



**The California State University**  
WORKING FOR CALIFORNIA

**AUXILIARY  
CONTRACT GENERAL CONDITIONS  
FOR DESIGN-BID-BUILD  
MAJOR PROJECTS**

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

[www.calstate.edu/cpdc](http://www.calstate.edu/cpdc)

Revised June, 2019

Contract General Conditions for Auxiliary Design-Bid-Build Major Projects Revisions Made Since Last Major Update:	
Article No.	Revision Description
4.06-b	Owner Controlled Insurance Program, revised June, 2019
General	Supplementary General Conditions were incorporated into this document.
General	Many passages reworked from passive to active voice.
1.00	Definitions: added BRIP, OCIP, Sample Forms.
2.02-a(2)	Dept. of Industrial Relations Public Works Registration: refreshed web link.
2.06-a	Bid Proposal Package, sections (1)-(3).
2.11	CA Company, etc. Renumbered section from 2.12 to 2.11.
2.12	Small Business. Renumbered from 2.11 to 2.12. Deleted and replaced 2.12-b (2), Penalty, with new section (2), Failure to Subcontract with Listed Small Businesses.
3.03	Contract Bonds: refreshed web links to CA Department of Insurance and to US Treasury listing.
4.02-b	Nondiscrimination. Deleted and replaced with updated language.
4.03-f	Archaeological Finds. Added web link to California Archaeological Inventory.
4.03-h	Buy Clean California Act. New section added per Public Contract Code section 3500 <i>et seq.</i> (per enactment of AB262).
4.08-a	Quality Control. Deleted “or registered Civil Engineer (pre-1982 license)”.
4.08-d	Safety. Broke out the requirements into six numbered sections.
4.15-c	Adjustment of Contract Time due to Acts of God, etc.: listed causes for delay for clarity (was in paragraph form).

**AUXILIARY CONTRACT GENERAL CONDITIONS  
FOR DESIGN-BID-BUILD MAJOR PROJECTS**

**TABLE OF CONTENTS**

<b>1.00</b>	<b>DEFINITIONS.....</b>	<b>1</b>
<b>2.00</b>	<b>BIDDING .....</b>	<b>2</b>
2.01	Duty to Carefully Examine These Instructions.....	2
2.02	Competence of Bidders .....	2
2.03	Availability of Plans and Specifications.....	3
2.04	Necessity for Careful Examination of Site, Plans and Specifications .....	3
2.05	Clarification during Bidding .....	4
2.06	Bidding Documents.....	4
2.07	Bid Proposals .....	6
2.08	Competitive Bidding .....	6
2.09	Mistake in Bid.....	7
2.10	Failure to be a Responsible Bidder .....	7
2.11	California Company; Reciprocal Preference against Nonresident Contractors; Certification.....	7
2.12	Small Business Five Percent Bid Advantage.....	7
2.13	Disabled Veteran Business Enterprise Participation Requirement and Incentive .....	8
<b>3.00</b>	<b>AWARD AND EXECUTION OF CONTRACT.....</b>	<b>11</b>
3.01	Award of Contract.....	11
3.02	Return of Bidder’s Security.....	11
3.03	Contract Bonds.....	11
3.04	Execution of Contract .....	12
3.05	Failure or Refusal to Execute Contract .....	12
<b>4.00</b>	<b>CONDUCT OF THE WORK.....</b>	<b>12</b>
4.01	Laws to be Observed--Generally.....	12
4.02	Laws to be Observed--Regarding Labor .....	14
4.03	Environmental Requirements .....	17
4.04	Substitution of Subcontractors .....	20
4.05	Delegation of Performance and Assignment of Money Earned.....	21
4.06	Insurance Requirements .....	21
4.07	Indemnification .....	28
4.08	Contractor’s Responsibility for the Work .....	29
4.09	Occupancy by Auxiliary Prior to Acceptance .....	31
4.10	Payments by Contractor .....	31
4.11	Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc. ....	32
4.12	Patented or Copyrighted Materials.....	32
4.13	Property Rights in Materials and Equipment .....	32
4.14	Taxes.....	32
4.15	Contract Time .....	32
4.16	Schedule.....	33
4.17	Labor Force and Superintendent .....	37
4.18	Limitation of Construction Operations.....	37
4.19	Coordination with Other Work.....	37
4.20	Drawings Reflecting Actual Construction.....	37
4.21	Access for Inspection .....	37
4.22	Cleanup of Project and Site.....	38
4.23	Project Sign, Advertising .....	38

**AUXILIARY CONTRACT GENERAL CONDITIONS  
FOR DESIGN-BID-BUILD MAJOR PROJECTS**

**TABLE OF CONTENTS**

<b>5.00</b>	<b>INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS.....</b>	<b>38</b>
5.01	Interpretation of Contract Requirements .....	38
5.02	Issuance of Interpretations, Clarifications, Additional Instructions .....	39
5.03	Product and Reference Standards.....	39
5.04	Shop Drawings, Samples, Alternatives or Equals, Substitutions.....	40
5.05	Quality of Materials, Articles and Equipment .....	41
5.06	Testing Materials, Articles, Equipment and Work .....	41
5.07	Rejection .....	41
5.08	Offsite Testing.....	41
5.09	Responsibility of Quality.....	41
<b>6.00</b>	<b>CHANGES IN THE WORK .....</b>	<b>41</b>
6.01	Change Orders.....	41
6.02	Emergency Changes .....	46
<b>7.00</b>	<b>CLAIMS AND DAMAGES .....</b>	<b>46</b>
7.01	Claims .....	46
7.02	Delay in Completion--Liquidated Damages .....	48
7.03	Termination for Cause.....	48
7.04	Termination for Convenience.....	48
7.05	Assignment of Subcontracts .....	49
7.06	Third-Party Claims.....	49
<b>8.00</b>	<b>PAYMENT AND COMPLETION.....</b>	<b>49</b>
8.01	Acceptance .....	49
8.02	Partial Payments.....	49
8.03	Escrow in Lieu of Retention.....	50
8.04	Stop Payment Notices .....	50
8.05	Payment.....	50
8.06	Guarantee .....	50
8.07	Contractor Evaluation .....	51
<b>9.00</b>	<b>MISCELLANEOUS.....</b>	<b>51</b>
9.01	Governing Law .....	51
9.02	Successors and Assigns.....	51
9.03	Rights and Remedies.....	51
9.04	Waiver .....	51
9.05	Survival.....	52
9.06	Complete Contract .....	52
9.07	Severability of Provisions .....	52
9.08	Notices .....	52
9.09	Counterparts.....	52

**SAMPLE FORMS**

**AUXILIARY CONTRACT GENERAL CONDITIONS  
FOR DESIGN-BID-BUILD MAJOR PROJECTS**

**1.00 - DEFINITIONS**

**Acceptance** – When the Project is complete in all respects in accordance with the Plans and Specifications, and the Contract has been otherwise fully performed by the Contractor, to the full satisfaction of Auxiliary, Auxiliary will accept the Project as complete.

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

**Agreement** – A form executed by both the Contractor and Auxiliary, that provides the Work will be done in accordance with the Contract Documents, as approved and on file with Auxiliary and as incorporated into the Contract Documents by reference.

**Allowance** – Allowances are allocations of the Contract Amount to portions of the Work that could not be specified sufficiently for competitive bidding.

**Architect** – The person or organization, including the authorized representatives thereof, commissioned by Auxiliary for the design of 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.

**Auxiliary** – The California State University auxiliary organization and its authorized representatives, as defined in Education Code section 89901 and in 5 California Code of Regulations section 42400, that enter into this Contract with the Contractor.

**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.

**BRIP** – The Trustees’ Builders Risk Insurance Program. Reference Article 4.06-c, Builders Risk Insurance Program.

**Business Day** – Calendar day excluding Saturdays, Sundays, national holidays and state holidays; same as Working Day.

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

**Capital Planning, Design and Construction (CPDC)** – Department within Business and Finance, a division in the Office of the Chancellor of the California State University, responsible for all 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 Auxiliary to manage the construction phase of the Project, and who is authorized to approve changes to the Contract on behalf of Auxiliary.

**Construction Documents** – The Contract General Conditions, Plans, Specifications, and Addenda related to the bidding and construction of the Project.

**Construction Inspector** – The Inspector on the Project Site who receives technical direction from the Architect and administrative direction from the Construction Administrator.

**Construction Schedule** – The Contractor’s time use plan for completing the Work within the Contract Time.

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

**Contract Amount** – The amount of compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order.

**Contract Documents** – The Bid Proposal Form, Notice to Contractors, Plans, Specifications, Addenda, Agreement, Bonds, Contract General Conditions, Supplementary General Conditions, Special Conditions, Change Orders, and any other documents so designated by the Trustees.

**Contractor** – The person or business entity that has entered into this Contract with Auxiliary.

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

**Day** – Unless otherwise indicated herein, day is a calendar day.

**Executive Facilities Officer** – University official who oversees the capital outlay process.

**Field Instruction** – A written order from Auxiliary to the Contractor, signed by the Construction Administrator.

**OCIP** – The Trustees’ Owner Controlled Insurance Program. Reference Article 4.06-b, Owner Controlled Insurance Program.

**Plans** – The drawings prepared by the Architect and approved by the Trustees, which include elevations, sections, details, material and equipment 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.

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

**Project** – The total Work required by the Contract.

**Project Manager** – The on-site representative of the Construction Administrator, but without the authority to approve changes to the Contract.

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

**Sample Forms** – Many of the forms referenced herein, are available on the CPDC website.

**Site** – The area on California State University property 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** – Contractor that is under contract to the Contractor or another subcontractor for completion of a portion(s) of the Work.

**Superintendent** – The representative of the Contractor at the construction Site, who is authorized to receive instructions from the Architect and Auxiliary, 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. Reference Executive Facilities Officer and Construction Administrator.

**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 located on California State University property and proposed to be constructed or done under the Contract, including the furnishing of all labor, materials, and equipment.

**Working Day** – Calendar day excluding Saturdays, Sundays, national holidays and state holidays; same as Business Day.

## 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 the conditions that must be satisfied before submitting a proposal, and the conditions that affect the award of the Contract.

### 2.02 Competence of Bidders

a. License and Public Works Registration.

(1) License

No Bidder may bid on Work for which it is not properly licensed. Auxiliary shall disregard any bid received from a Bidder who is not properly licensed (Business and Professions Code section 7028.15). Nor will Auxiliary award a Contract to a Bidder who does not possess the appropriate contractor's license, which is that specified in the Notice to Contractors. Bidders participating in a joint venture must individually possess a current license when submitting the joint venture bid, and the joint venture must possess a joint venture license at the time of award (Public Contract Code section 3300).

(2) Public Works Registration with Department of Industrial Relations

Auxiliary will only issue public works bids and award public works contracts to currently registered contractors and subcontractors on the Auxiliary's public works projects. All bidders and subcontractors of all tiers must register to bid public works projects with the Department of Industrial Relations (DIR), and obtain and maintain current registration numbers (Labor Code section 1725.5). Note: DIR will assess a penalty on any public works contractor who allows its registration to lapse. DIR will also assess a penalty on any contractor

who subcontracts to any contractor who is not registered with the DIR for each day the subcontractor is not registered. For more information review the DIR public works registration requirements at <https://www.dir.ca.gov/Public-Works/Contractors.html>.

The following applies to this Contract:

- A contractor will not be in violation for working on a private Project that is later determined to be public work;
- Contractor shall check the public works registration for all subcontractors that it proposes to list to ensure that each subcontractor is registered to bid public works projects with the DIR;
- An unregistered contractor or subcontractor can be replaced with one who is registered;
- A contract with an unregistered contractor or subcontractor is subject to cancellation but is not void as to past work.

b. Prequalification Rating.

Auxiliary will issue bid proposal packages only to Bidders who have prequalified with the Trustees. To prequalify, all bidders must file their prequalification applications online; and the application includes bidders' responses to a standard questionnaire, a statement of financial condition and previous experience in performing public works, all in accordance with the instructions contained in the Notice to Contractors.

Bidders shall go to: [http://www.calstate.edu/cpdc/cm/contractor\\_prequal\\_bidders.shtml](http://www.calstate.edu/cpdc/cm/contractor_prequal_bidders.shtml), under 'Contractor Prequalification' and login in to the database using the link provided ([PlanetBids](#)). Bidders shall verify the information contained in the prequalification application under oath and submit the completed prequalification application online at least ten (10) Business Days prior to the date for opening bids. The Trustees' Prequalification Coordinator must approve Bidders not less than one (1) Business Day prior to the date set for opening bids.

The Trustees' Prequalification Coordinator will review the Bidder's statement of experience and financial condition upon receipt of a complete online application, check Bidder's references, and notify the Bidder of the rating established based on the information contained in the application. The Bidder's assigned prequalification rating will be the maximum amount of a contract or contracts that the Bidder may undertake with the Trustees or Auxiliary. Bidder may request an increase in its rating from the Trustees' Prequalification Coordinator. The request shall be in writing, and specify the reason(s) for increase. The Trustees' Prequalification Coordinator will review Bidder's request, check new references submitted and notify Bidder of the resulting decision. The Prequalification Coordinator's decision is final.

Auxiliary 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 (reference Article 2.10, Failure to be a Responsible Bidder).

c. Joint Ventures.

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 form [703.12](#) with Auxiliary at least five (5) Days prior to the date and time set for opening bids, on a form obtained from Auxiliary. The affidavit of joint venture is valid only for the specific project for which it is filed. Each party to the joint venture must be prequalified, as provided herein, one (1) Business Day before the time set for opening bids.

If Auxiliary announces that the joint venture is the successful bidder, the joint venture shall, prior to Auxiliary's award of the Contract:

- 1) obtain the joint venture license (Business and Professions Code sections 7029 and 7029.1) and
- 2) register the joint venture with the Department of Industrial Relations.

### 2.03 Availability of Plans and Specifications

Bidders may obtain Plans and Specifications online, or at the Auxiliary for 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. Auxiliary may charge an amount stated in the Notice to Contractors for each set of Plans and Specifications.

The successful Bidder may purchase Plans and Specifications 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 be satisfied as to the conditions to be encountered, and shall also investigate:

- 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 (reference Article 4.11, Responsibility to Secure and Pay for Permits, Licenses and Utility Connections, Etc.).

Bidder certifies that Bidder has complied with the requirements of this provision by the submission of its bid.

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 estimate properly the difficulty or cost to perform the Work. Such examination does not require independent underground soils borings unless required elsewhere.

a. Subsurface Investigations.

Where the Trustees or Auxiliary has made investigations of subsurface conditions, and makes that information available to the Bidder, such information is limited in scope to that which the Trustees actually encountered in the investigations, and is included only for the convenience of the Bidder.

Neither the Trustees nor Auxiliary assume any 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 Auxiliary concurs, 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 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 addenda 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 period for submitting a proposed product as “an equal” is no later than 35 Days after the award of Contract, unless otherwise specified in the Supplementary General Conditions (Public Contract Code section 3400). Reference Article 5.04-c, Alternatives or Equals.

Only the Architect or Auxiliary Official, as identified in the Notice to Contractors, is authorized to answer questions or prepare addenda relative to the Project. Information obtained verbally from any source has no contractual authority, may not be relied upon, and shall have no standing in any event that may occur.

The Bidder is required to acknowledge each addendum on the Bid Proposal Form. Therefore, Bidder is responsible for assuring receipt of all addenda. Bidder shall confirm all addenda with designated Auxiliary official one (1) Business Day prior to bid opening.

## 2.06 Bidding Documents

Auxiliary will identify in the Project advertisement and in the Notice to Contractors if the project is a paper submittal bid, an electronic submittal bid, or an online submittal bid. Following are forms that Bidder shall tender with its bid in either case:

a. Bid Proposal Package.

Following a request from a prequalified Bidder, Auxiliary will furnish a bid proposal package, which when completely filled out and executed by Bidder, 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.

Auxiliary’s 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 the Bidder’s duly authorized representative, with its address and telephone number.



- 1) If an individual makes the proposal, the individual's name, postal address, and telephone number must be shown.
- 2) If made by a partnership, a limited partnership, or other type of legally recognized 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.
- 3) A proposal submitted by a corporation, or a limited liability company (LLC), or other type of legally recognized firm, shall show the name of the state in which the firm is chartered, the name of the firm, its address and telephone number, and the title of the person who signs on behalf of the firm. The firm shall also submit a certified copy of firm's board action that identifies and authorizes the person who may sign and submit bids for the firm. Auxiliary 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.

For each proposed subcontractor that will perform Work, labor, or render services for the Bidder in excess of one-half of one percent of the Bidder's total bid, Bidder shall list on its bid proposal the following:

- subcontractor's name,
  - California State License Board-issued contractor license number,
  - California Department of Industrial Relations Public Works Registration number, and
  - the location of the place of business.
- Bidder shall also state on its proposal the portion of Work or labor or rendition of services that each such subcontractor will do.

For each alternative, Bidder shall list any subcontractor not included in the base contract subcontractor listing.

Within 24 hours after the deadline established for the receipt of bids, or within the timeframe specified in the Supplementary General Conditions, the Bidder must submit a completed List of Subcontractors—Additional Information form, which contains more detailed information, such as complete subcontractor names, addresses, telephone numbers, license and registration numbers, etc. (Public Contract Code sections 4104, 4105 and 4106). Bidder's submittal of a correction to a listed subcontractor's contractor license number, provided that the number corresponds to the listed subcontractor's name and location, is not grounds for filing a bid protest or considering the bid nonresponsive (Public Contract Code section 4104).

(1) Non-small Business Bidders Claiming the Small Business Preference.

If a Non-small Business Bidder claims the 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 total bid price, including awarded alternatives.

(2) Disabled Veteran Business Enterprises (DVBE) Participation Requirement.

Bidder is required to achieve three percent DVBE participation on this Contract and may qualify for the DVBE bid incentive if Bidder proposes sufficient additional DVBE participation in this Contract. Trustees will calculate the Bidder's DVBE participation on the total Project bid price, including awarded alternatives. Bidder is required to achieve this level of participation at Contract Completion.

Bidder shall list in its bid proposal, on the List of Proposed Subcontractors form, the DVBEs participating in the bid and the dollar amount of participation by each DVBE. The total of the DVBE participation amounts that Bidder provides on the List of Proposed Subcontractors shall equal at least Bidder's proposed percentage of DVBE participation. For each alternative Bidder shall list any DVBE participating in work to be performed on the alternative. Auxiliary shall grant the DVBE Bid Incentive, if the total amount of DVBE participation equals at least the incentive percentage of the total bid price, including awarded alternatives.

At Contract Completion, Auxiliary shall compare Bidder's actual DVBE participation percentages to the actual percentages proposed at bid. Bidder's failure to achieve the proposed percentages may subject Bidder to penalties (as described in Article 2.13), and/or may cause the Trustees and Auxiliary to question the Bidder's responsibility in future Trustees and Auxiliary's bids.

(3) List of Subcontractors—Additional Information Form.

Bidders shall indicate on this form the dollar amount of each small business (if the Bidder claimed the non-small business bid preference) and each DVBE participating in its bid.

(4) Subcontractor Directory.

The successful Bidder shall provide and maintain current information requested on the Subcontractor Directory for all tiers of subcontractors working on the Project, and shall submit the Subcontractor Directory with its signed Contract and with all payment requests. All tiers of subcontractors working on the Project shall register with the DIR in accordance with Article 2.02-a (2), Public Works Registration with the Department of Industrial Relations.

c. Bidder's Security.

All Bidders shall present bids under sealed cover and have enclosed an amount equal to at least 10 percent of the total amount bid, including alternatives (if additive), as bid security. Bidders may submit the bid security in one of the following forms: a cashier's check or certified check made payable to Auxiliary, or a bidder's bond. Auxiliary 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 to issue surety bonds in the State of California shall execute that bond, and it shall be executed on the form prescribed by Auxiliary.

For bids submitted electronically or online, Bidders shall present their bidder's security in electronic form when tendering their bids, and then shall submit original bidder's security within 24 hours of bid opening, or Auxiliary will deem their bids nonresponsive.

Auxiliary will not accept riders or modifications of any kind on bidders' bonds, and, if presented by Bidder, may result in Bidder's disqualification as nonresponsive. Bidder must use bond document forms approved by the Trustees without alteration.

## **2.07 Bid Proposals**

a. Submission of Proposals.

Bidders shall submit proposals as instructed on the bid proposal. It is the responsibility of the Bidder to see that its bid is received in the proper time and location. Delays in timely receipt of the bid caused by the United States or Auxiliary's mail system, independent carriers, acts of God, electronic communication failures, or any other cause shall not excuse late receipt of a bid. Auxiliary 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 bidder may withdraw its bid 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 Auxiliary. The request shall be executed by the Bidder's authorized representative, and filed with the Auxiliary. A request to withdraw a bid that is communicated orally either in person, 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.

Auxiliary may reject any proposal if it shows any alterations of forms, additions not called for, conditional bids, incomplete bids, unsigned bids, erasures, or irregularities of any kind. If Bidder changes the bid amount after the amount has been once inserted, Bidder shall initial the change.

e. Power of Attorney or Agent.

When an agent signs the proposal, a power of attorney shall either be on file with Auxiliary 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.

Auxiliary reserves the right to waive minor irregularities in proposals submitted.

## **2.08 Competitive Bidding**

If more than one bid proposal is offered by an individual or business entity or combination thereof, under the same or different names, all such bid proposals may be rejected, or Auxiliary may accept the lowest proposal. 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 in order 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 Auxiliary to pursue any remedy authorized by law and shall include the right at the option of Auxiliary 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 Auxiliary 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 Auxiliary, 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 Auxiliary question Bidder's responsibility, Auxiliary 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 Auxiliary 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) Days of the conclusion of the hearing.

## **2.11 California Company; Reciprocal Preference against Nonresident Contractors; Certification**

Auxiliary 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 which 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).

## **2.12 Small Business Five Percent Bid Advantage**

Auxiliary shall calculate the five percent small business preference as a percentage of the lowest responsive bidder's bid. For bid evaluation purposes only, if the lowest responsive bidder is a California certified small business, Auxiliary will not calculate the five percent bid advantage for any bidders. The only bidders eligible for the DVBE incentive will be California certified small businesses.

### **a. Preference for Small Businesses.**

Auxiliary shall give a small business preference or 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. Reference Government Code section 14835 *et seq.*, and California Code of Regulations, Title 2, section 1896 *et seq.* To receive the five percent advantage, certified small businesses shall:

- (1) Submit with the bid proposal a completed form "Request for Small Business Five Percent Preference Certification" form 701.09,
- (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.**

#### **(1) Preference.**

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:

- (a) Indicate in its bid proposal 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 701.09],
- (b) Submit a timely and responsive bid,
- (c) Be determined to be a responsible bidder,
- (d) Submit the California certified small businesses on the List of Proposed Subcontractors form 701.04 that is provided in the bid documents, and
- (e) Submit a List of Subcontractors – Additional Information form 701.01A within 24 hours after the deadline for receipt of bids, and specify the dollar amount of each small business subcontractor's bid thereon.

(2) Failure to Subcontract with Listed Small Businesses.

Failure of the non-small business contractor to subcontract with the small businesses listed on its bid, or follow the substitution provisions identified in Article 4.04-b, may be grounds for the Department of General Services to impose sanctions pursuant to Government Code section 14842.5 and California 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 California Code of Regulations, sections 1896.18 and 1896.20.

c. Trustees' Reporting of Small Business Participation.

Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of certified small businesses in contract awards. To this end, the successful Bidder shall inform Auxiliary of any contractual arrangements with subcontractors, consultants or suppliers that are certified small businesses.

### 2.13 Disabled Veteran Business Enterprise Participation Requirement and Incentive

California state law requires that its state agencies achieve three (3) percent participation for disabled veteran business enterprises (DVBE) in state contracts. Though not a state agency, Auxiliary is implementing this state law in this Project. Failure of the Bidder to comply with the DVBE requirement may cause Auxiliary to deem the bid nonresponsive and the Bidder to be ineligible for award of Contract.

Bidder/Contractor understands and agrees that the DVBEs identified on the List of Proposed Subcontractors form in the bid may only be replaced by another DVBE, and that the Auxiliary and the Department of General Services (DGS) must approve the substitution. Auxiliary will document changes to the scope of Work that impact the DVBEs identified in the bid by Contract change order, and will provide their decision on DVBE substitutions in writing via the subcontractor substitution process per Public Contract Code section 4100.

Failure of Bidder/Contractor to seek substitution and adhere to the DVBE participation level identified in its bid may be cause for Contract termination, recovery of damages under rights and remedies due the State, and penalties as outlined in Military and Veterans Code section 999.9, Public Contract Code section 10115.10 or section 4110, and California Code of Regulations, section [1896.73](#).

a. Special Definitions.

(1) "Disabled veteran" as used herein, means a veteran of the military, naval or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, "New Scouts," and who has 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 a 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) is responsible for the execution of a distinct element of the Work of the Contract;
- (ii) carries out the obligation by actually performing, managing, or supervising the Work involved;
- (iii) performs Work that is normal for its business services and functions.
- (iv) is responsible, with respect to products, inventories, materials, and supplies required for the Contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and
- (v) 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.

(c) Equipment Brokers.

- (i) A DVBE that rents equipment to Auxiliary shall be deemed an equipment broker, unless one or more disabled veterans have 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to Auxiliary a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner.

- (ii) A DVBE that rents equipment to Auxiliary shall, prior to performing the Contract, submit to Auxiliary a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the Contract by representing that the enterprise was a DVBE meeting and maintaining all of the requirements of a DVBE. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the Contract.
  - (iii) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the DVBE participation requirement.
  - (iv) A DVBE that is a broker or agent and that obtains a Contract pursuant to these provisions shall, prior to performing the Contract, disclose to Auxiliary that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.
- (3) (a) 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 unconditionally 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 unconditionally owned by one or more disabled veterans; or
    - a joint venture in which at least 51 percent of the joint venture's management, control, and earnings are held by one or more disabled veterans.
  - (ii) The business is one or more disabled veterans who 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.
  - (iii) The business is 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 DVBE prior to that death or certification of a permanent disability, that business shall be deemed to be a DVBE 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. A business is a DVBE pursuant to this subdivision under either of the following circumstances:
- (i) for the duration of any contract entered into prior to the death or certification of permanent medical disability for the sole purpose of fulfilling the requirements of that contract.
  - (ii) after the date of the majority owner's death or certification of permanent medical disability established by this subdivision for the sole purpose of providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE for purposes of the program if the contract would not be completed within the three-year period.

b. Participation Requirement.

In order to satisfy and be responsive to this requirement, the Bidder must meet the three (3) percent DVBE Participation requirement, which is attained when:

- (1) the Bidder is not a DVBE and is committed to use DVBE subcontractors/suppliers for not less than three (3) percent of the Contract dollar amount (including alternatives); or
- (2) the Bidder is a DVBE and is committed to performing not less than three (3) percent of the Contract dollar amount (including alternatives) with its own forces or in combination with those of other DVBEs.

c. Documentation Requirements.

The Bidder must document its satisfaction of the DVBE participation requirement. Final determination of DVBE Participation by the Bidder shall be at Auxiliary's sole discretion.

(1) Required Documentation.

In addition to documentation submitted with the bid proposal, the DVBE on the List of Proposed Subcontractors form (reference Article 2.06-b (2)), the Bidder must complete the following DVBE documentation forms. 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. Bidder must complete all requested DVBE documentation on the forms provided and submit with the DVBE Transmittal Form.
- (b) Summary of Disabled Veteran Owned Business Participation (Attachment 1).  
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. 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 party with which the company listed is contracting.
  - (iv) Tier: Identify the contracting tier using 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: State the total dollar amount of the DVBE's bid.
  - (vi) Percentage of Bid: State the percentage (%) of the claimed DVBE's bid as it relates to the Bidder's total Project bid.
  - (vii) DVBE Certification: The Bidder must include one copy of the DVBE certification from the Office of Small Business & DVBE Services for each DVBE 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 DVBE listed on the Summary of Disabled Veteran Owned Business Participation (Attachment 1) complies with the legal definition of DVBE.
- (d) Disabled Veteran Business Enterprise Declarations (STD. 843).  
The disabled veteran owner(s) and disabled veteran manager(s) of the DVBE must complete this declaration when a DVBE contractor or subcontractor will provide materials, supplies, services or equipment.

(2) Timeframe for Submitting Documentation.

The Bidder must submit the full DVBE participation documentation within 24 hours after the deadline established for the receipt of bids, or within the timeframe specified in the Supplementary General Conditions. If Bidder fails to submit full and accurate documentation by the deadline established, the Trustees will deem the bid 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 Auxiliary in compliance with the Subletting and Subcontracting Fair Practices Act. Reference Article 4.04, Substitution of Subcontractors, subsection c, Substitution of a Disabled Veteran Business Enterprise.
- e. Trustees' Reporting of DVBE Participation.  
Responsive to direction from the State Legislature, the Trustees are seeking to report increased statewide participation of DVBE in contract awards. To this end, the successful Bidder shall inform Auxiliary of any contractual arrangements with subcontractors, consultants or suppliers that are certified DVBE.
- f. Additional DVBE Information Sources.  
Office of Small Business & DVBE Services  
Department of General Services, Procurement Division  
707 Third Street, West Sacramento, CA 95605  
Telephone number: (916) 375-4940; E-mail: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov), or,  
Internet at <https://www.dgs.ca.gov/PD/Services>, and search on "DVBE".
- g. Incentive.  
In accordance with Government Code section 14838(f), and Military and Veterans Code sections 999.5(a) and 999.5(d), Auxiliary is granting a bid incentive *for bid evaluation purposes only* to Bidders that exceed the three percent DVBE

participation requirement. The level of DVBE incentive will correlate to the level of participation; that is, the more DVBE participation proposed, the higher the incentive. The bid incentives are as follows:

DVBE Participation	Incentive
3.00% to 3.99%	None
4.00% to 4.99%	1%
5.00% to 5.99%	2%
6% or more	3%

The DVBE incentive may not exceed \$100,000. When used on combination with the Small Business Preference, the cumulative adjustment amount shall not exceed \$100,000. If the lowest responsive, responsible bid is a California certified small business, for bid evaluation purposes only, the only bidders eligible for the incentive will be California certified small businesses.

- h. Prime Contractor’s DVBE Subcontracting Report (DVBE Subcontracting Report).
  - (1) Contractor shall submit the Prime Contractor’s DVBE Subcontracting Report to Auxiliary within 60 days of receipt of the final (retention) payment.
  - (2) In submitting the DVBE Subcontracting Report, the Contractor certifies the following information provided in the report is true and correct:
    - (a) the total amount Contractor received from Auxiliary under the Contract,
    - (b) the name, address, and DVBE number for the DVBE(s) that participated in the performance of the Contract,
    - (c) the total contracted amount for each DVBE,
    - (d) the total payment amounts made to the DVBEs; and
    - (e) the actual percentage of DVBE participation that was achieved for this Contract.

A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in accordance with Military and Veterans Code section 999.5(d).

- i. Sanction for Contractor’s Failure to Achieve the DVBE Incentive.  
 Auxiliary will sanction any Contractor who receives the DVBE incentive and does not contract the incentive percentage dollar amount of its net bid price to DVBEs. The sanction will be no more than two times the amount of the bid incentive received. For example, if the Contractor received a bid incentive of \$49,000, and does not contract the incentive percentage dollar amount of its net bid price with DVBEs, then Auxiliary will assess an amount to be forfeited by the Contractor of \$98,000.

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

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

If Auxiliary deems the acceptance of the lowest responsible bid or bids is not in its own best interests, Auxiliary may reject all bids (Public Contract Code section 10785). If Auxiliary accepts the bid and awards the Contract, Auxiliary’s award shall be made 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 (60) Days after the opening of the proposals.

If the lowest responsible bidder refuses or fails to execute the Contract, Auxiliary may award the Contract to the second lowest responsible bidder. Such award shall be made within seventy-five (75) Days after the opening of proposals. If the second lowest responsible bidder refuses or fails to execute the Contract, Auxiliary may award the Contract to the third lowest responsible Bidder. Such award shall be made within ninety (90) 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 Auxiliary and the Bidder concerned (Public Contract Code section 10782).

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

Auxiliary may withhold Bidder’s security of the second and third lowest responsible Bidders until the Contract has been finally executed. Auxiliary shall return to all other unsuccessful Bidders the cashier’s checks and certified checks submitted by 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, for each Contract counterpart signed, 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 following websites:

- State of California Dept. of Insurance at: <https://interactive.web.insurance.ca.gov/companyprofile/companyprofile>, and
- US Treasury listing at: <https://www.fiscal.treasury.gov/surety-bonds/circular-570.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 Auxiliary. Contract bonds shall remain in full force and effect during the term of the Contract including the one-year guarantee period, and through the ten-year limit on latent defects (Public Contract Code sections 10821-10824, Code of Civil Procedure section 337.15).

Auxiliary will not accept Riders or modifications of any kind on original performance bonds and payment bonds provided at award. Bidder must use bond document forms approved by the Trustees without alteration.

Auxiliary shall make all alterations, extensions of time, extra and additional Work, and other changes authorized by Auxiliary for any part of the Contract, including determinations made under Article 7.01, Claims, without securing the consent of the surety or sureties on the Contract bonds.

Whenever Auxiliary has cause to believe that the surety has become insufficient, Auxiliary may demand in writing that the Contractor provide such further bonds or additional surety, as in Auxiliary's opinion is necessary, considering the extent of the Work added or remaining to be done. Thereafter Auxiliary shall make no payment to the Contractor or any assignee of the Contractor until the further bonds or additional surety has been furnished (Public Contract Code section 10825). To address the insufficiency of the surety, Auxiliary will accept a Rider to both bonds that will increase the Contract Amount, but such Rider shall not change any other Contract terms and conditions.

### **3.04 Execution of Contract**

The successful Bidder shall sign each Contract counterpart and return the Contract counterparts to Auxiliary, together with the Contract Bonds and certification, along with other requisite documentation such as the Subcontractor Directory and certificates evidencing the required insurance coverage (reference Article 4.06, Contractor's Insurance) within ten (10) Business Days of receipt from Auxiliary. Reference the following Article 3.05 for failure of the successful Bidder to execute the Contract timely. If the successful Bidder is a joint venture, then the joint venture shall submit with the Contract certification form a formal resolution designating the person authorized to sign on behalf the joint venture. The Contractor and Auxiliary 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 Auxiliary until it has been executed by the Contractor and Auxiliary, and approved by the attorney appointed according to law and authorized to represent the Auxiliary.

After the Counsel for Auxiliary has fully executed the Contract, Contractor can expect to start Work within 30 Days. Auxiliary will issue to the Contractor a written Notice to Proceed. The Contractor may not begin Work before receiving Auxiliary's written Notice to Proceed. Any Work performed by the Contractor before the project start date as specified on the written 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 Auxiliary's 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, Auxiliary may award the Contract as set forth in Article 3.01. On the failure or refusal of the first, 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. State and Federal Laws.**

The Contractor shall observe all state and federal laws that affect the Work under this Contract. The Contractor shall hold harmless, defend and indemnify Auxiliary 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 California State University executive orders, authoritative interpretations, and other rules and directives issued by legally constituted authority.

#### **b. National Labor Relations Board – Compliance with Order.**

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 which directs the



Contractor to comply with an order of the National Labor Relations Board. Auxiliary may rescind this Contract if Contractor falsely swears to this statement (Public Contract Code section 10296).

c. Child and Family Support Obligations

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 maintained by the State's Employment Development Department.

d. Audit Provisions.

The contracting parties shall be subject to examination and audit by the Trustees, Auxiliary (or designee) 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/Auxiliary/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/Auxiliary/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 the Trustees/Auxiliary/Auditor General from time to time whenever requested in an expeditious manner any and all such information, materials and data.
- (5) The Trustees/Auxiliary/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 Auxiliary 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/Auxiliary/Auditor General audit to the Trustees/Auxiliary. Any adjustments and/or payments that must be made as a result of 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 ninety (90) Days) from presentation of the Trustees/Auxiliary/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 Auxiliary for such overcharges upon receipt of a request from Auxiliary.

- e. **Building Codes.**  
The Contractor's Work under this Contract shall comply with the building codes identified in the Contract Documents.
- f. **Personal Responsibility and Work Opportunity Reconciliation Act of 1996.**  
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, then the Contractor certifies and declares by signing the Agreement with the CSU Auxiliary 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. **Prevailing Wage.**  
The Work under this Contract is a public works project (reference definition of public works, Labor Code section 1720 *et seq.*) 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. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR). Contractor and all subcontractors must comply with all applicable laws and regulations, and perform all obligations required by the DIR pursuant to such authority.

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. 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 liable for any penalties under section 1775(a), if the Contractor fails to comply with the requirements of section 1775(b). Contractor shall periodically review and monitor all subcontractors' certified payroll records. If Contractor learns that any subcontractor has failed to comply with the prevailing wage requirements herein, Contractor shall take corrective action.

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 Auxiliary, 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 Auxiliary in relation to such failure.

- (1) **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 Day during which the worker is required or permitted to work more than eight hours in any one 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.
- (2) If it becomes necessary to employ crafts other than those listed, the Contractor shall notify Auxiliary immediately, and Auxiliary 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 DIR 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. Contractor shall post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the Project Site in accordance with Labor Code section 1773.2. Auxiliary shall maintain copies of the prevailing rate of per diem wages, and shall make them available to any interested party upon request. Contractor shall also post job site notices as required by the DIR pursuant to Labor Code section 1771.4 (a) (2) and applicable regulations.

- (4) The Contractor and any subcontractor under subcontract to the Contractor on the Project shall comply with Labor Code section 1775, and 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 \$200 for each Day or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft in which the worker is employed for any public work done under the Contract by it or, except as provided in section 1775(b), by any subcontractor under it. In addition to this penalty, the Contractor or subcontractor shall pay each worker the difference between the prevailing wage rates and the amount paid to each worker for each Day or portion thereof for which each worker was paid less than the prevailing wage rate.
- (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, 1776, 1777.5, 1811 and 1815 for any work performed by its employees on the Project.

- (a) The Contractor and all subcontractors must furnish payroll records to the Labor Commissioner at least monthly and in a format prescribed by the Labor Commissioner, as required by Labor Code section 1776.
- (b) The Contractor and subcontractors' certified payroll records shall be available for inspection at all reasonable hours, or certified copies furnished upon request to the following requesting parties:
- (i) the employee or his or her authorized representative,
  - (ii) Trustees/Auxiliary, the Division of Labor Standards Enforcement (DLSE), the Division of Apprenticeship Standards (DAS),
  - (iii) the public; however, a request by the public shall be made through the Trustees/Auxiliary or the DLSE or DAS. If the requested payroll records have not been provided pursuant to paragraph (ii) above, the Contractor shall collect from the requesting party the costs of preparation by the contractor, subcontractors, and Trustees/Auxiliary. The public may not be given access to the records at the principal office of the Contractor.
- (c) Records made available for inspection as copies and furnished upon request to the public or any public agency by Auxiliary, the Trustees or the DLSE or the DAS shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the Contractor or subcontractor awarded the contract or subcontractor performing the contract shall not be marked or obliterated.
- (d) Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186 (c) (5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number.
- (e) Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 75a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.
- (f) Any copy of records made available for inspection by, or furnished to, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code, and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records.

Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

- (g) The Contractor or subcontractor shall file a certified copy of the payroll records with the requesting entity within 10 Days after receipt of a written request. In the event the Contractor or subcontractor fails to comply within the 10-Day period, the Contractor or subcontractor shall, as penalty to the state or Trustees, forfeit one hundred dollars (\$100) for each Day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the DLSE or the DAS, these penalties shall be withheld from progress payments then due. The Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section. A contractor or subcontractor may be subject to debarment by the Labor Commissioner for failure to submit certified payrolls timely.
- (6) The Contractor is required to submit to Auxiliary a minimum of the first two weeks of certified payroll and the Hourly Labor Rate Worksheet for its workers and all subcontractors included in change orders. Additional weeks of certified payroll records may be required at the discretion of Auxiliary.
- (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 section 1777.1 or 1777.7.
- (8) Apprentices.

If the Contractor or any subcontractor employs workers on the Project in any apprenticeable craft, it may apply to any apprenticeship program in 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 apprenticeable craft or trade shall contribute to the fund or funds set up in the area of Work to administer the apprenticeship program in each trade in which it employs such journeymen or apprentices in the same amount and manner as the contributing contractors.

Special attention is directed to Labor Code sections 1777.5, 1777.6 and 1777.7, and California Code of Regulations, Title 8, section 200 *et seq.* 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. Reference the following Division of Apprenticeship Standards website for contacts and other pertinent apprenticeship information, [https://www.dir.ca.gov/das/das\\_contactUS.html](https://www.dir.ca.gov/das/das_contactUS.html). Responsibility for compliance with this section lies with the prime Contractor.

Contractor or subcontractor's failure to comply with Labor Code section 1777.5 may result in penalties or debarment pursuant to Labor Code section 1777.7.

b. Nondiscrimination

- (1) During the performance of this Contract, the recipient, Contractor, and its subcontractors shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

"Recipient" means any contractor, local agency, or person, who regularly employs five or more persons, and who receives State support, as defined in this Section, in an amount in excess of \$10,000 in the aggregate per State fiscal year or in an amount in excess of \$1,000 per transaction. For more information, reference California Code of Regulations, Title 2, section 11150.

- (2) Contractor shall comply with the following:
- 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, [section 11000 et seq.](#)),

- the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code, [sections 11135-11139.8](#)), and
  - the regulations or standards adopted by the Trustees/Auxiliary to implement such article.
- (3) Contractor or Recipient shall permit access by representatives of the Department of Fair Employment and Housing and the Trustees/Auxiliary 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, and all other sources of information and its facilities as said Department or Trustees/Auxiliary shall require to ascertain compliance with this clause.
- (4) Recipient, 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) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

c. **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 the certification required in Labor Code section 1861 with Auxiliary prior to performing the Work (reference Article 4.06-a, Policies and Coverage, herein).

d. **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.

e. **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.

f. **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 Auxiliary 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 Auxiliary tenders final payment to the Contractor, without further acknowledgment by the parties.

#### **4.03 Environmental Requirements**

Mitigation Monitoring and Reporting Programs (MMRP), which are included in California Environmental Quality Act (CEQA) documentation, provide a description of required mitigation measures associated with California State University capital projects. The Contractor shall implement those mitigation measures in the MMRP for which the Contractor has been designated the responsible party. In addition, the Contractor shall comply with the following environmental requirements.

a. **Air Pollution Control.**

The Contractor shall comply with all air 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.

- (1) Solvents.  
In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, the Contractor shall ensure that all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Project, 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.
- (2) Disposal of Material.  
Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises.
- (3) Fugitive Dust.  
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 (reference Article 4.08-c, Protection of Facilities).
- (4) Construction Vehicles and Equipment.  
Trucks hauling dirt from the Site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune.

b. Water Pollution Control.

The Contractor shall have design-build responsibilities to comply with all water pollution control rules, regulations, ordinances and statutes that apply to the Work performed under the Contract, including the California General Permit (NPDES) 2009-009-DWQ for Storm Water Discharges Associated with Construction Activities issued by the California State Water Resources Control Board (SWRCB) and as modified by order 2010-0014-DWQ, also issued by the SWRCB.

(1) Storm Water Pollution Prevention Plan.

The Contractor shall develop and implement a Storm Water Pollution Prevention Plan (SWPPP) that complies with the State of California Construction General Permit for Storm Water Discharges.

The Contractor shall contract for, or have on payroll, a California Certified Qualified SWPPP Developer (QSD). The Contractor shall be responsible for hiring or contracting for the services of a California certified Qualified SWPPP Practitioner (QSP).

The Contractor shall pay all costs associated with development and implementation of the SWPPP. [See Specifications for additional requirements.]

(2) Compliance.

The Contractor shall comply with the California General Permit for Waste Discharge Requirements for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), Order Number 2013-0001-DWQ. The Contractor shall comply with the University's Post Construction Storm Water Management Program requirements.

Post Construction Storm Water Management Program Best Management Program Practice (BMP) details shall be designed by a competent individual licensed to practice as a Civil Engineer in California.

(3) Maintenance Manual for Post-construction BMPs.

The Contractor shall incorporate into the Project a maintenance program for post-construction BMPs that will be permanent components of the completed project. The maintenance program shall be delivered in a bound manual. The manual shall meet the requirements described in the California Stormwater Quality Association's (<https://www.casqa.org/>) New Development & Redevelopment BMP Handbook.

c. 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 Auxiliary's requests to reduce noise levels.

The Contractor shall not cause or allow sounds to be produced in excess of 65 decibels measured at the jobsite between the hours of 7:00 p.m. and 7:00 a.m. The Contractor shall not cause or allow sounds to be produced in excess of 85 decibels measured at the job site between the hours of 7:00 a.m. and 7:00 p.m. without the consent of the University.

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.

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

d. 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 Contractor shall not be compensated for the delays in obtaining environmental clearances and authorizations; however, an appropriate extension of time will be granted in accordance with the provisions in Article 4.15-g, Adjustment of Contract Time Due to Reasons Beyond Auxiliary’s Control, if the Contractor demonstrates to the satisfaction of Auxiliary that it has made every reasonable effort to obtain the requisite clearance or authorizations, and cannot obtain it in a timely manner.

e. 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.*). Though not a State agency, Auxiliary is requiring compliance with this law for this project on Trustees’ property only. Accordingly, the Contractor shall submit to Auxiliary documentation that it is complying with the requirements of this law in purchasing these materials.

f. Archaeological Finds.

If the Contractor discovers any artifacts during excavation and/or construction, the Contractor shall stop all affected Work and notify Auxiliary, who will call in a qualified archaeologist to assess the discovery and suggest further mitigation, as necessary. Reference the [California Archaeological Inventory](#).

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

g. 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 Auxiliary for reporting to Trustees. Reference Specifications for further requirements.

h. Buy Clean California Act.

The following materials or products are subject to Buy Clean California Act (Public Contract Code section 3500 *et seq.*):

Material or product	Material specifications: CSI Unifomat
Carbon steel rebar	Section 03 20 00 , "Bar Reinforcement"
Structural steel	Section 05 12 00, "Structural Steel"
Flat glass	Section 08 80 00, "Glazing"
Mineral wool board insulation	Section 07 21 13.19 "Mineral Board Insulation"

For product category rules and more information on applicable materials or products, go to: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>

The schedule for adoption of the Buy Clean California Act is as follows:

- January 1, 2019 – EPDs will be requested by the state.
- January 1, 2020 – EPDs will be required by the state.
- January 1, 2021 – DGS publishes the maximum acceptable GWP for eligible materials.
- July 1, 2021 – EPDs will be required and used to gauge GWP compliance of eligible materials.

For projects with bid opening dates after November 30, 2018, and before November 30, 2019, the Trustees shall collect existing environmental product declarations (EPDs) from contractors for materials or products subject to the Buy Clean California Act.

(1) Definitions.

- Environmental Product Declaration (EPD). Independently verified document created and verified in accordance with International Organization for Standardization (ISO) 14025 for Type III environmental

declarations that identifies the global warming potential emissions of the facility-specific material or product through a product stage life cycle assessment.

- Product Category Rule. Program operator established rule based on the science of life cycle assessment that governs the development of the environmental product declaration for the material or product.
- Product Stage. Boundary of the environmental product declaration that includes: (1) raw material supply, (2) transportation processes, and (3) processing operations, including operations such as melting, mixing, fabrication, finishing, curing, cooling, trimming, packaging and loading for transport delivery. Commonly referenced as a "cradle-to-gate" life cycle assessment.
- Program Operator. Independent agency that supervises and confirms the full environmental product declaration development process in accordance with ISO 14025.
- Raw Material Supply. Upstream processes which can include allocations, extraction, refinement, reclamation, handling and processing of the constituents used in producing the material or product.
- Transportation Processes. Includes transportation of raw, reclaimed or recycled material constituents from the supplier to the gate of the manufacturer, producer or fabricator. Includes transport of related waste products.

(2) Submittals to the Trustees.

Contractors shall submit EPDs to University as a part of the submittal process for eligible materials. University shall compile EPDs for submission to CPDC as a part of project closeout.

#### 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 Auxiliary's 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 small business preference, the Non-Small Business Contractor shall use the small business subcontractor(s) and/or suppliers listed in its bid proposal unless a substitution is requested in writing to Auxiliary, and Auxiliary approves 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 Auxiliary 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. Substitution of a Disabled Veteran Business Enterprise.

The Contractor shall use the Disabled Veteran Business Enterprise (DVBE) companies listed in its bid proposal on the List of Proposed Subcontractors form, unless a substitution is requested in writing to Auxiliary, and Auxiliary and the Department of General Services (DGS) 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) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.



- (3) The Contractor must substitute a DVBE with another DVBE. If the DVBE substitution cannot occur, the Contractor must include a written justification and the steps that were taken to try to acquire a new DVBE subcontractor and how that portion of the contract will be fulfilled.
- (4) 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 request for substitution of a DVBE and Auxiliary's and DGS approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Public Contract Code sections 4100 *et seq.*) or any other Contract requirements relating to substitution of subcontractors.

d. Subcontractor Directory.

Contractor shall have submitted a Subcontractor Directory with the Contract in accordance with Article 2.06-b (4). If any listed firms have been substituted without approval by Auxiliary 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 Auxiliary. 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 Auxiliary. Assignments of moneys earned by the Contractor shall be subject to proper retention in favor of Auxiliary and to all deductions provided for in the Contract and such moneys shall be subject to being used by Auxiliary for the completion of the work in the event the Contractor is in default.

#### 4.06 Insurance Requirements

a. The Contractor shall not commence Work on the Site until it has obtained all the insurance required in this Article, and such insurance has been approved by the Auxiliary. This Project shall be enrolled in the Trustees' Builders Risk Insurance Program, for which the provisions of Article 4.06-c shall apply. This Project may be enrolled in the Trustees' Owner Controlled Insurance Program ("OCIP"), and if so, the provisions of Article 4.06-b shall apply. Contractor shall reference the Supplementary General Conditions to determine if this Project is enrolled in OCIP.

(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) Worker's Compensation including Employers 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 Auxiliary and the Contractor.

(2) Verification of Coverage.

The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to Auxiliary as evidence of the insurance coverage. Contractor shall timely file renewal certifications and endorsements for all coverage until the Work is accepted as complete pursuant to Article 8.01, Acceptance. Auxiliary reserves the right to require the Contractor to furnish Auxiliary complete, certified copies of all required insurance policies.

(3) Insurance Provisions.

Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in Article 4.07. The insurance policies shall contain, or be endorsed to contain, the following provisions.

- (a) For the General and Automobile Liability Policies, the State of California, the Trustees of the California State University, the University, Auxiliary, 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, Auxiliary, 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, the University, Auxiliary, their officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- (c) The Contractor shall immediately upon receipt of any notice of cancellation or any notice of non-renewal of any insurance required under this Article 4.06, provide written notice of any such insurance cancellation or non-renewal by certified mail to Auxiliary.
- (d) The State of California, the Trustees of the California State University, the University, Auxiliary, 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 ('M' indicates millions):

(i) Comprehensive or Commercial Form General Liability Insurance--Limits of Liability

Contract Amount	Up to \$2M	\$2M+\$.01 to \$5M	\$5M+\$.01 to \$10M	\$10M+\$.01 and Over
General Aggregate	\$2M	\$5M	\$10M	\$10M
Each Occurrence – combined single limit for bodily injury and property damage	\$1M	\$5M	\$10M	\$10M

(ii) Business Automobile Liability Insurance – Limits of Liability (Each Accident– combined single limit of bodily injury and property damage to include uninsured and underinsured motorist coverage.)

Vehicle Type	Autos or Pickup Trucks (up to one-ton)	Dump Trucks or Semi-trucks (hauling materials or equipment)
Each Accident	\$2M	\$5M

(iii) Workers' Compensation limits as required by law with Employer's Liability limits of \$1,000,000. These requirements and limits are the same for all size contracts.

(b) For Projects Involving Hazardous Materials.

The Contractor shall provide additional coverage in amounts not less than the following:

(i) Environmental Impairment (pollution) Liability Insurance – Limits of Liability

Contract Amount	Up to \$5M	\$5M+\$.01 and Over
General Aggregate	\$10M	\$10M
Each Occurrence – combined single limit for bodily injury and property damage, including clean-up costs.	\$5M	\$10M

(ii) In addition to the coverage described in 4.06-d (1) (b), 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\*

\$2M Each Occurrence

\$2M General Aggregate

\* These requirements and limits are the same for all size Contracts. A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

With Auxiliary's 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 Auxiliary, the Contractor shall also provide Auxiliary 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 Auxiliary as soon as the Contractor fully executes its subcontract with the hazardous materials subcontractor, or within 30 Days of the Notice to Proceed for the prime contract, 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 Auxiliary.
- (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. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials as required in Article 4.06-d, Amounts of Insurance, subdivision (2).
- (7) **Miscellaneous.**
  - (a) Any deductible under any policy of insurance required in this Article shall be Contractor's liability.
  - (b) Acceptance of certificates of insurance by Auxiliary shall not limit the Contractor's liability under the contract.
  - (c) In the event the Contractor does not comply with these insurance requirements, Auxiliary may opt to provide insurance coverage to protect Auxiliary. 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 the Contractor.
  - (d) If Auxiliary is damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay Auxiliary for all such damages.
  - (e) The Contractor's obligations to obtain and maintain all required insurance are nondelegable duties under this Contract.

b. **Owner Controlled Insurance Program (OCIP).**

Auxiliary **must** enroll any Project awarded with a Contract Amount of ten million dollars or more in this program. Contractor **must** reference the Supplementary General Conditions to determine if this Project is enrolled in this program, and **must** disregard these provisions of Article 4.06-b if not.

The Trustees have established an Owner Controlled Insurance Program, or OCIP, which will provide to Enrolled Parties (as defined below) Workers' Compensation and Employer's Liability insurance, Commercial General Liability insurance, and Excess Liability insurance, as summarily described below, in connection with the performance of the Work (OCIP Coverage). The OCIP is more fully described in the insurance manual (Insurance Manual) for the Project, which can be downloaded from <http://www.calstate.edu/cpdc/CM/OCIP.shtml>. Parties performing labor or services at the Project Site **must** enroll in the OCIP, unless they are Excluded Parties (as defined below). The Trustees have designated Alliant Insurance Services, Inc. as the OCIP Administrator (OCIP Administrator).

**Contractor and every subcontractor must bid the Project 'net' of their insurance costs for insurance coverages provided under the OCIP. Contractor must exclude from its bid, and ensure that each subcontractor of every tier excludes from his or her respective bids, the amount of Contractor and its subcontractors' reduction in insurance costs due to eligibility for OCIP coverages.**

- (1) **Enrolled Parties and their Insurance Obligations.**  
OCIP Coverage **must** cover Enrolled Parties. Enrolled Parties are: the Trustees as the Owner, the OCIP Administrator, Contractor and eligible subcontractors of all tiers that enroll in the OCIP, and such other persons or entities as Trustees may designate, in its sole discretion, (each party insured under the OCIP is an "Enrolled Party"). **Upon Auxiliary's enrollment of a project into the OCIP, Auxiliary will be designated an "Enrolled Party".**

For all Enrolled Parties, the OCIP Administrator **must** deem that, upon each party's enrollment in the OCIP for all on site activities, each party's obligation to obtain Comprehensive or Commercial Form Liability Insurance and Workers' Compensation including Employer's Liability Insurance, set out under Article 4.06-a(1)(a), has been satisfied.

All Enrolled Parties must still comply with all other provisions of Article 4.06-a, including providing Business Automobile Liability insurance for all activities, and providing Comprehensive or Commercial Form Liability insurance for offsite activities, providing Workers' Compensation/Employer's Liability Insurance for offsite activities, and providing any other insurance required under Article 4.06-a, or under any Supplementary General Conditions.

(2) Excluded Parties and Their Insurance Obligations.

The OCIP Coverage does not cover the following "Excluded Parties":

- (a) Hazardous materials remediation, removal and/or transport companies and their consultants;
- (b) Heavy demolition. Selective demolition as an incidental part of a larger contract is included.
- (c) Architects, surveyors, engineers, and soil testing engineers, and their consultants;
- (d) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Project Site;
- (e) Contractor and each of its respective subcontractors of all tiers that do not perform any actual labor on the Project Site; and
- (f) Trustees may, in its sole discretion, exclude any other party or entity not specifically identified herein, even if they are otherwise eligible.
- (g) Subcontractors, of any tier, with an EMR rating of over 1.25 unless specifically approved by the Underwriter.

Excluded Parties must fully comply at all times with the requirements of Article 4.06-a.

(3) OCIP Insurance Policies Establish the OCIP Coverage.

The OCIP Coverage and exclusions summarized in this Article 4.06-b and in the other Contract Documents are set forth in full in their respective insurance policies. The summary descriptions of the OCIP Coverage in this Article 4.06-b or the Insurance Manual are not intended to be complete or to alter or amend any provision of the OCIP Coverage. In the event any provision of this Article 4.06-b, the summary below, the Insurance Manual, or the Contract Documents conflicts with the OCIP insurance policies, the provisions of the OCIP insurance policies **must** govern.

(4) Summary of OCIP Coverage.

OCIP Coverage **must** apply only to those operations of each Enrolled Party performed at the Project Site in connection with the Work, and only to Enrolled Parties that are eligible for the OCIP. OCIP coverage **must** not apply to ineligible parties, even if they are erroneously enrolled in the OCIP. An Enrolled Party's operations away from the Project Site, including product manufacturing, assembling, or otherwise, **must** only be covered if such offsite operations are identified and are dedicated solely to the Project. OCIP Coverage **must** not cover offsite operations until receipt by Contractor or its Subcontractor of any tier of written acknowledgment of such coverage from the OCIP Administrator.

Following is a summary of the coverage provided under the OCIP:

	<u>Coverage Limits</u>
(a) Workers' Compensation Insurance .....	Statutory Limit
This insurance is primary for all occurrences at the Project Site.	
(b) Employer's Liability Insurance	
Bodily Injury by Accident, each accident .....	\$1,000,000
Bodily Injury by Disease, each employee .....	\$1,000,000
Bodily Injury by Disease, policy limit .....	\$1,000,000
This insurance is primary for all occurrences at the Project Site.	
(c) Commercial General Liability Insurance	
(Written on most current ISO Occurrence Form, or its equivalent)	
Each Occurrence Limit.....	\$2,000,000
General Aggregate Limit for all Enrolled Parties.....	\$4,000,000
Products & Completed Operations Aggregate for all Enrolled Parties .....	\$4,000,000

Ten (10) Years Products & Completed Operations Extension  
This insurance is primary for all occurrences at the Project Site.

(d) Excess Liability Insurance (over Employer's Liability & General Liability) .....\$100,000,000

(5) Auxiliary's Insurance Obligations.

Auxiliary **must** pay the costs of premiums for the OCIP Coverage. Trustees will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Contractor hereby assigns to Trustees the right to receive all such adjustments, and **must** use its best efforts to ensure that each of its subcontractors of every tier assigns to Trustees the right to receive all such adjustments. Trustees and Auxiliary assume no obligation to provide insurance other than that specified in this Article, and in the OCIP insurance policies. Trustees and Auxiliary's furnishing of OCIP Coverage **must** in no way relieve or limit, or be construed to relieve or limit, Contractor or any of its subcontractors of any tier of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligations which Contractor or any of its Subcontractors has to Trustees and Auxiliary thereunder. Auxiliary reserves the right at their option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.

(6) Contractor's OCIP Obligations.

Contractor must:

- (a) Incorporate the terms of these Contract General Conditions into in all subcontract agreements.
- (b) Enroll in the OCIP within five (5) days of execution of the Contract and maintain enrollment in the OCIP for the duration of the Contract, and assure that each of Contractor's eligible subcontractors of every tier enroll in the OCIP, and maintain enrollment in the OCIP for the duration of their respective subcontracts within five (5) days of subcontracting and prior to the commencement of Work at the Project Site.
- (c) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Article 4.06-b, the Insurance Manual, the OCIP Safety Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.
- (d) Provide to each of its Subcontractors of every tier a copy of the Insurance Manual, and ensure subcontractor compliance with the provisions of the OCIP insurance policies, the Insurance Manual, this Article, and the Contract Documents. The failure of either (1) the Trustees to include the Insurance Manual in the bid documents or (2) Contractor to provide to each of its eligible subcontractors of every tier a copy of the same, **must** not relieve Contractor or any of its subcontractors from any of the obligations contained therein.
- (e) Acknowledge, and require all of its subcontractors of every tier to acknowledge, that:
  - Trustees, Auxiliary, and the OCIP Administrator are not agents, partners or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer"),
  - Neither Trustees, Auxiliary, nor the OCIP Administrator are responsible for any claims or disputes between or among Contractor, its subcontractors of any tier, and any OCIP Insurer(s), and
  - Neither Trustees, Auxiliary, nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s).

Any type of insurance coverage or limits of liability in addition to the OCIP Coverage that Contractor or its subcontractors of any tier require for its or their own protection, or that is required by applicable laws or regulations, **must** be Contractor's or its subcontractors' sole responsibility and expense, and **must** not be billed to Trustees.

- (f) Cooperate fully with the OCIP Administrator and the OCIP Insurers, as applicable, in its or their administration of the OCIP.
- (g) Provide, within five (5) days of Trustees, Auxiliary, or OCIP Administrator's request, all documents or information as requested of Contractor or its subcontractors. Such information may include, but may not

be limited to, payroll records, certified copies of insurance coverages, declaration pages of coverages, policy rate pages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, construction cost estimates for this Project, or such other data or information as Trustees, Auxiliary, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP, to verify that the Costs of OCIP Coverages were not included in the Contract Price/Contract Sum, or any subcontract amount, or as required by the Insurance Manual. All such records must be maintained through the term of the Contract and for a period of one (1) year thereafter.

- (h) Comply, and require all of its subcontractors to comply with OCIP Administrator’s instructions for electronically enrolling in the OCIP using “Alliant WrapX” and for electronically reporting payroll using “Alliant WrapX.”
- (i) Pay to Trustees a sum in accordance with the Contract Amounts in the table below for each occurrence, including court costs, attorneys’ fees and costs of defense for bodily injury or property damage to the extent losses payable under the OCIP Commercial General Liability Policy are attributable to Contractor’s Work, acts, or omissions, the Work, acts, or omissions of any of Contractor’s Subcontractors of any tier, or the Work, acts or omissions of any other entity or party for whom Contractor or its Subcontractor may be responsible (“General Liability Obligation”).

Contract Amounts	Pay to the Trustees for Each Occurrence
\$1,000,000 or less	\$1,000
\$1,000,000.01 through \$10,000,000	\$5,000
\$10,000,000.01 and over	\$25,000

The General Liability Obligation **must** remain uninsured by Contractor, and will not be covered by the OCIP Coverage.

**(7) All Bids Net of OCIP Insurance Costs.**

Contractor and every subcontractor must bid the Project ‘net’ of their insurance costs for insurance coverages provided under the OCIP. Contractor must exclude from its bid, and ensure that each subcontractor of every tier excludes from his or her respective bids, the “Costs of OCIP Coverages”. The Costs of OCIP Coverages is defined as the amount of Contractor’s and its subcontractors’ reduction in insurance costs due to eligibility for OCIP Coverages as determined by using the following Alliant Forms: Enrollment Form, Insurance Cost Worksheet Form, and Payroll Reporting Form; instructions for these forms are located in the Insurance Manual. The Costs of OCIP Coverages includes reduction in insurance premiums, related taxes and assessments, mark-up on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of OCIP Coverages must include expected losses within any retained risk. Contractor must deduct the Cost of OCIP Coverages for all subcontractors in addition to their own Cost of OCIP Coverages. Change orders must also be priced to exclude the Cost of OCIP Coverages.

- (8) Contractor’s Representations and Warranties to Trustees/Auxiliary.  
Contractor represents and warrants to Trustees/Auxiliary, and **must** use its best efforts to ensure that each of its subcontractors of every tier represent and warrant to Trustees/Auxiliary that:
  - (a) All information they submit to Trustees, Auxiliary, or to the OCIP Administrator **must** be accurate and complete.
  - (b) They have had the opportunity to read and analyze copies of the OCIP insurance policies that are on file in Trustees or Auxiliary’s office, and that they understand the OCIP Coverage. Any reference or summary in the Agreement, this Article 4.06-b, the Insurance Manual, or elsewhere in any other Contract Document as to amount, nature, type or extent of OCIP Coverage and/or potential applicability to any potential claim or loss is for reference only. Contractor and its subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Coverage in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverage and/or its potential applicability to any potential claim or loss.

- (c) The Costs of OCIP Coverages were not included in Contractor's bid or proposal for the Work, the Contract Price/Contract Sum, and will not be included in any change order or any request for payment for the Work or extra work.
- (d) Contractor acknowledges that Trustees/Auxiliary **must** not pay or compensate Contractor or any subcontractor of any tier, in any manner, for the Costs of OCIP Coverage.
- (9) OCIP Audits.  
Contractor agrees that Trustees, Auxiliary, the OCIP Administrator, and/or any OCIP Insurer may audit Contractor's or any of its subcontractors' payroll records, books and records, insurance coverage, insurance cost information, bid estimates, pricing for any cost in the Contract Price/Contract Sum, or any subcontracted Work, or any information that Contractor provides to Trustees, Auxiliary, the OCIP Administrator, or the OCIP Insurers to confirm their accuracy, and to ensure that the Costs of OCIP Coverages are not included in any payment for the Work.
- (10) Trustees' Election to Modify or Discontinue the OCIP.  
For any reason, Trustees may modify the OCIP Coverage, discontinue the OCIP, or request that Contractor or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice Contractor and/or one or more of its subcontractors, as specified by Trustees in such notice, **must** obtain and thereafter maintain during the performance of the Work, all (or a portion thereof as specified by Trustees) of the OCIP Coverage. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance **must** be subject to Trustees or Auxiliary's approval. The cost of the replacement coverage **must** be at Trustees' expense, but only to the extent of the applicable Insurance Credit.
- (11) Withholding Payments.  
**Auxiliary** may withhold from any payment owed or owing to Contractor or its subcontractors of any tier any portion of the Insurance Credit improperly included in a request for payment. In the event a Trustees or Auxiliary's audit of Contractor's records and information as permitted under the Contract Documents reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract Documents to be provided by Contractor to Trustees or Auxiliary, or to the OCIP Administrator, **or reveals the inclusion of the Cost of OCIP Coverages in any payment for the Work**, Auxiliary shall have the right to a full deduction of any improperly billed costs from the Contract Amount and recovery of all audit costs. Audit costs shall include, but shall not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the audit and review. If the Contractor or its subcontractors fail to timely comply with the provisions of Contract General Conditions Article 4.06-b, and Supplementary General Conditions Article 4.06-b, Auxiliary may withhold any payments due to Contractor and/or its subcontractors of any tier until such time as they do comply. Such withholding by Auxiliary shall not be deemed to be a default under the Contract Documents.
- (12) Waiver of Subrogation.  
Where permitted by law, Contractor hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against Trustees, Auxiliary, the OCIP Administrator, their officers, agents, or employees, and any other contractor or subcontractor performing Work or rendering services on behalf of Trustees in connection with the planning, development and construction of the Project. Auxiliary **must** also require that all Contractor-maintained insurance coverage related to the Work, include clauses providing that each insurer **must** waive all of its rights of recovery by subrogation against Contractor together with the same parties referenced immediately above in this Article 4.06-b (12). Where permitted by law, Contractor **must** require similar written express waivers and insurance clauses from each of its subcontractors. A waiver of subrogation **must** be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- (13) Conflicts.  
In the event of a conflict between the provisions of this Contract and the OCIP Insurance Manual, this Contract **must** govern. In the event of any conflict or difference between the OCIP insurance policies and this Contract or the OCIP Insurance Manual, the actual OCIP policies **must** govern.

- c. Trustees' Course of Construction ("Builder's Risk") Property Insurance. Trustees shall insure or self-insure all Work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the Work, against physical loss or damage resulting from the perils normally insured under a "Standard All Risk Course of Construction" policy, including, but not limited to theft, fire, flood, vandalism, or Acts of God, as defined in Public Contract Code section 7105. The term, Acts of God, as defined in Public Contract Code section 7105, means earthquakes in excess of a magnitude of 3.5 on the Richter magnitude scale and tidal waves. Trustees or Auxiliary shall issue to the Contractor a "Summary of Coverage" provided under this Article 4.06-c, upon request of the Contractor.
- (1) Contractor shall be responsible for paying a deductible of \$25,000 per occurrence in the event of loss, with the following exceptions. The Contractor shall be responsible for paying a deductible of:
    - (a) \$50,000 per occurrence in the case of water damage, or
    - (b) \$100,000 per occurrence in the case of flood, or
    - (c) \$100,000 per occurrence in the case of damages caused by Acts of God.
  - (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 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 or Auxiliary will be payable to the Trustees or Auxiliary 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 offsite; however, the Contractor is responsible for reviewing the summary of coverage and reporting large values requiring special treatment. Contractor shall advise Auxiliary whenever the total value of materials in transit exceeds \$1,000,000 at any time, and whenever the total value of materials stored offsite exceeds \$1,000,000 at any time.
  - (5) Nothing in this Article 4.06-c shall be construed to relieve the Contractor of Contractor's responsibilities referred to under Article 4.06-a.
  - (6) Insurance policies referenced in this Article 4.06-c 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 right of subrogation against the Contractor and subcontractors of every tier.
    - (c) Insurer shall name the Contractor and subcontractors of every tier as additional insured.

#### **4.07 Indemnification**

Nothing in these indemnification provisions shall be deemed to alter the insurance provisions in Article 4.06.

- a. The Contractor shall hold harmless, defend, and indemnify the State of California, the Board of Trustees of the California State University, the University, and Auxiliary, their 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 their obligations under the Contract or the performance of their obligation in a willful, reckless, 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 Auxiliary 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 Board of Trustees of the California State University, the University, and Auxiliary, their 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, recklessness, 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 Board of Trustees of the California State University, the University, and Auxiliary, their 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 Auxiliary, against Auxiliary, 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 Board of Trustees of the California State University, the University, and Auxiliary, their 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, recklessness, 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.

Auxiliary shall cause a reciprocal indemnification provision in favor of the Contractor to be included in its contracts with separate contractors of Auxiliary. Liability for any negligent act or omission, recklessness, 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.

Contractor shall create a report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the Work the subcontractors are performing. Each subcontractor shall create report of construction activities occurring each day, and include a listing of all subcontractors of all tiers and the numbers of workers for each that are on Site each day, briefly describing the Work the subcontractors are performing. Contractor and every subcontractor shall submit these reports to Auxiliary daily. At the end of the Project, Contractor shall submit to Auxiliary a complete listing of all subcontractors, suppliers and other businesses that performed Work on the Project. Reference Article 2.06-b (4), Subcontractor Directory.

Auxiliary 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 Auxiliary other than those special inspections and tests performed by Auxiliary's selected laboratories for which there are written reports.

On projects with new foundations (for buildings, Site improvements, bridges, light poles, others), the Contractor shall prepare a certified survey illustrating dimensions, locations, angles and elevations of the construction associated with the new foundation, and shall show the as-built location of the construction on the Project Site Boundary drawing provided by Auxiliary. The Contractor shall specify the horizontal location using California Coordinate System, NAD 83 Coordinates. An appropriately licensed Professional Land Surveyor shall stamp the certified survey, after which the Contractor shall submit it promptly to the Architect and Auxiliary.

##### **b. Burden for Damage.**

From the issuance of the official Notice to Proceed until the formal acceptance of the Project by Auxiliary, 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 Auxiliary 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 Auxiliary or the Trustees, Auxiliary, in addition to other remedies available to Auxiliary, may 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, Auxiliary, nor the officers, employees, representatives, nor agents of each of them shall be responsible for any damage to the Project, and to materials and equipment for the Project.

c. Protection of Facilities.

From Auxiliary's issuance of the official Notice to Proceed to the Contractor, until the formal acceptance of the Project by Auxiliary, Contractor shall protect the Site and Work from theft, acts of malicious mischief, vandalism and unauthorized entry. During all hours that Contractor is not prosecuting Work, Contractor shall furnish such security 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 result 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 Auxiliary. Contractor shall initiate an erosion and sedimentation control program, which includes measures addressing erosion caused by wind and water and sediment in runoff from Site. Also, Contractor shall initiate a regular watering program to adequately control the amount of fugitive dust in accordance with applicable Air Quality Management District (AQMD) rules, reference 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.

- (1) 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.
- (2) The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs.
- (3) 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.
- (4) 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).
- (5) Auxiliary 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 that all local, state, and federal workplace safety guidelines are being observed. 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.
- (6) Contractor shall not use explosives without first obtaining written permission from the Trustees and Auxiliary and then shall use them 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. The Trustees/Auxiliary prohibit storage of explosives on the Project Site or University property. 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 and Auxiliary 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, Auxiliary 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. Auxiliary shall also compensate the Contractor 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. Auxiliary shall base all such compensation to the Contractor on an actual repair cost plus Contractor and subcontractor mark-up, as identified in Article 6.01-b, Allowable Costs Upon Change Orders, subdivisions (4), (5) and (6). When the damage results from the failure of the Contractor or subcontractor to exercise reasonable care, Auxiliary shall reduce both the Contractor and subcontractor's

mark-up by six (6) percent each. Auxiliary 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. If the Auxiliary or the owner of the utility fail to provide for removal or relocation of such unidentified utility facilities, the Auxiliary shall not assess liquidated damages on the Contractor for delay in the completion of the Project.

- (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 the presence of existing service laterals or appurtenances. Additionally, Auxiliary shall have no obligation to indicate them 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. This would include, without limitation, repair of any damage that may result, including any damage resulting from hand or exploratory excavation.

Auxiliary cautions the Contractor 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 high voltage cables, the Contractor shall:

- observe special precautions at his own cost;
- expose all cables and the enclosure ducts by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and
- erect appropriate warning signs, barricades, and safety devices.

- (4) The Contractor shall provide as-built drawings of all utilities encountered and constructed to the Trustees and Auxiliary, indicating the size, horizontal location, and vertical location based on the Project benchmark or a stable datum.

f. **Hazardous Materials**

(1) **Asbestos.**

The Contractor shall not install any asbestos-containing materials or products in any Work 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 shall not install any lead-containing materials or products, including paint, in any Work performed under this Contract without the written consent of the Executive Facilities Officer, the University Director of Environmental Health and Safety, and Auxiliary. 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 Auxiliary Prior to Acceptance**

Auxiliary reserves the right to occupy all or any part of the Project before completion of the entire contract, upon issuance of a Field Instruction and subsequent written Contract Change Order, or upon issuance of a written Contract Change Order therefor. In such event, the Contractor shall be relieved of responsibility for any injury or damage to such occupied part as results from Auxiliary's 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 Auxiliary, and if such occupancy results in increased premiums for such insurance, Auxiliary 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.

Auxiliary's occupancy of the Project shall not constitute acceptance by Auxiliary (reference 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 Auxiliary 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 the facilities is entirely occupied by Auxiliary, then upon written request of the Contractor, and subject to Auxiliary's written consent thereto, the guarantee period for the occupied facility may commence from the date of occupancy by Auxiliary.

**4.10 Payments by Contractor**

In accordance with Business and Professions Code section 7108.5, and unless otherwise agreed in writing by the parties, the Contractor agrees to promptly pay all subcontractors within seven (7) Days of receipt of each progress payment, the respective

amounts allowed Contractor on account of the Work performed by its subcontractors, to the extent of each such subcontractor's interest therein.

Under this Contract, the Contractor shall pay each employee engaged in Work on the Project, and shall require its subcontractors to pay each employee engaged in Work on the Project, in full (less deductions made mandatory by law), and 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. Contractor is responsible 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 occur 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 and agrees to save harmless, defend, and indemnify the State, the Trustees of the California State University, the University, Auxiliary, and its officers, agents and employees of each of them from all suits, actions, or claims for or on account of, the use of any patented or copyrighted materials, equipment, devices, or processes.

#### **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 Auxiliary once 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 installed. The Contractor warrants that all such property shall pass to Auxiliary free and clear of all liens, claims, security interests, or encumbrances.

#### **4.14 Taxes**

The Contractor shall pay all levied taxes imposed by law that become payable resulting from 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.

Auxiliary 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 Auxiliary adjusts such time, in writing, by change order. The Contractor may complete the Work before the completion date if it will not interfere with Auxiliary or their other contractors engaged in related or adjacent Work. Auxiliary shall regard the Work as completed on the acceptance date noted on Auxiliary's Notice of Completion, and Auxiliary considers this acceptance date as the date that starts the guarantee period as defined in Article 8.06, Guarantee.

c. Adjustment of Contract Time Due to Acts of God, etc.

Provided that the Contractor shall notify the Architect and Auxiliary in writing of the causes of delay within 24 hours from the beginning of any such delay, Auxiliary shall not assess the Contractor with liquidated damages, nor the cost of engineering and inspection during any delay in the completion of the Project caused by any of the following:

- 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.

The Architect, in conjunction with Auxiliary, shall determine the facts with regard to the delay and the reasonable period of time to extend the date of completion by reason thereof, if any, and advise Auxiliary accordingly. Auxiliary's findings thereon shall be final and conclusive.

Auxiliary shall not compensate 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 that delays the time of completion of the Contract. Adverse weather is subject to a Contract Time adjustment if it exceeds weather normal for the locality as defined by the National Oceanic and Atmospheric Administration (NOAA).

The Contractor shall have no right to an adjustment in the time of completion due to weather conditions or industrial conditions that are normal for the locality of the Site. Auxiliary has calculated the time for completion of the Contract, 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 Auxiliary or the Architect.

If the Contractor experiences a delay in completing the Contract by:

- reason of any act of the Architect or Auxiliary 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,

Auxiliary may extend the time for completion of the Contract for a period commensurate with the delay. The Contractor shall notify the Architect and Auxiliary in writing of the causes of the delay within seven Days from the beginning of the delay.

e. Contractor to Prosecute the Work Fully.

Auxiliary will grant no extension of time for any of the causes for which extensions are granted unless the Contractor demonstrates to the satisfaction of Auxiliary that the Contractor has made every reasonable effort to fully prosecute the Work and complete the Work within the Contract Time. 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. Contractor shall reference Article 4.16, Schedule.

f. Auxiliary's Adjustment of Contract Time.

The Contractor has no right to an extension of time for completion, however, Auxiliary may extend the time at the Contractor's request, if Auxiliary determines it to be in the best interest of the State. If Auxiliary extends the time, Auxiliary may, as Auxiliary may deem proper, in lieu of assessing liquidated damages, charge the Contractor and its successors, heirs, assigns, or sureties, and deduct the following from the final payment for the Work:

- all or any part of the value of the lost use of the completed Project, and
- the actual cost to Auxiliary of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension. Such costs will not exceed liquidated damages.

g. Adjustment of Contract Time due to Reasons beyond Auxiliary's Control.

Due to any litigation or other reason beyond Auxiliary's control that prevents or enjoins Auxiliary from proceeding with Work, either before or after the start of construction, the Contractor shall not be entitled to make or assert any claim for damage by reason for said delay. Auxiliary will extend the time for completion of the Work to such reasonable time as Auxiliary may determine will compensate the Contractor for time lost by such delay. Auxiliary will set forth in writing any such determinations.

h. Liquidated Damages.

Reference Article 7.02, Delay in Completion--Liquidated Damages.

#### 4.16 Schedule

a. Time is of the essence of this Contract, including the time of beginning, the rate of progress, and the time of completion of the Work. Contractor shall prosecute the Work 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. Contractor shall prepare and submit to Auxiliary with copy to the Architect and the Construction Administrator's on-site representative the Contractor's Initial Construction Schedule within thirty (30) Days after starting date on the Notice to Proceed. Contractor's Initial Construction Schedule shall be comprised of a Critical Path Method network. Contractor shall input the critical path Construction Schedule on the computer using the scheduling software as specified in the Division 01-General Requirements for this Project. The Contractor shall provide electronic data files.

The Contractor shall show on the initial Construction Schedule the expected dates on which each part or division of the Work is to start and complete. The initial Construction Schedule shall also show all submittals associated with each Work activity required by the Contract with activities for the submittal development, its review, and the fabrication/procurement for each procurement, allowing 21 Days for the Architect's review of each submittal. The Work activities making up the Construction Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that, in the sole judgment of Auxiliary, it provides an appropriate basis for monitoring and evaluating the progress of the Work. The Construction Schedule shall show the interdependence of each activity and a critical path. The Contractor shall also submit a separate listing of all submittals required under the Contract, noting the anticipated submittal date for each submittal.

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

- 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 Construction Schedule shall show milestones, including milestones for Auxiliary-furnished information, and shall include activities for Auxiliary-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 acceptance and recordation dates as noted on the recorded Notice of Completion. No more than twenty percent of the activities will have less than five Working Days of float unless approved by Auxiliary. 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. Contractor shall base its weather data on information provided by the National Oceanic and Atmospheric Administration (NOAA).

Contractor shall develop the Construction Schedule using an appropriate Work breakdown structure. The Contractor's transmittal provided with the initial Construction Schedule shall state whether the durations are in Working Days or 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 Construction Schedule will not change the Contract Time. The Contract Time shall control in any determination of liquidated damages or extension of the Contract Time. Total float, slack time, or contingency is the unused time within the Construction Schedule and the difference in time between the Project's early completion date and the required Contract completion date. Total float is not for the exclusive use of either Auxiliary or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.
- e. The 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, constraints, unnecessary milestones, leads or lags in logic ties, and hammock type activities. Since Contractor and Auxiliary jointly own float within the Construction Schedule, Auxiliary will grant no time extensions, nor pay delay damages, until a delay occurs which extends the Work beyond the Contract completion date. Since float within the Construction Schedule is jointly owned, it is acknowledged that Auxiliary-caused delays on the project may be offset by Auxiliary-caused timesavings (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 Auxiliary exceeds all Auxiliary-caused timesavings, and the Contract completion date is overrun.
- f. Comments made by Auxiliary 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 Auxiliary's 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). Auxiliary may request the participation of subcontractors in these reviews, as determined necessary by Auxiliary. All revisions shall be resubmitted within fifteen (15) Days after Auxiliary's 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 Auxiliary grants a time extension due to unusual circumstances.
- h. The Contractor's Construction Schedule shall provide a workable plan for monitoring the progress of all the elements of the Work, establish and clearly display the critical elements of the Work, forecast completion of the construction, and match the Contract duration in time. Exclusive of those activities for submittal review and material fabrication and

delivery, activity duration shall not be less than one (1) nor more than thirty (30) Days, unless otherwise approved by Auxiliary. 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 Construction Schedule, and
- (2) Activity Report, sorted by early start or a list showing each activity in the Construction Schedule, arranged by early start dates.

- i. The Contractor shall submit an updated Construction Schedule 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 Progress Schedule that satisfies the requirements of this Article, accurately reflects the status of the Work, revises the cash flow schedule, and incorporates all changes into the Construction Schedule, shall be a condition precedent to the processing of the monthly payment application. Contractor shall also submit Progress Schedules at such other times as Auxiliary may direct. If the Contractor fails to comply or is late in compliance with this requirement, and Auxiliary finds it to be in its best interest to process the monthly payment, Auxiliary shall retain an amount not exceeding \$10,000 from each monthly progress payment until compliant.

The Contractor's monthly Progress Schedule update shall include a report containing a narrative that includes the following:

CONTRACTOR'S PROGRESS 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 the Construction Schedule, the number of calendar days ahead
  - If behind the Construction Schedule, the number of calendar days behind
- Other Project or scheduling concerns
- Updated network diagram with target bars shown.
- Tabular report as specified in subdivision (h) above, including a listing of completed activities and activities in progress.
- Flash drive or other media with the latest data files as specified in subdivision (h) above.

If the Contractor revises the logic or durations of the approved schedule as part of the monthly updates, the Contractor shall submit a narrative detailing the revisions with the monthly update.

The Contractor shall set the schedule calculation setting for the monthly updates to retained logic, and may only utilize the progress override setting to identify the differential in the calculated finish date due to out of sequence progress. Should the differential in the Project completion exceed ten (10) Days utilizing the retained logic setting vs. the progress override setting, the Contractor shall revise the successor logic of the out of sequence activities to eliminate the differential.

The Contractor shall set the schedule calculation setting for the monthly updates to retained logic, and may only utilize the progress override setting to identify the differential in the calculated finish date due to out of sequence progress. Should the differential in the Project completion exceed ten (10) Days utilizing the retained logic setting vs. the progress override setting, the Contractor shall revise the successor logic of the out of sequence activities to eliminate the differential.

- j. If any of the following is behind the approved 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 revised Construction Schedule acceptable to the Auxiliary for completing the Work on or before the current Contract completion date.
- completion of any part of the Work,
  - delivery of equipment or materials, or
  - submission of the Contractor submittals.

The revised Construction Schedule shall take some or all of the following actions:

- (1) Increase construction manpower in such quantities and crafts as shall substantially eliminate the backlog of Work and meet the current Contract completion date.
- (2) Increase the number of working hours per shift, the number of shifts per day, the number of Working 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 shall Contractor add equipment or construction forces, increase the working hours, or employ any other method, manner, or procedure to return to the contractually required completion date justification for a change order or justification for a compensable acceleration, unless Auxiliary provides prior written approval.

k. Adjustment of Contract Times for Completion

In addition to the provisions in the Contract General Conditions, Auxiliary will adjust the Contract Time for completion of the Work in accordance with these procedures.

(1) Time Impact Analysis

Whenever the Contractor submits a request for an adjustment of the Contract Time for completion for changes or alleged delays, the Contractor shall also submit a complete Time Impact Analysis (TIA). The Contractor shall submit the TIA for review within seven (7) Days after the request. Auxiliary will not grant time extensions unless substantiated by the TIA, and then not until the Project float becomes zero. If the Contractor fails to submit a TIA within the aforementioned time specified, then Auxiliary shall deem that the Contractor agreed that there is no time impact and that the Contractor has irrevocably waived its rights to any additional Contract Time.

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

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

The Contractor shall determine the TIA based on the date or dates when the change or changes were issued or the date or dates when the alleged delay or delays began. The status of the construction Project and TIA shall include event time computations for all affected activities including, but not limited to, Work around sequencing or recovery options to maintain the original Contract completion date.

The Construction Administrator may require that the Contractor provide the TIA in order to demonstrate the time impact upon the overall Project and the time for completion, at no additional cost to Auxiliary.

If the Construction Administrator finds, after review of the TIA, that the Contractor is entitled to any extension of time for completion, the Construction Administrator will adjust the Contract Time for completion accordingly, and the Contractor shall then revise the Monthly Baseline Schedule accordingly.

- (2) The Construction Administrator shall grant no time extensions nor pay indirect costs unless:
  - the Contractor can clearly demonstrate the delay on the basis of the updated Progress Schedule current as of the month the change is issued or the delay occurred, and
  - the delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other means.

The Contractor shall include field instructions and change orders in the revised Construction Schedule. Failure to include field instructions or change orders shall waive rights to a Contract Time extension or delay damages.

- l. Once each week, or as approved in writing by Auxiliary, the Contractor shall submit a Progress Schedule listing the activities begun, completed, and in progress in the past week, and the activities scheduled to begin, to be completed or to be in progress for the succeeding three (3) weeks. This schedule shall cover all Work activities listed on the Progress Schedule for the reporting period.



- m. As a condition precedent to the release of retained funds, the Contractor shall, after completion of the Work has been achieved, submit a final Contractor's Progress Schedule, which accurately reflects the manner in which the Project was constructed and includes actual start and completion dates for all Work activities.
- n. Auxiliary 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 Construction Schedule and within the Contract Time (Public Contract Code section 10843). Contractor shall make certain that competent workers are employed who are skilled in the type of Work required and that workmanship is of the best, regardless of the quality of material. If, in the judgment of Auxiliary, 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 Contractor shall not replace a Superintendent without advanced written approval from Auxiliary. If, in the judgment of Auxiliary, the Superintendent is incompetent, unqualified, poorly performing or disorderly, the Contractor shall, upon request by Auxiliary, promptly remove such person from the Project and shall not re-employ such person thereon. In this event, Auxiliary shall approve the replacement Superintendent.

The Superintendent shall prepare a daily report that includes worker count, Work in progress, etc., and shall provide it to Auxiliary 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 which is authorized in the Plans and Specifications or approved by Auxiliary.

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

The Trustees and Auxiliary 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 and Auxiliary or others engaged in the Trustees and Auxiliary's Work nor to cause any unreasonable delay or hindrance thereto. Where two or more contractors are working on related or adjacent Work, each shall conduct their 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. Contractor shall mark every sheet of the Plans and Specifications that differs from the actual construction, and shall note sheets so changed on the title sheets of the Plans and Specifications. Contractor shall show all change orders by reference to drawings, and include any supplementary drawings or change order drawings. Contractor shall review the "as-built" drawings with the Construction Inspector at least once a month to demonstrate that the Contractor is recording all changes that have occurred fully and accurately. The Contractor shall provide sufficient detail to the altered Contract drawings so that contractor(s) may conduct future Work on the Project or in adjacent areas with a minimum of difficulty. Before the completion of the Project, and before Auxiliary releases the final retention payment, Contractor shall transmit the "as-built" drawings and Specifications to the Architect for further handling, with a copy of the transmittal to Auxiliary and the University representative assigned to the Project.

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

The Contractor shall at all times permit Auxiliary, 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. Contractor shall not cover up Work requiring testing, inspection or verification without such test, inspection, or approval. The Contractor shall notify the Construction Inspector in writing at least one (1) Working Day before the Construction Inspector is required to inspect the Work. For a project with part-time inspection, a minimum of two (2) 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.  
Auxiliary defines “Premium Time” 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 (2) 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, Contractor shall reimburse Auxiliary the premium cost of inspection.
- b. Reinspections.  
Auxiliary 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 Auxiliary 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 Auxiliary. At all times while finish Work is underway, Contractor shall keep floors 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, Auxiliary may opt to arrange to clean the Project or Site and 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, and shall identify the Project name, Auxiliary, the Architect, and the Contractor. No advertising is permitted on the Project or Site without written permission from Auxiliary.

### **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) Material and equipment 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 material and equipment 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, Contractor shall deem such detail 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 Contractor shall provide the written request to the Architect with copies to the Project Manager/Construction Inspector and Auxiliary.

The Architect, with review as required by Auxiliary, 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 (7) Days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. Contractor shall send copies of such correspondence to Auxiliary and the Project Manager/Construction Inspector. Within seven (7) 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 Auxiliary. If, in the judgment of Auxiliary, the notice is justified, the Architect shall revise the interpretation, clarification or additional detailed instructions or the extra Work authorized by Contract Change Order or by Field Instruction with a Change Order to follow. If Auxiliary decides that the claim is not justified, Auxiliary 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 Auxiliary of a written order to do so, in accordance with the Architect's interpretation of the Contract requirements. If the Contractor objects to the order, the Contractor must notify the Architect and Auxiliary in writing of its objection and the reasons therefor, within seven (7) Days of receipt of the order. The Contractor shall have the right to have this claim later determined by a Claims Review Board pursuant to this Contract (reference Article 7.01, Claims). 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 the written notices required to the Architect within seven (7) 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 referenced in the Contract, Contractor shall consider such designations as those found in industry publications of current issue as of the bid opening 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, Contractor shall consider these a part of this Contract. When such references do not bear a date of issue, Contractor shall consider the current and most recently published edition, as of the bid opening date specified in the Notice to Contractors, a part of this Contract.

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

a. Submittal Procedure.

“Shop drawings” include drawings, diagrams, illustrations, material and equipment 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 review and approve all shop drawings. Once approved, the Contractor shall promptly mark the shop drawing “approved” so as to cause no delay in the Work, and submit it to the Architect. The Contractor shall also include with this submittal samples as required by the Contract, and any offers of alternatives or substitutions. Contractor shall submit at least six copies of shop drawings as well as additional copies as required by Architect, or as required by Auxiliary for electronic management. Contractor shall send all such submittals 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 containing a list of all matters submitted and identifying 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. In the letter and all items accompanying it, the Contractor shall fully identify the Project name and location, the Contractor’s name, and Contract number. In submitting the letter transmitting the approved shop drawings and samples, the Contractor represents that Contractor has verified the data contained therein 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 for judging the Work. Physical samples shall govern in the case of a conflict between finish schedules, specifications, other submittals, and the physical sample.

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 Auxiliary. If Contractor does not remove samples from the Site, Auxiliary may opt to claim the samples as the property of Auxiliary, Auxiliary will remove or dispose of them 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 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 Auxiliary so requires, the Construction Administrator may give written consent to a submittal or re-submittal received after the expiration of the time limit designated. The Bidder/Contractor is responsible for a timely submittal of its proposed “or equal.”
- (2) Auxiliary shall consider no proposal unless accompanied by complete information necessary to permit determination of the equality of the offered materials or equipment. Provide samples when requested by the Architect or Auxiliary.
- (3) The burden of proof as to the comparative quality and suitability of the offered materials or equipment shall be upon the Bidder/Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Bidder/Contractor to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Bidder/Contractor shall furnish at its own expense all information necessary for a determination regarding meeting the minimum capacities or performance requirements.

The Architect shall be the judge of such matters. If the Architect rejects the use of any alternative materials or equipment, then Contractor shall furnish one of the products designated by brand name.

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, Contractor shall make such changes or delays at the Contractor’s expense without recourse for reimbursement from Auxiliary.

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 Auxiliary allows a longer period in writing. Auxiliary is 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 that are specified.

#### **5.06 Testing Materials, Articles, Equipment and Work**

- a. Auxiliary specifies in this Contract the materials, articles, equipment or other Work requiring tests. The Contractor shall deliver to the Site all materials, articles and equipment requiring tests in ample time before intended use to allow for testing. Contractor shall not use these prior to testing and receipt of written approval. The Contractor shall be solely responsible for notifying Auxiliary where and when materials, articles, equipment and Work are ready for testing. Should Contractor cover any such materials, articles, equipment or Work without testing and approval, if required, Contractor shall uncover them at the Contractor's expense. Auxiliary has 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, Auxiliary shall take all samples for testing from materials, articles or equipment for use on the Project or from Work performed. All tests will be under the supervision of, and at locations convenient to, Auxiliary. Auxiliary shall select the laboratories for all tests. The laboratories shall issue decisions regarding the adequacy of materials, articles, equipment or Work to Auxiliary in writing.
- b. All costs of the initial required tests shall be borne by Auxiliary. Auxiliary may decide to take further samples and tests, and if the results show that the Work was not defective, Auxiliary 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 Auxiliary.

#### **5.07 Rejection**

Should any portion of the Work fail to comply with the requirements of the Contract, Auxiliary shall reject such Work in writing, and Contractor shall immediately make the rejected Work satisfactory to the Architect and Auxiliary, at no additional expense to Auxiliary. Contractor shall immediately remove any rejected Work from the premises at the Contractor's expense. Auxiliary may retain one and one-fourth times the cost of the rejected Work from any payments due the Contractor until Contractor makes the rejected materials, articles, equipment, and Work acceptable to the Architect and Auxiliary. Auxiliary may back charge the Contractor for design costs incurred in the correction of the Contractor's rejected Work.

#### **5.08 Offsite Testing**

Auxiliary shall bear the cost of offsite testing up to a distance of fifty 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 increases because the fabrication yard or manufacturing plant is located beyond this fifty-mile radius, then the Contractor shall bear these increased costs. The increased cost due to the use of multiple fabrication yards or manufacturing plants for similar materials shall also be borne by the Contractor.

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

The testing and inspection provided by Auxiliary 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**

Auxiliary reserves the right to issue written orders, or Field Instructions, to the Contractor, and the Auxiliary's Construction Administrator shall sign them. Through the use of Field Instructions, the Construction Administrator may direct changes in the Work 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 Auxiliary. Any change made without Auxiliary's written authorization shall be the responsibility of the Contractor; in this case Auxiliary will not increase compensation or extend time for a change involving greater expense to

the Contractor, and may reject changes. The consequent responsibility falls 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, Auxiliary shall adjust the Contract price for any written order or Field Instruction requiring a different quantity or quality of labor, materials or equipment from that originally required, and Auxiliary shall adjust the partial payments to the Contractor to reflect the change, as set forth in Article 8.02, Partial Payments. Whenever the necessity for a change arises, and when so ordered by Auxiliary in writing, the Contractor shall take all necessary steps to halt such other Work in the area of the change, to prevent the change affecting the other Work. Contractor shall perform changed Work in accordance with the original Contract requirements except as modified by the change. 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.

Auxiliary shall issue to the Contractor a cost request bulletin via the Architect, for a proposed change order describing the intended change. Further, Auxiliary shall require the Contractor to respond with a proposed amount added to or subtracted from the Contract price due to the change, and supported by a detailed estimate of cost (hereinafter called a change order request (COR)). Upon request by Auxiliary, the Contractor shall permit inspection of the original Contract estimate, subcontract agreements, or purchase orders relating to the change. The Contractor shall also include in its response to the cost request bulletin, with substantiating detailed explanation, any request for adjustment in time of final completion of the Project that is directly attributable to the changed Work. Contractor's 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 COR with detailed estimates and any time extension request thereon to the Architect and Auxiliary within fifteen (15) Days after issuance of the cost request bulletin or field instruction, with a copy to the Project Manager/Construction Inspector. If the Contractor does not submit the COR within the required fifteen (15) Days, and the Contractor has not obtained the Architect's and Auxiliary's permission for a delay in submission, Auxiliary may order the Contractor in writing to begin the work immediately, in accordance with Article 6.01-c or Article 6.02. Then Auxiliary shall adjust the Contract price in accordance with Auxiliary's estimate of cost, unless the Contractor within fifteen (15) Days following completion of the changed Work presents proof convincing to Auxiliary that Auxiliary's estimate was in error. For any amount added to the Contract price for the changed Work, Auxiliary shall determine payment, made in one of the following three ways: a lump sum amount, time and materials with a guaranteed maximum price, or time and materials with no guaranteed maximum price. If the parties agree on either of the latter two methods, the Contractor shall keep and submit time and materials records verified daily by the Construction Inspector to substantiate its costs and to furnish such proof.

When Auxiliary and the Contractor agree on:

- the amount to be added to the Contract price or deducted from the Contract price, and
  - the time to be added to the Contract completion date or deducted from the Contract completion date, and
  - when Auxiliary and Contractor have signed a Contract Change Order,
- then the Contractor shall proceed with the changed Work.

When Auxiliary and the Contractor agree to the adjustment in compensation for the performance of changed Work, but agreement is not reached as 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 (reference Article 4.15-d, Adjustment of Contract Time Due to Acts of Auxiliary or the Architect). Auxiliary shall not bear any costs incurred to acquire information relative to a proposed change order.

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
- that 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 Auxiliary (Government Code sections 12650 *et seq.*).

The definition of the term "Direct Cost" is the actual cost of Work before the application of any markups for overhead and profit. In addition to items identified in the following provisions, direct cost items may include: hoisting, cleanup (both periodic and final), trash removal, traffic control and dust control.

(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, 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.

Auxiliary will not recognize any labor cost at a rate in excess of the wages that Contractor paid for similar Work on the Project at the time the Contractor performed the Work. Nor will Auxiliary permit the use of a classification that would increase the cost of labor, unless the Contractor established to the satisfaction of Auxiliary the necessity for use of such higher classifications of workers. On a proposed change, the Contractor and subcontractors shall submit a fully detailed breakdown of the cost of every labor classification utilized in the Work on the Hourly Labor Rate Worksheet. Auxiliary may verify wage and burden per Article 4.02-a, Prevailing Wage, subdivision (6). Contractor shall ensure that 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.

Auxiliary allows Contractor's costs 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, Contractor shall provide the credit to Auxiliary. If Contractor obtains the materials 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. Contractor may charge cost for consumed materials on a reasonably estimated basis, but may not be a percentage of labor.

If, Auxiliary deems that 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. Auxiliary reserves 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 Auxiliary.

(3) Equipment.

Auxiliary allows Contractor's actual costs for the use of equipment directly required in the performance of the changed Work, except that Auxiliary will make no payment 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 does not move by its own power, then Auxiliary will pay loading and transportation costs. However, Auxiliary will not pay either moving time or loading and transportation costs, if Contractor uses the equipment on the Project in any other way than upon the changed Work. Small tools or small equipment are individual pieces of equipment having a replacement value of \$200.00 or less, and Auxiliary will make no payment therefor unless it has been rented specifically for the changed Work. For consumed equipment or tools, such as paintbrushes, rollers, drill bits, etc., Contractor may charge on an actual or reasonably estimated cost basis, and shall not charge as a percentage.

For equipment owned, furnished, or rented by the Contractor, Auxiliary shall not pay any cost in excess of the rental rates established by distributors or equipment rental agencies in the locality of the performed Work.

Auxiliary shall pay the Contractor an amount that includes mark-up for the use of equipment as set forth above. Auxiliary's payment constitutes full compensation to the Contractor for the costs of the following: 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 incidental to the use of such equipment. Equipment operators shall be paid 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 including labor; and small tools. Any incidental overhead support cost not expressly identified herein shall be included in the Contractor's mark-up. Auxiliary will not permit mark-up on mark-up. If the Contractor owns, partially owns, or has a shared profits arrangement with the subcontractor, Contractor shall reduce any mark-up otherwise applicable to a change in proportion with the shared profits.

(5) Work by Subcontractors and Vendors.

For any portion of the changed Work, which a subcontractor of any tier performs, the Contractor shall furnish to Auxiliary a detailed estimate prepared and signed by subcontractor, of the subcontractor's cost for performing the changed Work. Auxiliary may opt to accept a lump sum estimate of such cost to subcontractor, 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 deleted from subcontractor's portion of the Work shall be the 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 furnished by a vendor, the Contractor shall furnish upon demand of Auxiliary, a lump sum estimate of the cost of the items including taxes and cartage prepared by the vendor. Auxiliary will not allow vendor mark-up for overhead, profit, layout, supervision or bonds for changed Work furnished by a vendor.

(6) General Contractor Mark-up for Added Work.

When a subcontractor performs changed/added Work, 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, reference 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 deduct from the Contract amount the estimated value of the deducted Work plus at least six percent for saved overhead, bonds and insurance. Contractor shall use the value submitted on the schedule of values 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 Auxiliary that it investigated all possible means of obtaining Work at prevailing market values and could not avoid the excess cost.



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 Auxiliary and the Contractor to agree as to the cost of the proposed change order, the Contractor, upon written order from Auxiliary, shall proceed immediately with the changed Work. This written order shall be in the form of a Field Instruction or letter signed by Auxiliary. At the start of each day's Work on the change, the Contractor shall notify Auxiliary in writing as to the size of the labor force for the changed Work and its location. Failure to notify Auxiliary 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. Auxiliary, however, may make subsequent adjustments, based on later audits by Auxiliary. When Contractor performs changed Work at locations away from the jobsite, 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 Contractor is to pay changed Work based on time and materials, Contractor shall include a credit for deleted Contract Work. 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 Auxiliary itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. The vendors and the subcontractors must sign all statements.

(2) For Deleted Work.

When a proposed change order contains a deletion of any Work, and Auxiliary and the Contractor are unable to agree upon the value thereof, Auxiliary's estimate may be deducted from the Contract price. Auxiliary may withhold from any payment due the Contractor until the Contractor presents proof convincing to Auxiliary that Auxiliary's 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. Use the guidelines set forth in Article 6.01-b 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, Auxiliary will not grant an extension of time for a change in the Work unless the Contractor:

- demonstrates to the satisfaction of Auxiliary that the Work is on the critical path and
- submits an updated schedule showing that an extension of time is required and
- 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).

e. Use of Allowances.

Auxiliary uses allowances for specific and discrete scopes of Work that are indeterminate at time of bid and may cause allowances to be included in the base bid as estimates for this Work. Examples of allowances include but are not limited to keying, hard rock excavations, special utility permits or utility connection fees. Auxiliary shall authorize each debit from an allowance in writing, using a field instruction. Debits from allowances and mark-ups on allowance work performed by subcontractors shall be in accordance with this Article 6. Since allowances are a part of the base Contract Work, Auxiliary will not award additional mark-up to Contractor for work performed within the allowance by Contractor or any subcontractor. Contractor shall include a six-percent mark-up on a credit change order for any unused portion of an allowance. Work performed in excess of an allowance is subject to normal mark-ups in accordance with this Article 6.

Contractor shall maintain an allowance log, indicating each debit from each allowance, and submit it with the monthly payment application for the Auxiliary's approval.

**6.02 Emergency Changes**

Following are the kinds of emergency changes that Auxiliary may authorize in writing to the Contractor:

- changes in the Work agreed by Auxiliary 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 Auxiliary.

The Contractor shall commence performance of the emergency change immediately upon receipt of written direction from Auxiliary.

If Auxiliary and Contractor reach an agreement as to compensation and/or time adjustment for the purpose of any emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01 relating to ordinary changes. If Auxiliary and Contractor do not reach an agreement on compensation and/or time adjustment at the time of commencing the emergency change, then compensation and/or time extension, as appropriate, will be as provided in Article 6.01-c. All time and materials records and summaries shall be witnessed on a daily basis, and maintained until either a lump sum payment and/or time extension, as provided in Article 6.01-d, is agreed upon, or the changed Work is completed.

**7.00 - CLAIMS AND DAMAGES**

**7.01 Claims**

a. Claim and Dispute Submittals.

Contractor shall promptly submit any dispute related to this Contract or its breach that is not resolved by agreement in accordance with this Article 7.01, with adequate supporting data. Adequate supporting data shall include, but is not limited to a statement of the reasons for the asserted entitlement, the certified payrolls, invoice(s) for material and equipment rental, an itemized breakdown of any adjustment sought, and supporting schedules.

At the time of submission of any claim, the Contractor shall certify as follows:

<b>SUBMISSION UNDER PENALTY OF PERJURY</b>	
“I, <u>(insert full name)</u> , am the <u>(insert title--must be an Officer)</u> of <u>(insert name of firm)</u> .	
I declare, under penalty of perjury under the laws of the State of California, and do personally certify and attest that I have thoroughly reviewed the attached claim for additional compensation and/or extension of time, know its contents, made said claim in good faith, and that:	
<ul style="list-style-type: none"> <li>• the supporting data is truthful and accurate;</li> <li>• the amount requested accurately reflects the contract adjustment for which I believe the Trustees are liable, and further,</li> <li>• I am familiar with California Penal Code section 72 and California Government Code section 12650 <i>et seq.</i>, pertaining to false claims, and further know and understand that submission or certification of a false claim may lead to fines, imprisonment and/or other severe legal consequences.”</li> </ul>	
By: <u>(signature)</u>	Date: <u>(insert date of signature)</u>

Contractor’s submission of a claim, properly certified, with all required supporting documentation, and Auxiliary’s written rejection or denial of all or part of the claim(s) are conditions precedent to any action, proceeding, litigation, suit, or demand for arbitration by the Contractor.

b. Contractor’s Claim(s) – Notice of Claim

In accordance with Article 5.02 (Issuance of Interpretations, Clarifications, Additional Instructions), should the Contractor disagree with the determination of Auxiliary on a matter that substantially affects the Contractor’s costs, compensation or extent of Work, the Contractor shall file a preliminary claim with Auxiliary. For purposes of this Article 7.01, “claim” means a separate demand by Contractor, sent by registered or certified mail with return receipt requested, for one or more of the following:

- (1) a time extension for relief from damages or penalty for delay;
- (2) Auxiliary’s payment which is not otherwise expressly provided or to which the Contractor is not otherwise entitled.
- (3) payment of an amount that Auxiliary disputes,
- (4) subcontractor claims.

c. Actions Prior to Claims Review Board

- (1) Contractor’s Claim Submittal / Documentation.  
Contractor submitted its claim in accordance with Article 7.01, subsections ‘a’ and ‘b’.

- (2) **Auxiliary's Review of Contractor's Claim upon Receipt.**  
 Auxiliary shall conduct a reasonable review of the claim upon receipt and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying disputed and undisputed portions of the claim. Upon receipt of the claim and by mutual agreement, Auxiliary and Contractor may extend the time provided herein. Auxiliary's failure to issue a written statement shall result in the rejection of the claim in its entirety. A claim that is denied by reason of the Auxiliary's failure to respond to the claim or to meet the time requirements contained herein shall not constitute an adverse finding regarding the merits of the claim or the responsibility/qualifications of the Contractor.
- (3) **Auxiliary's Payment of Undisputed Portion of Claim.**  
 Auxiliary shall pay the undisputed portion of the claim within 60 days after issuing the written statement.
- d. **Informal Meet and Confer Conference**
- (1) If Contractor disputes the Auxiliary's response, or if Auxiliary fails to respond to Contractor's claim within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered or certified mail with return receipt requested, Auxiliary shall schedule a meet and confer conference within 30 days for settlement of the dispute.
- (2) **Post-Meet and Confer Conference**  
 Within ten business days following conclusion of meet and confer conference, Auxiliary shall provide Contractor a second written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Auxiliary shall pay the undisputed portion within 60 days after Auxiliary issues the second written statement.
- e. **Nonbinding Claims Review Board**  
 Contractor shall submit any remaining disputed portion of the claim shall to a nonbinding Claims Review Board. If the Claims Review Board is unsuccessful, Contractor may submit the disputed portion of the claim to mediation.
- f. **Contractor Submission of Unresolved Claims.**  
 Contractor shall submit all claims in writing in accordance with this Article 7.01 to Auxiliary no later than 30 Days after the County Recorder's recordation date on the Auxiliary's Notice of Completion. The Contractor's failure to submit its claims to the Auxiliary within this 30-Day period shall constitute a waiver by the Contractor of such claims. Once Contractor has submitted the claims, and the 30 Days after the County Recorder's recordation date on the Notice of Completion have expired, Contractor may not submit any additional claims. Contractor shall have 30 additional 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.
- g. **False Claims.**  
 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 Auxiliary (reference Government Code sections 12650 *et seq.*).
- h. **Auxiliary's Claim(s) Submittal.**  
 Auxiliary shall submit a rebuttal to the Contractor's claim, along with any Auxiliary's claims to the Claims Review Board within a reasonable time after the submission by the Contractor of a total and detailed claims package or the expiration of the time to file Contractor's claims.
- i. **Contractor Rebuttal to Auxiliary's Claims.**  
 Upon submission of any Auxiliary claims, the Contractor shall have an additional 30-day period to submit to the Claims Review Board the Contractor's rebuttal to the Auxiliary's claims.
- j. **Claims Review Board.**  
 The Trustees will convene a Claims Review Board to hear the submitted claims at the completion of the Project. Each Claims Review Board shall continue to function until the members review all pertinent facts and arrive at a recommendation. The Assistant Vice Chancellor for Capital Planning, Design and Construction, or a designee administers the Claims Review Board process. These administrative responsibilities include, but are not limited to, selection of the Claims Review Board members, determination of the time and location of the hearing, and application of the Claims Review Board procedures. The Claims Review Board is comprised of representatives of the California State University, which may include representatives of Capital Planning, Design and Construction staff who have not had any direct connection to the Project. It is a neutral, lay dispute resolution board, in which an independent third-party board assists the parties in dispute resolution through negotiation or by issuance of an evaluation or recommendation. 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 either the appropriate Auxiliary or 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 Auxiliary/University official, if the Auxiliary administered the Project, or the Assistant Vice Chancellor, Capital Planning, Design and Construction, if the Chancellor's Office administered the Project. The decision of the Auxiliary/University official or the Assistant Vice Chancellor (as appropriate) exhausts the Contractor's contractual and administrative remedies with the Trustees.

k. Actions Post Claims Review Board.

(1) Initial Mediation.

Should a dispute remain unresolved following exhaustion of the Claims Review Board process, the parties shall attempt in good faith first to mediate such dispute and use their best efforts to reach agreement on the matters in dispute.

Within ten business days after Auxiliary has identified the disputed portion in the Auxiliary's second written statement, Auxiliary and Contractor shall mutually agree to a mediator, for which Auxiliary and the Contractor shall share the costs equally. If Contractor and Auxiliary cannot agree on a mediator, each party shall select a mediator, and these mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(2) Other Dispute Resolution.

If, on completion of such mediation, the parties are unable to agree and settle the dispute, then the parties may pursue the dispute in litigation or through some other dispute resolution technique, except arbitration.

**7.02 Delay in Completion--Liquidated Damages**

If the Contractor does not complete the Work within the time required, Auxiliary will sustain damage. It is, and will be, impractical and extremely difficult to determine the actual damage that Auxiliary will sustain due to the delay. It is therefore agreed that the Contractor will pay to Auxiliary the sum of money stipulated per Day in the Contract for each Day's delay in completing the Work beyond the time prescribed, reference Article 8.01, Acceptance. If the Contractor fails to pay such liquidated damages, Auxiliary 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 Auxiliary has 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, Auxiliary may reduce the amount of assessment of liquidated damages (if it is determined to be in the best interest of Auxiliary). In this case, Auxiliary may reduce the liquidated damages assessment to \$500 per Day or half of the value originally stipulated per Day, whichever is higher. Auxiliary's assessment of liquidated damages shall not commence on a Saturday, Sunday or legal holiday.

**7.03 Termination for Cause**

If Auxiliary deems 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 Auxiliary shall take either of the following 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 Auxiliary.

If Auxiliary subsequently determines that grounds for termination under this Article do not exist, then Auxiliary shall deem the Contract to have been properly terminated for convenience under Article 7.04, Termination for Convenience.

**7.04 Termination for Convenience**

Auxiliary may terminate this Contract or any part thereof, for its sole convenience and without cause. Unless Auxiliary directs otherwise, upon written notice from Auxiliary of such termination, the Contractor shall:

- a. Stop all Work under the Contract except that Work specifically directed to complete before suspension of the Work.
- b. Perform Work Auxiliary deems 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 Auxiliary has terminated the Contract, and that they are not to perform their contracts or orders, unless otherwise authorized in writing by Auxiliary. Reference Articles 4.05, Delegation of Performance and Assignment of Money Earned, and 7.05, Assignment of Subcontracts.
- f. Provide Auxiliary 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 Auxiliary may request.

- g. Handle materials not yet used in the Work as directed by Auxiliary. The Contractor shall provide Auxiliary with good title to all materials purchased hereunder, including materials for which partial payment has been made.
- h. Subject to prior written approval of Auxiliary, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by Auxiliary, the Contractor shall assign to Auxiliary all the right, title and interest of the Contractor under subcontracts or orders for materials.
- i. Furnish Auxiliary with the required documentation under the provisions of the Contract.
- j. Take such other actions pertinent to terminating the Contract as Auxiliary may direct.
- k. Remain liable for any defective construction completed before termination.

Auxiliary shall pay the Contractor in accordance with the provisions of Article 8, Payment and Completion, with the following exception. The amount due the Contractor shall be based upon Auxiliary's 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 Auxiliary terminate the Contractor's control over the Work under Article 7.03, Termination for Cause, or Article 7.04, Termination for Convenience, Auxiliary may elect to take legal assignment of subcontracts, purchase orders, and other contractual rights. In such an event and as a condition of receiving the payments referenced in these Articles, the Contractor shall execute and deliver all papers and take all steps, including the legal assignment to Auxiliary of subcontracts, purchase orders, and other contractual rights of the Contractor, as Auxiliary may require. This will be done to fully vest in Auxiliary all rights and benefits of the Contractor under such subcontracts, purchase orders, or other contractual rights in order that Auxiliary may proceed to finish the Project.

#### **7.06 Third-Party Claims**

Auxiliary has full authority to compromise or otherwise settle any claim relating to a Contract at any time. However, Auxiliary 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 Auxiliary deems that the whole Project is complete in all respects in accordance with the Plans and Specifications, to Auxiliary's full satisfaction, Auxiliary will then file a Notice of Completion with the County Recorder in the county in which the Project is located. For projects bid with a segregation of costs for separate, independent portions of Work, Auxiliary may individually accept each of the separate portions. 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. Acceptance shall be final and conclusive except for latent defects, gross mistakes amounting to fraud, audit rights, or Auxiliary's rights under any warranty or guarantee.

The County Recorder's date of recording on the Notice of Completion, if filed timely (within fifteen Days of acceptance), shall be the official completion date relating to stop payment notices. Contractor and all subcontractors must file all stop payment notices with Auxiliary within 30 Days after the County Recorder's recordation date on Auxiliary's timely filed Notice of Completion. Contractor and all subcontractors shall submit claims arising from this Contract in writing to Auxiliary no later than 30 Days after the recordation date on Auxiliary's Notice of Completion (reference Article 7.01, Claims).

#### **8.02 Partial Payments**

To assist in computing partial payments, the Contractor shall submit to the Architect, the Construction Inspector, and Auxiliary a "Schedule of Values" of the Contractor's actual and estimated costs for each item of Work, including approved change orders. The Contractor shall provide cost breakdowns in sufficient detail for use in estimating the completed Work each month, and shall submit this information within 21 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 Uniform Building Systems form. This information is valuable to Auxiliary for budgeting purposes, and Contractor shall submit it 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 upon by the Architect and Auxiliary's Project Manager/Construction Inspector. The Contractor shall base the partial payment request on the approved bid breakdown for the cost of the Work completed. Where applicable, Contractor shall provide a maximum of 90% of the verified supplier-invoiced and Contractor-purchased value for the acceptable materials delivered to the Site, or stored, subject to the control of the Contractor but identified as the property of Auxiliary, and not yet installed and as allowed on the Contract Payment Request, form [702.12](#),

line 2-f. The Contractor must make any materials stored offsite accessible to Auxiliary to verify invoiced value and shall deliver these materials to Auxiliary upon request. When submitting a request for payment for materials, the Contractor shall submit the Request for Materials On Hand, form [702.17](#), with its partial payment request.

The Contractor shall submit the partial payment request 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 as to the validity of the request, which, if the request includes an invoice for materials, then it shall include an inspection by the Construction Inspector of materials invoiced. Contractor shall make no partial payment without the certification of the Architect, unless the partial payment is strictly administrative and processed after the completion of the Work (e.g. release of stop payment notice claims).

Auxiliary shall process Contractor's partial payment requests with five percent retention. Auxiliary holds retention as security for the fulfillment of the Contract by Contractor. Auxiliary will withhold sufficient funds in addition to the retention to cover for anticipated liquidated damages, stop payment notices, Labor Code wage and penalty assessments, unacceptable Work, punch list Work, and Auxiliary's back-charges such as for retesting and reinspection. Auxiliary will withhold monies from partial payments for incomplete punch list Work in addition to retention. Auxiliary shall not process partial release of retention before Contract completion (Public Contract Code section 10851) unless Auxiliary phases the Project with a segregation of costs per Articles 8.01 and 8.05.

Auxiliary shall not construe partial payments 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, the Architect or Construction Inspector shall submit it to Auxiliary's Construction Administrator for approval and processing (Public Contract Code section 10851). Auxiliary will then process payment in accordance with Public Contract Code section 10853, which 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**

Auxiliary shall not allow escrow in lieu of retention.

### **8.04 Stop Payment Notices**

Auxiliary 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 payment notice provisions of the law (Civil Code section 9000 *et seq.*).

All parties shall present preliminary notices and stop payment notices to Auxiliary's Construction Administrator in proper form, and should send a copy to Auxiliary 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 Auxiliary's 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. Auxiliary shall process this payment request in the same manner as the partial payment requests. Reference Article 8.02, Partial Payments.

Auxiliary 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 Days after the date of recordation by the County Recorder.

Auxiliary shall continue to retain funds to cover liquidated damages, stop notices and stop payment notices, state labor commissioner claims, back charges from Auxiliary, unexecuted credit change orders, and other such claims that may be received up to the end of the 30 Days period following recordation. Upon receiving any stop payment notice, Auxiliary shall withhold payment in an amount of at least 125 percent of the total claims filed until either the rights under the stop payment 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 of Work that Auxiliary accepts individually pursuant to Article 8.01, Acceptance, Contractor and Auxiliary shall follow the final payment procedure specified in this Article. The total amount due under the Contract, the amounts retained, other claims for compensation, and the filing of stop payment 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 Auxiliary stipulates a longer guarantee period in the Contract Documents. Contractor shall obtain and deliver to Auxiliary all manufacturers' warranties; the manufacturers' warranties shall start on the acceptance date noted on the Notice of Completion and shall run through the

full term of each manufacturer's standard warranty. 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 Auxiliary.

The Contractor who is responsible for the entire Work and the subcontractor that performs the Work shall sign special guarantees required by the Contract.

Within ten (10) Days after Contractor receives Auxiliary's written notification regarding any Work not in accordance with the requirements of the Contract or any defective Work, Contractor agrees to 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 comply, does hereby authorize Auxiliary to proceed to have the Work done at the Contractor's expense, and agrees to pay the cost thereof upon demand. Auxiliary 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 Auxiliary's employees, property, or licenses, Auxiliary 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 Contract requirements at the Contractor's expense.

#### **8.07 Contractor Evaluation**

Auxiliary will perform a contractor evaluation, and a report filed 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. If an evaluation results in a non-responsible contractor finding, it could affect the Contractor's prequalification, and the Trustees' Prequalification Administrator may deem the Contractor ineligible to bid on Auxiliary's or Trustees' Work. Reference Article 2.10, Failure to be a Responsible Bidder.

### **9.00 - MISCELLANEOUS**

#### **9.01 Governing Law**

The Contract shall be governed by the laws of the State of California.

#### **9.02 Successors and Assigns**

Auxiliary and Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, in whole or in part, without prior written consent of the other party. Notwithstanding any such assignment, each of the original contracting parties shall remain legally responsible for all of their obligations under the Contract.

#### **9.03 Rights and Remedies**

All Auxiliary's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of Auxiliary under the Contract Documents or those otherwise available at law or in equity.

No action or failure to act by Auxiliary or Auxiliary's representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Auxiliary or Auxiliary's representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against Auxiliary, Auxiliary's representative, or Contractor.

#### **9.04 Waiver**

A waiver of or failure by Auxiliary or Auxiliary's representative to enforce any requirement in this Contract will not constitute a waiver of, and will not preclude Auxiliary or Auxiliary's representative from enforcing, any other requirement of the Contract, and the Contract will remain valid.

A waiver of or failure by Auxiliary or Auxiliary's representative to enforce any requirement in this Contract in connection with any adjustment of the Contract Amount or Contract Time will not constitute a waiver of, and will not preclude Auxiliary or Auxiliary's representative from enforcing, such requirements in connection with any other adjustments of the Contract Amount or Contract Time.

The Contractor agrees and understands that no oral directive, approval or representation, either express or implied, by Auxiliary or its agents shall be binding upon Auxiliary.

**9.05 Survival**

The provisions of the Contract which by their nature survive termination of the Contract or Acceptance under Article 8.01, including all warranties, indemnities, payment obligations, and Auxiliary's right to audit Contractor's books and records, shall remain in full force and effect after Acceptance or any termination of the Contract.

**9.06 Complete Contract**

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 6.00, Changes in the Work.

**9.07 Severability of Provisions**

If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

**9.08 Notices**

Except as otherwise provided, all notices, requests, demands, and other communications to be given under the Contract Documents shall be in writing and shall be transmitted by one of the following methods:

- a. Personally delivered.
- b. Sent by facsimile copy where receipt is confirmed.
- c. Sent by courier where receipt is confirmed.
- d. Sent by registered or certified mail, postage prepaid, return receipt requested.

Such notices and other communications in this Article 9.08 shall be deemed given and received upon actual receipt in the case of all except registered or certified mail; and in the case of registered or certified mail, on the date shown on the return receipt or the date delivery during normal business hours was attempted. Such notices and communications shall be given at the respective street addresses set forth in the Contract. Such street addresses may be changed by notice given in accordance with this Article 9.08.

**9.09 Counterparts**

Agreements may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (.pdf) form or by any other electronic means shall constitute effective execution and delivery of this Agreement and shall have the same effect as copies executed and delivered with original signatures.

-End of Auxiliary Contract General Conditions for Design-Bid-Build Major Projects-