

**CONTRACT  
GENERAL CONDITIONS  
FOR  
DESIGN-BID-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](http://www.calstate.edu/cpdc/cm))*

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**CONTRACT GENERAL CONDITIONS  
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**1.00 DEFINITIONS**

**Addendum** - A document issued by the Architect during the bidding period that modifies or supersedes portions of the Contract Documents.

**Architect** - The person or organization, including the authorized representatives thereof, commissioned by the Trustees for 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** - Shall mean the day on which bid proposals for a project are opened.

**Bidder** - Any person or business entity acting directly or through an authorized representative who submits a proposal for the work.

**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 delegated 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 receives technical direction from the Architect and administrative direction from the Construction Administrator.

**Construction Management** - That unit within Capital Planning, Design and Construction in Business and Finance, a division in the Office of the Chancellor of the California State University, which may be responsible for the management of major capital outlay construction projects for the California State University system when delegated by the Trustees.

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

**Contract Documents** - The Bid Proposal Form, Notice to Contractors, bonds, insurance certificates, Plans, Specifications, addenda, agreement, Contract General Conditions, Supplementary General Conditions, Special Conditions, and change orders.

**Contractor** - The person or business entity that has entered into this Contract with the Trustees.

**Executive Dean** - University official who oversees the capital outlay process.

**Field Instruction** - A written communication to the Contractor. The field instruction may reject work or issue coordination communications under the Construction Inspector's or the Project Manager's signature, 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 Architect and approved by the Trustees which include elevations, sections, details, schedules, diagrams, information, notes, or reproductions or 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.

**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.

**Site** - The area specified in the Contract for the project and the area made available for the Contractor's operation.

**Specifications** - The instructions and requirements prepared by the Architect which 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 person or business entity that contracts with Contractor to furnish either labor and materials or equipment, or labor only.

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

**Supplier or Vendor** - Any person or business entity that contracts with the Contractor to provide materials or equipment.

**Trustees** - The Board of Trustees of the California State University and their authorized representatives who act on behalf of the Trustees.

**University** - The California State University campus upon which the project is located and the University President and other University officers and employees acting within the scope of their duties.

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

## 2.00 BIDDING

### 2.01 Duty to Carefully Examine These Instructions

Prospective bidders for this project shall carefully examine 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.

### 2.02 Competence of Bidders

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

Bidders may procure standard questionnaire forms from: The California State University, Office of the Chancellor, Capital Planning, Design and Construction, Attention: 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](http://www.calstate.edu/cpdc), under 'Construction Management' (Public Contract Code sections 10760-10763).

The Trustees will review the bidder's statement of experience and financial condition upon receipt, check references, and notify the bidder 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 bidder may undertake with the Trustees. The Trustees shall disregard any bid received either from a bidder that is not currently prequalified, or from a bidder that is prequalified but the rating is not high enough to accommodate its bid. Although this prequalification permits participation in the bidding of the project, it does not mean that the bidder satisfies the requirements of being a "responsible" bidder. This determination occurs later in the process (see Article 2.10, Failure to be a Responsible Bidder).

If two or more prospective bidders desire to bid as a joint venture on a single project, they must file an affidavit of joint venture with the Trustees at least five days prior to the date and time set for opening bids, 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 in this subdivision 2.02-b, at least one day before the time set for opening bids.

**2.03 Availability of Plans and Specifications**

Bidders may obtain Plans and Specifications at the University where the work will be performed (or other location as designated in the Notice to Contractors), or bidders may view them at the locations listed in the Notice to Contractors. Plans and Specifications are available only to licensed contractors, licensed subcontractors and suppliers.

The Trustees may charge a refundable deposit in an amount stated in the Notice to Contractors for each set of Plans and Specifications. General contractors may place two (2) deposits each, subcontractors, one (1) each. If desired, general contractors and subcontractors may purchase additional sets of Plans and Specifications; however there will be no refund for any additional sets purchased. Deposits will be returned by the University if the Plans and Specifications are returned within 30 days of bid opening in good condition and unmarked. Marked-up drawings, missing sheets and unbound Specifications are sufficient reasons for forfeiture of deposits. The Trustees will use unclaimed deposits to defray project plan printing costs.

When awarding a Contract, the Trustees will issue sets of Plans and Specifications to the successful bidder at no charge in accordance with the following schedule:

<u>Project Bid Cost</u>	<u>Number of Sets of Plans Given to Contractor</u>
Up to \$400,000	15 Maximum
\$400,000 to \$1,000,000	20 Maximum
\$1,000,000 and over	24 Maximum

The Contractor may purchase Plans and Specifications in excess of these stated numbers from the Architect at cost. Subcontractors of the successful bidder shall receive their Plans and Specifications directly from the Contractor.

**2.04 Necessity for Careful Examination of Site, Plans, and Specifications**

The bidder shall carefully examine the Site and the Plans and Specifications for the project. The bidder 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 materials to be furnished and as to the requirements of the proposal, Plans, and Specifications for the project (see Article 4.11, Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.).

Any failure by the bidder 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 soil borings unless required elsewhere.

- a. Subsurface Investigations. Where the Trustees have made investigations of subsurface conditions, and that information is made available to the bidder, 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 bidder.

The Trustees assume no responsibility whatsoever in 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 the bidder is not to be construed in any way as a waiver of this provision. The bidder must satisfy itself through its own investigations as to the actual conditions to be encountered.

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

## **2.05 Clarification During Bidding**

The bidder shall examine the Plans and Specifications in preparing the bid and shall report to the Architect any omissions, discrepancies, or apparent errors found in the Plans and Specifications. Before the date of the bid opening, the bidder shall submit a written request for clarification to the Architect, who may give such clarification in the form of an addendum to all bidders if time permits. Otherwise, in estimating the cost of the project, the bidder shall consider that any conflicts shall be governed by Article 5.01, Interpretation of Contract Requirements.

Bidders are advised that the time 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 5.04-c, Alternatives or Equals.

Only the Architect or the University Official, as identified in the Notice to Contractors, has authorization 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.

## **2.06 Bidding Documents**

- a. Bid Proposal Package. Following a request from a prequalified bidder, the Trustees will furnish a bid proposal package, which when completely filled out and executed, may be submitted as a bid. Bids not presented using the furnished bid proposal package shall be disregarded (Public Contract Code section 10764). The bid proposal package is not transferable to another bidder, and must be submitted in the same name as is used on the bidder’s license and prequalification.

The bid proposal package contains a standard proposal form that shall be used for bidder’s proposal. Each proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the bidder or by the bidder’s duly authorized representative, with its 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 in 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 shall also submit a certified copy of corporate board action that identifies and authorizes the person who may sign and submit bids for the corporation. The Trustees shall reject any proposal submitted that is not signed by the bidder or by the bidder’s duly authorized representative.

- b. Listing of Proposed Subcontractors. Each proposal shall have listed therein the name and location of the place of business of each subcontractor under proposed subcontract to the Contractor, which will perform work or labor or render services for the Contractor in excess of one-half of one percent of the Contractor’s total bid. The proposal shall also state the portion of work or labor or rendition of services that each such subcontractor will do. Within 24 hours after the deadline established for the receipt of bids, the apparent lowest and second lowest bidders must submit a completed Expanded List of Subcontractors form, which contains more detailed information, such as complete subcontractor names and addresses, telephone numbers, license numbers, etc. (Public Contract Code sections 4104, 4105 and 4106).

If bidder claims the non-small business preference, the proposal shall list all subcontractors certified as California small businesses, and the total of these subcontracts shall be at least 25% of the net bid price. Included on the Expanded List of Subcontractors form, which is to be submitted by the apparent lowest and second lowest bidders within 24 hours after the deadline established for the receipt of bids, is a space where the bidder shall indicate the dollar amount of the small business subcontract bid, if the bidder claimed the non-small business bid preference.

- c. Bidder’s Security. All bidders shall present bids under sealed cover and have enclosed an amount equal to at least ten (10) percent of the total amount bid, including alternatives (if additive), as bid security. The bid security may be a cashier’s check, or certified check made payable to the Trustees, or a bidder’s bond. The Trustees shall not consider any bid unless one of these forms of bid security is enclosed therewith (Public Contract Code section 10765). If the bid security is a bond, a corporation authorized as an admitted surety insurer to issue surety bonds in California shall execute that bond, and it shall be executed on the form prescribed by the Trustees.

## **2.07 Bid Proposals**

- a. Submission of Proposals. Bidders shall submit proposals to the office indicated on the bid proposal. It is the responsibility of the bidder to see that its bid is received in the proper time. Delays in timely receipt of the bid

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 a bid. The Trustees shall return unopened, any bid received after the time specified in the Notice to Contractors or in any addendum (Public Contract Code sections 4104.5 and 10766).

- b. **Withdrawal of Proposals.** Any bid may be withdrawn at any time prior to the time fixed in the public notice for the opening of bids but only by a written request from the bidder or its authorized representative filed with the Trustees. A request to withdraw a bid that is communicated orally, or by use of telegram or telephone is not acceptable. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. This paragraph does not authorize the withdrawal of any bid after the time fixed in the public notice for the opening of bids (Public Contract Code section 10767).
- c. **Public Opening of Proposals.** Proposals will be publicly opened and read at the time and place stated in the Notice to Contractors. Bidders or their agents are invited to be present (Public Contract Code section 10780).
- d. **Rejection of Irregular Proposals.** Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, unsigned bids, erasures, or irregularities of any kind. If the bid amount is changed after the amount has been once inserted, the change shall be initialed.
- e. **Power of Attorney or Agent.** When an agent signs proposals, a power of attorney either shall be on file with the Trustees before the opening of bids or be submitted with the proposal. Failure to submit a 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.** The Trustees reserve the right to waive minor irregularities in proposals submitted.

#### **2.08 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 bidder is not thereby disqualified from quoting prices to other bidders, or from submitting a bid directly for the materials or work.

All bidders are hereby notified that any collusive agreement fixing the prices to be bid to control or affect the awarding of this Contract may render void any Contract awarded under such circumstances. The bidder, by act of submitting a bid, certifies that in the preparation of the bid, no bid was received by the bidder from a bid depository, which depository, as to any portion of the work, prohibits, or imposes sanctions for, the obtaining by the bidder, or the submission to the bidder by any 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 Trustees of declaring any Contract made as a result thereof to be void (Business & Professions Code section 16600 *et seq.*).

#### **2.09 Mistake in Bid**

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

#### **2.10 Failure to Be a Responsible Bidder**

In order to be considered for award of a Contract a bidder must be a responsible bidder (Public Contract Code section 10780). To be responsible, the bidder, 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 bidder's responsibility, the Trustees shall give the bidder an opportunity to rebut any evidence of non-responsibility, and to present evidence of responsibility. The hearing shall be informal, and an individual appointed by the Trustees to hear the matter may conduct it in whole or in part in writing. A decision concerning the bidder's responsibility shall be mailed to the bidder within ten (10) calendar days of the conclusion of the hearing.

#### **2.11 Small Business Five Percent Bid 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 bid 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 bid date,
- (3) Submit a timely and responsive bid,
- (4) Be determined to be a responsible bidder.

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 bid price to California certified small businesses and/or micro businesses. To receive this preference the non-small business must satisfy the following criteria:

- (1) Indicate in its bid its commitment to subcontract at least 25% of its net bid amount with one or more small businesses [submit the Request for Small Business Bidding Preference form],
- (2) Submit a timely and responsive bid,
- (3) Be determined to be a responsible bidder,
- (4) Submit the California certified small businesses on the List of Proposed Subcontractors that is provided in the bid documents, and
- (5) Submit an Expanded List of Subcontractors within 24 hours after the deadline for receipt of bids, and specify the dollar amount of each small business subcontractor's bid thereon.

### **2.12 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 bidder shall certify at the time of bid, that the bidder 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 bidder 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).

### **2.13 Disabled Veteran Business Enterprise Participation Requirement**

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. Failure of the bidder to comply with the DVBE requirement may cause the Trustees to deem the bid nonresponsive and the bidder to be ineligible for award of Contract.

a. Special Definitions

- (1) "Disabled veteran" as used herein, means a veteran of the military, naval or air service of the United States with at least a ten (10) percent service-connected disability and who is domiciled in 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 the Office of 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 that 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 and/or "Good Faith Effort." In order to satisfy and be responsive to this requirement, the bidder 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 bidder 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 bidder is a DVBE and is 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. A "Good Faith Effort" to meet the DVBE goal is achieved by doing all of the following five items prior to the final bid due date. Each of these items must be satisfied for each Contract bid. The bidder shall:
    - (a) Contact the Trustees' DVBE Program Advocate at the telephone number provided in the Notice to Contractors to identify potential DVBEs. This call will initiate the provision of information to the bidder.
    - (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. Advertisement must have appeared in publications at least ten (10) calendar days prior to the bid due date, unless time limits imposed by the Trustees do not permit that advertising.
    - (d) Send solicitation to potential DVBE subcontractors and suppliers for this Contract with sufficient lead time to fully entertain and consider responding bids; and
    - (e) Consider responding DVBE for participation in this Contract.
- c. Documentation Requirements. The bidder must document its effort to either meet the DVBE participation goal requirement or make a good faith effort to meet it. Bidders 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 bidder'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 bidder shall be at the Trustees' sole discretion.

- (1) Required Documentation. The DVBE documentation forms that must be completed are as follows, and instructions for completing the required forms correctly are included to assist the bidder.
  - (a) DVBE Transmittal Form. Bidders must fill out the DVBE transmittal form as a cover sheet to the required documents, attach and submit it and the additional required documentation within two (2) business days following the bid opening date. All requested DVBE documentation must be completed 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, Summary of

Disabled Veteran Owned Business Participation, Attachment 1, 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 bidder 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 prime contractor 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=Prime contractor;  
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 (%) of the claimed DVBE value of the total Contract dollar amount.
  - (vii) DVBE Certification: The bidder must include one copy of the DVBE certification letter from the Office of Small Business & DVBE Services for each DVBE firm listed on the Summary of Disabled Veteran Owned Business Participation.
- (c) Bidder's Certification (Attachment 2). The bidder 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). Bidders 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 within two (2) business days following the bid opening date. Failure to submit full and accurate documentation within two (2) business days following the bid opening date will result in the Trustees deeming your firm nonresponsive, and thus ineligible for award of the Contract.
- d. Use of Proposed DVBE. If awarded the Contract, the successful bidder must use the DVBE suppliers and/or subcontractors proposed in its bid proposal unless it has requested substitution and has received approval of the Trustees in compliance with the Subletting and Subcontracting Fair Practices Act.
- e. 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  
Email: [osdchelp@dgs.ca.gov](mailto:osdchelp@dgs.ca.gov) Or, via the Internet at [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus).

### **3.00 AWARD AND EXECUTION OF CONTRACT**

#### **3.01 Award of Contract**

If the Trustees deem the acceptance of the lowest responsible bid or bids is not in the best interests of the State, the Trustees may reject all bids (Public Contract Code section 10785). If the Contract is awarded, it shall be to the lowest responsible bidder whose proposal complies with all the requirements prescribed (Public Contract Code section 10780). Such award shall be made within sixty days after the opening of the proposals. If the lowest responsible bidder refuses or fails to execute the Contract, the Trustees may award the Contract to the second lowest responsible bidder. Such award shall be made within seventy-five days after the opening of proposals. If the second lowest responsible bidder refuses or fails to execute the Contract, the Trustees may award the Contract to the third lowest responsible bidder. Such award shall be made within ninety

days after the opening of the proposals. The above time periods within which the award of Contract may be made are subject to such no-cost extensions as may be agreed upon in writing between the Trustees and the bidder concerned (Public Contract Code section 10782).

### **3.02 Return of Bidder's Security**

The Trustees may withhold bidder's security of the second and third lowest responsible bidders until the Contract has been finally executed. The cashier's checks and certified checks submitted by all other unsuccessful bidders shall be returned to them within ten (10) days after the Contract is awarded, and their bidder's bonds shall be of no further effect (Public Contract Code section 10784).

### **3.03 Contract Bonds**

The successful bidder shall furnish in four duplicate counterparts two surety bonds in the form prescribed by the Trustees. Each bond shall be in an amount equal to 100 percent of the awarded Contract price and executed by an admitted surety insurer licensed in the State of California and listed in the latest published United States Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies." (Reference the State of California Department of Insurance on the following web site: <http://www.insurance.ca.gov/license-status/>, and the US Treasury listing at the following web site: <http://www.fms.treas.gov/c570/c570.html>.) One of the surety bonds shall guarantee faithful performance of the Contract by the Contractor and the other shall secure payment of laborers, mechanics, or materialmen employed on the project. Such bonds are subject to the approval of the Trustees. Contract bonds 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 8.06, 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 7.01, Contractor's Claims Review Board, 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 Contractor 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 the Contractor or any assignee of the Contractor until the further bonds or additional surety has been furnished (Public Contract Code section 10825).

### **3.04 Execution of Contract**

The Contract shall be signed by the successful bidder and returned to the Trustees, together with the Contract bonds and certificates evidencing the required insurance coverage (see Article 4.06, Contractor's Insurance) within ten (10) days of receipt from the Trustees, not including Saturdays, Sundays, or legal holidays. The Contractor and the Trustees shall each sign two sets of Plans, Specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No Contract shall be binding upon the Trustees until it has been executed by the Contractor and the 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 Contractor a Notice to Proceed. The Contractor may not begin work before receiving the Trustees' written Notice to Proceed. Any work performed by the Contractor before receipt of the Notice to Proceed shall be considered as having been done at the Contractor's own risk.

### **3.05 Failure or Refusal to Execute Contract**

Failure or refusal by the bidder to execute the Contract within the time set in Article 3.04, Execution of Contract, shall be just cause for the rescission of the award and the forfeiture of the bidder's security. Failure or refusal to file acceptable bonds within the time set in Article 3.04 constitutes a failure or refusal to execute the Contract. If the successful bidder fails or refuses to execute the Contract, the Trustees may award the Contract as set forth in Article 3.01, Award of Contract. On the failure or refusal of the second or third lowest responsible bidder to execute the Contract, bidder's security in each case shall be forfeited (Public Contract Code sections 10781-10783).

## 4.00 CONDUCT OF THE WORK

### 4.01 Laws to be Observed--Generally

- a. The Contractor shall observe all state and federal laws that affect the work under this Contract. The Contractor 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 Contractor shall immediately notify the Architect and the Construction Administrator in writing. "Law" as used in this paragraph includes statutes and regulations adopted pursuant to statute, as well as executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.
- b. In executing this Contract, the Contractor 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 Contractor within the immediately preceding two-year period, because of the Contractor's failure to comply with an order of a federal court that directs the Contractor to comply with an order of the National Labor Relations Board. The Trustees may rescind this Contract if Contractor falsely swears to this statement (Public Contract Code section 10296).
- c. The Contractor 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 Contractor 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 that the State's Employment Development Department maintains.
- 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 Contractor and the subcontractor records as delineated in the following:
  - (1) The Contractor's records which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, 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 Contractor's compliance with Contract requirements and (b) compliance with provisions for pricing change orders, payments or claims submitted by the Contractor or any of his payees. The Contractor 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 Contractor'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 Contractor 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 Contractor and payee. Such requirements will also apply to subcontractors and sub-subcontractors, etc. The Contractor will cooperate fully and will cause all related parties and all of the

Contractor's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Trustees/Auditor General from time to time whenever requested in an expeditious manner any and all such information, materials and data.

- (5) The Trustees/Auditor General shall have access to the Contractor'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 an examination in accordance with this Article discloses overcharges (of any nature) by the Contractor to the Trustees in excess of one-half of one percent (.5%) of the total Contract billings, the Contractor shall reimburse the reasonable actual cost of the Trustees/Auditor General audit to the Trustees. Any adjustments and/or payments that must be made resulting from any such audit or inspection of the Contractor'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 Contractor.
- (7) If an audit discloses overcharges on change orders, where a Contractor 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 Contractor's records do not reflect offsetting back-charges, the Contractor shall reimburse the Trustees for such overcharges upon receipt of a request from the Trustees.

- e. The Contractor's work under this Contract shall comply with the building codes identified in the Contract Documents.
- f. If the Contractor is a natural person, the Contractor certifies in accepting this Contract that he or she 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 Contractor is a corporation, the Contractor 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.*).

#### **4.02 Laws to be Observed--Regarding Labor**

- a. Nondiscrimination
  - (1) During the performance of the Contract, the Contractor 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. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
  - (2) Contractor 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) Contractor 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) Contractor 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) Contractor 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 Contractor or any subcontractor shall forfeit, as a penalty to State, \$25.00 for each worker employed in the execution of the Contract by the Contractor or any subcontractor, for each calendar day during which the 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 Contractor 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.** Contractor represents and warrants that the Contract Amount includes sufficient funds to allow Contractor and all subcontractors to comply with all applicable laws and contractual agreements. Contractor 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 Contractor or any subcontractor to comply with any applicable law in this regard, including, but not limited to, Labor Code section 2810. Contractor 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 sections 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 Contractor on a public works contract. Nothing herein contained shall be construed as preventing the Contractor 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 Contractor to hire labor at minimum rates, nor for the necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing the bid.
  - (2) If it becomes necessary to employ crafts other than those listed, the Contractor 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 Notice to Contractors. The Trustees shall furnish the Contractor a copy of the prevailing rates, which Contractor shall post at the job site.
  - (4) The Contractor and any subcontractor under the Contractor shall comply with Labor Code section 1775. The Contractor shall include provisions in its Contract with its subcontractors that will require compliance with Labor Code section 1775. As required by Section 1775(b) the Contractor shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 in the Contract between the Contractor and the subcontractor. The Contractor shall monitor its subcontractors' compliance with the prevailing wage law as required by Section 1775(b). In accordance with Section 1775, the Contractor and any subcontractor under the Contractor 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 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 Contractor 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 Contractor is not liable for any penalties under 1775(a) unless the Contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with the requirements of 1775(b).
  - (5) In accordance with Labor Code section 1776, the Contractor 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 Contractor 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 Contractor'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 Contractor shall file with the requesting entity a certified copy of the payroll records. Should the Contractor or subcontractor fail to comply within the ten-day period, the Contractor 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. Contractor is not subject to a penalty assessment due to the failure of a subcontractor to comply with this section.

- (6) The Contractor 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 Contractor is prohibited from performing a portion of work with a subcontractor who is debarred pursuant to Labor Code sections 1777.1 or 1777.7.

d. **Workers' Compensation.** The Contractor 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 4.06-a, Policies and Coverage, herein).

e. **Apprentices.** If the Contractor or any subcontractor employs workers on the project in any apprentice 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 Contractor or subcontractor for the employment and training of apprentices. The Contractor 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 Contractor or subcontractor employing journeymen or apprentices in any apprentice 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.* Each Contractor and subcontractor must, before commencement of work under this Contract, contact the Division of Apprenticeship Standards, 455 Golden Gate, 8<sup>th</sup> 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 prime Contractor.

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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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) of Part 2 of Division 7 of the California Business and Professions Code), 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 Contractor, without further acknowledgment by the parties.

#### **4.03 Environmental Requirements**

- a. Air and Water Pollution Control. The Contractor shall comply with all air and water pollution control rules, regulations, ordinances and statutes which apply to the work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes adopted under the authority of Government Code section 11017. Contractor 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 4.08-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.

- b. Sound Control Requirements. The Contractor shall comply with all sound control and noise level rules, regulations and ordinances that apply to the work. In the absence of any such rules, regulations and ordinances, the Contractor 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 Contractor shall provide state and federal agencies all information necessary for environmental clearances and other authorizations necessary for this project. The Contractor shall comply with the provisions, including giving notices during construction when so required. The Trustees shall not compensate the Contractor for the delays in obtaining environmental clearances and authorizations. However, the Trustees will grant an appropriate extension of time in accordance with the provisions in Article 4.15-g, Adjustment of Contract Time Due to Reasons Beyond Trustees' Control, if the Contractor 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 Contractor 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 Contractor discovers any artifacts during excavation and/or construction, the Contractor 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 Contractor discovers human remains, the Contractor 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. Contractor shall report all source reduction, recycling and composting relative to this project to the Trustees. Refer to Specifications for further requirements.

#### **4.04 Substitution of Subcontractors**

The Contractor shall not substitute any subcontractor in place of a subcontractor listed in its bid proposal except as authorized in the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 *et seq.*).

- a. Bond Requirements. It is the Trustees' interpretation of section 4108 of the Public Contract Code that the Contractor 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 Contractor shall use the small business subcontractor(s) and/or suppliers listed in its bid proposal 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 Contractor must substitute a small business with another small business. If the small business substitution cannot occur, the Contractor 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 Contractor 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 Contractor 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 Contractor 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 base Contract, penalties are applicable per Section 4110 of the Public Contract Code.

#### 4.05 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 that would relieve the Contractor or its surety of their responsibilities under the Contract.

The Contractor may assign moneys due, or to become due under the Contract, only upon written consent of the Trustees. Assignments of moneys earned by the Contractor 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 use by the Trustees for the completion of the work in the event the Contractor is in default.

#### 4.06 Contractor's Insurance

- a. The Contractor 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) The Contractor 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 Contractor 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 Contractor and providing insurance for bodily injury, property damage and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
      - (iii) Workers' Compensation including Employer's Liability Insurance as required by law.
    - (b) The Contractor also may be required to obtain and maintain the following policies and coverage:
      - (i) Environmental Impairment Liability Insurance should the work involve hazardous materials, such as asbestos, lead, fuel storage tanks and PCBs.
      - (ii) Other Insurance by agreement between the Trustees and the Contractor.
  - (2) Verification of Coverage. The Contractor shall submit certificates of insurance and original endorsements to the policies of insurance required by the Contract to the Trustees as evidence of the insurance coverage. The scope of coverage 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 Contractor for all coverage until the work is accepted as completed pursuant to Article 8.01, Acceptance. The Trustees reserve the right to require the Contractor to furnish the Trustees complete, certified copies of all required insurance policies.
  - (3) Insurance Provisions. 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 Contractor'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 Contractor'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 Contractor 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 Contractor 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  
 \$5,000,000 General Aggregate  
 \$5,000,000 Each Occurrence – combined single limit for bodily injury and property damage
- (ii) Business Automobile Liability Insurance – Limits of Liability  
 \$5,000,000 Each Accident – combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.
- (iii) Workers' Compensation limits as required by law with Employer's Liability limits of \$1,000,000.

(b) For projects involving hazardous materials, the Contractor 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 General Aggregate  
 \$ 5,000,000 Each Occurrence – combined single limit for bodily injury and property damage, including clean up costs.
- (ii) In addition to the coverage described in 4.06-a (4)(a)(ii), Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:
  - (A) MCS-90 endorsement.
  - (B) Sudden & Accidental Pollution endorsement – Limits of Liability\*  
 \$2,000,000 Each Occurrence  
 \$2,000,000 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 Contractor may delegate the responsibility to provide this additional coverage, as described in this Article 4.06-a (4)(b) above, to its hazardous materials subcontractor. When the Contractor returns its signed project construction phase agreement to the Trustees, the Contractor 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 Contractor shall affirm in this letter that the hazardous materials subcontractor's certificate of insurance shall also adhere to all of the requirements in Article 4.06-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 Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 days of the Notice to Proceed, whichever is less.

- (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 no less than A:VII, or shall be a carrier otherwise acceptable to Trustees.
- (6) Subcontractor's Insurance. Contractor shall ensure that its subcontractors 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. Contractor 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 Contractor's liability.
  - (b) Acceptance of certificates of insurance by the Trustees shall not limit the Contractor's liability under the Contract.
  - (c) In the event the Contractor 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 Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due to the Contractor.
  - (d) If the Trustees are damaged by the failure of the Contractor to provide or maintain the required insurance, the Contractor shall pay the Trustees for all such damages.
  - (e) The Contractor'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 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, earthquake and mold. Other perils included are those acts of God, as defined in Public Contract Code section 7105, in excess of the deductible, and up to five percent of the contract amount, if the loss does not involve Contractor negligence and if the work damaged is built in accordance with the Contract and applicable building standards. Trustees shall issue to the Contractor a “Summary of Coverage” provided under this Article 4.06-b, upon request of the Contractor.

- (1) Contractor shall be responsible for paying a deductible of \$25,000 per occurrence in the event of loss, except that the Contractor shall be responsible for paying a deductible of \$100,000 per occurrence in the case of flood, water damage or acts of God (as defined in Public Contract Code section 7105).
- (2) Contractor 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 Contractor 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 Contractor 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 Contractor is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. Contractor 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 4.06-b shall be construed to relieve the Contractor of Contractor’s responsibilities referred to under Article 4.06-a.
- (6) Insurance policies referred to in this Article 4.06-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 Contractor.
  - (b) Insurer shall waive of subrogation against the Contractor.

#### **4.07 Indemnification**

- a. The Contractor 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 Contractor to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the Contractor 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 Contractor or any other subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor.
- b. The Contractor 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 Contractor, 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 4.07-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 Contractor, a subcontractor, or a person indirectly employed by the Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, a subcontractor, anyone directly or indirectly employed by either the Contractor or subcontractor, or anyone for whose acts either the Contractor or subcontractor may be liable.

- f. The Contractor shall hold harmless, defend, and indemnify the separate contractors of 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 the negligent acts or omissions or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable.

The Trustees shall cause a reciprocal indemnification provision in favor of the Contractor 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.

#### **4.08 Contractor's Responsibility for the Work**

The Contractor shall be responsible for all work performed under this Contract, and no subcontractor will be recognized as such. For purposes of assessing responsibility to the Contractor, all persons engaged in the work shall be considered employees of the Contractor. The Contractor 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 Contractor and one or more subcontractors concerning responsibility for performing any part of the project.

- a. **Quality Control.** The Contractor shall be fully responsible for the quality of materials and workers' skill in the project. The Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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, or 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.** From the issuance of the official Notice to Proceed until the formal acceptance of the project by the Trustees, Contractor shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Work is not prosecuted, Contractor 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 Contractor shall be liable for any loss or damage that results from its failure to protect the Site and the Work.

Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor'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 Article 4.03-a, Air and Water Pollution Control.

- d. Safety. The Contractor shall exercise precaution at all times for the protection of persons and their property. The Contractor 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 Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions, including the safety regulations of the California Division of Industrial Safety. Unless the Contractor designates other employees, its superintendent shall have the duty of prevention of accidents. The Contractor shall institute a safety program that 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 Contractor 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 Architect may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site. The Contractor shall be responsible for verifying the compliance with all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Contractor 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 Contractor shall make available to the Trustees copies of its accident report to its insurance carrier. The Contractor shall determine the cause of the accident and immediately correct any equipment, procedure, or condition contributing to the accident.

e. Utilities

- (1) If the Contractor discovers utility facilities not identified in the Contract Documents, the Contractor shall immediately notify the Trustees and the utility involved, in writing, of such discovery. When the Contractor 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 Contractor 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 Contractor to exercise reasonable care. All such compensation to the Contractor shall be based on an actual cost plus Contractor and subcontractor mark-up, as identified in Articles 6.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5), and (6), except that both the Contractor's and the subcontractor's mark-up shall be reduced by six (6) percent each, when the damage results from the failure of the Contractor 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 Contractor to do such repairs or relocation work at a reasonable price, where such work is required to facilitate the project. The Contractor 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 Contractor 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 Contractor 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 Contractor at his 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 Contractor shall provide as-built drawings of all utilities encountered and constructed to the University, indicating the size, horizontal location, and vertical location based on the project benchmark or a stable datum.

f. **Hazardous Materials**

- (1) **Asbestos.** The Contractor is prohibited from installing any asbestos-containing materials or products in any work to be performed under this Contract. The Contractor 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 Contractor 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 Contractor 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.

**4.09 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 written Contract Change Order therefor. In such event, the Contractor shall be relieved of responsibility for any injury or damage to such occupied part as results from the Trustees' occupancy and use. If the Contractor 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 Contractor 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 8.01, Acceptance) either of the project as completed or of any portion thereof, nor will it relieve the Contractor 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 Contractor, the guarantee period for the occupied facility may commence from the date of occupancy subject to Trustees' written consent thereto by the Trustees.

**4.10 Payments by Contractor**

In accordance with Section 7108.5 of the Business and Professions Code, the Contractor agrees to promptly pay all subcontractors within ten (10) days of receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed Contractor on account of the work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

The Contractor 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.

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

The Contractor 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 Contractor'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 that may be caused by securing permits and licenses.

**4.12 Patented or Copyrighted Materials**

The Contractor shall assume all costs arising from the use of patented or copyrighted materials, equipment, devices, or processes used on or incorporated in the project. The Contractor agrees to save 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 all suits, actions, or claims for, or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

#### **4.13 Property Rights in Materials and Equipment**

Nothing in the Contract shall be construed as vesting in the Contractor 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 Contractor warrants that all such property shall pass to Trustees free and clear of all liens, claims, security interests, or encumbrances.

#### **4.14 Taxes**

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

#### **4.15 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 Contractor shall immediately begin and thereafter diligently prosecute the work to completion. The Contractor agrees to complete the work on the date specified for completion of the Contractor's performance in the Contract unless such time is adjusted, in writing, by change order by the Trustees. The Contractor may complete the work before the completion date if it will not interfere with the Trustees or their 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 8.06, Guarantee.
- c. Adjustment of Contract Time Due to Acts of God, etc. The Contractor 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 Contractor shall notify the Architect and the Trustees in writing of the causes of delay within seven days from the beginning of any such delay. The Architect, in conjunction with 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, and advise the Trustees. The Trustees' findings thereon shall be final and conclusive.

There shall be no compensation to the Contractor 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 Contractor 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 or the Architect. If the Contractor is delayed in completing the Contract by reason of any act of the Architect or the Trustees not provided by the Contract, or by reason of changes made pursuant to Article 6.01, 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 Contractor shall notify the Architect and 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 4.15-c, Adjustment of Contract Time Due to Acts of God, etc., above.
- e. Contractor to Fully Prosecute Work. No extension of time will be granted for any of the causes for which extensions are granted unless the Contractor demonstrates to the satisfaction of the Trustees that the Contractor has made every reasonable effort to complete all work under the Contract not later than the date prescribed, or as soon as possible thereafter, notwithstanding delay in the work due to any such cause.

- f. Trustees' Adjustment of Contract Time. Even though the Contractor has no right to an extension of time for completion, the Trustees may extend the time at the request of the Contractor 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 Contractor, 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.
- 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 Contractor 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 Contractor for time lost by such delay. Any such determinations will be set forth in writing.
- h. Liquidated Damages. Attention is directed to Article 7.02, Delay in Completion--Liquidated Damages.

**4.16 Progress 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 Contractor's construction schedule.
- b. The Contractor shall prepare and submit to the Trustees with copy to the Architect and the Construction Administrator's on-site representative the Contractor's initial construction schedule within thirty (30) calendar days after the starting date on the Notice to Proceed. The Contractor's initial construction schedule shall be comprised of either a detailed bar chart, if the Contract value is less than one million dollars (\$1,000,000), or a critical path method network, if the Contract value is one million dollars (\$1,000,000) or more. The Contractor shall input the critical path schedule on the computer using Primavera Project Planner, Primavera SureTrack, or approved equal software. All programs shall be capable of converting the data to a format that is readable using Primavera SureTrack, version 3.0, 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, Contractor shall provide fully licensed software to the Trustees for their exclusive use to meet the readability requirement of the submittals.

The Contractor'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, allowing a minimum of fourteen (14) and a maximum of thirty (30) calendar days for the Architect's review of each submittal, unless a longer period of time is specified in the Supplementary General Conditions. The work activities making up the 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 schedule shall show the interdependence of each activity and a critical path. The Contractor shall also submit a separate progress schedule listing all submittals required under the Contract and noting the anticipated date that each submittal will be submitted. All submittals precedent to critical construction activities shall be included in the construction schedule.

- c. The Contractor'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 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 Contractor's activities. The Contractor'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 workdays 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 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 Contractor 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 schedule will not change the Contract time. The Contract time shall control in any determination of liquidated damages or extension of the Contract time. Float, slack time or contingency within the schedule (i.e., the difference in time between the project's early completion date and the required Contract completion date), and total float within the overall schedule, are not for the exclusive use of either the Trustees or the Contractor, but are jointly owned by both and are resources available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.
- e. The Contractor 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, etc. Since float time within the 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 time 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 Contractor, etc.). In such an event, the Contractor 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 Contractor's initial construction schedule during review will not relieve the Contractor 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 Contractor shall participate in the review of the Contractor'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 Contractor'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. On any project with a construction value equal or greater than one million dollars (\$1,000,000), the Contractor must submit a critical path method (CPM) network. The network 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 Contractor 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 schedule.
  - (2) Activity Report sorted by early start or a list showing each activity in the schedule, arranged by early start dates.
- A diskette or compact disc shall be provided. The data files shall be readable using Primavera SureTrack Project Manager Version 3.0 or later, or approved equal software. 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, Contractor shall provide fully licensed software to the Trustees for their exclusive use to meet the readability requirement of the submittals.
- i. Regardless of which schedule method the Contractor elects to use in formulating the Contractor's construction schedule, and unless the Construction Administrator in writing each month, specifically waives this requirement, an updated construction schedule shall be submitted to the Construction Administrator with a copy to the Architect five (5) days prior to the submittal of the Contractor's monthly payment request. The submittal of the updated construction schedule that satisfies the requirements of this Article, accurately reflects the status of the work, and incorporates all changes into the schedule, shall be a condition precedent to the processing of the monthly payment application. Updated schedules shall also be submitted at such other times as the Trustees may direct. If the Contractor 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 any monthly progress payment until compliance is effected. The withheld amount shall be deducted from the Contract amount if delinquent for any additional month.

On projects estimated at \$5,000,000 or higher, the monthly schedule update shall include a report containing a narrative that includes the following:

CONTRACTOR'S SCHEDULE NARRATIVE REPORT OUTLINE

- Contractor's transmittal letter
- Description of problem tasks, referenced to field instructions, Requests for Information (RFIs), change orders 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 schedule, the number of calendar days ahead
  - If behind 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.

j. If completion of any part of the work, delivery of equipment or materials, or submission of the Contractor submittals is behind the updated construction schedule and will impact the end date of the work past the Contract completion date (create negative float), the Contractor shall submit in writing, a plan acceptable to the Trustees for completing the work on or before the current Contract completion date. The plan 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 adding 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. No time extensions shall be granted nor delay damages paid unless the Contractor can clearly demonstrate the delay on the basis of the updated construction schedule current as of the month the change is issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other means. 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 Contractor shall submit a report or 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 two (2) weeks. This report shall cover all work activities listed on the construction schedule. The report or schedule may be submitted in bar chart form or in a schedule narrative document.

m. As a condition precedent to the release of retained funds, the Contractor shall, after completion of the work has been achieved, submit a final Contractor's construction schedule which accurately reflects the manner in which the project was constructed and includes actual start and completion dates for all work activities on the construction schedule.

- 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.

#### **4.17 Labor Force and Superintendent**

At all times the Contractor 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 Contractor 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 Contractor shall promptly remove such person from the project and shall not re-employ such person thereon.

The Contractor shall retain a competent, full-time, on-site superintendent to represent the Contractor and to direct the project at all times while any work under this Contract is underway. The Superintendent shall prepare a daily report that includes worker count, work in progress, etc., and shall provide it to the Trustees upon request.

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

#### **4.18 Limitation of Construction Operations**

The Contractor shall limit the area and nature of the construction operations to that area authorized in the Plans or Specifications or approved by the Trustees.

#### **4.19 Coordination with Other Work**

The Trustees reserve the right to do other work in connection with the project or adjacent thereto by Contract or otherwise, and the Contractor 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 Contractor 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 Contractor shall coordinate its work with the work of others so that no discrepancies shall result in the project.

#### **4.20 Drawings Reflecting Actual Construction**

During the course of construction, the Contractor shall maintain drawings daily to show the project as it is actually constructed. Every sheet of the Plans and Specifications that 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 Contractor shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that the Contractor 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 Architect for further handling, with a copy of the transmittal to the Trustees and the University representative assigned to the project.

#### **4.21 Access for Inspection**

The Contractor shall at all times permit the Trustees, the Architect, 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 Contractor 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 Contractor 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 Contractor 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 Contractor, the premium cost of inspection shall be reimbursed to the Trustees.

- b. Reinspections. The Trustees may back-charge all reinspection costs to the Contractor.
- 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 Contractor for the extraordinary costs incurred.

#### **4.22 Cleanup of Project and Site**

The Contractor shall clean up its work at frequent intervals and at other times when directed by the Architect or the Trustees. At all times while finish work is underway, floors shall be kept broom clean. Upon completion of the work, the Contractor 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 Contractor does not maintain the project or the site clear of debris and rubbish in a manner acceptable to the Architect, the Trustees may, at their option, cause the project or site to be properly cleaned and may withhold the expense incurred therefor from payments due the Contractor.

#### **4.23 Project Sign, Advertising**

The Contractor shall furnish and install a project sign designed by the Architect 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 Architect, and the Contractor. No advertising is permitted on the project or site without written permission from the Trustees.

### **5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS**

#### **5.01 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 priorities stated below 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 Plans. No other section of the Specifications shall modify the Contract General Conditions.
  - (4) In case of conflict between Plans and Specifications, the Specifications shall govern.
  - (5) Conflicts within the Plans:
    - (a) Schedules, when identified as such, shall govern over all other portions of the Plans.
    - (b) Specific notes shall govern over all other notes and all other portions of the Plans except the schedules described in Article 5.01-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.

### **5.02 Issuance of Interpretations, Clarifications, Additional Instructions**

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

The Architect, with review as required by the Trustees, shall, within a reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested.

Should the Contractor proceed with the work affected before receipt of the interpretation, clarification, or instructions from the Architect, the Contractor 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, in the opinion of the Contractor, constitute work beyond the scope of the Contract, the Contractor must submit written notice thereof to the Architect 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 Contractor shall send copies of such correspondence to the Trustees and the Project Manager/Construction Inspector. Within seven calendar days after the Contractor issues its written notice, the Contractor 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.

The Architect shall consider such notice and make a recommendation to the Trustees. 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 Contractor a written order that the claim is not justified and direct the Contractor to perform such work.

The Contractor must proceed with the work upon receipt from the Trustees of a written order to do so, in accordance with the Architect's interpretation of the Contract requirements, but within seven days of receipt of the order, the Contractor must notify the Architect and the Trustees, by letter, that it protests the decision. The Contractor shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (see Article 7.01, Contractor's Claims Review Board). When performing disputed work, the Contractor shall prepare time and materials records for each day, and the Construction Inspector shall verify these records at the conclusion of each day. The Contractor shall have no claim for additional compensation because of such interpretation, clarification, or additional detailed instruction, unless it gives written notice to the Architect within seven calendar days as specified above.

### **5.03 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 Notice to Contractors.
- 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 Notice to Contractors shall be considered a part of this Contract.

### **5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions**

- a. Submittal Procedure. The Contractor shall review and approve all shop drawings. "Shop drawings" include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the work. The Contractor shall promptly review and mark the shop drawing approved and submit to the Architect, 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. At least six copies of shop drawings shall be submitted as well as additional copies as required by Architect. All such submittals shall be sent to the Architect at the address given in the instructions to the Contractor 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 Contractor to identify all deviations may render any action taken by the Architect on the materials submitted to be void. Whether to void such action shall be in the discretion of the Architect. The letter and all items accompanying it shall be fully identified as to project name and location, the Contractor's name, and Contract number. By submitting the approved shop drawings and samples, the Contractor 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 Contractor 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 Architect. The Contractor shall remove samples from the site when directed by the Trustees. Samples not removed by the Contractor, at the Trustees' option, will become the property of the Trustees or will be removed or disposed of by the Trustees at the Contractor'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 bidder complies with the following requirements:

- (1) The bidder shall submit its proposal to the Architect 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 Construction Administrator may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The bidder is responsible for 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 Architect or the Trustees.
- (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the bidder. Where the material is specified by capacity or performance, the burden of proof shall be on the bidder to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The bidder 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 Architect shall be the judge of such matters. If the Architect rejects 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 Contractor's expense without recourse for reimbursement from the Trustees.

- d. **Substitutions.** If the Contractor 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 5.04, but, in addition, the Contractor must submit any cost impact, and must pay the Architect's fees associated with the review of this substitution. By submitting a substitute, the Contractor waives any rights to claim a delay due to the processing of this substitution. The time for submittal of a substitution 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 period in writing. The Trustees are not obligated to review or accept substitutions.

## **5.05 Quality of Materials, Articles and Equipment**

Materials, articles and equipment furnished by the Contractor 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 Contractor shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

#### **5.06 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 Contractor 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 Contractor'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 Contractor shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Contractor. All retesting costs may be back-charged to the Contractor by the Trustees.

#### **5.07 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 Architect and the Trustees, by the Contractor, at no additional expense to the Trustees. Any materials, articles or equipment that are rejected shall immediately be removed from the premises at the Contractor'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 Contractor until it is made acceptable to the Architect and the Trustees.

#### **5.08 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 Contractor. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall be borne by the Contractor.

#### **5.09 Responsibility of Quality**

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

### **6.00 CHANGES IN THE WORK**

#### **6.01 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 Contractor shall promptly comply with such orders. The Contractor 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 Contractor. The Trustees will not increase compensation or extend time for a change involving greater expense to the Contractor, and the Trustees may reject changes involving greater or lesser expense, but with the consequent responsibility on the Contractor 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 Contractor, set forth in Article 8.02, 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 Contractor 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 Contractor 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 Contractor a cost request bulletin via the Architect, 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 Contractor 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 Contractor 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 that is directly attributable to the changed work shall also be included, with substantiating detailed explanation, by the Contractor 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 Contractor shall submit the change order request with detailed estimates and any time extension request thereon to the Architect, the Project Manager/Construction Inspector, and the Trustees within fifteen calendar days after issuance of the cost request bulletin. If not submitted within the required fifteen calendar days, and the Contractor has not obtained the Architect's and the Trustees' permission for a delay in submission, the Trustees may order the Contractor in writing to begin the work immediately, in accordance with Article 6.01-c or Article 6.02, and the Contract price shall be adjusted in accordance with the Trustees' estimate of cost, unless the Contractor within fifteen days following completion of the changed work presents proof convincing to the Trustees that the Trustees' estimate was in error. The Contractor 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 Contractor 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 Contractor, the Contractor shall proceed with the changed work. When the Trustees and the Contractor agree to the adjustment in the Contractor's compensation for the performance of changed work, but fail to agree to the time adjustment for such work, the Contractor shall proceed with the work at the agreed price, reserving the right to further pursue its claim for a time adjustment (see Article 4.15-d, Adjustment of Contract Time Due to Acts of the Trustees or the Architect). 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) allowable due to changed work, and the manner in which such costs are computed, shall be in accordance with the following eight provisions. In submitting a change order request, the Contractor 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 Contractor 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 (Government Code sections 12650 *et seq.*). Direct cost is defined as the actual cost of work before the application of any mark-ups for overhead and profit.

- (1) **Labor.** Costs are allowed for the actual payroll cost to the Contractor 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 on labor only, 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 paid by the Contractor 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 Contractor established to the satisfaction of the Trustees the necessity for use of such higher classifications of workers. The Contractors 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 4.02-c, Prevailing Wage, subdivision (6). The unit cost of labor shall be an accurate accounting of actual costs paid in accordance with the allowances herein, and it shall be submitted under penalty of perjury.

- (2) **Materials.** Contractor'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 Contractor, it shall be

credited to the Trustees. If the materials are obtained from a supply or source owned wholly or in part by the Contractor, 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 Contractor 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 Contractor shall have no claim for costs or profits on material furnished by the Trustees.

- (3) Equipment. Contractor'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 Contractor, 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 Contractor including mark-up for the use of equipment as set forth above shall constitute full compensation to the Contractor for the cost of fuel (unless the Contractor 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 Contractor incidental to the use of such equipment. Equipment operators shall be paid for as provided in Article 6.01-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 6.01-b (1), the 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 Contractor'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 Contractor, 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 Contractor 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 6.01-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 Contractor shall furnish upon demand of the Trustees, a lump sum estimate of the cost of the items including taxes and cartage to the Contractor 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) General Contractor Mark-up for Added Work. When changed/added work is performed by a subcontractor, the Contractor 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 Contractor'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 6.01-b (1), (2) and (3). Also refer to Article 4.08-e, Utilities, for special mark-up on repair of utilities. The Contractor 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 Contractor'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 Contractor 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 Contractor's net cost for the change order. The Contractor shall then apply the mark-up to this net cost. Similarly, the Contractor 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 Contractor shall apply separate mark-ups for added work as specified in Article 6.01-b (6). If the resulting net costs for each subcontractor will decrease the Contract price, then the Contractor shall apply separate mark-ups for deleted work as specified in Article 6.01-b (7).

For example:

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

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

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

The Contractor'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 Contractor 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 bids were opened.

c. Failure to Agree as to Cost

- (1) For Added Work. Notwithstanding the failure of the Trustees and the Contractor to agree as to the cost of the proposed change order, the Contractor, 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 Contractor 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 Contractor 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 Contractor's daily summary and may make any necessary adjustments to the summary. After the Construction Inspector and the Contractor 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 Contractor 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 Contractor who shall certify thereon under penalty of perjury that the information is true, and the costs are as allowed in Article 6.01-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 6.01-b (4), (5), (6) and (7).

The Contractor 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 Contractor 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 Contractor until the Contractor 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 6.01-b (7), shall be the costs to the Contractor 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 6.01-b shall be used in computing the amounts involved for changes under than deletion of an entire item.

- d. Allowable Time Extensions. For any change in the work, the Contractor 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 Contractor 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 Contractor 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).

Adjustment in Contract time shall be on a calendar day basis, except that if the new Contract completion date falls on a Saturday, Sunday, or legal holiday, it shall be extended through the next full working day. Such adjustment is applicable only once in the course of a Contract, and should occur only at the end of the Contract. Attention is directed to Article 4.15, Contract Time, for adjustments to the Contract time.

## **6.02 Emergency Changes**

Changes in the work agreed by the Trustees to be necessary due to unforeseen site conditions, discovery of errors in Plans or Specifications 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 Contractor. The Contractor shall commence performance of the emergency change immediately upon receipt of written direction from the Trustees.

If agreement is reached as to compensation adjustment for the purpose of any emergency change, then compensation will be as provided in Article 6.01 relating to ordinary changes. If agreement is not reached as to compensation at the time of commencing the emergency change, then compensation will be as provided in Article 6.01-c, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment is agreed upon, or the changed work is completed.

## **7.00 CLAIMS AND DAMAGES**

### **7.01 Contractor's Claims Review Board**

In accordance with Article 5.02, Issuance of Interpretations, Clarifications, Additional Instructions, should the Contractor disagree with the determination of the Trustees on a matter that substantially affects the Contractor's costs, compensation or extent of work, the Contractor shall file a claim with the Trustees and request a review of the decision. The Contractor must proceed with the work upon receipt from the Trustees of a written order to do so, in accordance with the Architect's interpretation of the Contract requirements, but within seven days of receipt of the written order, the Contractor must notify the Architect and the Trustees, by letter, that it protests the decision.

All unresolved claims arising from this Contract, for which the Contractor seeks resolution by a Contractor's 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 Contractor's failure to submit its claims to the Trustees within this 30-day period shall constitute a waiver by the Contractor 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, Contractor 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 Contractor of such claims.

Before the Contractor files a claim with the Trustees, the Contractor shall make a reasonable effort to analyze the claim to determine the truth of the information comprising the claim. The Contractor 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 Contractor to be true may be filed with the Trustees. By submitting a claim, Contractor 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 Contractor constitutes a basis under the Contract for additional compensation. Further, Contractor 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.*).

The Trustees will convene a Contractor's 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 Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction professional 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 Contractor's contractual and administrative remedies with the Trustees.

#### **7.02 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 that the Trustees will sustain by reason of the delay. It is therefore agreed that the Contractor 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 8.01, Acceptance. If the Contractor fails to pay such liquidated damages, the Trustees may deduct the amount thereof from any money due or that may become due the Contractor 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.

#### **7.03 Termination for Cause**

If the Trustees deem that Contractor has failed to supply an adequate working force or material of proper quality, or Contractor 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 Contractor'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 Contractor shall pay the difference to the Trustees.

If it is subsequently determined that grounds for termination under this Article do not exist, then the Contractor shall be deemed to have been properly terminated for convenience under Article 7.04, Termination for Convenience.

#### **7.04 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 Contractor 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 4.05, Delegation of Performance and Assignment of Money Earned, and 7.05, 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. Dispose of materials not yet used in the work as directed by the Trustees. The Contractor 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 Contractor shall assign to the Trustees all the right, title and interest of the Contractor under subcontracts or orders for materials.
- i. Furnish the Trustees with the documentation required to be furnished by the Contractor 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 Contractor shall be paid in accordance with the provisions of Article 8, Payment and Completion, with the following exception. The amount due the Contractor 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 8, and less any prior payment(s) made to, or on account of the Contractor.

**7.05 Assignment of Subcontracts**

Should the Contractor's control over the work be terminated under Article 7.03, Termination for Cause, or 7.04, Termination for Convenience, the Trustees may elect to take legal assignment of subcontracts, purchase orders, and other contractual rights. In such an event, the Contractor 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 Contractor, as the Trustees may require for the purpose of fully vesting in the Trustees all rights and benefits of the Contractor under such subcontracts, purchase orders, or other contractual rights in order that the Trustees may proceed to finish the project.

**7.06 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 Contractor of the receipt of any third-party claim relating to the Contract (Public Contract Code section 9201).

**8.00 PAYMENT AND COMPLETION**

**8.01 Acceptance**

When the whole project has been completed in all respects in accordance with the 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 7.01, Contractor's Claims Review Board.

**8.02 Partial Payments**

To assist in computing partial payments, the Contractor shall submit to the Architect, the Construction Inspector, and the Trustees a "Schedule of Values" of the Contractor'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. Contractor 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 Contractor to the Construction Administrator along with the initial submittal of the Schedule of Values.

Once each month during the progress of the work, the Contractor shall submit to the Construction Administrator a partial payment request that has been received and agreed to by the Architect and the Trustees' Project Manager/Construction Inspector. The partial payment request shall be based on the approved bid breakdown for the cost of the work completed plus a maximum of 90% of the invoiced value for the acceptable materials delivered to the site or stored subject to the control of the Contractor and not yet installed and as allowed on the Contractor's Payment Request, Form 702.12, line 2-f. The partial payment request shall be submitted on the monthly anniversary of the day selected by the Contractor in the job start meeting. The Architect and Construction Inspector shall review and certify the validity of the request. No partial payment shall be made without the certification of the Architect, 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. This retention is part security for the fulfillment of the Contract by Contractor. Partial payments shall not be construed as acceptance of any work that is not in accordance with the requirements of the Contract. Once the Architect and the Construction Inspector have 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 by the Construction Administrator, prior to assessment of late payment interest.

### **8.03 Escrow in Lieu of Retention**

Upon the Contractor'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 Contractor 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 specified in Public Contract Code section 10852 and prescribed by the Trustees.

### **8.04 Stop Notices**

The Trustees shall retain out of any money due or that may become due the Contractor, 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. Contractor shall be responsible to communicate this information to all subcontractors.

### **8.05 Payment**

After acceptance of the project as complete, the Contractor shall submit to the Construction Administrator a payment request indicating 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 8.02, Partial Payments, in second paragraph.

The Trustees shall notify the Contractor of the date of recordation of the Notice of Completion. The Contractor 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 Contractor 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 8.01, 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.

### **8.06 Guarantee**

The Contractor 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 4.15–b, Starting and Completion Date, unless a longer guarantee period is stipulated in the Contract Documents. By this guarantee the Contractor 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 Contractor who is responsible for the entire work and countersigned by the subcontractor that 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 Contractor 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, Contractor shall commence and prosecute with due 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 Contractor, in the event of failure to so comply, does hereby authorize the Trustees to proceed to have the work done at the Contractor's expense, and it agrees to pay the cost thereof upon demand. The Trustees shall be entitled to all costs necessarily incurred upon the Contractor'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 licenses, the Trustees may undertake at the Contractor's expense, without prior notice, all work necessary to correct such hazardous conditions caused by the work of the Contractor that is not in accordance with the requirements of this Contract.

#### **8.07 Contractor Evaluation**

The University will perform a contractor evaluation and file a report with the Trustees after completion of the project. If the Contractor 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 Contractor's prequalification and may cause the Contractor to be deemed ineligible to bid on Trustees' work. Refer also to Article 2.10, Failure to be a Responsible Bidder.

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