

SAN JOSE STATE UNIVERSITY
CAMPUS VILLAGE STUDENT/FACULTY APARTMENTS

Final Report

September 6, 2006

CONSTRUCTION PROJECT EVALUATION
SAN JOSE STATE UNIVERSITY
CAMPUS VILLAGE STUDENT/FACULTY APARTMENTS

September 6, 2006

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EXECUTIVE SUMMARY

Summary of Findings

As a result of our evaluation of the CSU San Jose Campus Village Student/Faculty Apartments, we found areas of control or process weaknesses that could expose SJSU to unnecessary risks, if not addressed. As a result of our observations, we have identified the areas of the planning and execution process which should be improved.

Our observations, associated risks and recommendations are summarized below. Examples of specific action steps are further detailed in the body of this report.

	Observation	Risk	Recommendation
1.	Additional Services Agreements were not counter signed by the Architect and were executed SJSU letterhead instead of the Standard CSU Extra Services Agreement form.	Lack of consultant counter signatures on Extra Services Agreements may limit the enforceability of the SJSU intended to scope of work. Also, by not utilizing the standard ESA form, SJSU may compromise the intent and legal meaning of the standard ESA language.	SUAM 9210.03 should be modified to require counter signature of the service provider on Extra Service Agreements. (Ownership: CPDC)
2.	Significant work outside of the base agreement was performed and invoiced by the Architect before it was incorporated into an executed Extra Services Agreement.	Work performed without an Executed ESA and a clearly defined scope and contract terms memorialized in an executed ESA signed by the Architect may result in a dispute at a later date.	In the future, SJSU should not allow any consultant to perform and invoice any work without an executed ESA in place. (Ownership: SJSU)
3.	Neither SJSU nor NBA tracked the amounts invoiced against each contractual component separately.	By not tracking the amount charged to each item in the contractual agreement separately, the chances an individual line item would exceed the contractually agreed upon amount increases.	A better practice would be to require consultants to invoice presenting all contracted line items including the contracted amount, the amount previously billed, the current billing, and total invoiced to date for each line item. In addition, SJSU should track the invoices in a similar fashion to verify the accuracy of the billings presented by the consultant. (Ownership: SJSU)
4.	Reconciliation between the accounting system(s) and invoices did not occur on a comprehensive and regular basis.	Without controls to prevent and detect extra amounts entered into the accounting system, SJSU is at a risk of overpaying its consultants.	Perform periodic reconciliation between the invoiced amounts and amounts paid. SJSU should consider the \$6,000 overpayment in its final negotiations with NBA. (Ownership: SJSU)
5.	The Architect contract was entered into without evidence of legal review.	Lack of legal review of contracts by counsel may commit SJSU to unfavorable contractual terms which may cause financial loss or other damage at a later date.	Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should attempt to have design agreements receive documented legal review. (Ownership: SJSU)

EXECUTIVE SUMMARY

	Observation	Risk	Recommendation
6.	SJSU did not consistently obtain appropriate level of signature authority on Change Orders.	Lack of formal authorization by appropriate individuals on Change Orders may cause unnecessary cost and risk exposure to SJSU.	A better practice would require the highest level of signature authority on the face of the change order which is the contractually binding document. (Ownership: SJSU)
7.	On occasion, mark-up was calculated incorrectly on the Change Orders.	SJSU is at a risk of overpayment when mark-up is calculated incorrectly.	Change order proposal summary sheets should be checked for proper mark-up calculation prior to issuing the change order. (Ownership: SJSU)
8.	The Contractor charged certain direct costs which by industry standards and the General Conditions should have been covered by the Change Order mark-up percentage. In addition, the General Conditions allow for ambiguous interpretation of the definition of mark-up.	SJSU is at a risk of overpayment when items which are not intended or allowed to be charged as a direct cost are permitted in the Change Orders	(a) SJSU should require the Contractor to substantiate its direct costs prior to executing a Change Order. The Contractor should be required to account for any direct costs associated with a change to facilitate an audit. (Ownership: SJSU) (b) The General Conditions should be modified to specify mark-up to include anything not expressly stated as an allowable change order cost of work. (Ownership: CPDC)
9.	Several agreements were entered into without evidence of CSU legal review.	Lack of legal review of agreements may commit SJSU to unfavorable contractual terms which may cause financial loss or other damage at a later date.	Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should ensure that construction management agreements receive documented legal review (Ownership: SJSU)
10.	CSU Standard Consultant Agreement and forms were not always utilized by SJSU nor were they consistently signed by the construction manager.	Non-standard agreements and unilaterally signed contract documents may not sufficiently protect SJSU in case of a dispute or other legal event.	In the future, SJSU and Spartan Shops should utilize agreements and forms with documented legal review, and ensure that counter signatures are obtained as required. (Ownership: SJSU)
11.	Work was performed by the Construction Manager prior to the formal execution of an agreement or ESA.	Allowing work to begin on a project prior to the execution of a contractual agreement puts SJSU at risk in the event of a dispute over work performed.	In the future, SJSU should not allow any consultant to perform or invoice any work without an executed ESA in place. (Ownership: SJSU)
12.	Limitations in internal controls resulted in initial overpayments of \$127,000 and a payment in the amount of \$29,732 for which no contractual obligation existed.	A compromised internal control function over the invoice approval and payment process may result in overpayments.	SJSU should review its invoice approval and payment process and institute revised controls. In addition, SJSU should evaluate the apparent duplicate payments to JLL. (Ownership: SJSU)

INTRODUCTION

Purpose

KPMG LLP (“KPMG”) was retained by California State University’s (“CSU”) Office of the University Auditor on October 29, 2004 to perform an independent project evaluation of California State University, San Jose’s (“SJSU”) Campus Village Student/Faculty Apartments project (“the Project”).

The overall objective of the construction evaluation was to assess construction management practices for the Project and to substantiate it was managed in accordance with law, Trustee policy, generally accepted business practices, and industry standards.

To the extent they were uncovered as part of our work, this report provides conclusions and recommendations addressing necessary recovery of project costs and process improvements. Recommendations are listed and numbered sequentially throughout this report.

Scope

While the basic scope of our work matches that required by the RFP and that which KPMG has performed in years past, we also included additional items that we believe will provide value to the CSU. KPMG identified specific areas within the scope listed below that present the greatest potential for substantive loss or liability related to the Project. The various scope categories are outlined in CSU’s Request for Proposal, dated July 14, 2004 and KPMG’s Proposal, dated July 27, 2004 and contains the following sections:

- Project Background
- Design Cost
- Construction Bid Process
- Construction Change Orders
- Project Management Inspection Services
- Major Equipment/Materials
- Close-Out Documentation
- Liquidated Damages
- Accounting

Methodology

KPMG’s approach to this engagement incorporates a work plan shared with the University Auditor’s office as outlined in our Agreement with CSU. During the course of our work we expanded on tasks related to scope sections with the greatest potential risk exposure. The work performed by KPMG was conducted in accordance with our aforementioned Methodology, but is not limited to, the following tasks:

- Examine financial records, reports, written CSU procedures, contract documents and other material related to the project and compare current practices and procedures with CSU requirements and accepted practices in the industry;
- Conduct a preliminary review to determine project emphasis;
- Interview key individuals involved in the project;
- Identify considerable deficiencies, if any;
- Recommend changes that may result in streamlining the design/construction process, assuring adequate project controls and reducing costs; and
- Prepare a written report of our findings and recommendations.

Exclusions

The services, fees and delivery schedule for this Engagement are based upon the following assumptions, representations or information supplied by CSU (“Assumptions”).

1. KPMG is not responsible for and will not make management decisions relating to this Project or any other aspect of CSU’s business. CSU shall have responsibility for making all decisions with respect to the management and administration of its real estate and capital projects.
2. CSU management accepts responsibility for the substantive outcomes of this engagement and, therefore, has a responsibility to be in a position in fact and appearance to make an informed judgment on the results of this engagement.
3. Our work under this did not include technical opinions related to engineering, operations and maintenance.
4. KPMG’s work under this engagement did not include a review, audit or evaluation of financial statements, tax services, or other services of KPMG not listed in this Statement.
5. We have, and will continue to consider the effect of this Engagement on the ongoing, planned and future audits, as required by *Government Auditing Standards* and have determined that this engagement will not impair KPMG’s independence.

PROJECT BACKGROUND

The Project incorporated new student and faculty housing with a residence hall for freshmen, an apartment building for upper division students, and a faculty/staff/guest apartment building. The Project included fiber optic telecommunications, kitchens, common areas, laundry facilities, recreation areas, underground parking, a convenience store, and a computer lab and office space.

During the week of February 27, 2006, KPMG conducted field work at SJSU and the General Contractor. KPMG reviewed records from the following entities involved with the project:

Architect	Niles Bolton Associates (“NBA”)
General Contractor (“GC”)	Clark Construction Group, Inc. (“Clark”)
Construction Manager (“CM”)	Jones Lang LaSalle (“JLL”)
Inspector of Record (“IOR”)	Construction Testing Services (“CTS”)
Project Management and Administration	SJSU Department of Planning, Design and Construction; Spartan Shops, Inc. (“Spartan Shops”)

Follow-up discussions to clarify issues and supplement supporting documentation were conducted through the completion of this report.

Delivery Methodology

The Project was initiated by Spartan Shops, Inc., an auxiliary organization to SJSU, as a turn-key methodology. The Project later changed to a Design-Bid-Build approach.

Timeline

- The Project was initiated in 2000 by Spartan Shops with the intent of obtaining outside financing for the turn-key Project. At the time, it was SJSU’s understanding that Spartan Shops was able to issue its own debt to finance the Project and as such, the Project would not be a Public Works Project.
- In November, 2000, JLL was retained by Spartan Shops to assist with Project development.

In January 2001, the Board of Trustees granted conceptual approval of the Project with the stipulation that an actual development plan and financing mechanisms would be presented to the Board for additional approval at key points in the process.

- With the assistance of JLL, Spartan Shops retained a development team in April 2001 that included Trammell Crow, NBA, and McCarthy Construction. Spartan Shops had secured a revenue stream for the initial expenditures.
- The Project approach changed course in late April, 2001 as the Chancellor's Office became aware of the progress on the Project. The Chancellor's Office advised SJSU and Spartan Shops that issuing its own debt as a financing mechanism was not appropriate. Instead, the Chancellor's Office indicated the preferred financing method should be a system wide revenue bond. In addition, SJSU and Spartan Shops were informed by CSU Capital Planning, Design & Construction ("CPDC") that the intended delivery methodology of using an outside developer was not recommended. As a result of SJSU's discussions with the Chancellor's Office and CSU CPDC, the Project approach was revised to a Design-Bid-Build delivery methodology financed under system wide revenue bond.
- The contracts with Trammell Crow and McCarthy were terminated in September, 2001. NBA continued as the Architect for the remainder of the Project, as they had already completed a substantial part of the work and were familiar with the Project.
- In January, 2002, the Board of Trustees approved schematic plans of the Project.
- Clark Construction was selected as the General Contractor following a normal bid opening and evaluation procedure in late October, 2002. Notice to Proceed was issued in November 2002 and construction started in December 2002.
- The balances of JLL's and NBA's contracts were assumed from Spartan Shops by SJSU's Department of Planning Design and Construction in December, 2002.
- Notice of Completion was issued to the Contractor on December 22, 2005.

Project Costs

Project schematic plans were approved by the Board of Trustees at \$215,000,000 based on cost per square foot estimates derived from the California Construction Cost Index. Following construction bid opening and realized bid savings, the capital outlay estimate was revised to approximately \$206,211,000, which included additional cost category detail.

At the time of our field work, there were \$205,058,554 in total approved Project commitments and a total amount paid to date of \$194,535,665, as summarized in the following table:

PROJECT BACKGROUND

Description	Budget	Paid	Committed	Variance
Construction	\$ 145,715,000	\$ 150,861,311	\$ 159,183,660	\$ 13,468,660
Furniture, Fixtures and Equipment	6,836,115	7,479,509	7,630,016	793,901
Soft Costs	23,230,344	25,967,445	26,532,745	3,302,401
Owner costs	15,714,302	10,227,400	11,712,133	(4,002,169)
Contingency	14,715,000	-	-	(14,715,000)
Total	\$ 206,210,761	\$ 194,535,665	\$ 205,058,554	\$ (1,152,207)

As a result of the change from the initial turn-key Project approach to a design-bid-build approach, SJSU incurred costs in form of payments to both Trammell Crow and McCarthy. In total, SJSU paid McCarthy \$534,552 and Trammell Crow \$3,346,068 (excluding \$960,500 for NBA, who continued on the job and whose efforts were not considered lost). Although some of these costs resulted in value for SJSU, a large portion of these payments may not have.

SJSU reportedly secured competitive financing and benefited from a competitive bid climate at the time the Project was re-bid. These circumstances could not have been predicted, and may have ultimately contributed to an overall favorable financial outcome of the Project. No analysis has been completed on whether or not the Project incurred a net loss due to the change in direction of the overall Project approach.

DESIGN COSTS

Niles Bolton Associates (“NBA”) was initially selected as the Architect for the Project to serve on a team with the developer, Trammell Crow. NBA was a CSU pre-qualified Architectural firm at the time this selection was made.

At the termination of the contract between Spartan Shops and Trammell Crow, SJSU decided to keep NBA as the Architect of Record, since NBA already was intimately familiar with the project and already had performed a significant portion of the design services. The initial selection process for retaining NBA was discussed with CPDC and it was agreed that the process fulfilled the requirements under SUAM for a design-bid-build public works project. Consequently, it was reported not to be in violation of Public Contract Code to continue using NBA.

- NBA served under contract with Trammel Crow until the termination of Trammel Crow on September 1, 2001, whereby Spartan Shops agreed to assume the obligation to continue paying NBA under the existing consultant agreement between NBA and Trammel Crow.
- A Letter of Intent was issued by Spartan Shops to NBA on November 8, 2001 authorizing NBA to proceed with all services under a draft agreement.
- A standard CSU Architect/Engineer agreement was executed on April 22, 2002 between NBA and Spartan Shops in the amount of \$11,059,800. The contract covered Basic Services, Miscellaneous Optional Services, and Reimbursable Expenses.
- A Letter of Assignment dated December 5, 2002 officially transferred the rights and interests under the aforementioned agreement from Spartan Shops to SJSU.
- On March 10, 2003 a new standard CSU Architect/Engineer agreement was executed to transfer the remaining value of the April 22, 2002 agreement to the SJSU from Spartan Shops, pursuant to the Letter of Assignment dated December 5, 2002. The new agreement was executed for \$2,618,000 and superseded NBA’s initial agreement with Spartan Shops.
- At the time of our filed visit, 16 Additional Service Agreements (“ASA”’s) had been executed with NBA in an amount of \$528,816 bringing the total value of the agreement to \$11,588,616. (Note: SJSU uses the terminology Additional Services Agreement while SUAM uses the terminology Extra Services Agreement. For the purposes of this document, they are interchangeable.)

The table below summarizes the agreement with NBA:

Description	Date	Amount
Total Basic Services	04/22/02	\$ 8,145,000
Extra Services	04/22/02	2,899,800
Reimbursable Expenses	04/22/02	15,000
Total Base Contract		\$ 11,059,800
ASA 1a Tunnel Service	01/15/03	\$ 37,700
ASA 1b "Other" Services and Expenses	01/15/03	70,949
ASA 2 Expansion of Gaming Area	01/22/03	24,940
ASA 3 Mod. of security system design	02/27/04	3,740
ASA 4 Retail Space Design	03/26/04	116,190
ASA 5 Building A Entrance Revisions	03/26/04	13,572
ASA 6 Building A Mailroom Addition	03/26/04	4,177
ASA 7 Building B, 1st & 2nd Floor Revisions	06/16/04	135,973
ASA 8 Tel/Data redesign and Data Room Revisions	06/18/04	175,341
ASA 9 Building C window Revision Credit	06/17/04	(118,350)
ASA 10 Café Door Redesign - Building B Tower	12/21/04	4,141
ASA 11 Added Audiovisual Design	01/03/05	33,462
ASA 12 Added Civil Engineering Support	01/31/05	10,000
ASA 13 Structural Engineering for satellite dishes	03/28/05	6,050
ASA 14 Added Civil Engineering Support	05/16/05	5,650
ASA 15 Executive Suite Design	05/01/05	3,300
ASA 16 Executive suite Design	08/12/05	1,980
Subtotal ASA's		\$ 528,816
Total Agreement		\$ 11,588,616

Note: The agreement uses the term "Extra Services" for miscellaneous and optional categories of work including landscape design, programming, and furniture purchasing assistance.

The ASA's were executed on SJSU letterhead and not on the CSU Standard Extra Services Agreement form which should be utilized for this purpose. The ASA's were not countersigned by the NBA and only in some instances could we locate a cost proposal from NBA indicating agreement to the scope of work set forth in the ASA. Although SUAM 9210.03 currently does not require counter signature of a service provider on Extra Service Agreements, obtaining the Architect's counter signature is a standard practice.

In addition, we noted several ASA's for which work had been performed and invoiced by NBA before the ASA's were formally executed. These include ASA's no. 1a, 4, 5, 6, 7, 8, 10, 11, and 12, issued by SJSU Facilities Development and Operations, for a total amount of \$505,281. However, none of the ASA's were paid before they were executed.

Observation:

Additional Services Agreements were not counter signed by the Architect and were executed on SJSU letterhead instead of the Standard CSU Extra Services Agreement form.

Risk:

Lack of consultant counter signatures on Extra Services Agreements may limit the enforceability of the SJSU intended to scope of work. Also, by not utilizing the standard ESA form, SJSU may compromise the intent and legal meaning of the standard ESA language.

Recommendation:

1. SUAM 9210.03 should be modified to require counter signature of the service provider on Extra Service Agreements.

(Ownership: CPDC)

Management Response:

1. We agree. The extra services authorization procedure was modified and posted on the CPDC web site (SUAM X, Section 9210.03 and sample letter with designer signature block in Appendix C).

Observation:

Significant work outside of the base agreement was performed and invoiced by the Architect before it was incorporated into an executed Extra Services Agreement.

Risk:

Work performed without an Executed ESA and a clearly defined scope and contract terms memorialized in an executed ESA signed by the Architect may result in a dispute at a later date.

Recommendation:

2. In the future, SJSU should not allow any consultant to perform and invoice any work without an executed ESA in place.

(Ownership: SJSU)

Campus Response:

2. We concur. We agree with the recommendation and will follow the SUAM protocol.

At the time of our audit, \$375,548 remained to be billed under the contract with NBA. The invoices presented by NBA did not consistently utilize the above schedule of values to show what contractual component was being invoiced against, what had previously been invoiced and what value had been earned. This resulted in difficulties in determining what had been invoiced to date and what work remains outstanding on the agreement.

SJSU did not keep a complete listing of all invoices and contractual agreements on the project, mainly due to Spartan Shops use of a separate accounting system from SJSU and SJSU's own change of accounting systems during the course of the Project. As a result, no comprehensive list of invoices was maintained. JLL tracked certain cost information on behalf of the SJSU and Spartan Shops, but detail data was not available for our review, nor was it retained by SJSU.

Observation:

Neither SJSU nor NBA tracked the amounts invoiced against each contractual component separately.

Risk:

By not tracking the amount charged to each separate component within the agreement separately, chances that an individual line item would exceed the contractually agreed upon amount increases. In addition, the risk for accounting irregularities and errors increases.

Recommendation:

3. A better practice would be to require consultants to invoice presenting all contracted line items including the contracted amount, the amount previously billed, the current billing, and total invoiced to date for each line item. In addition, SJSU should track the invoices in a similar fashion to verify the accuracy of the billings presented by the consultant.

(Ownership: SJSU)

Campus Response:

3. We concur. We agree with the recommended practice and going forward will conform with invoicing format/forms posted by the Chancellor's Capital Planning Design and Construction (CPDC) office. In addition, we will add the invoice format requirement to future A/E contracts.

When comparing the NBA invoices to the appropriate entries in SJSU's accounting system, KPMG discovered that invoice number 22478 in the amount of \$51,758 was incorrectly entered as \$57,758 which indicates a \$6,000 overpayment on that invoice. No later correction was noted. We were informed that no systematic reconciliation against the contractual agreement or the accounting systems occurred.

Observation:

Reconciliation between the accounting system(s) and invoices did not occur on a comprehensive and regular basis.

Risk:

Without controls to prevent and detect extra amounts entered into the accounting system, SJSU is at a risk of overpaying its consultants.

Recommendation:

4. A periodic reconciliation between the invoiced amounts and amounts paid should occur to detect errors in data entry and correct any accidental overpayments. SJSU should consider the \$6,000 overpayment in its final negotiations with NBA.

(Ownership: SJSU)

Campus Response:

4. We concur. We agree with the recommendation and will reconcile invoiced amounts before payments. The \$6,000 overpayment was corrected and SJSU did not end up paying more than the contract amount.

The April 22 Standard Agreement in the amount of \$11,059,800 with a modified Rider A lacked evidence of legal review, as no signature by Counsel was present. SUAM 9780.03 and 9210.01 states the requirements for review by Counsel and that and is not considered in effect until approved by CSU Office of General Counsel. Although Spartan Shops may not be subject to all requirements of CSU Contract Law, review by Counsel is a better business practice.

Observation:

The Architect contract was entered into without evidence of legal review.

Risk:

Lack of legal review of contracts by counsel may commit SJSU to unfavorable contractual terms which may cause financial loss or other damage at a later date.

Recommendation:

5. Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should attempt to have design agreements receive documented legal review.

(Ownership: SJSU)

Campus Response:

5. We concur. In the future, Spartan Shops will have design agreements receive documented legal review.

CONSTRUCTION BID PROCESS

Following the change in direction to Design-Bid-Build, the Project became a public works project governed by Public Contract Code including the requirement for public bid. The resulting formal bid process was administered by JLL under the direction of SJSU.

Five general contractors, Clark, Hensel Phelps Construction, the Hunt Construction Group, McCarthy Building Company, and Swinerton Builders, were pre-qualified and invited to submit bids for the Project.

A mandatory pre-bid meeting was held on September 19, 2002 where a completed set of specifications, general conditions and drawings were made available to the bidders. A total of six addenda were issued prior to bid opening, revising the bid opening date and modifying drawings and specifications. The Architect's estimated cost of the Project at the time of bid was \$167,600,000.

Bid Opening occurred on October 22, 2002. Clark and Hensel Phelps were the only two contractors who submitted bids. A formal evaluation and ranking process occurred where Clark emerged with the lowest bid, both on the base bid and including all Alternate bid items. Clark was awarded the project with a base bid and alternates of \$145,715,000 which resulted in a \$21 million bid saving over the Architect's estimate.

KPMG reviewed the bid files and evaluated the pre-qualification and bid process and found SJSU in compliance with requirements related to pre-bid meeting, advertising for bids, distribution of Project plans and specifications, review of bid proposal package, addenda during bidding, pre-qualification of bidder, obtaining required documentation from the successful bidder and award of contract. When visiting with Clark, we verified that sub-contractor trades had been competitively bid.

In addition to the base bid there were two major change orders which expanded on the scope of the work. The changes encompassed a significant telecom upgrade and the construction of a separate mail facility. Both these items were competitively bid separately from the base contract.

Recommendation:

None

CONSTRUCTION CHANGE ORDERS

The initial contract with Clark was executed on November 11, 2002 in the amount of \$145,715,000 including all alternate bid items. 33 change orders had been executed on the Project at the time of our field work totaling \$14,408,599. The Change Orders resulted in a total contract value of \$160,123,599 as shown in the following table:

Description	Effective Date	Net Amount
Base Contract	10/30/02	\$ 145,715,000
CO #1 - Change in specifications, move computer lab modulars	03/13/03	\$ (876)
CO #2 - Value engineering of ductwork	04/18/03	(254,452)
CO #3 - Add elevator sump pump, MEP modifications	05/23/03	148,235
CO #4 - Modify GFRC, added parking lot lighting	06/23/03	335,435
CO #5 - Upgrade windows, misc. revised work	07/23/03	537,202
CO #6 - Delete Alternate #10, revise mechanical config.	08/22/03	75,996
CO #7 - Marketplace Café revised proposal, kitchen equipment	09/22/03	1,292,527
CO #8 - Miscellaneous revisions	10/24/03	23,057
CO #9 - Delete fiberglass insulation, add stud wall support	11/24/03	197,134
CO #10 - Extend roof columns, rise frames	12/22/03	161,980
CO #11 - Add Isolations valves, change to mock-ups, revise entrance	01/21/04	980,931
CO #12 - Data revisions, change windows, revised cabinet spec's.	02/25/04	1,009,740
CO #13 - Telecom/Data bid, shower changes, added lighting	03/22/04	755,257
CO #14 - Upgraded finishes, delete refrigerators, misc changes	04/28/04	360,058
CO #15 - Attic sprinklers, revised condensate receiver	05/28/04	402,844
CO #16 - Sprinkler standpipe relocation	06/21/04	252,205
CO #17 - Miscellaneous revisions	07/28/04	112,247
CO #18 - Miscellaneous revisions, temporary access ramp	08/31/04	225,520
CO #19 - Miscellaneous revisions	09/29/04	110,916
CO #20 - Revised loading dock area, ceiling revisions, elevator equip.	10/27/04	1,126,249
CO #21 - Wood blocking, fiber plates, misc. changes	11/22/04	281,731
CO #22 - Miscellaneous revisions	12/21/04	263,917
CO #23 - Loading dock winter break package, misc. revisions	01/27/05	528,961
CO #24 - Miscellaneous revisions	02/28/05	230,155
CO #25 - Added smoke detectors, attic duct penetration shafts	03/31/05	725,434
CO #26 - Flashing revisions, misc. revisions	04/25/05	478,701
CO #27 - Building A&B revisions, make-up air, misc. revisions	06/01/05	642,852
CO #28 - Add smoke detectors, misc. revisions	06/28/05	674,036
CO #29 - Miscellaneous revisions	08/18/05	470,595
CO #30 - Make-up air, add offices	08/31/05	507,456
CO #31 - Exterior light revisions, new offices, misc. revisions	10/17/05	441,032
CO #32 - Video gaming & RAC revisions, misc revisions	11/18/05	371,585
CO #33 - Make-up air, added smoke detectors, misc revisions	01/09/06	939,939
Total Change Orders		\$ 14,408,599
Total Contract Amount		\$ 160,123,599

Clark and SJSU were in ongoing negotiations regarding a project time extension at the time of our field work and no extra time had been granted on any of the Change Orders. These negotiations were occurring after the Notice of Completion had been issued. SJSU provided KPMG with details of the negotiations, including initial discussions with Clark.

Recommendation:

None

Signature Authority

KPMG reviewed the Change Orders for compliance with signature authority and supporting backup. The signature authority for Change Order authorization as presented by SJSU is summarized as follows:

Amount	Signature Approval Required
Up to \$20,000	Project Manager/Administrator
Up to \$50,000	Director, Planning, Design & Construction
Up to \$100,000	Associate Vice President, Facilities Development & Operations
No Limit	Vice President of Administration

The Change Order section of SJSU’s Campus Management Plan states:

“...the campus has established a tiered level of review and approval of change orders based on the dollar level of the proposed change...”

The Construction Management Procedures Manual Section 22, Subsection 1.05c requires Change Orders to be signed according to the levels established by the Campus Management Plan. Change Orders were generally approved by the Construction Administrator or Associate Vice President for Facilities Development & Operations, which in all instances was insufficient. Of the 33 Change Orders executed, seven received the appropriate level of signature authority required, from the Vice President of Administration and Finance. One Change Order lacked any kind of approval signature.

Observation:

SJSU did not always obtain appropriate level of signature authority on Change Orders.

Risk:

Lack of formal authorization by appropriate individuals on Change Orders may cause unnecessary cost and risk exposure to SJSU.

Recommendation:

6. A better practice would require the highest level of signature authority on the face of the change order which is the contractually binding document.

(Ownership: SJSU)

Campus Response:

6. We concur. We agree with the recommendation and will follow SUAM and Project Administrator protocol going forward.

Mark-Up

KPMG recalculated the mark-up charged on Change Order work by Clark. The Contract General Conditions specify how mark-up is to be calculated on the various portions and types of work. KPMG sampled 11 change order line items (comprised of individual change proposals) and recalculated the mark-up based on the costs submitted by Clark Construction. We noted that on occasion, mark-up was calculated on a straight percentage basis without adjusting the percentage downward for amounts greater than \$50,000 as described in the General Conditions and SUAM.

The total value of the tested change proposals included with the Change Orders was \$3,583,107 for which we KPMG calculated a variance of \$12,126 strictly based on adjustments to the mark-up calculation. Any cost adjustments would further modify the calculated mark-up.

The variance represents 0.31% of the total value of the total value of the Change Proposals as summarized in the table below:

CP #	Value of CP	Recalculated Amount	Variance
114	\$ 1,141,427	\$ 1,139,197	\$ 2,230
185	293,009	292,971	38
189	219,044	224,776	(5,732)
190	210,557	208,615	1,942
194	307,403	298,918	8,485
201	118,350	118,376	(26)
207	270,093	264,904	5,189
216	400,953	400,953	-
231	114,404	114,404	-
246	244,739	244,739	-
505	533,128	533,128	-
Total	\$ 3,853,107	\$ 3,840,981	\$ 12,126
Variance as percent of total CP value			0.31%

Observation:

On occasion, mark-up was calculated incorrectly on the Change Orders.

Risk:

SJSU is at a risk of overpayment when mark-up is calculated incorrectly.

Recommendation:

7. Change order proposal summary sheets should be checked for proper mark-up calculation by the Construction Administrator prior to issuing the change order.

(Ownership: SJSU)

Campus Response:

7. We concur. We agree with the recommendation and will have mark-up calculations according to Operational Plan mark-up template provided by CPDC and reviewed by at least two persons going forward.

Contractor Direct Costs

Clark submitted certain recurring direct costs as part of its Change Order costs which included cost categories which by industry standards generally are categorized as general conditions costs or field overhead and as such should be covered by the Contractor's mark-up. Examples of costs charged by Clark as direct costs include project management, supervision, quality control, temporary facilities, clean-up, and insurance.

SJSU objected to the nature of these costs early on in the Project, arguing that such costs should in fact be covered by the mark-up. Due to differing interpretations of the contract definition of what mark-up should cover, SJSU eventually approved of the Change Order amounts as submitted by Clark, inclusive of all direct costs. In our discussions with the Contractor, Clark explained its interpretation of the Contract General Conditions, section 6.01.c-(4) concluding that the definition of mark-up was weak and ambiguous and allowed for their strict interpretation. Specifically mentioned by Clark was the absence of a description pertaining to work related to Change Order administration, solicitation of quotes from subcontractors and vendors as well as direct supervision. Clark did not present conclusive evidence that supported their calculation of their contractor controlled insurance program, for which they included costs in the Change Orders. Clark also indicated that any attempt by SJSU to recover any costs would result in legal action on behalf of Clark.

Each Change Order generally consisted of 10-30 separate Change Proposals. KPMG sampled 11 Change Proposals and performed an analysis of the direct costs submitted by Clark. Amounts associated with dumpsters, temporary toilets, clean-up and insurance were subtracted. The total value of the Change Proposals included with the Change Orders was \$3,583,107 of which \$293,067 encompassed Contractor Direct Costs. KPMG calculated a variance of \$178,261 or 4.6% of the total value of the total value of the Change Proposals as summarized in the table below:

CP #	Value of CP	Amount Claimed	Amount Allowed	Variance
114	\$ 1,141,427	\$ 94,618	\$ 43,432	\$ 51,186
185	293,009	21,728	125	21,603
189	219,044	14,824	215	14,609
190	210,557	13,947	4,878	9,069
194	307,403	16,813	1,659	15,154
201	118,350	10,508	9,090	1,418
207	270,093	16	16	-
216	400,953	9,482	1,283	8,199
231	114,404	12,857	59	12,798
246	244,739	29,342	5,295	24,047
505	533,128	68,932	48,754	20,178
Total	\$ 3,853,107	\$ 293,067	\$ 114,806	\$ 178,261
Variance as percent of total CP value				4.6%

Observation:

The Contractor charged certain direct costs which by industry standards and the General Conditions should have been covered by the Change Order mark-up percentage. In addition, the General Conditions allow for ambiguous interpretation of the definition of mark-up.

Risk:

SJSU is at a risk of overpayment when items which are not intended or allowed to be charged as a direct cost are permitted in the Change Orders

Recommendation:

- 8.a. On future contracts, SJSU should require the Contractor to submit substantiation for its direct costs prior to executing a Change Order. SJSU should also evaluate whether any monetary recourse against the Contractor is warranted.

(Ownership: SJSU)

8.b. The General Conditions should be modified to specify mark-up to include anything not expressly stated as an allowable change order cost of work.

(Ownership: CPDC)

Campus Response:

8.a. We concur. We will require the Contractor to submit substantiation for its direct costs prior to executing a Change Order. We will also evaluate whether any monetary recourse against the Contractor is warranted.

Management Response:

8.b. We agree. We have modified the Contract General Conditions using the Supplementary General Conditions and posted it to the CPDC web site.

Change Order Report Analysis

Trustees generally consider additional cost incurred related to Architect/Engineer errors and omissions of up to 3% of the initial award construction cost as being within the requirements of ‘standard of care’, as per the current agreement. However, the agreement as executed did not contain any language related to ‘standard of care’. The agreement stated the Architect/Engineer shall secure and maintain appropriate errors and omissions insurance of no less than \$5,000,000 per occurrence, \$10,000,000 annual aggregate.

SJSU provided a change order log reflecting the source of each change order. However data was available through Change Order 31(of 33) only and does not reconcile to the actual executed Change Orders. The following table summarizes the data:

Type of Change		Amount	% of Total CO	% of Original Contract
4.1	Error in or omission from the contract documents	\$ 4,161,174	36.05%	2.86%
4.2	Unforeseeable job site condition	351,124	3.04%	0.24%
4.2	Change in the requirements of a regulatory agency	2,088,563	18.09%	1.43%
4.4	Change originated by the University	4,424,118	38.32%	3.04%
4.5	Changes in specified work due to the unavailability of specified materials	7,624	0.00	0.00
4.6	Other	511,090	4.43%	0.35%
Total Change Orders		11,543,693	100.00%	7.92%
Original Contract Amount		\$ 145,715,000		
Total		\$ 157,258,693		

Change orders attributable to Architect's errors and omissions exceeded 36 % of the total net change order costs. In addition these errors and omissions are calculated to be 2.86% of the original contract amount. Although the total errors and omissions are less than 3% which normally fall under the CSU's acceptable levels of 'standard of care', SJSU is in the process of negotiating any responsibility by NBA, as the total amount of errors and omissions exceeded \$4 million.

Recommendation:

None

Contractor Compliance – Subcontractor Practices

There were two instances of subcontractor substitution identified on this Project, which requires specific substitution procedures to be followed. F.W. Spencer replaced Scott Co. for Mechanical work due to Scott's inability to obtain the proper Performance or Payment bonds, and B.T. Mancini Co. Inc replaced Spectra Contract Flooring when their local store closed. Both substitutions occurred according to public contract code section 4400.

Recommendation:

None

CONSTRUCTION MANAGEMENT SERVICES

Through a competitive process, JLL was initially retained to assist with selection of a development team for the Project. As the Project progressed, JLL was competitively retained to provide construction management services for the Project throughout construction. The following bullet points summarize the timeline for the contractual arrangements with JLL:

JLL was initially retained on July 7, 2000 to provide initial scoping services and to assist in the selection of a developer to provide a turn-key solution to the Project. Spartan Shops issued the initial agreement to JLL in the amount of \$77,000.

- On June 21, 2001 Spartan Shops entered into a second agreement with JLL to provide development advisory services. This agreement was issued in the amount of \$1,881,900.
- On April 22, 2002 Spartan Shops entered into a third agreement with JLL to expand the development advisory services to encompass full project management and construction management services. This agreement was issued in the amount of \$4,328,000 and superseded the June 21, 2001 agreement.
- A Letter of Assignment dated December 5, 2002 officially transferred the rights and interests under the aforementioned agreement from Spartan Shops to SJSU.
- On March 3, 2003 a standard CSU consultant agreement was executed to transfer the remaining value of the April 22, 2002 to SJSU from Spartan Shops, pursuant to the Letter of Assignment dated December 5, 2002. The new agreement was executed for \$2,893,000 and superseded the existing agreement with Spartan Shops.
- Three additional agreements for an operations evaluation (\$112,750), selection of a marketing firm (\$21,000), and assembling an operating budget (\$21,000) were agreed to in June 2003 by counter signing or otherwise agreeing to three JLL cost proposals.
- At the time of our field visit, 3 Extra Service Agreements (ESA's) had been executed totaling \$143,750, bringing the total value of the agreement to \$4,630,686.

The table below summarizes the various agreements with JLL:

Description	Date	Amount
Initial Development Services	07/07/02	\$ 77,000
Expandete Developmnet and Construction Management Services	04/22/02	4,328,000
Total Base Contracts		\$ 4,405,000
ESA #1 - Security and IT Mgmt Services	05/28/04	62,000
ESA # 2 - Dining Commons, Joe West Hall, and Village Gaming	07/13/04	74,490
ESA #3 - Miscellaneous Expanded Scope Services	07/14/05	89,196
Subtotal ESA's		\$ 225,686
Marketing Program	06/21/03	21,000
Operating Budget	6/2/2003	10,000
Operations Evaluation Proposal	11/18/03	112,750
Subtotal Additional Agreements		\$ 143,750
Total Agreement		\$ 4,630,686

The JLL agreements entered into by Spartan Shops in the amounts of \$77,000, \$1,881,900 (superseded) and \$4,328,000 did not contain any evidence of CSU legal review. Legal review becomes particularly important when non-standard agreements are utilized.

Observation:

Several JLL agreements were entered into without evidence of CSU legal review.

Risk:

Lack of legal review of agreements may commit SJSU to unfavorable contractual terms which may cause financial loss or other damage at a later date.

Recommendation:

9. Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should ensure that construction management agreements receive documented legal review.

(Ownership: SJSU)

Campus Response:

9. We concur. In the future, Spartan Shops will have construction management agreements receive documented legal review.

SJSU and Spartan Shops did not consistently utilize the Standard CSU consultant Agreement in contracting with JLL; (a) two of the initial agreements were developed independently by Spartan Shops, (b) the additional agreements entered into consisted of JLL proposals, bilaterally signed on JLL letterhead or, in one instance, not signed by SJSU at all, and (c) the CSU Standard Form was not utilized for the Extra Services Agreements, nor were they bilaterally signed. Although auxiliary organizations such as Spartan Shops

may enjoy some flexibility in its contracting arrangements, it is the preference by the Chancellor's Office that CSU contract law is adhered to. Since this Project transitioned to a SJSU Project, adherence to CSU Contract Law became a requirement.

Observation:

The CSU standard consultant Agreement and standard ESA form were not always utilized by SJSU nor were they consistently signed by the construction manager.

Risk:

Non-standard agreements and unilaterally signed contract documents may not sufficiently protect SJSU in case of a dispute or other legal event.

Recommendation:

10. In the future, SJSU and Spartan Shops should utilize agreements and forms with documented legal review, and ensure that counter signatures are obtained as required.

(Ownership: SJSU)

Campus Response:

10. We concur. In matters related to Construction Management Services, Spartan Shops will utilize agreements and forms with documented legal review and obtain counter signatures as required.

The initial JLL with Spartan Shops in the amount of \$1,881,900 was effective June 21, 2001. Although JLL did not present an invoice to Spartan Shops until the day after the agreement was signed into effect, this first invoice was backdated for services rendered from February 1, 2001 through May 31, 2001 totaling \$185,128. Similarly, ESA #3 was invoiced and paid in full in the amount of \$29,732 before the ESA was executed.

Observation:

Work was performed by the Construction Manager prior to the formal execution of an agreement or ESA.

Risk:

Allowing work to begin on a project prior to the execution of a contractual agreement puts SJSU at risk in the event of a dispute over work performed.

Recommendation:

11. In the future, SJSU should not allow any consultant to perform or invoice any work without an executed ESA in place.

(Ownership: SJSU)

Campus Response:

11. We concur. We agree with the recommendation and will follow the SUAM protocol (this finding is the same as #2 above).

KPMG noticed two invoice processing discrepancies for JLL. The initial \$185,128 invoice from Spartan Shops contained a mathematical error of \$37,000; the correct amount should be \$148,128. In addition, JLL invoice #29 in the amount of \$90,000 was paid by both Spartan Shops and SJSU. No subsequent reversals or invoice corrections were noted. ESA #3 in the amount of \$29,732 was paid before the ESA was executed.

Observation:

Limitations in internal controls over the invoice approval and payment process resulted in initial overpayments of \$127,000 and a payment in the amount of \$29,732 for which no contractual obligation existed.

Risk:

A compromised internal control function over the invoice approval and payment process, such as performing mathematical checks, preventing double payments of an invoice, and verification of a contractual obligation, may result in overpayments.

Recommendation:

12. SJSU should review its invoice approval and payment process and institute revised controls to prevent multiple payments on the same invoice and to help ensure invoices are checked for mathematical accuracy. In addition, SJSU should evaluate the apparent duplicate payments to JLL.

(Ownership: SJSU)

Campus Response:

12. We concur. We agree with the recommendation and will improve controls for invoice approval and payment process. We have evaluated and reconciled all JLL payments, and after careful review and adjustments, there are no duplicate payments.

In addition to JLL, SJSU contracted with CTS, a specialized inspection firm. A Standard Service Agreement was executed on February 12, 2003 in the amount of \$708,000. As a result of added scope and increased inspection needs, change orders in the amount of \$937,500 were issued resulting in a total value of the of \$1,645,500. Limited review of supporting documentation was performed to evaluate reasonableness of the invoicing process. Nothing came to our attention that indicated a discrepancy.

MAJOR EQUIPMENT/MATERIALS REVIEW

The Project consisted of active housing units at the time of KPMG's field work and as a result, equipment and materials were selected partially based on accessibility in order not to disturb the occupants.

SJSU allowed full and complete access to drawings, specifications, samples and submittals which were organized and easy to locate and contained sufficient information. The equipment was verified in the field against performance specifications, submittals, and drawings available.

The following equipment items and specific model data were approved and visually confirmed as installed on the project:

Division	Drawing No.	Brand	Model No./ Capacity	Description
15855	M0.02	Trane	MCCB010VA0COVA / 7.5 HP / 5,000	Air Handling Unit
15855	M0.02	Trane	MCCB012UA0COUB / 7.5 HP / 5,500	Air Handling Unit
16800.200.2	SE0.01-SE5.07	Info Graphic	Diamond Series	Security System
14240	A4.92 & A7.20	Fujitec	Car Number 7 / 3,500 lbs	Elevator
08800-200.0	A8.10	Kawneer	843OTL Single Hung HC 65	Glass
09680-200.0	not found	Interface	1462902500 / Chenille Warp Tile Carpet	Carpet
07411-205.0	A2.13 & WW1.05	Una-Clad	UC-6 18" o/c, 24 Gauge Steel Roof System	Roofing
07411-205.1	A2.13 & WW1.05	Una-Clad	UC-3 16" o/c, 24 Gauge Steel Roof System	Roofing
06410-	A1.06	Unspecified	Unspecified	Cabinets
04211-200.0	A6.00	H.C. Muddox	Wire Cut Medium Tumble Mountain Rose # 1230	Masonry
08210-	A8.01	Lynden Door, Inc.		Wood Doors

The equipment and materials observed in the field conformed to the specifications above, based on a visual inspection of equipment labeling, and comparison to samples provided.

Recommendation:

None

CLOSE-OUT PROCESS

KPMG verified the project close out requirements established by the Contract General Conditions and SUAM. KPMG reviewed Notice of Completion, the Certificate of Occupancy for all five buildings, Punch List, Operating Permits, Operation & Maintenance Manuals, Warranties, As-Built Drawings, Pre-Final and Final Inspections, and other relevant project close out documentation, which was filed in an orderly fashion and retained properly at the SJSU.

This project had not been fully closed out at the time of our field work and open contracts remain with Clark, NBA, and JLL.

Recommendation:

None

LIQUIDATED DAMAGES

The agreement between the Trustees and Clark establishes the final completion date of August 15, 2005. The State Fire Marshal issued a Conditional Certificate of Occupancy on August 17, 2005 and a final Certificate of Occupancy on March 1, 2006.

Due to the outstanding negotiations between the SJSU and Clark regarding change order time extensions, liquidated damages cannot be calculated at the present time.

Recommendation:

None

ACCOUNTING

KPMG reviewed the accounting process for the Project with SJSU personnel, including invoicing and the accounts payable process. Tracking of invoices obligations and payments occurred by Spartan Shops, JLL and SJSU's Department of Planning, Design and Construction. Four accounting systems were utilized; one by Spartan Shops and two by SJSU (who changed accounting systems shortly after the Project transitions from Spartan Shops), and one by JLL. We encountered several discrepancies and reconciliation issues between different sources of information, which in part can be attributed to the multiple accounting systems. These apparent discrepancies include:

- Accounting of agreements and payments not part of this Project
- No regular and comprehensive reconciliation between invoices and accounts payable
- No central tracking of all obligations and payments by vendor
- Double payment of invoices
- Overpayment of invoices

A standardized reconciliation process designed to (a) ensure the accuracy and validity of the entries in all project cost accounting systems, (b) validate that records are accurately recorded, (c) make sure unauthorized changes did not occur, and (d) resolve any discrepancies in a timely fashion, will help minimize the risk of accounting irregularities and errors go undetected. An effective reconciliation process becomes particularly important when accounting information is housed in multiple locations, as was the case with this Project.

Recommendation:

See previous recommendations throughout this report.

CONSTRUCTION PROJECT EVALUATION

SAN JOSE STATE UNIVERSITY

CAMPUS VILLAGE STUDENT/FACULTY APARTMENTS

DESIGN COSTS

Recommendation:

1. SUAM 9210.03 should be modified to require counter signature of the service provider on Extra Service Agreements.

(Ownership: CPDC)

Management Response:

1. We agree. The extra services authorization procedure was modified and posted on the CPDC web site (SUAM X, Section 9210.03 and sample letter with designer signature block in Appendix C).

CONSTRUCTION CHANGE ORDERS

Recommendation:

- 8.b. The General Conditions should be modified to specify mark-up to include anything not expressly stated as an allowable change order cost of work.

(Ownership: CPDC)

Management Response:

- 8.b. We agree. We have modified the Contract General Conditions using the Supplementary General Conditions and posted it to the CPDC web site.



San José State
UNIVERSITY

**Office of the Vice President
for Administration and
Finance**

One Washington Square
San José, CA 95192-0006
Voice: 408-924-1500
Fax: 408-924-1515
<http://www.sjsu.edu>

November 15, 2006

Mr. Larry Mandel
University Auditor
The California State University
401 Golden Shore, 4th Floor
Long Beach, CA 90802

RECEIVED
UNIVERSITY AUDITOR

NOV - 9 2006

THE CALIFORNIA STATE
UNIVERSITY

**Campus Response to CONSTRUCTION AUDIT – CAMPUS VILLAGE
STUDENT/FACULTY APARTMENTS at San José State University**

Enclosed is San José State University's response to the Campus Village Construction Audit. The campus is committed to addressing the issues identified in this audit report.

Please let me know if I can provide you with additional information.

ROSE L. LEE
Vice President for Administration and Finance

Enclosure

c: Don W. Kassing, President
Ninh Pham-Hi, Director, Internal Control

The California State University:

Chancellor's Office, Bakersfield, Channel Islands, Chico, Dominguez Hills, East Bay, Fresno, Fullerton, Humboldt, Long Beach, Los Angeles, Maritime Academy, Monterey Bay, Northridge, Pomona, Sacramento, San Bernardino, San Diego, San Francisco, San José, San Louis Obispo, San Marcos, Sonoma, Stanislaus

CONSTRUCTION PROJECT EVALUATION

SAN JOSE STATE UNIVERSITY

CAMPUS VILLAGE STUDENT/FACULTY APARTMENTS

DESIGN COSTS

Recommendations:

2. In the future, SJSU should not allow any consultant to perform and invoice any work without an executed ESA in place.

(Ownership: SJSU)

3. A better practice would be to require consultants to invoice presenting all contracted line items including the contracted amount, the amount previously billed, the current billing, and total invoiced to date for each line item. In addition, SJSU should track the invoices in a similar fashion to verify the accuracy of the billings presented by the consultant.

(Ownership: SJSU)

4. A periodic reconciliation between the invoiced amounts and amounts paid should occur to detect errors in data entry and correct any accidental overpayments. SJSU should consider the \$6,000 overpayment in its final negotiations with NBA.

(Ownership: SJSU)

5. Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should attempt to have design agreements receive documented legal review.

(Ownership: SJSU)

Campus Responses:

2. We concur. We agree with the recommendation and will follow the SUAM protocol.
3. We concur. We agree with recommended practice and going forward will conform with invoicing format/forms posted by the Chancellor's Capital Planning Design and Construction (CPDC) office. In addition, we will add the invoice format requirement to future A/E contracts.

4. We concur. We agree with the recommendation and will reconcile invoiced amounts before payments. The \$6,000 overpayment was corrected and SJSU did not end up paying more than the contract amount.
5. We concur. In the future, Spartan Shops will have design agreements receive documented legal review.

CONSTRUCTION CHANGE ORDERS

Recommendations:

6. A better practice would require the highest level of signature authority on the face of the change order which is the contractually binding document.

(Ownership: SJSU)

7. Change order proposal summary sheets should be checked for proper mark-up calculation by the Construction Administrator prior to issuing the change order.

(Ownership: SJSU)

- 8.a. On future contracts, SJSU should require the Contractor to submit substantiation for its direct costs prior to executing a Change Order. SJSU should also evaluate whether any monetary recourse against the Contractor is warranted.

(Ownership: SJSU)

Campus Responses:

6. We concur. We agree with the recommendation and will follow SUAM and Project Administrator protocol going forward.
7. We concur. We agree with the recommendation and will have mark-up calculations according to Operational Plan mark-up template provided by CPDC and reviewed by at least two persons going forward.
- 8.a. We concur. We will require the Contractor to submit substantiation for its direct costs prior to executing a Change Order. We will also evaluate whether any monetary recourse against the Contractor is warranted.

CONSTRUCTION MANAGEMENT SERVICES

Recommendations:

9. Legal review is a key factor in protecting the interests of SJSU. In the future, Spartan Shops should ensure that construction management agreements receive documented legal review.

(Ownership: SJSU)

10. In the future, SJSU and Spartan Shops should utilize agreements and forms with documented legal review, and ensure that counter signatures are obtained as required.

(Ownership: SJSU)

11. In the future, SJSU should not allow any consultant to perform or invoice any work without an executed ESA in place.

(Ownership: SJSU)

12. SJSU should review its invoice approval and payment process and institute revised controls to prevent multiple payments on the same invoice and to help ensure invoices are checked for mathematical accuracy. In addition, SJSU should evaluate the apparent duplicate payments to JLL.

(Ownership: SJSU)

Campus Responses:

9. We concur. In the future, Spartan Shops will have construction management agreements receive documented legal review.
10. We concur. In matters related to Construction Management Services, Spartan Shops will utilize agreements and forms with documented legal review and obtain counter signatures as required.
11. We concur. We agree with recommendation and will follow the SUAM protocol (this finding is the same as #2 above).
12. We concur. We agree with recommendation and will improve controls for invoice approval and payment process. We have evaluated and reconciled all JLL payments and after careful review and adjustments there are no duplicate payments.

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR



BAKERSFIELD

November 28, 2006

CHANNEL ISLANDS

CHICO

MEMORANDUM

DOMINGUEZ HILLS

EAST BAY

TO: Mr. Larry Mandel
University Auditor

FRESNO

FROM: Charles B. Reed
Chancellor

A handwritten signature in black ink that reads "Charles B. Reed".

FULLERTON

HUMBOLDT

SUBJECT: KPMG Draft Final Report on the *Campus Village Student/Faculty Apartments* Construction Project at San Jose State University

LONG BEACH

LOS ANGELES

In response to your memorandum of November 28, 2006, I accept the response as submitted with the draft final report on the *Campus Village Student/Faculty Apartments* construction project at San Jose State University.

MARITIME ACADEMY

MONTEREY BAY

CBR/amd

NORTHRIDGE

Enclosure

POMONA

cc: Ms. Erika Alvord, KPMG

SACRAMENTO

Mr. Dennis Hordyk, Assistant Vice Chancellor, Financial Services

SAN BERNARDINO

Mr. Don W. Kassing, President, San Jose State University

SAN DIEGO

Ms. Rose L. Lee, Vice President, Administration and Finance,
San Jose State University

SAN FRANCISCO

Ms. Elvyra San Juan, Assistant Vice Chancellor, CPDC

SAN JOSÉ

Mr. Richard P. West, Executive Vice Chancellor and Chief Financial Officer

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS

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