a reciprocal indemnification provision in favor of the Design-Builder to be included in its contracts with separate contractors of the Trustees. Liability for any negligent act or omission or willful misconduct shall be apportioned pursuant to the applicable law of the State of California.

35.08 Design-Builder's Responsibility for the Work

The Design-Builder shall be fully responsible for all work performed under this Contract, and no subcontractor will be recognized as such. For purposes of assessing responsibility to the Design-Builder, all persons engaged in the work shall be considered as employees of the Design-Builder. The Design-Builder shall give its personal attention to the fulfillment of the Contract and keep all phases of the work under its control.

The Trustees will not arbitrate disputes among subcontractors nor between the Design-Builder and one or more subcontractors concerning responsibility for performing any part of the project.

- a. **Quality Control.** The Design-Builder shall be fully responsible for the quality of materials and workers' skill in the project. The Design-Builder shall not rely upon the inspection and testing provided by the Trustees other than those special inspections and tests performed by the Trustees' selected laboratories for which there are written reports.
- b. **Burden for Damage.** From the issuance of the official Notice to Proceed until the formal acceptance of the project by the Trustees, the Design-Builder shall have the charge and care of and shall bear the risk of damage to the project and materials and equipment for the project.

The Design-Builder, at its own expense, shall promptly rebuild, repair, restore, and make good all such damage to any portion or to all of the project and materials therefor before the acceptance of the project by the Trustees except for such damage as is proximately caused by acts of the federal government or public enemy. In case of suspension of work from any cause whatever, the Design-Builder shall be responsible for all materials, and shall properly store them, if necessary, and shall provide suitable drainage and erect temporary structures where necessary.

If the Design-Builder damages any property belonging to the Trustees, the Trustees may, in addition to other remedies available to the Trustees, retain from the money due to the Design-Builder an amount sufficient to ensure repair of the damage or an amount to contribute toward repair of the damage.

Neither the State of California, the Trustees of the California State University, the University, nor the officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the project and materials and equipment for the project.

- c. Protection of Facilities. Once the Design-Builder mobilizes and occupies the Site, and until the formal acceptance of the project by the Trustees, Design-Builder shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, Design-Builder shall furnish such watchman's services as necessary to safeguard materials and equipment in storage on the Project site, including Work in place or in process of fabrication, against theft, acts of malicious mischief, vandalism and other losses or damages. The Design-Builder shall be liable for any loss or damage that result from its failure to protect the Site and the Work.

The Design-Builder shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Design-Builder's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to Trustees. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules (see also Article 35.03-a, Air and Water Pollution Control).

- d. Safety. The Design-Builder shall exercise precaution at all times for the protection of persons and their property. The Design-Builder shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the work or permanently installed as part of the project. The Design-Builder shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Design-Builder shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Design-Builder designates other employees, its superintendent shall have the duty of prevention of accidents. The Design-Builder shall institute a safety program which includes all trades on the site.

Renovation, expansion, or remodel work of any existing building may expose workers to lead-containing materials such as paint, flashings, and pipe joints. The Design-Builder shall comply with all applicable laws addressing such exposure, including the Cal/OSHA Lead in Construction Standards (Title 8, California Code of Regulations, section 1532.1).

The Trustees and the Construction Inspector may bring to the attention of the Design-Builder a possible hazardous situation in the field regarding the safety of personnel on the site. Design-Builder shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Design-Builder absolve the Design-Builder of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Design-Builder has assumed any responsibility for field safety operations.

Explosives shall not be used without first obtaining written permission from the Trustees and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Storage of explosives on the project site or University is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

In the event of an accident, the Design-Builder shall make available to the Trustees copies of its accident report to its insurance carrier. The Design-Builder shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

- e. Utilities

- (1) If the Design-Builder discovers utility facilities not identified in the Contract Documents, the Design-Builder shall immediately notify the Trustees and the utility involved, in writing, of such discovery. When the Design-Builder is required by the plans and specifications to locate, remove or relocate utility facilities not identified in the Contract Documents with reasonable accuracy, it shall be compensated for any reasonable actual added cost incurred. The Design-Builder shall also be compensated for the cost of repairing any damage resulting from the discovery of such unidentified utility facility when such damage does not result from the failure of the Design-Builder to exercise reasonable care. All such compensation to the Design-Builder shall be based on an actual cost plus Design-Builder and subcontractor mark-up, as identified in Article 37.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5), and (6), except that both the Design-Builder's and subcontractor's mark-up shall be reduced by six (6) percent each, where

the damage results from the failure of the Design-Builder or subcontractor to exercise reasonable care. The Trustees or the public utility, where it is the owner of the utility facilities, shall have the sole discretion to perform repairs, or relocation work or permit the Design-Builder to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project. The Design-Builder shall not be assessed liquidated damages for delay in the completion of the *project* which is caused by the failure of the Trustees or the owner of the utility to provide for removal or relocation of such unidentified utility facilities.

- (2) With the exception of the identification of main or trunk line utility facilities in the Contract Documents, the foregoing provisions of subdivision (1) shall not apply to, and Trustees shall have no obligation to indicate, the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the project can be inferred from the presence of other visible facilities, such as buildings, meter and junction boxes, on or adjacent to the site of the construction.
- (3) Except as expressly provided in subdivisions (1) and (2) above, the Design-Builder shall be responsible at its own cost for all work, expense, or special precautions caused by the existence or proximity of utilities encountered at the site or in the performance of the project work including, without limitation, repair of any damage that may result including any damage resulting from hand or exploratory excavation. The Design-Builder is cautioned that the utilities encountered at the site may include communication cables or electrical cables conducting high voltage. When excavating in the vicinity of the ducts enclosing such cables, special precautions are to be observed by the Design-Builder at its own cost and shall include the following: all cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and appropriate warning signs, barricades, and safety devices shall be erected.
- (4) The Design-Builder shall provide to the University as-built drawings of all utilities encountered and constructed indicating the size, horizontal location, and vertical location based on the project bench mark or a stable datum.

f. Hazardous Materials

- (1) Asbestos. The Design-Builder is prohibited from installing any asbestos-containing materials or products in any work to be performed under this Contract. The Design-Builder shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by project completion, the warranty period, or other provisions of this Contract.
- (2) Lead. The Design-Builder is prohibited from installing any lead-containing materials or products, including paint, in any work to be performed under this Contract without the written consent of the University Executive Dean and University Director of Environmental Health and Safety. The Design-Builder shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by project completion, the warranty period, or other provisions of this Contract.

35.09 Occupancy by Trustees Prior to Acceptance

The Trustees reserve the right to occupy all or any part of the project before completion of the entire Contract, upon issuance of a Field Instruction and subsequent written Contract Change Order, or upon issuance of a written Contract change order therefor. In such event, the Design-Builder shall be relieved of responsibility for any injury or damage to such occupied part as results from the Trustees' occupancy and use. If the Design-Builder carries insurance against damage to such premises or against liability to third persons covering the premises so used and occupied by the Trustees, and if such occupancy results in increased premiums for such insurance, the Trustees will pay to the Design-Builder the added premium costs for such insurance during the period of occupancy. The occupancy change order shall be the vehicle for such payment, if applicable.

The Trustees' occupancy shall not constitute acceptance by the Trustees (see Article 39.01, Acceptance) either of the project as completed or of any portion thereof, nor will it relieve the Design-Builder of full responsibility for correcting defective work or materials found at any time before the formal written acceptance of the project as completed by the Trustees and during the full guarantee period after such acceptance, nor does it stop the assessment of liquidated damages. However, when the project includes several separate facilities, and one or more of such facilities is entirely occupied by the Trustees, then

upon written request of the Design-Builder, the guarantee period for the facility occupied may commence from the date of occupancy subject to written consent thereto by the Trustees.

35.10 Payments by Design-Builder

In accordance with Business and Professions Code section 7108.5, the Design-Builder agrees to pay all subcontractors not later than ten days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed the Design-Builder on account of the work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

The Design-Builder shall pay and shall require its subcontractors to pay each employee engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

35.11 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.

The Design-Builder shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the Design-Builder's responsibility to ascertain the necessity of such permits and licenses in preparing its bid and include in its bid the cost thereof as well as adjustments for any delays which may be caused by securing permits and licenses.

35.12 Patented or Copyrighted Materials

The Design-Builder shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the project. And the Design-Builder agrees to save harmless, defend, and indemnify the State, the Trustees of the California State University, Trustees' Consultants, the University, and the officers, agents and employees of each of them from all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

35.13 Property Rights in Materials and Equipment

Nothing in the Contract shall be construed as vesting in the Design-Builder any property right in the materials or equipment after they have been attached to or permanently placed in or upon the work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the site of the work whether or not they have been so attached or placed. All such materials or equipment shall become the property of Trustees upon being so attached or placed or upon payment of fifty percent or more of the value of the materials or equipment delivered on the site but not yet installed, and the Design-Builder warrants that all such property shall pass to Trustees free and clear of all liens, claims, security interests, or encumbrances.

35.14 Taxes

The Design-Builder shall pay all taxes imposed by law which are levied or become payable as a result of the Design-Builder's performance under this Contract.

35.15 Contract Time

- a. Time of the Essence. All time limits specified in this Contract are of the essence of the Contract.
- b. Starting and Completion Date. The Trustees shall designate in the Notice to Proceed the starting date of the Contract on which the Design-Builder shall immediately begin and thereafter diligently prosecute the work to completion. The Design-Builder agrees to complete the work on the date specified for completion of the Design-Builder's performance in the Contract unless such time is adjusted, in writing, by change order by the Trustees. The Design-Builder may complete the work before the completion date if it will not interfere with the Trustees or other contractors engaged in related or adjacent work. The work shall be regarded as completed on the acceptance date noted on the Trustees' Notice of Completion. This date shall be used as the date the guarantee period begins as defined in Article 39.06, Guarantee.
- c. Adjustment of Contract Time Due to Acts of God, etc. The Design-Builder shall not be assessed with liquidated damages, nor the cost of engineering and inspection, during any delay in the completion of the project caused by acts of God, the public enemy, fire, flood, epidemic, quarantine restriction, strike, freight embargo, discovery of archaeological or paleontological artifacts, and unusual action of the elements; provided that the Design-Builder shall notify the Trustees in writing of the causes of the delays within 24 hours from the beginning of any such delay. The Trustees shall determine the facts with regard to the delay and the reasonable period of time by which the date

of completion should be extended by reason thereof, if any. The Trustees' findings thereon shall be final and conclusive.

There shall be no compensation to the Design-Builder for costs associated with this kind of delay.

The term "unusual action of the elements" is limited to extraordinary, adverse weather conditions and conditions immediately resulting therefrom which cause a cessation in the progress of the work which will delay the time of completion of the Contract.

The Design-Builder shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions which are normal for the locality of the site. The time for completion of the Contract has been calculated with consideration given to the average climatic range and usual industrial conditions prevailing in the locality of the site.

- d. Adjustment of Contract Time Due to Acts of the Trustees. If the Design-Builder is delayed in completing the Contract by reason of any act or omission of the Trustees not provided by the Contract, or by reason of changes made pursuant to Article 37.01, Change Orders, without reaching agreement as to any time adjustments, the time for completion of the Contract may be extended for a period commensurate with the delay. The Design-Builder shall notify the Trustees in writing of the causes of the delay within seven days from the beginning of the delay. The causes of delay shall be subject to the same determinations as stated in Article 35.15-c, above.
- e. Design-Builder's Duty to Fully Prosecute Work. No extension of time will be granted for any of the causes for which extensions may be granted unless the Design-Builder demonstrates to the satisfaction of the Trustees that the Design-Builder has made every reasonable effort to fully prosecute the work and complete the work within the Contract Time.
- f. Trustees' Adjustment of Contract Time. Even though the Design-Builder has no right to an extension of time for completion, the Trustees may extend the time at the request of the Design-Builder, if they determine it to be in the best interest of the State. If the time is extended, the Trustees may, in lieu of assessing liquidated damages, charge the Design-Builder, its successors, heirs, assigns, or sureties, and deduct from the final payment for the work all or any part, as they may deem proper, the value of the lost use of the completed project, and of the actual cost to the Trustees of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension. Such costs will not exceed liquidated damages.
- g. Adjustment of Contract Time Due to Reasons Beyond Trustees' Control. Should the Trustees be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond their control, the Design-Builder shall not be entitled to make or assert any claim for damage by reason for said delay; but time for completion of the work will be extended to such reasonable time as the Trustees may determine will compensate the Design-Builder for time lost by such delay. Any such determinations will be set forth in writing.
- h. Liquidated Damages. Attention is directed to Article 38.02, "Delay in Completion--Liquidated Damages."

35.16 Schedule

- a. Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the work. The work shall be prosecuted at such time, in such manner, and on such part or parts of the project as may be required to complete the project as contemplated in the Contract Documents and the Design-Builder's Construction Schedule.
- b. The Design-Builder shall prepare and submit to the Trustees' Construction Administrator the Design-Builder's initial construction schedule within thirty (30) calendar days after the starting date on the Notice to Proceed. The Design-Builder's initial Construction Schedule shall be comprised of a critical path method network. The Design-Builder shall input the critical path Construction Schedule on the computer using Primavera Project Planner, Primavera SureTrak, or Trustees-approved equal software. All programs shall be capable of converting the data to a format that is readable using the latest version of Primavera SureTrak, unless another format is specified in the Supplementary General Conditions. Trustees' approval of the equal software shall be conditioned upon the Trustees' ability to read the required electronic submittals. If the Trustees are unable to read these required

electronic submittals, Design-Builder shall provide fully licensed software to the Trustees for their exclusive use to meet the readability requirement of the submittals.

The Design-Builder's initial Construction Schedule shall show the dates on which each part or division of the work is expected to be started and completed. The initial Construction Schedule shall also show all submittals associated with each work activity, required by the Contract with activities for the submittal development, its review, and the fabrication/procurement for each procurement, allowing 21 calendar days for review of each submittal unless a longer period of time is specified in the Supplementary General Conditions. The work activities making up the Construction Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the work and such that, in the sole judgment of the Trustees, it provides an appropriate basis for monitoring and evaluating the progress of the work. The Construction Schedule shall show the interdependence of each activity and a critical path. The Design-Builder shall also submit a separate listing of all submittals required under the Contract and noting the anticipated date that each submittal will be submitted.

Design-Builder shall submit a monthly cash flow schedule with the initial Construction Schedule and shall revise the cash flow schedule with each Construction Schedule revision. The cash flow schedule is the Design-Builder's estimate of the dollar value of Contract Work completed and billable each month of the project.

- c. The Design-Builder's initial Construction Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all work. The Construction Schedule shall show milestones, including milestones for Trustees-furnished information, and shall include activities for Trustees-furnished equipment and furniture when those activities are interrelated with the Design-Builder's activities. The Design-Builder's initial Construction Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final completion. No more than twenty percent of the activities will have less than five work days of float unless approved by the Trustees. The Construction Schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the site. Weather data shall be based on information provided by the National Weather Service or other approved source. The Construction Schedule shall be developed using an appropriate work breakdown structure. The transmittal provided with the initial Construction Schedule shall state whether the durations are in work days or calendar days.
- d. The Design-Builder may submit an initial Construction Schedule that shows the work completed in less time than the specified Contract Time. However, the acceptance of such a Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time. Total float, slack time, or contingency is the unused time within the Construction Schedule (i.e., the difference in time between the project's early completion date and the required Contract completion date. Total float is not for the exclusive use of either the Trustees or the Design-Builder, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.
- e. The Design-Builder shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, constraints, unnecessary milestones, leads or lags on logic ties, and hammock type activities. Since float within the Construction Schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the Contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Trustees-caused delays on the project may be offset by Trustees-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the Design-Builder, etc.). In such an event, the Design-Builder shall not be entitled to receive a time extension or delay damages until all Trustees-caused time savings are exceeded, and the Contract completion date is also exceeded.
- f. Comments made by the Trustees on the Design-Builder's initial Construction Schedule during review will not relieve the Design-Builder from compliance with the requirements of the Contract Documents. The review is only for general conformance with the scheduling requirements of the Contract Documents. Upon the Trustees' request, the Design-Builder shall participate in the review of the Design-Builder's initial Construction Schedule submissions (including the original submittal, all update submittals, and any re-submittals). The Trustees may request the

participation of subcontractors in these reviews, as determined necessary by the Trustees. All revisions shall be resubmitted within fifteen (15) calendar days after the Trustees' review.

- g. The submittal of a fully revised and acceptable Design-Builder's initial Construction Schedule shall be a condition precedent to the processing of the second monthly payment application, unless the Trustees grant a time extension due to unusual circumstances.
- h. The Design-Builder's Construction Schedule shall provide a workable plan for monitoring the progress of all the elements of the work, establish and clearly display the critical elements of the work, forecast completion of the construction, and match the Contract duration in time. Exclusive of those activities for submittal review and material fabrication and delivery, activity duration shall not be less than one (1) nor more than thirty (30) calendar days, unless otherwise approved by the Trustees. In addition to the detailed network diagram, the Design-Builder shall submit the following reports with the original submittal and all updates and revisions:
- (1) Predecessor/Successor Report or a list showing the predecessor activities and successor activities for each activity in the Construction Schedule.
 - (2) Activity Report sorted by early start or a list showing each activity in the Construction Schedule, arranged by early start dates.

Electronic data files shall be provided. The electronic data files shall be readable using the latest version of Primavera SureTrak Project Manager, or using Trustees-approved equal software, as specified herein.

- i. The Design-Builder shall submit an updated Construction Schedule to the Construction Administrator with a copy to the Project Manager/Construction Inspector five (5) days prior to the submittal of the Design-Builder's monthly payment request. The submittal of the Progress Schedule that satisfies the requirements of this Article, accurately reflects the status of the work, revises the cash flow schedule, and incorporates all changes into the Construction Schedule, shall be a condition precedent to the processing of the monthly payment application. Progress Schedules shall also be submitted at such other times as the Trustees may direct. If the Design-Builder fails to comply or is late in compliance with this requirement, and the Trustees find it to be in their best interest to process the monthly payment, an amount not exceeding \$10,000 shall be retained from each monthly progress payment until compliance is effected.

The Design-Builder's monthly Progress Schedule update shall include a report containing a narrative which includes the following:

DESIGN-BUILDER'S PROGRESS SCHEDULE NARRATIVE REPORT OUTLINE

- Design-Builder's transmittal letter
- Description of problem tasks (referenced to field instructions, requests for information (RFIs), change order or claim numbers) as appropriate.
- Current and anticipated delays not resolved by approved change order, including:
 - Cause of the delay
 - Corrective action and schedule adjustments to correct the delay
 - Known or potential impact of the delay on other activities, milestones, and project completion date
- Changes in construction sequence
- Pending items and status thereof including but not limited to:
 - Pending change orders
 - Time extension requests
 - Other items
- Contract completion date status:
 - If ahead of Construction Schedule, the number of calendar days ahead
 - If behind Construction Schedule, the number of calendar days behind
- Other project or scheduling concerns
- Updated network diagram with target bars shown.
- Tabular report as specified in subdivision (h) above, including a listing of completed activities and activities in progress.
- Diskette or compact disc with the latest data files as specified in subdivision (h) above.

The Design-Builder shall not make unilateral revisions to the monthly updates. Should the Design-Builder desire to revise the schedule logic or durations, it shall first submit the monthly update based upon the previous monthly update with just actual start dates, actual finish dates, and/or percentages of completion. The Design-Builder shall not make any additional changes other than actual status data. Following this updating and submittal task, the Design-Builder can then submit a copy of this update with its proposed changes. The Design-Builder shall clearly identify this proposed revised update as a proposed revision in the Title, Number/Version and File Name, and Design-Builder shall submit a narrative with the proposed revision.

The Design-Builder shall set the Primavera schedule calculation setting for the monthly updates to retained logic, and may only utilize the progress override setting to identify the differential in the calculated finish date due to out of sequence progress. Should the differential in the project completion exceed ten days utilizing the retained logic setting vs. the progress override setting, the Design-Builder shall revise the successor logic of the out of sequence activities to eliminate the differential.

- j. If completion of any part of the work, delivery of equipment or materials, or submission of the Design-Builder submittals is behind the approved Construction Schedule and will impact the end date of the work past the Contract completion date (create negative float), the Design-Builder shall submit in writing, a revised Construction Schedule acceptable to the Trustees for completing the work on or before the current Contract completion date. The revised Construction Schedule shall take some or all of the following actions:
- (1) Increase construction manpower in such quantities and crafts as shall substantially eliminate the backlog of work and meet the current Contract completion date.
 - (2) Increase the number of working hours per shift, the number of shifts per day, the number of work days per week, or the amount of construction equipment, or any combination of the foregoing sufficient to substantially eliminate the backlog of work.
 - (3) Reschedule work items to achieve concurrent accomplishment of work activities.

Under no circumstances will the adding of equipment or construction forces, increasing the working hours, or employing any other method, manner, or procedure to return to the contractually required completion date be justification for a change order or justification for a compensable acceleration, unless prior written approval is received from the Trustees.

- k. **Adjustment of Contract Times for Completion**
In addition to the provisions in the Contract General Conditions, the Contract Time for completion of the work will be adjusted in accordance with these procedures.
- (1) **Time Impact Analysis**
Whenever the Design-Builder submits a request for an adjustment of the Contract Time for completion for changes or alleged delays, the Design-Builder shall also submit a complete Time Impact Analysis (TIA). The Design-Builder shall submit the TIA for review within seven (7) calendar days after the request. The Trustees will not grant time extensions unless substantiated by the TIA, and then not until the project float becomes zero. If the Design-Builder fails to submit a TIA within the aforementioned time specified, then the Design-Builder shall be deemed by the Trustees to have agreed that there is no time impact and that the Design-Builder has irrevocably waived its rights to any additional Contract Time.

The Design-Builder shall ensure that each TIA provides information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. Each TIA shall be in the form and content acceptable to the Construction Administrator, and shall include, but not be limited to, the following:

- (a) A fragmentary critical path method type network (Fragnet) illustrating how the Design-Builder proposed to incorporate the change or alleged delay into the current Monthly Baseline Schedule.
- (b) Identification of activities in the current Monthly Baseline Schedule which are proposed to be amended due to the change or alleged delay, together with estimates and other appropriate data justifying the proposal.

The Design-Builder shall determine the TIA based on the date or dates when the change or changes were issued or the date or dates when the alleged delay or delays began. The status of the construction project

and TIA shall include event time computations for all affected activities including, but not limited to, work around sequencing or recovery options to maintain the original Contract completion date.

The Construction Administrator may require that the TIA be provided in order to demonstrate the time impact upon the overall project and the time for completion, at no additional cost to the Trustees.

If the Construction Administrator finds, after review of the TIA, that the Design-Builder is entitled to any extension of time for completion, the Contract Time for completion will be adjusted accordingly by the Construction Administrator, and the Design-Builder shall then revise the Monthly Baseline Schedule accordingly.

- (2) No time extensions shall be granted nor indirect costs paid unless the Design-Builder can clearly demonstrate the delay on the basis of the Progress Schedule current as of the month the change is issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through revising the intended sequence of work or other means. The Design-Builder shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract time extension or delay damages.
- l. Once each week, or as approved in writing by the Trustees, the Design-Builder shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, be completed or be in progress for the succeeding three (3) weeks. This schedule shall cover all work activities listed on the Progress Schedule for the reporting period.
- m. As a condition precedent to the release of retained funds, the Design-Builder shall, after completion of the work has been achieved, submit a final Design-Builder's Progress Schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all work activities.
- n. The Trustees may require a more detailed and comprehensive scheduling requirement. In this case, the schedule requirement shall be included in the Contract as Supplementary General Conditions.

35.17 Labor Force and Superintendent

At all times the Design-Builder shall provide sufficient labor to properly prosecute the work and to ensure completion of each part in accordance with the schedule and within the Contract Time (Public Contract Code section 10843). The Design-Builder shall employ competent workers who are skilled in the type of work required and whose workmanship is of the best, regardless of the quality of material. If, in the judgment of the Trustees, any person is incompetent or disorderly, the Design-Builder shall promptly remove such person from the project and shall not re-employ such person thereon.

The Design-Builder shall retain a competent, full-time, on-site superintendent to represent the Design-Builder and to direct the project at all times while any work under this Contract is underway. The Design-Builder shall not replace a Superintendent without advanced written approval from the Trustees. If, in the judgment of the Trustees, the Superintendent is incompetent, unqualified, poorly performing or disorderly, the Design-Builder shall, upon request by the Trustees, promptly remove such person from the project and shall not re-employ such person thereon. In this event, the Trustees shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report which includes worker count, work in progress, etc. and shall provide it to the Trustees upon request.

The Design-Builder shall make certain that all subcontractors employed are properly licensed and are in good standing with the California Department of Industrial Relations.

35.18 Limitation of Construction Operations

The Design-Builder shall limit the area and nature of the construction operations to that which is authorized in the Request for Proposal or as approved in writing by the Trustees.

35.19 Coordination With Other Work

The Trustees reserve the right to do other work in connection with or related to the project or adjacent thereto by Contract or otherwise, and the Design-Builder shall at all times conduct the work so as to impose no hardship on the Trustees or others

engaged in the Trustees' work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are employed on related or adjacent work, each shall conduct its operation in such a manner as not to cause delay or additional expense to the other.

The Design-Builder shall be responsible to others engaged in the related or adjacent work for all damage to work, to persons and to property, and for loss caused by failure to complete the work within the specified time for completion. The Design-Builder shall coordinate its work with the work of others so that no discrepancies shall result in the project.

35.20 Drawings Reflecting Actual Construction

During the course of construction, the Design-Builder shall maintain drawings daily to show the project as it is actually constructed. Every sheet of the plans and specifications which differs from the actual construction shall be marked, and sheets so changed shall be noted on the title sheets of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The Design-Builder shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that the Design-Builder is fully and accurately recording all changes that have occurred. The altered Contract drawings shall be sufficiently detailed so that future work on the project or in adjacent areas may be conducted with a minimum of difficulty. Before the completion of the project, and before release of the final retention payments, the "as-built" drawings and specifications shall be transmitted to the Trustees' Construction Administrator for further handling. Additionally, the Design-Builder shall turn over to the Trustees a re-drafted and complete set of "as-built" drawings of the actual construction on AutoCAD, Version 12, and mylar reproducibles generated from AutoCAD. Final payment will not be made to the Design-Builder until the mylar "as-builts" are received and spot checked by the Trustees. Corrections, if any, shall be made to the AutoCAD, Version 12 and to the mylar reproducibles.

35.21 Access for Inspection

The Design-Builder shall at all times permit the Trustees, the Construction Administrator, the Construction Inspector and the Project Manager to visit and inspect the work and the shops where work is in preparation and shall maintain proper facilities and provide safe access for such inspection. Work requiring testing, inspection or verification shall not be covered up without such test, inspection, or approval. The Design-Builder shall notify the Construction Inspector in writing at least one working day before the Construction Inspector is required to inspect the work. For a project with part-time inspection, a minimum of two working days written notification by the Design-Builder to the Construction Inspector is required before the Construction Inspector is required to inspect the work.

- a. Inspections on Premium Time. Premium time is defined as work performed in excess of eight hours per day Monday through Friday and any work performed on Saturday, Sunday or holiday. Whenever the Design-Builder intends to perform work during premium time, it shall provide a minimum of two working days written notice of such intention before performing such work. If such work during premium time is discretionary and for the sole benefit of the Design-Builder, the premium cost of inspection shall be reimbursed to the Trustees.
- b. Reinspections. The Trustees may back-charge all reinspection costs to the Design-Builder.
- c. Additional Inspections. If a fabricator or manufacturer of a material or equipment requiring inspection is inefficiently performing or performing at multiple locations, then the Trustees may charge the Design-Builder for the extraordinary costs incurred.

35.22 Cleanup of Project and Site

The Design-Builder shall clean up its work at frequent intervals and at other times when directed by the Trustees. At all times while finish work is underway, floors shall be kept broom clean. Upon completion of the work, the Design-Builder shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the Design-Builder does not maintain the project or the site clear of debris and rubbish in a manner acceptable to the Trustees, the Trustees may cause the project or site to be properly cleaned and may withhold the expense incurred therefor from payments due the Design-Builder.

35.23 Project Sign, Advertising

The Design-Builder shall furnish and install a project sign required as part of the work under the Contract. As a minimum, the sign shall be four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the project name, the

Trustees, the Design-Builder, and the Architect. No advertising is permitted on the project or site without written permission from the Trustees.

36.00 - INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

36.01 Interpretation of Contract Requirements

- a. Correlation. Contract documents shall be interpreted as being complementary, requiring a complete project. Any requirement occurring in any one of the Contract Documents is as binding as though occurring in all Contract Documents. Generally, the Specifications address quality, types of materials and Contract conditions while the Plans show placement, sizes, and fabrication details of materials.
- b. Conflicts. In the event of conflict in the Contract Documents, the following priorities shall govern:
- (1) Addenda shall govern over all other Contract Documents, and subsequent Addenda shall govern over prior Addenda only to the extent modified.
 - (2) Supplementary General Conditions shall govern over Contract General Conditions.
 - (3) Contract General Conditions shall govern over all sections of the Specifications and any notation on the RFP Plans. No other section of the Specifications shall modify the Contract General Conditions.
 - (4) In case of conflict between the RFP Plans and the RFP Specifications, the RFP specifications shall govern.
 - (5) In case of conflict within the RFP Plans:
 - (a) Material and equipment schedules, when identified as such, shall govern over all other portions of the RFP Plans.
 - (b) Specific notes shall govern over all other notes and all other portions of the RFP Plans, except the material and equipment schedules described in Article 36.01-b(5)(a) above.
 - (c) Larger scale drawings shall govern over smaller scale drawings.
 - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling.
 - (6) In the event that provisions of codes, safety orders, Contract Documents, referenced manufacturers' specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.
- c. Omissions. In the event of omissions in the Contract Documents, the following shall apply:
- (1) If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component that is incidental, even though its cost or importance may be substantial.
 - (2) The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.
- d. Quality. The quality of the Design-Builder's work shall be equal to or better than that required in the RFP, and if it is found that the work in the Design-Builder's proposal is of lesser quality, the RFP shall prevail.

36.02 Issuance of Interpretations, Clarifications, Additional Instructions

Should the Design-Builder discover any conflicts, omissions, errors, or coordination issues in the Contract or have any question concerning interpretation or clarification of the Contract, the Design-Builder shall request in writing interpretation, clarification, or additional detailed instructions before proceeding with the Work affected. The written request shall be given to the Trustees with copies to the Project Manager/Construction Inspector.

The Trustees shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the Design-Builder proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Trustees, the Design-Builder shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions as approved by the Trustees and, in the opinion of the Design-Builder, constitute Work beyond the scope of the Contract, the Design-Builder must submit written notice thereof to the Trustees within seven calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. The Design-Builder shall send copies of such correspondence to the Project Manager/Construction Inspector. Within seven calendar days after the Design-Builder issues its written notice, the Design-Builder shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes Work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts.

If, in the judgment of the Trustees, the notice is justified, the interpretation, clarification or additional detailed instructions shall be revised or the extra Work authorized by Contract change order or by field instruction with a change order to follow. If the Trustees decide that the claim is not justified the Trustees shall give the Design-Builder a written order that the claim is not justified and direct the Design-Builder to perform such Work.

The Design-Builder shall proceed with the Work upon receipt from the Trustees of a written order to do so, in accordance with the Trustees' interpretation of the Contract requirements. If the Design-Builder objects to the order, the Design-Builder must notify the Trustees in writing of its objection and the reasons therefor, within seven days of receipt of the order. The Design-Builder shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (Article 38.01, Claims). When performing disputed Work, the Design-Builder shall prepare time and materials records for each day, and the Construction Inspector shall verify these records at the conclusion of each day. The Design-Builder shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives the written notices required to the Trustees within seven calendar days as specified above.

36.03 Product and Reference Standards

- a. Product Designation. When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract, such designations shall be considered as those found in industry publications of current issue at the date specified in the RFP.
- b. Reference Standards. When the Contract references standards of the federal government, trade societies, or trade associations by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at the date specified in the RFP shall be considered a part of this Contract.

36.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions

- a. Submittal Procedure. The Design-Builder shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, materials and equipment schedules, performance charts, brochures and catalogs and other data prepared by the Design-Builder or any subcontractor, manufacturer, supplier or distributor, which illustrate some portion of the work. The Design-Builder shall promptly review and mark the shop drawing approved and submit to the Trustees, so as to cause no delay in the work, together with samples as required by the Contract and shall also submit any offers of alternatives or substitutions. Design-Builder shall submit at least four copies of shop drawings with three to be retained by the Trustees. All such submittals shall be sent to the Trustees at the address given in the instructions to the Design-Builder at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations in the shop drawings and samples from the requirements of the Contract. Failure by the Design-Builder to identify all deviations may render any action taken by the Trustees on the materials submitted to be void. Whether to void such action shall be in the discretion of the Trustees. The letter and all items accompanying it shall be fully identified as to project name and location, the Design-Builder's name, and Contract number. By submitting the approved shop drawings and samples, the Design-Builder represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract.
- b. Samples. Samples are physical examples furnished by the Design-Builder to illustrate materials, equipment, color, texture, or workmanship, and to establish standards by which the work will be judged.

The work shall be in accordance with the samples, submitted as required by the Contract and reviewed by the Trustees. The Design-Builder shall remove samples from the site when directed by the Trustees. Samples not removed by the Design-Builder, at the Trustees' option, will become the property of the Trustees or will be removed or disposed of by the Trustees at the Design-Builder's expense.

- c. Alternatives or Equals. For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the proposer complies with the following requirements:
- (1) The proposer shall submit its proposal to the Trustees for an alternative as an "equal" in writing no later than 35 days after the award of the Contract, unless otherwise specified in the Supplementary General Conditions (Public Contract Code section 3400). In exceptional cases where the best interests of the Trustees so require, the Trustees may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The proposer is responsible for a timely submittal of its proposed "or equal."
 - (2) No proposal will be considered unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Trustees.
 - (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the proposer. Where the material is specified by capacity or performance, the burden of proof shall be on the proposer to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The proposer shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met.

The Trustees shall be the judge of such matters. If the Trustees reject the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Design-Builder's expense without recourse for reimbursement from the Trustees.

- d. Substitutions. If the Design-Builder proposes a product that is of lesser or greater quality or performance than the specified material or equipment, it must comply with these provisions of Article 36.04, but, in addition, the Design-Builder must submit any cost impact of this substitution. By submitting a substitute, the Design-Builder waives any rights to claim a delay due to the processing of this substitution. The time for submission of a substitute of an unequal product shall be restricted to 35 days after the effective date on the Notice-to-Proceed unless the Trustees allow a longer or shorter period in writing. The Trustees are not obligated to review or accept substitutions.

36.05 Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Design-Builder for incorporation into the work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Design-Builder shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

36.06 Testing Materials, Articles, Equipment and Work

- a. Materials, articles, equipment or other work requiring tests are specified in the Contract. Materials, articles and equipment requiring tests shall be delivered to the Site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Design-Builder shall be solely responsible for notifying the Trustees where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Design-Builder's expense. The Trustees have the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the Trustees from materials, articles or equipment to be used on the project or from Work

performed. All tests will be under the supervision of, and at locations convenient to, the Trustees. The Trustees shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the Trustees in writing.

- b. All costs of the initial required tests shall be borne by the Trustees. The Trustees may decide to take further samples and tests, and if the results show that the Work was not defective, the Trustees shall bear the costs of such samples and tests.
- c. In the event the results of such additional samples and tests show that the Work was defective, the Design-Builder shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Design-Builder. All retesting costs may be back-charged to the Design-Builder by the Trustees.

36.07 Rejection

Should any portion of the work done or any materials, articles or equipment delivered fail to comply with the requirements of the Contract, such work, materials, articles or equipment shall be rejected in writing and shall immediately be made satisfactory to the Trustees, by the Design-Builder, at no additional expense to the Trustees. Any materials, articles or equipment that are rejected shall immediately be removed from the premises at the Design-Builder's expense. The Trustees may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and work from any payments due the Design-Builder until it is made acceptable to the Trustees. The Trustees may back charge the Design-Builder for the Trustees' costs incurred in the correction of Design-Builder's rejected work.

36.08 Off-Site Testing

The Trustees shall bear the cost of off-site testing up to a distance of fifty (50) miles from the project site and up to one fabrication yard or manufacturing plant per manufactured item, for example, structural steel. If the cost of testing is increased because the fabrication yard or manufacturing plant is located beyond this fifty mile radius, then the increased costs shall be borne by the Design-Builder. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the Design-Builder.

36.09 Responsibility of Quality

The testing and inspection provided by the Trustees shall not relieve the Design-Builder of its responsibility for the quality of materials and workmanship provided by the Design-Builder, and the Design-Builder shall make good all defective work discovered during or after completion of the project.

37.00 - CHANGES IN THE WORK

37.01 Change Orders

The Trustees reserve the right to issue written change orders directing changes in the Contract at any time prior to the acceptance of the project without voiding the Contract, and Design-Builder shall promptly comply with such orders. The Design-Builder may request changes in the work, but shall not act on the changes until approved in writing by the Trustees. Any change made without the Trustees' written authorization shall be the responsibility of the Design-Builder. The Trustees will not increase compensation or extend time for a change involving greater expense to the Design-Builder, and the Trustees may reject changes involving greater or lesser expense, but with the consequent responsibility on the Design-Builder to replace at its own expense the changed work with that originally specified (Public Contract Code section 10827).

On the basis set forth herein, the Contract price shall be adjusted for any change order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Design-Builder, set forth in Article 39.02, Partial Payments, shall be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the Trustees in writing, the Design-Builder shall take all necessary steps to halt such other work in the area of the change that might be affected by the ultimate change. Changed work shall be performed in accordance with the original Contract requirements except as modified by the change order. Except as herein provided, the Design-Builder shall have no claim for any other compensation due to changes in the work (Public Contract Code section 10841).

- a. Proposed Change Orders. The Trustees shall issue to the Design-Builder a cost request bulletin via the Construction Administrator, or a field instruction via the Project Manager/Construction Inspector, hereinafter called the cost request bulletin, for a proposed change order describing the intended change, and shall require the Design-Builder to respond with a proposed amount to be added to or subtracted from the Contract price due to the change supported

by a detailed estimate of cost (hereinafter called a change order request). Upon request by the Trustees, the Design-Builder shall permit inspection of the original Contract estimate, subcontract agreements, or purchase orders relating to the change. Any request for adjustment in time of final completion of the project which is directly attributable to the changed work shall also be included, with substantiating detailed explanation, by the Design-Builder in its response to the cost request bulletin. Failure to request adjustment of time on the change order request shall waive any right to subsequently claim an adjustment of the time for final completion based on the changed work. The Design-Builder shall submit the change order request with detailed estimates and any time extension request thereon to the Trustees and to the Project Manager/Construction Inspector within fifteen calendar days after issuance of the cost request bulletin. If not submitted within the required fifteen calendar days, and the Design-Builder has not obtained the Trustees' permission for a delay in submission, the Trustees may order the Design-Builder in writing to begin the work immediately in accordance with Articles 37.01-c or 37.02, and the Contract price shall be adjusted in accordance with the Trustees' estimate of cost, unless the Design-Builder within fifteen days following completion of the changed work presents proof convincing to the Trustees that the Trustees' estimate was in error. The Design-Builder must keep and submit time and materials records verified daily by the Construction Inspector to substantiate its costs and to furnish such proof.

When the Trustees and the Design-Builder agree on the amount to be added to or deducted from the Contract price and the time to be added to or deducted from the completion date, and a Contract change order is signed by the Trustees and the Design-Builder, the Design-Builder shall proceed with the changed work. When the Trustees and the Design-Builder agree to the adjustment in the Design-Builder's compensation for the performance of changed work, but fail to agree to the time adjustment for such work, the Design-Builder shall proceed with the work at the agreed price, reserving the right to further pursue its claim for a time adjustment (see Article 35.15-d, Adjustment of Time Due to Acts of the Trustees). Any costs incurred to acquire information relative to a proposed change order shall not be borne by the Trustees.

b. Allowable Costs Upon Change Orders. The only costs (estimated or actual) that will be allowed due to changed work, and the manner in which such costs are computed, shall be in accordance with the following nine provisions. In submitting a change order request, the Design-Builder affirms that the cost is submitted in good faith, that the cost is accurate and is in accordance with the provisions of the Contract requirements, and the Design-Builder submits the cost recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (see Government Code section 12650 *et seq.*). Direct cost is defined as the actual cost of work before the application of any mark-ups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, clean-up (both periodic and final), trash removal, traffic control and dust control.

(1) Labor. Costs are allowed for the actual payroll cost to the Design-Builder for labor, field supervision of changed work, (but not field office supervision nor indirect supervision) and engineering or technical services directly required for the performance of the changed work, (but not site management such as field office estimating, clerical, purchasing, as-builts, change order coordination or warranty). Costs include payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, liability insurance premium (only if based solely on labor), contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act.

No labor cost will be recognized at a rate in excess of the prevailing wages that are being paid by the Design-Builder for similar work on the project at the time the work is performed, nor will the use of a classification which would increase the labor cost be permitted unless the Design-Builder established to the satisfaction of the Trustees the necessity for use of such higher classifications of workers. The Design-Builder and subcontractors shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change, on the Hourly Labor Rate Worksheet. The Trustees may verify wage and burden per Article 35.02-c, Prevailing Wage, subdivision (6). The unit cost of labor shall be an accurate accounting of actual costs being paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

(2) Materials. Design-Builder's costs are allowed for the cost of the materials directly required for the performance of the changed work. Such cost of materials may include the costs of transportation, sales tax, and delivery if necessarily incurred. If a trade discount by the actual supplier is available to the Design-Builder, it shall be credited to the Trustees. If the materials are obtained from a supply or source owned

wholly or in part by the Design-Builder, payment therefor will not exceed the current wholesale price for such materials. Cost for consumed materials may be charged on a reasonably estimated basis, but may not be a percentage of labor.

If, in the opinion of the Trustees, the cost of materials is excessive, or if the Design-Builder fails to furnish satisfactory evidence of the cost from the actual suppliers thereof, then in either case the cost of the materials shall be deemed to be the lowest wholesale price at which similar materials are available in the quantities required at the time they were needed. The Trustees reserve the right to furnish such materials as they deem advisable, and the Design-Builder shall have no claim for costs or profits on material furnished by the Trustees.

- (3) Equipment. Design-Builder's costs are allowed for the actual cost of the use of equipment directly required in the performance of the changed work except that no payment will be made for time while equipment is inoperative due to breakdowns or for non-working days. The rental time shall include the time required to move the equipment to the project site from the nearest available source for rental of such equipment, and to return it to the source. If such equipment is not moved by its own power, then loading and transportation costs will be paid. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the project in any other way than upon the changed work. Individual pieces of equipment having a replacement value of \$200.00 or less shall be considered to be small tools or small equipment, and no payment therefor will be made unless it has been rented specifically for the changed work. Consumed equipment or tools, such as paint brushes, rollers, drill bits, etc. may be charged on an actual or reasonably estimated cost basis and are not to be charged as a percentage.

For equipment owned, furnished, or rented by the Design-Builder, no cost therefor shall be recognized in excess of the rental rates established by distributors or equipment rental agencies in the locality where the work is performed.

The amount to be paid to the Design-Builder including mark-up for the use of equipment as set forth above shall constitute full compensation to the Design-Builder for the cost of fuel (unless the Design-Builder has demonstrated that mark-up does not cover consumed fuel cost), power, oil, lubrication, supplies, small tools, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and any and all costs to the Design-Builder incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 37.01-b (1), above.

- (4) Mark-ups on Change Orders. The mark-ups allowed on the direct cost of changed work include all incidental overhead support costs and profit. Such incidental overhead support costs include: estimating and purchasing; indirect supervision and project management; home office overhead; site overhead including facilities and utilities; change order coordination; as-built drawings; warranties; bonds; liability insurance (however, per Article 37.01-b (1), cost of liability insurance premium for labor only is allowed as a cost for labor); and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the Design-Builder's mark-up. No mark-up on mark-up is permitted. If the subcontractor is owned, partially owned, or has a shared profits arrangement with the Design-Builder, any mark-up otherwise applicable to a change shall be reduced in proportion with the shared profits.
- (5) Work by Subcontractors and Vendors. For any portion of the changed work which is to be performed by a subcontractor (any tier), the Design-Builder shall furnish to the Trustees a detailed estimate prepared and signed by subcontractor of the cost to subcontractor for performing the changed work. At the option of the Trustees, a lump sum estimate of such cost to subcontractor may be accepted in lieu of the detailed estimate. The combined costs for subcontractor's overhead, profit, taxes, indirect supervision, insurance, bonds, warranty and any other costs not specifically allowed by Article 37.01-b (1), (2) and (3), shall not exceed fifteen (15) percent on the first \$50,000 of the direct cost; thereafter, ten (10) percent on the balance beyond \$50,000. The maximum allowable mark-up of a first tier subcontractor on any subsequent tiers shall be seven (7) percent. The aggregate mark-ups allowed by multiple tiered subcontractors shall not exceed twenty-six (26) percent of the direct cost on the first \$50,000; thereafter, twenty-one (21) percent on the balance beyond \$50,000. Estimates of the amount to be deleted from subcontractor's portion of the work shall be gross value of the deducted work plus at least six percent for overhead, bonds, insurance, and related savings added to the direct value of the deleted work. For changed work to be furnished by a

vendor, the Design-Builder shall furnish upon demand of the Trustees, a lump sum estimate of the cost of the items including taxes and cartage to the Design-Builder prepared by the vendor. No vendor mark-up for overhead, profit, layout, supervision or bonds will be allowed for changed work furnished by a vendor.

- (6) Design-Builder Mark-up for Added Work. When changed/added work is performed by a subcontractor, the Design-Builder may add no more than ten (10) percent mark-up to the subcontractor's total direct cost estimate (excluding the subcontractor's mark-up) for such work on the first \$50,000; thereafter the mark-up is seven (7) percent on the balance beyond \$50,000. The Design-Builder's ten percent mark-up in this case is for profit, overhead, insurance, taxes, indirect supervision, bonds, warranty and any other costs not specifically allowed by Article 37.01-b (1), (2) and (3). Also refer to Article 35.08-e, Utilities, for special mark-up on repair of utilities. The Design-Builder may add up to fifteen (15) percent to its direct cost when self-performing the changed work on the first \$50,000 and ten (10) percent thereafter on the balance beyond \$50,000.
- (7) Credit for Deleted Work. Where an entire item or section of work is deleted from the Contract, the entire subcontract value or bid value shall be considered the appropriate deduction less the value of work performed, and shall have at least six percent mark-up added thereto for the Design-Builder's saved overhead, bonds, and insurance. If the subcontract value or bid value is not identifiable, then the amount to be deducted from the Contract amount shall be the estimated value of the deducted work plus at least six percent for saved overhead, bonds, and insurance. The value submitted on the schedule of values shall be used to calculate the credit amount, and may not be further marked up if it includes the value for general conditions (overhead, bonds, insurance, etc.).

For a proposed change order that involves both added and omitted work, the Design-Builder shall separately calculate its total added costs and its total deducted costs, and shall then sum its total added and deducted costs, resulting in the Design-Builder's net cost for the change order. The Design-Builder shall then apply the mark-up to this net cost. Similarly, the Design-Builder shall separately calculate each subcontractor's total added costs and total deducted costs, and shall then sum each subcontractor's total added and deducted costs, resulting in each subcontractor's net cost for the change order. If the resulting net costs for each subcontractor will increase the Contract price, then the Design-Builder shall apply separate mark-ups for added work as specified in Article 37.01-b (6). If the resulting net costs for each subcontractor will decrease the Contract price, then the Design-Builder shall apply separate mark-ups for deleted work as specified in Article 37.01-b (7).

For example:

Design-Builder - net cost is \$30,000, Design-Builder's mark-up is 15%, or \$4,500.

Subcontractor A - net cost is \$20,000, Design-Builder's mark-up is 10%, or \$2,000.

Subcontractor B - net cost is <\$10,000>, Design-Builder's mark-up is six percent, or <\$600>.

The Design-Builder's total mark-up for this example change order is \$5,900.

- (8) Market Values. Cost for added work shall be no more than market values prevailing at the time of the change, unless the Design-Builder can establish to the satisfaction of the Trustees that it investigated all possible means of obtaining work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes work from the Contract, the computation of the amount thereof shall be the values which prevailed at the time bids for the work were opened, if the work is contained in a subcontract agreement or purchase order executed at or near the time proposals were opened.

- (9) Architect/Engineer's Extra Services for Change Order Work.
 - (a) Negotiated Fee. The Trustees may elect to negotiate a fixed fee for design extra services on change order work.
 - (b) Work Performed by Principals and Employees of the Architect/Engineer. Unless as identified in (a) above, for any work performed by the Architect/Engineer on a change order, the Architect/Engineer shall receive an amount not to exceed two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra services. Reimbursement for principals when providing drafting or other related

services normally provided by an employee shall be reimbursed at the maximum rate for services of employees. The Architect/Engineer shall provide an Hourly Labor Rate Worksheet at the onset of the project listing rates applicable to this project within the limits listed above.

- (c) Work Performed by Firms or Individuals Not Employees of the Architect/Engineer. Unless as identified in (a) above, for work performed by firms or individuals not employees of the Architect/Engineer, but engaged by the Architect/Engineer to assist in providing the authorized extra service, the Architect/Engineer shall receive one and one tenth (1.1) times the amount to be paid by the Architect/Engineer to the consultants for said services. Payment to consultants for services rendered is limited to direct project costs, including a maximum of two and one half (2.5) times the direct payroll costs for services of principals and/or employees for actual time expended to provide the authorized extra service.
- (d) Architect/Engineer Reimbursables. The Architect/Engineer shall be paid only the actual and reasonable costs of reimbursable expenses incurred on change order work as approved in writing by the Trustees prior to the Architect/ Engineer incurring the costs, with no mark-up for overhead and profit.

c. Failure to Agree as to Cost

- (1) For Added Work. Notwithstanding the failure of the Trustees and the Design-Builder to agree as to the cost of the proposed change order, the Design-Builder, upon written order from the Trustees, shall proceed immediately with the changed work. A Field Instruction or letter signed by the Trustees shall be used for this written order. At the start of each day's work on the change, the Design-Builder shall notify the Trustees in writing as to the size of the labor force to be used for the changed work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's work, the Design-Builder shall furnish to the Construction Inspector a detailed summary of all labor, materials, and equipment employed in the changed work. The Construction Inspector will compare his/her records with Design-Builder's daily summary and may make any necessary adjustments to the summary. After the Construction Inspector and the Design-Builder agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed work. Subsequent adjustments, however, may be made based on later audits by the Trustees. When changed work is performed at locations away from the job site, the Design-Builder shall furnish in lieu of the daily summary, a summary submitted at the completion of the work containing a detailed statement of labor, material, and equipment used in the work. This latter summary shall be signed by the Design-Builder who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 37.01-b(1), (2), and (3). If changed work is to be paid on the basis of time and materials, a credit for deleted Contract work shall be included. Mark-up shall be as covered in Article 37.01-b(4), (5), (6), (7) and (9).

The Design-Builder shall maintain and furnish on demand of the Trustees itemized statements of cost from all vendors and subcontractors who perform changed work or furnish materials and equipment for such work. All statements must be signed by the vendors and the subcontractors.

- (2) For Deleted Work. When a proposed change order contains a deletion of any work, and the Trustees and the Design-Builder are unable to agree upon the value thereof, the Trustees' estimate may be deducted from the Contract price and may be withheld from any payment due the Design-Builder until the Design-Builder presents proof convincing to the Trustees that the Trustees' estimate was in error. The amount to be deducted, other than deletion of an entire item as addressed in Article 37.01-b (7), shall be the costs to the Design-Builder for labor, materials, and equipment which would have been used on the deleted work together with the credit mark-up. The guidelines set forth in Article 37.01-b, shall be used in computing the amounts involved for changes other than deletion of an entire item.

- d. Allowable Time Extensions. For any change in the work, the Design-Builder shall be entitled only to such adjustments in time by which completion of the entire work is delayed due solely to performance of the changed work. However, no extension of time shall be granted for a change in the work unless the Design-Builder demonstrates to the satisfaction of the Trustees that the work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Design-Builder is making, or has made, every reasonable effort to guarantee completion of the additional work called for by the change within the time originally

allotted for the Contract (Public Contract Code section 10842). Attention is directed to Article 35.15, Contract Time, and Article 35.16, Schedule.

37.02 Emergency Changes

Changes in the work agreed by the Trustees to be made necessary due to unforeseen site conditions, discovery of errors in the Contract Documents requiring immediate clarification in order to avoid a serious work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the Trustees are kinds of emergency changes which may be authorized by the Trustees in writing to the Design-Builder. The Design-Builder shall commence performance of the emergency change immediately upon receipt of written direction from the Trustees.

If agreement is reached as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 37.01 relating to ordinary changes. If agreement is not reached as to compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 37.01-c, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment and/or a time extension, as provided in Article 37.01-d, is agreed upon, or the changed work is completed.

38.00 - CLAIMS AND DAMAGES

38.01 Claims

a. Design-Builder's Claim(s) – Notice of Claim

In accordance with Article 36.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the Design-Builder disagree with the determination of the Trustees on a matter that substantially affects the Design-Builder's costs, compensation or extent of work, the Design-Builder shall file a preliminary claim with the Trustees and request a review of the decision. The Design-Builder must proceed with the work upon receipt from the Trustees of a written order to do so. However, within seven days of receipt of the written order, the Design-Builder must notify the Trustees, by letter, that it protests the decision.

b. Design-Builder Submission of Unresolved Claims to Claims Review Board

All unresolved claims arising from this Contract, for which the Design-Builder seeks resolution by a Claims Review Board, shall be submitted in writing to the Trustees no later than 30 calendar days after the County Recorder's recordation date on the Trustees' Notice of Completion. The Design-Builder's failure to submit its claims to the Trustees within this 30-day period shall constitute a waiver by the Design-Builder of such claims. Once the claims have been submitted, and the 30 calendar days after the County Recorder's recordation date on the Notice of Completion have expired, Design-Builder may not submit any additional claims. Design-Builder shall have 30 additional calendar days in which to submit six copies of a total and detailed claims package. Failure to submit the full detailed package within this second 30-day period shall constitute a waiver by the Design-Builder of such claims.

Before the Design-Builder files a claim with the Trustees, the Design-Builder shall make a reasonable effort to analyze the claim to determine the truth of the information comprising the claim. The Design-Builder shall not present a subcontractor claim without making a reasonable effort to determine the truth of the facts comprising the claim. Only claims reasonably determined by the Design-Builder to be true may be filed with the Trustees. By submitting a claim, Design-Builder affirms that its claim is submitted in good faith, that the facts supporting the claim are true and accurate, and that the claim, in the reasonable opinion of the Design-Builder, constitutes a basis under the Contract for additional compensation. Further, Design-Builder submits the claim recognizing the significant civil penalties and treble damages which follow from making a false claim or presenting a false claim to the Trustees (see Government Code sections 12650 *et seq.*).

c. Trustees' Claim(s) Submittal

The Trustees shall submit a rebuttal to the Design-Builder's claim, along with any Trustees' claims to the Claims Review Board within a reasonable time after the submission by the Design-Builder of a total and detailed claims package or the expiration of the time period to file Design-Builder's claims.

- d. Design-Builder Rebuttal to Trustees' Claims
Upon submission of any Trustees claims, the Design-Builder shall have an additional 30 day period to submit to the Claims Review Board the Design-Builder's rebuttal to the Trustees' claims.
- e. Claims Review Board
The Trustees will convene a Claims Review Board to hear the submitted claims at the completion of the project. Each Claims Review Board shall continue to function until all pertinent facts are reviewed, and it arrives at a recommendation. The Claims Review Board process shall be administered by the Assistant Vice Chancellor for Capital Planning, Design and Construction, or designee. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Review Board procedures. The Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction staff who have not had any direct connection to any claim from the project. It is a lay board; attorneys and third party claims specialists may not participate in the hearings, with the exception of scheduling consultants. The Board's recommendation will be made as soon as possible after the conclusion of the hearing, and that recommendation is made to the appropriate University official and the Assistant Vice Chancellor of Capital Planning, Design and Construction. The decision to accept or reject the Board's recommendation is the responsibility of either the University official, if the project was administered by the University, or the Assistant Vice Chancellor, if the project was administered by Capital Planning, Design and Construction. The decision of the University official or the Assistant Vice Chancellor (as appropriate) exhausts the Design-Builder's contractual and administrative remedies with the Trustees.

38.02 Delay in Completion--Liquidated Damages

If the work is not completed within the time required, the Trustees will sustain damage. It is, and will be, impractical and extremely difficult to determine the actual damage which the Trustees will sustain by reason of the delay. It is therefore agreed that the Design-Builder will pay to the Trustees the sum of money stipulated per day in the Contract for each day's delay in completing the work beyond the time prescribed (see Article 39.01, Acceptance). If the Design-Builder fails to pay such liquidated damages, the Trustees may deduct the amount thereof from any money due or that may become due the Design-Builder under the Contract (Public Contract Code section 10826). If the Trustees have occupancy of all or the majority of the project and can use it for its intended purpose, including operation of fire and life safety systems, the Trustees may reduce the amount of assessment of liquidated damages (if it is determined to be in the best interest of the Trustees) to \$500 per calendar day or half of the value originally stipulated per day, whichever is higher. The Trustees' assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

38.03 Termination for Cause

If the Trustees deem that Design-Builder has failed to supply an adequate working force or material of proper quality, or Design-Builder has failed in any other respect to prosecute the work with the diligence and force as required by the Contract, then the Trustees may take any of the actions authorized by Public Contract Code section 10843 *et seq.* The Design-Builder's failure to complete a punch list with diligence is an example of a failure to prosecute the work with the diligence and force required by the Contract.

If the costs of finishing the work exceed the unpaid balance of the Contract sum, the Design-Builder shall pay the difference to the Trustees.

If it is subsequently determined that grounds for termination under this Article do not exist, then the Design-Builder shall be deemed to have been properly terminated for convenience under Article 38.04, Termination for Convenience.

38.04 Termination for Convenience

After the third payment request or 90 days, whichever comes first, the Trustees may terminate this Contract or any part thereof, for its sole convenience and without cause. Unless Trustees direct otherwise, upon written notice from the Trustees of such termination, the Design-Builder shall:

- a. Stop all work under the Contract except that specifically directed to be completed before suspension of the work.
- b. Perform work the Trustees deem necessary to secure the project for termination.

- c. Remove equipment and plant from the Site of the work.
- d. Take such action as is necessary to protect materials from damage.
- e. Notify all subcontractors and suppliers that the Contract has been terminated, and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Trustees. Reference Articles 35.05, Delegation of Performance and Assignment of Money Earned, and 38.05, Assignment of Subcontracts.
- f. Provide the Trustees with an inventory list of all materials previously produced, purchased or ordered from suppliers for use in the work and not yet used in the work, including their storage locations, and such other information as the Trustees may request.
- g. Handle materials not yet used in the work as directed by the Trustees. The Design-Builder shall provide the Trustees with good title to all materials purchased hereunder, including materials for which partial payment has been made.
- h. Subject to prior written approval of the Trustees, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Trustees, the Design-Builder shall assign to the Trustees all the right, title and interest of the Design-Builder under subcontracts or orders for materials.
- i. Furnish the Trustees with the documentation required to be furnished by the Design-Builder under the provisions of the Contract.
- j. Take such other actions pertinent to terminating the Contract as the Trustees may direct.
- k. Remain liable for any defective construction completed before termination.

The Design-Builder shall be paid in accordance with the provisions of Article 39, Payment and Completion, with the following exception. The amount due the Design-Builder shall be based upon the Trustees' final estimate of the actual work completed, or acceptable materials furnished but not used, to the date of suspension of the work, less any amounts required to be withheld pursuant to Article 39.00, and less any prior payment(s) made to, or on account of the Design-Builder.

38.05 Assignment of Subcontracts

Should the Design-Builder's control over the work be terminated under Article 38.03, Termination for Cause, or 38.04, Termination for Convenience, the Trustees may elect to take legal assignment of subcontracts, purchase orders, and other contractual rights. In such an event, the Design-Builder shall, as a condition of receiving the payments referred to in these Articles, execute and deliver all papers and take all steps, including the legal assignment to the Trustees of subcontracts, purchase orders, and other contractual rights of the Design-Builder, as the Trustees may require for the purpose of fully vesting in the Trustees all rights and benefits of the Design-Builder under such subcontracts, purchase orders, or other contractual rights in order that the Trustees may proceed to finish the project.

38.06 Third-Party Claims

The Trustees have full authority to compromise or otherwise settle any claim relating to a Contract at any time. However, the Trustees shall notify the Design-Builder of the receipt of any third-party claim relating to the Contract (Public Contract Code section 9201).

39.00 - PAYMENT AND COMPLETION

39.01 Acceptance

When the whole project has been completed in all respects in accordance with the completed, plan-checked and Trustees-approved plans and specifications, to the full satisfaction of the Trustees, the Trustees will then file a Notice of Completion with the County Recorder in the county in which the project is located. Projects bid with a segregation of costs for separate, independent portions may, at the Trustees' discretion, have each of the separate portions accepted individually. The date of acceptance of the project as stated on the Notice of Completion shall be the official completion date relating to the assessment of liquidated damages. The County Recorder's date of recording on the Notice of Completion, if filed timely (within ten days of acceptance), shall be the official completion date relating to stop notices. All stop notices must be filed with the Trustees within 30 calendar days after the County Recorder's recordation date on the Trustees' timely filed Notice of Completion. All claims arising from this Contract shall be submitted in writing to the Trustees no later than 30 calendar days after the recordation date on the Trustees' Notice of Completion (see Article 38.01, Claims).

39.02 Partial Payments

To assist in computing partial payments, the Design-Builder shall submit to the Construction Inspector and the Trustees a "Schedule of Values" of the Design-Builder's actual and estimated costs for each item of work. The cost breakdowns shall be in sufficient detail for use in estimating the work to be completed each month and shall be submitted within 21 calendar days after the date of commencement of work given in the Notice to Proceed. The Design-Builder shall also provide the breakdown of the awarded Contract value by completing the Unifomat Building Systems form. This information is valuable to the Trustees for budgeting purposes, and shall be submitted by the Design-Builder to the Construction Administrator along with the initial submittal of the Schedule of Values.

Once each month during the progress of the work, the Design-Builder shall submit to the Construction Administrator a partial payment request that has been received and agreed to by the Trustees' Project Manager/Construction Inspector. The Design-Builder shall base the partial payment request on the approved bid breakdown for the cost of the work completed plus, where applicable, a maximum of 90% of the verified supplier-invoiced and Design-Builder -purchased value for the acceptable materials delivered to the site, or stored subject to the control of the Design-Builder but identified as the property of the Trustees, and not yet installed and as allowed on the Design-Builder's Payment Request, Form 702.12DB, line 2-f. The Design-Builder must make any materials stored offsite accessible to the Trustees to verify invoiced value and shall deliver these materials to the Trustees upon request. When submitting a request for payment for materials, the Design-Builder shall submit the Request for Materials On Hand, Form 702.17, with its partial payment request.

The partial payment request shall be submitted on the monthly anniversary of the day selected by the Design-Builder in the job start meeting. The Construction Inspector shall review and certify the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Construction Inspector of materials invoiced. No partial payment shall be made without the certification of the Construction Inspector, unless the partial payment is strictly administrative, and is processed after the completion of the work (e.g. release of stop notice claims). Partial payment requests shall be processed with a minimum of five percent retention. The Trustees hold retention in part as security for the fulfillment of the Contract by Design-Builder, and in part, as retainage for liquidated damages, stop notices, Labor Code wage and penalty assessments, and Trustees' back-charges such as for retesting and re-inspection. If the Trustees deem that five percent retention is inadequate, the Trustees may increase the amount of retention.

Partial payments shall not be construed as acceptance of any work which is not in accordance with the requirements of the Contract. Once the Construction Inspector has certified the partial payment request, it shall be submitted to the Trustees' Construction Administrator for approval and processing (Public Contract Code section 10851). Payment will then be processed in accordance with section 10853 of the Public Contract Code. Such procedure provides for 39 days processing, from the date of receipt of an undisputed and properly submitted payment request by the Construction Administrator, prior to assessment of late payment interest.

39.03 Escrow in Lieu of Retention

Upon the Design-Builder's request and with the approval of the Trustees, the Trustees may make payment of the five percent (5%) retention withheld from progress payments pursuant to the requirements of Public Contract Code section 10852 if the Design-Builder deposits in escrow with the State Treasurer securities eligible for investment of State funds under Government Code section 16430 or bank certificates of deposit, and satisfies the conditions prescribed in Public Contract Code section 10852 and prescribed by the Trustees.

39.04 Stop Notices

Trustees shall retain out of any money due or that may become due the Design-Builder, sums sufficient (125 percent of the claim) to cover claims filed pursuant to the stop notice provisions of the law (Civil Code section 3082 *et seq.*).

Preliminary notices and stop notices should be addressed to the Construction Administrator and sent to the Trustees at the address identified in the letter transmitting the Contract for signature and at the preconstruction conference. The Design-Builder shall be responsible to communicate this information to all subcontractors.

39.05 Final Payment

After acceptance of the project as complete, the Design-Builder shall submit to the Construction Administrator a payment request stating the total due under the Contract less the retention. This payment request will be processed in the same manner as the partial payment requests. Refer to Article 39.02, Partial Payments.

The Trustees shall notify the Design-Builder of the date of recordation of the Notice of Completion. The Design-Builder shall then submit a request for payment of the retention to the Construction Administrator, who will process the retention payment 30 calendar days after the date of recordation by the County Recorder.

The Trustees shall continue to retain funds to cover liquidated damages, stop notices, state labor commissioner claims, back charges from the University, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 days period following recordation. If any stop notice has been filed, payment shall be withheld in an amount of at least 125 percent of the total claims filed until either the rights under the stop notice have been settled or the Design-Builder has posted sufficient bond in an amount of at least 125 percent of the total claims filed to secure payment of such claims.

On projects bid with a segregation of costs for separate, independent portions which portions are accepted individually pursuant to Article 39.01, Acceptance, the final payment procedure specified in this Article shall be followed. The total amount due under the Contract, the amounts retained, other claims for compensation, and the filing of stop notices shall refer only to the portion accepted.

39.06 Guarantee

The Design-Builder hereby unconditionally guarantees the work under this Contract to be in conformance with the Contract requirements and to be and remain free of defects in workmanship and materials for a period of one year from the date of acceptance of the project pursuant to Article 35.15-b, Starting and Completion Date, unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the Design-Builder agrees, within the guarantee period, to repair or replace any work, together with any adjacent work which may be displaced in so doing which is not in accordance with the requirements of the Contract or which is defective in its workmanship or material, all without any expense whatsoever to the Trustees.

Special guarantees that are required by the Contract shall be signed by the Design-Builder which is responsible for the entire work and countersigned by the subcontractor which performs the work.

Contract bonds shall remain in full force and effect during the one-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

The Design-Builder further agrees that within ten calendar days after being notified in writing by the Trustees of any work not in accordance with the requirements of the Contract or of any defects in the work, the Design-Builder shall commence and prosecute with diligence all work necessary to fulfill the terms of this guarantee and to complete the work in accordance with the requirements of the Contract within a reasonable period of time. The Design-Builder, in the event of failure to so comply, does hereby authorize the Trustees to proceed to have the work done at the Design-Builder's expense, and the Design-Builder agrees to pay the cost thereof upon demand. The Trustees shall be entitled to be reimbursed by the Design-Builder all costs necessarily incurred upon the Design-Builder's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of the Trustees' employees, property, or the public, the Trustees may undertake at the Design-Builder's expense, without prior notice, all work necessary to correct any hazardous conditions caused by the work of the Design-Builder that is not in accordance with the requirements of this Contract.

39.07 Contractor Evaluation

The University will perform a contractor evaluation, and a report filed with the Trustees after completion of the project. If the Design-Builder fails to perform the construction Contract responsibly by failing to complete all work and requirements, including honoring the warranty, the Construction Administrator shall so state the facts on the Contractor Evaluation Form. An evaluation which results in a non-responsible contractor finding, could affect the Design-Builder's prequalification and may cause the Design-Builder to be deemed ineligible to bid on Trustees' work. Refer also to Article 32.09, Failure to be a Responsible Bidder.

End of Contract General Conditions for Design-Build (Major Capital Outlay) Projects