

REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR
CONSTRUCTION MANAGEMENT SERVICES



UNIVERSITY OF CALIFORNIA, MERCED
STUDENT SERVICES BUILDING (SSB)

PROJECT 900120

August 2011

Table of Contents

1. Introduction
 2. General Description of the Scope of Services
 3. Program
 4. Scope of Services
 5. Qualifications of the Construction Manager: Selection Criteria
 6. Submittal Requirements
 7. Submittal Instructions
 8. Insurance Requirements
 9. Evaluation and Selection Schedule
 10. UC Equal Opportunity Contracting
- Attachments:
- A. UC Construction Management Agreement
 - B. Exhibit G: Supplemental Basic Services
 - C. General Conditions of the Multiple Prime Trade Contract

Introduction: The University of California, Merced is seeking a qualified construction management firm to provide preconstruction services and to manage construction of its Student Services Building (SSB) project, which includes classrooms/learning, tutorial, office, administrative, and support space.

General Description of the Scope of Services: The project will be constructed under the University's Multiple Prime Trade Contract method, with the major trades bid as separate bid packages, and with the Prime Trade Contractors under direct contract with the University. It is anticipated that preconstruction services will be authorized in September 2011. The construction cost, including CM fees for all phases including preconstruction, is approximately \$15M.

Program: This capital project will construct the Student Services Building (SSB) at the UC Merced campus, which includes research laboratories, teaching laboratories, office, administrative, and support space. The SSB project is approximately 20,650 assignable square feet (33,400 gross square feet).

Scope of Services: Attachments A and B to this Request for Statements of Qualifications are available on the UC Merced website (<http://www.ucmerced.edu/community/rfprfq.asp>) and outline the scope of services for the project. These attachments are, respectively, the Construction Management Agreement and Exhibit G to that Agreement—Supplemental Basic Services. These documents are general and generic in nature and do not yet include site- and project-specific information. Attachment C, the General Conditions of the Contract for the Prime Trade Contractors, is also provided for reference.

The University's expectation is that Construction Management pre-construction services shall be provided by the same members of the CM team who will continue on throughout the construction phase of the project.

Qualifications of the Construction Manager: Selection Criteria

- Experience with constructability review, prime trade contractor outreach, creating prime trade bid packages, bidding, managing University of California's Multiple Prime Trade Contract, managing and supervising construction with multiple prime trade contractors, documenting as-builts, and commissioning: classrooms/learning, tutorial, office, administrative, and support space; infrastructure; site work; and landscaping.
- Experience of the firm and proposed team members with the Multiple Prime Trade Contract mode of project delivery, especially the University of California's Multiple Prime Trade Contract.
- Licensed contractor in the State of California in good standing (B license).
- Recent experience of the firm and proposed team members in providing services of the scope described in Attachments A and B for comparable projects.
- Demonstrated experience as a Construction Manager in pre-construction (constructability, developing a construction schedule, developing a cost estimate, prime trade contractor outreach, creating prime trade contractor bid packages), constructing on-time, on-budget projects, taking into consideration change order/claims and schedule history for comparable projects.
- Demonstrated experience in achieving high-quality outcomes on projects with rigorous budget constraints.
- Experience working with multiple stakeholders in a single project.
- Demonstrated experience in and knowledge of public work in California is required. Experience with University projects, especially University of California projects, is desirable.

Please note that in accordance with campus policy, joint ventures will not be considered eligible for this project. If two firms wish to combine for the project, one of them shall be the entity contracting with the University, and the other a sub-consultant to the primary team. If two firms do propose together in this fashion, the University will consider as a criterion of selection the firms' history in working together in similar circumstances on comparable projects.

Submittal Requirements

The Statement of Qualifications shall consist of the following:

1. Cover Letter

The cover letter shall introduce the proposed team, naming the key players and highlighting the firm's qualifications for the project, and other relevant information as desired.

2. Consultant Company History (please include for all team member firms, if the team consists of more than one firm) including:

- Number of years in business
- Annual revenues
- Current work commitments, broken down by project delivery method (General Contractor; CM at Risk; CM-Multiple Prime; etc.).

3. Project Team

Provide resumes of key proposed project personnel—Project Executive; Project Manager; Project Superintendent; Project Engineer; Scheduler; and others, if any. Indicate number of years each person has been employed by the proposing firm (or subconsultant firm). Resumes should highlight relevant qualifications for this project.

In addition, submit at least two resumes (preferably three) for Project Superintendent. The University intends to interview and select the Superintendent in cooperation with the selected Construction Manager before the start of construction.

4. Project Experience & References

Provide concise, one- or two-page descriptions of comparable projects now in progress or completed within the last 5 years for which the proposing firm provided similar services. These descriptions should demonstrate your firm's and your team's experience relevant to the scope, costs, conditions and delivery method of the projects listed in this RFQ. Include in the description of each project:

- Name of the firm that provided the services.
- Member(s) of the proposed team for these projects who worked on the reference project, and their role(s).
- Services provided (indicate whether completed or in progress, and for what phases services have been provided—i.e., Preliminary Plans, Construction Documents, Bid/Award, Construction).
- Project delivery method (General Contractor; CM at Risk; CM Multiple Prime; etc.).
- Brief description of each project, including owner, type of construction, size of the building, type and use of building (i.e., academic building, office building, etc.).
- Bid price; value of executed change orders; value of claims made; value of claims as settled.
- Actual construction duration and original construction duration from the approved baseline schedule.
- Owner references (include name, title, organization, address, current phone number, and email address).

5. Project Controls and Contract Administration

Describe and demonstrate your firm's abilities and experience by providing one-page narratives for each of the following capabilities:

- Administering Multiple Prime Contract projects, if any.
- Adding value through preconstruction services.
- Estimating.
- Cost control.
- Schedule control.
- Document management and control.
- Construction Quality Assurance/Control.

6. Financial Strength

Indicate the dollar value of the three largest projects within the past five years on which the Prime

Consultant has served in a Construction Management capacity, regardless of project type.

7. Litigation History

Provide specific information on the firm's (or that of all firms included in the Statement of Qualifications) history, in the last five years, of:

- Termination for default.
- Litigation by or against your firm.
- Judgments entered for or against your firm.

8. Declaration

Provide the information requested below in items (a) through (e) with a declaration stating that reasonable diligence has been used in preparation of the Statement of Qualifications submitted in response to this RFQ and that all information provided in the Statement of Qualifications is true, correct and complete.

- a. Type of organization or company structure.
- b. Number of years the firm has been in business.
- c. Contractor license number and category
- d. Location of principal office that will be responsible for the implementation of this contract.
- e. Certification that the firm is legally permitted to conduct business in the State of California.

Submittal Instructions

The individual or official of this firm who has the power to bind the firm contractually must sign the Declaration.

Completed submittals must be received at the following address no later than 1:00 p.m. on September 7, 2011. Eight (8) bound copies of the submittal are required. Please address submittals to (please note the address below is valid for overnight and hand delivery. For delivery Via US mail please call Tammy Petree at 209 228 4470):

Associate Vice Chancellor Thomas E. Lollini, FAIA
University of California, Merced
Physical Planning, Design & Construction
767 E. Yosemite Avenue, Bld. B, Suite C
Merced, CA 95340

Please direct any questions to Michael Chow at 1 (209) 205-8091 (cell) or at mchow@ucmerced.edu.

The University reserves the right to reject late submissions and to reject any and all Statements of Qualifications, to amend the Request for Qualifications and the process itself, or to discontinue the process at any time.

Insurance Requirements

The University requires evidence of insurance coverage, to be presented only after the successful firm is selected to provide services. Submittal of insurance information is not required as part of the Statement of Qualifications.

General Liability, Professional Liability Insurance, Business Automobile Liability, and Worker's Compensation will be required in the following amounts:

1. General Liability:
Comprehensive or Commercial Form:
 - (1) Each Occurrence \$1,000,000
 - (2) Products/Completed Operations \$2,000,000
Aggregate
 - (3) Personal and Advertising Injury \$1,000,000
 - (4) General Aggregate (Not applicable \$2,000,000
to Comprehensive Form)

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

2. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than one million dollars (\$1,000,000) per occurrence.
3. Workers' Compensation as required by California State law.
4. Professional Liability Insurance:
 - (1) Each Occurrence \$1,000,000
 - (2) Project Aggregate \$2,000,000

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

5. Such other insurance in such amounts which from time to time may reasonably be required by the mutual agreement of the University and Construction Manager against other insurable hazards relating to the work to be done.

Evaluation and Selection Schedule

The University will evaluate all Statements of Qualifications received by the deadline and will convene a committee to determine a short list of firms for interview within a week. Interviews of short-listed firms are scheduled to take place on Thursday, September 15, 2011 at the UC Merced campus in Merced, California.

Schedule

RFQ – solicitation date	August 24, 2011
Deadline for Submission of SOQ's	September 7, 2011
Notification of Short-listed firms for Interviews	September 12, 2011
Mandatory Team Interviews	September 15, 2011
Anticipated Start Date	September 2011

UC Policy on Equal Opportunity in University Business Contracting

It is the policy of The Regents of the University of California that race, religion, sex, color, ethnicity, and national origin will not be used as criteria in its business contracting practices. Every effort will be made to ensure that all persons regardless of race, religion, sex, color, ethnicity and national origin have equal access to contracts and other business opportunities with the University. Each candidate firm will be required to show evidence of its equal employment opportunity policy. The University will establish effective outreach programs to assure equal opportunity in business contracting.

GENERAL CONDITIONS - TABLE OF CONTENTS

ARTICLE 1.	GENERAL PROVISIONS
1.1	Basic Definitions
1.2	Ownership and Use of Contract Documents
1.3	Interpretation
ARTICLE 2.	UNIVERSITY
2.1	Information and Services Provided by University
2.2	Access to Project Site
2.3	University's Right to Stop the Work
2.4	University's Right to Carry Out the Work
2.5	University's Right to Replace University's Representative
2.6	University's Right to Accelerate the Work
ARTICLE 3.	PRIME TRADE CONTRACTOR
3.1	Review of Contract Documents and Field Conditions by Contractor
3.2	Supervision and Construction Procedures
3.3	Labor and Materials
3.4	Prime Trade Contractor's Warranty
3.5	Taxes
3.6	Permits, Fees, and Notices
3.7	Applicable Code Requirements
3.8	Superintendent
3.9	Schedules Required of Contractor
3.10	As-Built Documents
3.11	Documents and Samples at Project Site
3.12	Shop Drawings, Product Data, and Samples
3.13	Use of Site and Clean Up
3.14	Cutting, Fitting, and Patching
3.15	Access to Work
3.16	Royalties and Patents
3.17	Differing Site Conditions
3.18	Concealed, Unforeseen or Unknown Conditions or Events
3.19	Information Available to Bidders
3.20	Liability for and Repair of Damaged Work
3.21	Indemnification
ARTICLE 4.	ADMINISTRATION OF THE CONTRACT
4.1	Administration of the Contract by University's Representative
4.2	Prime Trade Contractor Change Order Requests
4.3	Claims
4.4	Assertion of Claims
4.5	Decision of University's Representative on Claims
4.6	Mediation
4.7	Arbitration

- 4.8 Waiver
- ARTICLE 5. SUBCONTRACTORS
 - 5.1 Award of Subcontracts and Other Contracts for Portions of the Work
 - 5.2 Subcontractual Relations
 - 5.3 Contingent Assignment of Subcontracts
- ARTICLE 6. CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS
 - 6.1 University's Right to Perform Construction and to Award Separate Contracts
 - 6.2 Mutual Responsibility
 - 6.3 University's Right to Clean Up
- ARTICLE 7. CHANGES IN THE WORK
 - 7.1 Changes
 - 7.2 Definitions
 - 7.3 Change Order Procedures
 - 7.4 Field Orders
 - 7.5 Variation in Quantity of Unit Price Work
 - 7.6 Waiver
- ARTICLE 8. CONTRACT TIME
 - 8.1 Commencement of the Work
 - 8.2 Progress and Completion
 - 8.3 Delay
 - 8.4 Adjustment of the Contract Time for Delay
 - 8.5 Compensation for Delay
 - 8.6 Waiver
- ARTICLE 9. PAYMENTS AND COMPLETION
 - 9.1 Cost Breakdown
 - 9.2 Progress Payment
 - 9.3 Application For Payment
 - 9.4 Certificate For Payment
 - 9.5 Deposit of Securities in Lieu of Retention and Deposit of Retention Into Escrow
 - 9.6 Beneficial Occupancy
 - 9.7 Substantial Completion
 - 9.8 Final Completion and Final Payment
- ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY
 - 10.1 Safety Precautions and Programs
 - 10.2 Safety of Persons and Property
 - 10.3 Emergencies
- ARTICLE 11. INSURANCE AND BONDS
 - 11.1 Prime Trade Contractor's Insurance

11.2	Builder's Risk Property Insurance
11.3	Performance Bond and Payment Bond
ARTICLE 12.	UNCOVERING AND CORRECTION OF WORK
12.1	Uncovering of Work
12.2	Correction of Defective Work and Guarantee to Repair Period
ARTICLE 13.	TERMINATION OR SUSPENSION OF THE CONTRACT
13.1	Termination by Prime Trade Contractor
13.2	Termination by University for Cause
13.3	Suspension by University for Convenience
13.4	Termination by University for Convenience
ARTICLE 14.	STATUTORY AND OTHER REQUIREMENTS
14.1	NOT USED
14.2	Nondiscrimination
14.3	Prevailing Wage Rates
14.4	Payroll Records
14.5	Apprentices
14.6	Work Day
ARTICLE 15.	MISCELLANEOUS PROVISIONS
15.1	Governing Law
15.2	Successors and Assigns
15.3	Rights and Remedies
15.4	Survival
15.5	Complete Agreement
15.6	Severability of Provisions
15.7	University's Right to Audit
15.8	Notices
15.9	Time of the Essence

ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 APPLICABLE CODE REQUIREMENTS

The term "Applicable Code Requirements" means all laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Prime Trade Contractor, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work including without limitation the requirements set forth in Article 3.7 of the General Conditions.

1.1.2 APPLICATION FOR PAYMENT

The term "Application For Payment" means the submittal from Prime Trade Contractor wherein payment for certain portions of the completed Work is requested in accordance with Article 9 of the General Conditions.

1.1.3 BENEFICIAL OCCUPANCY

The term "Beneficial Occupancy" means the University's right to occupancy or use of any part of the Work in accordance with Article 9 of the General Conditions.

1.1.4 CERTIFICATE FOR PAYMENT

The term "Certificate For Payment" means the form signed by University's Representative attesting to the Prime Trade Contractor's right to receive payment for certain completed portions of the Work in accordance with Article 9 of the General Conditions.

1.1.5 CHANGE ORDER

See Article 7.2 of the General Conditions

1.1.6 CLAIM

See Article 4.3 of the General Conditions.

1.1.7 COMPENSABLE DELAY

The term "Compensable Delay" means a delay that entitles the Prime Trade Contractor to an adjustment of the Contract Sum and an adjustment of the Contract Time pursuant to Articles 7 and 8 of the General Conditions.

1.1.8 CONTRACT

The term "Contract" means the written Agreement between Prime Trade Contractor and University set forth in the Contract Documents.

1.1.9 CONTRACT DOCUMENTS

The term "Contract Documents" means all documents listed in Article 2 of the Agreement, as modified by Change Order, including but not limited to the Drawings and Specifications.

1.1.10 CONTRACT MILESTONE

The term "Contract Milestone" means any requirement in the Contract Documents that reflects a planned point in time for the start or completion of a portion of the Work measured from I) the date of the Notice to proceed or ii) the date of another Contract Milestone defined in the contract Documents, as applicable.

1.1.11 CONTRACT SUM

The term "Contract Sum" means the amount of compensation stated in the Agreement for the performance of the Work, as adjusted by Change Order.

1.1.12 CONTRACT TIME

The term "Contract Time" means the number of days set forth in the Agreement, as adjusted by Change Order, within which Prime Trade Contractor must achieve full completion of the Work.

1.1.13 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

1.1.14 DAY

The term "day," as used in the Contract Documents, shall mean calendar day, unless otherwise specifically provided.

1.1.15 DEFECTIVE WORK

The term "Defective Work" means work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to the requirements of the Contract Documents, directives of University's Representative, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.

1.1.16 DRAWINGS

The term "Drawings" means the graphic and pictorial portions of the Contract Documents showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams. The Drawings are listed in the List of Drawings.

1.1.17 EXCUSABLE DELAY

The term "Excusable Delay" means a delay that entitles the Prime Trade Contractor to an adjustment of the Contract Time but not an adjustment of the Contract Sum, pursuant to Articles 7 and 8 of the General Conditions.

1.1.18 EXTRA WORK

The term "Extra Work" means Work beyond or in addition to the Work required by the Contract Documents.

1.1.19 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.20 FINAL COMPLETION

The term "Final Completion" means the date at which the Work has been fully completed in accordance with the requirements of the Contract Documents pursuant to Article 9.8.1 of the General Conditions.

1.1.21 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions.

1.1.22 MASTER PROJECT SCHEDULE

The term "Master Project Schedule" means the graphical representation of a practical plan, in accordance with Article 3 of the General Conditions and the Specifications, to perform and complete the Project within the Project Time.

1.1.23 PRIME TRADE CONTRACTOR

The term "Prime Trade Contractor" means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

1.1.24 PRIME TRADE CONTRACTOR FEE

See Article 7.3 of the General Conditions.

1.1.25 PRIME TRADE CONTRACTOR SCHEDULE

The term "Prime Trade Contractor Schedule" means the graphical representation of a practical plan, in accordance with Article 3 of the General Conditions and the Specifications, to perform and complete the Work within the Contract Time.

1.1.26 PROJECT

The term "Project" means the Work of the Contract and all other work, labor, equipment, and materials necessary to accomplish the construction of the improvement of which the Work is a part. The Project will include construction by Separate Contractors.

1.1.27 PROJECT SUBSTANTIAL COMPLETION

The term "Project Substantial Completion" means the stage in the progress of the Project, as determined by University's Representative, when all work of the Project is complete and in accordance with the Contract Documents and Substantial Completion of all Prime Trade Contracts have occurred except only for completion of minor items which do not impair University's ability to occupy and fully utilize all work of the Project for its intended purpose and a Certificate of Occupancy for the Project has been issued by the University's Building Official.

1.1.28 PROJECT TIME

The term "Project Time" means the number of days from the first Notice to Proceed issued to a Prime Trade Contractor to the date for completion of the Project.

1.1.29 SEPARATE CONTRACTOR

The term "Separate Contractor" means a person or firm under separate contract with University performing other work related to the Project.

1.1.30 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.12 of the General Conditions.

1.1.31 SPECIFICATIONS

The term "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

1.1.32 SUBCONTRACTOR

The term "Subcontractor" means a person or firm that has a contract with Prime Trade Contractor or with a Subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers.

1.1.33 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.34 SUPERINTENDENT

The term "Superintendent" means the person designated by Prime Trade Contractor to represent Prime Trade Contractor at the Project site in accordance with Article 3 of the General Conditions.

1.1.35 TIER

The term "tier" means the contractual level of a Subcontractor or supplier with respect to Prime Trade Contractor. For example, a first-tier Subcontractor is under subcontract with Prime Trade Contractor, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so on.

1.1.36 UNEXCUSABLE DELAY

The term "Unexcusable Delay" means a delay that does not entitle the Prime Trade Contractor to an adjustment of the Contract Sum and does not entitle the Prime Trade Contractor to an adjustment of the Contract Time.

1.1.37 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.38 UNIVERSITY

The term "University" means The Regents of the University of California.

1.1.39 UNIVERSITY BUILDING OFFICIAL

The term "University's Building Official" shall mean the individual the University has designated to act in the capacity as the "Building Official" as defined by the California Building Standards Code. The University's Building Official will determine whether the all work of the Project complies with Applicable Code Requirements and will determine whether and when it is appropriate to issue a Certificate of Occupancy.

1.1.40 UNIVERSITY'S REPRESENTATIVE

The term "University's Representative" means the person or firm identified as such in the Agreement.

1.1.41 UNIVERSITY'S RESPONSIBLE ADMINISTRATOR

The term "University's Responsible Administrator" means the person, or his or her authorized designee, who is authorized to sign the Agreement and other applicable contract Documents on behalf of the University.

1.1.42 WORK

The term "Work" means all construction, services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Prime Trade Contractor to fulfill Prime Trade Contractor's obligations. The Work will constitute a part of the Project.

1.2 OWNERSHIP AND USE OF CONTRACT DOCUMENTS

1.2.1 The Contract Documents and all copies thereof furnished to or provided by Prime Trade Contractor are the property of the University and are not to be used on other work.

1.3 INTERPRETATION

1.3.1 The Contract Documents are complementary and what is required by one shall be as binding as if required by all. In the case of conflict between terms of the contract Documents, the following order of precedence shall apply:

- .1 The Agreement
- .2 The Supplementary Conditions
- .3 The General Conditions
- .4 The Specifications
- .5 The Drawings

1.3.2 With respect to the Drawings, figured dimensions shall control over scaled measurements and specific details shall control over typical or standard details.

1.3.3 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Prime Trade Contractor in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.

1.3.4 Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.

1.3.5 The Contract Documents may omit modifying words such as "all" and "any," and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation," "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement.

1.3.6 Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. Each gender shall be deemed to include any other gender, and each shall include corporation, partnership, trust, or other legal entity whenever the context so requires. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

ARTICLE 2 UNIVERSITY

2.1 INFORMATION AND SERVICES PROVIDED BY UNIVERSITY

2.1.1 If required for performance of the Work, as determined by University's Representative, University will make available a survey describing known physical characteristics, boundaries, easements, and utility locations for the Project site.

2.1.2 University is not subject to any requirement to obtain or pay for local building permits, inspection fees, plan checking fees, or certain utility fees. Except as otherwise provided in the Contract Documents, University will obtain and pay for any utility permits, demolition permits, easements, and government approvals for the use or occupancy of permanent structures required in connection with the Work.

2.1.3 Prime Trade Contractor will be furnished, free of charge, such copies of the Contract Documents as University deems reasonably necessary for execution of the Work.

2.2 ACCESS TO PROJECT SITE

2.2.1 University will provide, no later than the earliest start date for the Prime Trade Contractor as shown in the Master Project Schedule, access to the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents for use by Prime Trade Contractor.

2.3 UNIVERSITY'S RIGHT TO STOP THE WORK

2.3.1 If Prime Trade Contractor fails to correct Defective Work as required by Article 12.2 of the General Conditions or fails to perform the Work in accordance with the Contract Documents, University or University's Representative may direct Prime Trade Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Prime Trade Contractor. Prime Trade Contractor shall not be entitled to any adjustment of Contract Time or Contract Sum as a result of any such order. University and University's Representative have no duty or responsibility to Prime Trade Contractor or any other party to exercise the right to stop the Work.

2.4 UNIVERSITY'S RIGHT TO CARRY OUT THE WORK

If Prime Trade Contractor fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Master Project Schedule, fails to start any activity by its start date as directed by the University Representative which will be no earlier than the early start date nor later than the late start date reflected in the Master Project Schedule, fails to complete any activity by its completion date as directed by the University Representative which will be no earlier than the early completion date nor later than the late completion date as reflected in the Master Project Schedule, or otherwise fails to comply with any material term of the Contract Documents, and, after receipt of written notice from University, fails within 2 days, excluding Saturdays, Sundays and legal holidays, or within such additional time as the University may specify, to correct such failure and thereafter diligently continue to completion, University may, without prejudice to other remedies University may have:

.1 correct such failure at Prime Trade Contractor's expense. In such case, University will be entitled to deduct from payments then or thereafter due Prime Trade Contractor the cost of correcting such failure, including compensation for the additional services and expenses of University's Representative and University's consultants made necessary thereby. If payments then or thereafter due Prime Trade Contractor are not sufficient to cover such amounts, Prime Trade Contractor shall pay the additional amount to University.

.2 supply additional workers to the Prime Trade Contractor in such quantity and for such period as deemed necessary by the University's Representative, all at the Prime Trade Contractor's expense. In such case, University will be entitled to deduct from payments then or thereafter due Prime Trade Contractor the cost of such additional workers, including compensation for the additional services and expenses of University's Representative and University's consultants made necessary thereby. If payments then or thereafter due Prime Trade Contractor are not sufficient to cover such amounts, Prime Trade Contractor shall pay the additional amount to University.

2.5 UNIVERSITY'S RIGHT TO REPLACE UNIVERSITY'S REPRESENTATIVE

2.5.1 University may at any time and from time to time, without prior notice to or approval of Prime Trade Contractor, replace University's Representative with a new University's Representative. Upon receipt of notice from University informing Prime Trade Contractor of such replacement and identifying the new University's Representative, Prime Trade Contractor shall recognize such person or firm as University's Representative for all purposes under the Contract Documents.

2.6 UNIVERSITY'S RIGHT TO ACCELERATE THE WORK

2.6.1 University may direct the acceleration of the Work by Prime Trade Contractor to meet schedule requirements when the Work has been delayed by one or more Separate Contractors and such delay would otherwise give rise to a time extension. The University will compensate the Prime Trade Contractor for the additional costs incurred by such acceleration to the extent that such costs are directly attributable to the acceleration and are incurred through no fault or negligence of the Prime Trade Contractor.

2.6.2 Any acceleration directed by University pursuant to the foregoing provision will be by a Change Order. The University will not be obligated, under any circumstances, to direct such acceleration and may elect, at its option, not to accelerate the Work of the Prime Trade Contractor.

2.6.3 University may accelerate the work of one or more Separate Contractors to meet schedule requirements when the Work of Prime Trade Contractor does not adhere to the Master Project Schedule and said failure to adhere causes, in whole or in part, a delay in the work of such Separate Contractors and if such delay would otherwise give rise to a time extension. The University may reduce the Contract Sum by the amounts incurred due to the acceleration.

ARTICLE 3

PRIME TRADE CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY PRIME TRADE CONTRACTOR

3.1.1 Prime Trade Contractor shall carefully study and compare each of the Contract Documents with the others and with information furnished by University, and shall promptly report in writing to University's Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Prime Trade Contractor.

3.1.2 Prime Trade Contractor shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Prime Trade Contractor before commencing the Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to University's Representative.

3.1.3 If Prime Trade Contractor performs any construction activity which it knows or should know involves an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2 above, without notifying and obtaining the written consent of University's Representative, Prime Trade Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Prime Trade Contractor shall supervise, coordinate, and direct the Work using Prime Trade Contractor's best skill and attention. Except as otherwise reserved to the University, Prime Trade Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work.

3.2.2 Prime Trade Contractor shall be responsible to University for acts and omissions of Prime Trade Contractor's agents, employees, and Subcontractors, and their respective agents and employees.

3.2.3 Prime Trade Contractor shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of University or University's Representative in the administration of the Contract, or by tests, inspections, or approvals required or performed by persons or firms other than Prime Trade Contractor.

3.2.4 Prime Trade Contractor shall be responsible for inspection of all portions of the Work, including those portions already performed under this Contract, to determine that such portions conform to the requirements of the Contract Documents and are ready to receive subsequent Work.

3.2.5 Prime Trade Contractor shall at all times maintain good discipline and order among its employees and Subcontractors. Prime Trade Contractor shall provide competent, fully qualified personnel to perform the Work.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, Prime Trade Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and Final Completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4 PRIME TRADE CONTRACTOR'S WARRANTY

3.4.1 Prime Trade Contractor warrants to University that all materials and equipment used in or incorporated into the Work will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Work will be of good quality and free from defects; and that the Work will conform with the requirements of the Contract Documents. If required by University's Representative, Prime Trade Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5 TAXES

3.5.1 Prime Trade Contractor shall pay all sales, consumer, use, and similar taxes for the Work or portions thereof provided by Prime Trade Contractor.

3.6 PERMITS, FEES, AND NOTICES

3.6.1 Except for the permits and approvals which are to be obtained by University or the requirements with respect to which University is not subject as provided in Article 2.1.2 of the General Conditions, Prime Trade Contractor shall secure and pay for all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Prime Trade Contractor shall deliver to University all original licenses, permits, and approvals obtained by Prime Trade Contractor in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

3.7 APPLICABLE CODE REQUIREMENTS

3.7.1 Prime Trade Contractor shall perform the Work in accordance with the following Applicable Code Requirements:

- .1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Prime Trade Contractor, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.
- .2 All requirements of any insurance company issuing insurance required hereunder.
- .3 The Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety.
- .4 Applicable titles in the State of California Code of Regulations.
- .5 Applicable sections in the State of California Labor Code.
- .6 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

Without limiting the foregoing, Prime Trade Contractor shall comply with the provisions regarding nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day set forth in Article 14 of the General Conditions.

3.7.2 Prime Trade Contractor shall comply with and give notices required by all Applicable Code Requirements, including all environmental laws and all notice requirements under the State of California Safe Drinking Water and Enforcement Act of 1986 (State of California Health and Safety Code Section 25249.5 and applicable sections that follow). Prime Trade Contractor shall promptly notify University's Representative in writing if Prime Trade Contractor becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

3.7.3 If Prime Trade Contractor performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to University and University's Representative, Prime Trade Contractor shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

3.8 SUPERINTENDENT

3.8.1 Prime Trade Contractor shall employ a competent Superintendent satisfactory to University who shall be in attendance at the Project site at all times during the performance of the Work. Superintendent shall represent Prime Trade Contractor and communications given to and received from Superintendent shall be binding on Prime Trade Contractor.

3.8.2 Failure to maintain a Superintendent on the Project site at all times that Work is in progress shall be considered a material breach of this Contract, entitling University to terminate the Contract or alternatively, issue a stop Work order until the Superintendent is on the Project site. If, by virtue of issuance of said stop Work order, the Project is not completed within the Contract Time, Prime Trade Contractor will be assessed Liquidated Damages in accordance with the Agreement.

3.8.3 The Superintendent approved for the Project must be able to read, write and verbally communicate in English.

3.8.4 The superintendent may not perform the Work of any trade, pick-up materials, or perform any Work not directly related to the supervision and coordination of the Work at the Project site when Work is in progress.

3.9 SCHEDULES REQUIRED OF PRIME TRADE CONTRACTOR

3.9.1 The University's Representative has developed an overall "Preliminary Master Project Schedule" indicating major milestones and construction sequences for the Project, showing the general timing for the work of Prime Trade Contractor. This Preliminary Master Project Schedule is for Bidder information and guidance only, and is not intended to serve as the Master Project Schedule that will be utilized for construction. However, the construction milestones and sequences shall be the basis for the Master Project Schedule, unless the University's Representative modifies them to improve the overall progress and completion by utilizing revised logic and revised schedule.

3.9.2 Using the Prime Trade Contract Schedules submitted by each of the Prime Trade Contractors, the University's Representative will develop and issue the Master Project Schedule showing completion of the Project within the Project Time. University Representative may require additional information from the Prime Trade Contractor during development of the Master Project Schedule.

3.9.3 The University Representative may impose upon the Prime Trade Contractor, in the initial Master Project Schedule, whatever scheduling requirements are deemed appropriate, consistent with the Preliminary Master Project Schedule, and the Prime Trade Contractor shall comply with any such requirements, at no additional cost to University.

3.9.4 The Prime Trade Contractor shall submit updated schedule information to University's Representative within the time limits required by the Specifications and acceptable to University's Representative. The University Representative may, at any time, make reasonable adjustments, at no cost to the University, to the Master Project Schedule so that the Project may be completed within the Contract Time, or if completion within the Contract Time is impracticable, to mitigate damages to the University resulting from late completion of the Project.

3.9.5 The Master Project Schedule shall represent a practical plan to complete the Work so that the entire Project can be fully completed within the Project Time.

3.9.6 The Prime Trade Contractor shall prepare and keep current, to the satisfaction of University's Representative, a Submittal Schedule, in the form contained in the Exhibits, for each submittal, as required by the Specifications, and that are coordinated with the other activities in the Master Project Schedule.

3.9.7 Prime Trade Contractor shall plan, develop, supervise, control, and coordinate the performance of the Work so that its progress and the sequence and timing of Work activities conform to the current Master Project Schedule. Prime Trade Contractor shall continuously obtain from Subcontractors updated information and data about the planning for and progress of the Work and the delivery of equipment, shall coordinate, and monitor the progress of the Work and the delivery of equipment. Prime Trade Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier. Prime Trade Contractor shall cooperate with University's Representative in the development of the Prime Trade Contract Schedule, the Master Project Schedule, and their updates.

University's Representative's acceptance of or its review comments about Prime Trade Contractor Schedule or scheduling data provided by Prime Trade Contractor shall not relieve Prime Trade Contractor of its sole responsibility to plan for, perform, and fully complete its Work within the Contract Time. Acceptance of or review comments about the Prime Trade Contractor Schedule shall not imply the University's agreement with (1) any assumption upon which such Prime Trade Contractor Schedule is based, or (2) any matter underlying or contained in such Prime Trade Contractor Schedule.

Failure of University's Representative to discover errors or omissions in the Prime Trade Contractor Schedules that it has reviewed, or to inform Prime Trade Contractor that Prime Trade Contractor is behind schedule, or to direct or enforce procedures for complying with the Master Project Schedule shall not relieve Prime Trade Contractor from its sole responsibility to perform and complete the Work and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.9.8 The Work may require performance in several areas of the project simultaneously in order to fully complete the Project within the Project Time. As each area becomes available, Prime Trade Contractor shall begin work in those respective areas with additional crews if necessary to avoid a reduction of effort in other areas already under construction.

3.9.9 Subject to University's rights under the Prime Trade Contract or at law, time is of the essence in the Prime Trade Contractor's performance of this Contract. Prime Trade Contractor agrees to promptly commence work when directed by University's Representative.

3.9.10 In addition to any completion dates required under the Prime Trade Contract, the Prime Trade Contractor agrees to perform the work in accordance with University's Representative's Master Project Schedule, including all subsequent modifications to the Master Project Schedule by University's Representative. Prime Trade Contractor agrees to perform the work in a way that will not delay University, University's Representative, or the progress of the Project, all at Prime Trade Contractor's cost and without additional cost or liability to University.

3.9.11 If, at any time during Prime Trade Contractor's performance of the work, the actual progress of the Prime Trade Contractor's Work falls behind the Master Project Schedule, then Prime Trade Contractor agrees to immediately take any steps necessary per University's Representative's sole discretion to improve progress in the Work or the Project. All these steps will be taken at Prime Trade Contractor's cost and without additional cost or liability to the University. If for any reason the Prime Trade Contractor's progress is not in accord with University's Representative's current Master Project Schedule, including remedial schedules, or any dates or intervals required elsewhere by the Prime Trade Contract, University's Representative may require Prime Trade Contractor to increase its labor force, its supervision force, the number of work shifts, overtime, work on weekends and holidays, the equipment on the Project, revise or modify its construction procedures and sequences and any other measures which University's Representative considers necessary, all without additional cost or liability to University. Neither notice by University's Representative nor the failure to issue notice that Prime Trade Contractor's progress is inadequate shall relieve Prime Trade Contractor from its obligation to achieve the quality of work and rate of progress required by University's Representative.

If University incurs expense or loss or it appears that University may sustain expense or loss due to Prime Trade Contractor's failure to comply with the above provisions, University or University's Representative may either deduct that amount from any progress payment or retention payable to Prime Trade Contractor and/or delay payment of any sums otherwise owing to Prime Trade Contractor until the situation is remedied or adjusted to University's or University's Representative's satisfaction.

3.9.12 The University Representative will schedule and coordinate the activities of the Prime Trade Contractor in accordance with the latest approved Master Project Schedule. The Prime Trade Contractor shall cooperate with the University Representative in the reasonable determinations of scheduling and performing the Prime Trade Contractor's work to avoid conflict, delay in or interference with the Work or other Prime Trade Contractors, or Separate Contractors, regardless of their float shown on the Master Project Schedule.

3.9.13 University's Representative may, at any time, update, supplement or revise its Master Project Schedule and/or require Prime Trade Contractor to suspend, delay or re-sequence its work. Such updates, supplements, revisions, suspensions, delays or re-sequencing shall be without additional cost or liability to University except to the extent they result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor. To the extent such updates, supplements, revisions, suspensions, delays or re-sequencing result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor, the Prime Trade Contract shall be subject to adjustment provided the Prime Trade Contractor complies with the requirements of the Prime Trade Contract for seeking an adjustment, including without limitation, the requirements set forth in Articles 4,

7 and 8 of the General Conditions. Notwithstanding the foregoing, the University may elect to accelerate the work of one or more Separate Contractors to reduce or eliminate the delay and require the Prime Trade Contractor to complete its Work within the Contract Time.

3.10 AS-BUILT DOCUMENTS

3.10.1 Prime Trade Contractor shall maintain one set of As-built drawings and specifications, which shall be kept up to date during the Work of the Contract. All changes which are incorporated into the Work which differ from the documents as drawn and written shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work and each revision shall be initialed and dated by Superintendent. Prior to filing of the Notice of Completion each drawing and the specification cover shall be signed by Prime Trade Contractor and dated attesting to the completeness of the information noted therein. As-built Documents shall be turned over to the University's Representative and shall become part of the Record Documents.

3.11 DOCUMENTS AND SAMPLES AT PROJECT SITE

3.11.1 Prime Trade Contractor shall maintain the following at the Project site:

- .1 One as-built copy of the Contract Documents, in good order and marked to record current changes and selections made during construction.
- .2 The current accepted Master Project Schedule and Prime Trade Contractor Schedule.
- .3 Shop Drawings, Product Data, and Samples.
- .4 All other required submittals.

These shall be available to University's Representative and shall be delivered to University's Representative for submittal to University upon the earlier of Final Completion or termination of the Contract.

3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.12.1 Definitions:

- .1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by Prime Trade Contractor or a Subcontractor to illustrate some portion of the Work.
- .2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Prime Trade Contractor to illustrate or describe materials or equipment for some portion of the Work.
- .3 Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.12.2 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate, for those portions of the Work for which submittals are required, how Prime Trade Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.12.3 Prime Trade Contractor shall review, approve, and submit to University's Representative Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of University or of Separate Contractors. Submittals made by Prime Trade Contractor which are not required by the Contract Documents may be returned without action by University's Representative.

3.12.4 Prime Trade Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been reviewed by University's Representative and no exceptions have been taken by University's Representative. Such Work shall be in accordance with approved submittals and the Contract Documents.

3.12.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Prime Trade Contractor represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within such submittals with the requirements of the Contract Documents and Shop Drawings for related Work.

3.12.6 If Prime Trade Contractor discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Prime Trade Contractor shall notify University's Representative and receive instruction before proceeding with the affected Work.

3.12.7 Prime Trade Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by University's Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless Prime Trade Contractor has specifically informed University's Representative in writing of such deviation at the time of submittal and University's Representative has given written approval of the specific deviation. Prime Trade Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by University's Representative's review, acceptance, comment, or approval thereof.

3.12.8 Prime Trade Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by University's Representative on previous submittals.

3.13 USE OF SITE AND CLEAN UP

3.13.1 Prime Trade Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Prime Trade Contractor shall not unreasonably encumber the Project site with materials or equipment.

3.13.2 Prime Trade Contractor shall, during performance of the Work, keep the Project site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Prime Trade Contractor. Prime Trade Contractor shall remove all excess dirt, waste material, and rubbish

caused by the Prime Trade Contractor; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.

3.13.3 Personnel of Prime Trade Contractor and Subcontractors shall not occupy, live upon, or otherwise make use of the Project site during any time that Work is not being performed at the Project site, except as otherwise provided in the Contract Documents.

3.14 CUTTING, FITTING, AND PATCHING

3.14.1 Prime Trade Contractor shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly and to allow the Work to receive or be received by work of Separate Contractors shown upon, or reasonably implied by, the Contract Documents.

3.14.2 Prime Trade Contractor shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Prime Trade Contractor shall not cut or alter the work of any Separate Prime Trade Contractor without the prior consent of University's Representative.

3.15 ACCESS TO WORK

3.15.1 University, University's Representative, their consultants, and other persons authorized by University will at all times have access to the Work wherever it is in preparation or progress. Prime Trade Contractor shall provide safe and proper facilities for such access and for inspection.

3.16 ROYALTIES AND PATENTS

3.16.1 Prime Trade Contractor shall pay all royalties and license fees required for the performance of the Work. Prime Trade Contractor shall defend suits or claims resulting from Prime Trade Contractor's or any Subcontractor's infringement of patent rights and shall Indemnify University and University's Representative from Losses on account thereof.

3.17 DIFFERING SITE CONDITIONS

3.17.1 If Prime Trade Contractor encounters any of the following conditions at the site, Prime Trade Contractor shall immediately notify the University's Representative in writing of the specific differing conditions before they are disturbed and before any affected Work is performed, and permit investigation of the conditions:

- .1 Subsurface or latent physical conditions at the site which differ materially from those indicated in this Contract, or if not indicated in this Contract, in the Information Available to Bidders; or
- .2 Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

3.17.2 Prime Trade Contractor shall be entitled to an adjustment to the Contract Sum and/or Contract Time as the result of extra costs and/or delays resulting from a materially differing site condition, if and only if Prime Trade Contractor fulfills the following conditions:

- .1 Prime Trade Contractor fully complies with Article 3.17.1 above; and
- .2 Prime Trade Contractor fully complies with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.17.3 Adjustments to the Contract Sum and/or Contract Time shall be subject to the procedures and limitations set forth in Articles 7 and 8 of the General Conditions.

3.18 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

3.18.1 Except and only to the extent provided otherwise in Articles 3.17, 7 and 8 of the General Conditions, by signing the Agreement, Prime Trade Contractor agrees:

- .1 To bear the risk of concealed, unforeseen or unknown conditions and events, if any, which may be encountered in performing the Contract; and
- .2 That Prime Trade Contractor's bid for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of concealed, unforeseen or unknown conditions and events, Prime Trade Contractor understands that, except and only to the extent provided otherwise in Articles 3.17, 7 and 8 of the General Conditions, concealed, unforeseen or unknown conditions and events shall not excuse Prime Trade Contractor from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Prime Trade Contractor to an adjustment of the Contract Sum.

3.18.2 If Prime Trade Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, Prime Trade Contractor shall immediately notify University's Representative in writing such that University's Representative can determine if such conditions require design details which differ from those design details shown in the Contract Documents. Prime Trade Contractor shall be liable to University for any extra costs incurred as the result of Prime Trade Contractor's failure to immediately give such notice.

3.18.3 If concealed or unknown conditions are encountered which require, in the opinion of University's Representative, design details which differ from those design details shown in the Contract Documents and the University's Representative finds that such revised design details will cause an increase or decrease in the cost of, or the time required for performance of the Contract, and if University agrees with the University's Representative's determinations, University will issue a Change Order modifying the Contract Terms to provide for the change in design details and to provide for an adjustment in the Contract Sum and/or Contract Time pursuant to Articles 7 and 8 of the General Conditions.

3.18.4 Prime Trade Contractor shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under Article 3.18.3 above, fully comply with Article 4 of the General Conditions (including the timely filing of a Change Order Request and all other requirements for Change Orders Requests and Claims).

3.19 INFORMATION AVAILABLE TO BIDDERS

3.19.1 Any information provided pursuant to INFORMATION AVAILABLE TO BIDDERS is subject to the following provisions:

- .1 The information is made available for the convenience of Bidders and is not a part of the Contract.
- .2 The Prime Trade Contractor may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.
- .3 Other components of the information, including but not limited to recommendations, may not be relied upon by Prime Trade Contractor. University shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Prime Trade Contractor.

3.20 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.20.1 Prime Trade Contractor shall be liable for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to University's acceptance of the Project as fully completed except that Prime Trade Contractor shall not be liable for:

- .1 Losses covered by the builder's risk property insurance provided by University pursuant to Article 11 of the General Conditions, except that the Prime Trade Contractor shall be liable for any deductible(s) and any amounts exceeding policy limits.
- .2 Earthquake, tidal wave, or flood, provided that the loss was not caused in whole or in part by the negligent acts or omissions of Prime Trade Contractor, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

3.20.2 Prime Trade Contractor shall promptly repair and replace any Work or materials damaged or destroyed for which the Prime Trade Contractor is liable under Article 3.20.1 above.

3.21 INDEMNIFICATION

3.21.1 Prime Trade Contractor shall Indemnify University, University's consultants, University's Representative, University's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses arising out of, resulting from, or relating to the following:

- .1 The failure of Prime Trade Contractor to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by Prime Trade Contractor given in accordance with or contained in the Contract Documents.
- .3 Any claim of damage or loss by any Subcontractor or Separate Contractor against University arising out of any alleged act or omission of Prime Trade Contractor or any other Subcontractor, or anyone directly or indirectly employed by Prime Trade Contractor or any Subcontractor.

3.21.2 The University shall not be liable or responsible for any accidents, loss, injury (including death) or damages happening or accruing during the term of the performance of the Work herein referred to or in connection therewith, to persons and/or property, and Prime Trade Contractor shall fully indemnify, defend and hold harmless University and protect University from and against the same. In addition to the liability imposed by law upon the Prime Trade Contractor for damage or injury (including death) to persons or property by reason of the negligence of the Prime Trade Contractor, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Prime Trade Contractor shall defend, indemnify, hold harmless, release and forever discharge the University, its officers, employees, and agents from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of the Prime Trade Contractor, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the Prime Trade Contractor, its officers, agents, employees, or any of its Subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by this Contract. Prime Trade Contractor agrees that this indemnity and hold harmless shall apply even in the event of negligence of University, its officers, agents, or employees, regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply in the event of the sole negligence of University, its officers, agents, or employees.

3.21.3 In claims against any person or entity indemnified under this Article 3.21 that are made by an employee of Prime Trade Contractor or any Subcontractor, a person indirectly employed by Prime Trade Contractor or any Subcontractor, or anyone for whose acts Prime Trade Contractor or any Subcontractor may be liable, the indemnification obligation under this Article 3.21 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Prime Trade Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.21.4 The indemnification obligations under this Article 3.21 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

3.21.5 Prime Trade Contractor shall Indemnify University from and against Losses resulting from any claim of damage made by any Separate Contractor against University arising out of any alleged acts or omissions of Prime Trade Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

3.21.6 Prime Trade Contractor shall Indemnify Separate Contractors from and against Losses arising out of the negligent acts, omissions, or willful misconduct of Prime Trade Contractor, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY UNIVERSITY'S REPRESENTATIVE

4.1.1 University's Representative will provide administration of the Contract as provided in the Contract Documents and will be the representative of University. University's Representative will have authority to act on behalf of University only to the extent provided in the Contract Documents.

4.1.2 University's Representative will have the right to visit the Project site at such intervals as deemed appropriate by the University's Representative. However, no actions taken during such Project site visit by University's Representative shall relieve Prime Trade Contractor of its obligations as described in the Contract Documents.

4.1.3 Except as otherwise reserved to the University, University's Representative will not have control over, will not be in charge of, and will not be responsible for construction means, methods, techniques, sequences, coordination or procedures, or for safety precautions and programs in connection with the Work, since these are solely Prime Trade Contractor's responsibility.

4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, University and Prime Trade Contractor shall communicate through University's Representative. Communications by Prime Trade Contractor with University's consultants and University's Representative's consultants shall be through University's Representative. Communications by University and University's Representative with Subcontractors will be through Prime Trade Contractor. Communications by Prime Trade Contractor and Subcontractors with Separate Contractors shall be through University's Representative. Prime Trade Contractor shall not rely on oral or other non-written communications.

4.1.5 Based on University's Representative's Project site visits and evaluations of Prime Trade Contractor's Applications For Payment, University's Representative will recommend amounts, if any, due Prime Trade Contractor and will issue Certificates For Payment in such amounts.

4.1.6 University's Representative will have the authority to reject the Work, or any portion thereof, which does not conform to the Contract Documents. University's Representative will have the authority to stop the Work or any portion thereof. Whenever University's Representative considers it necessary or advisable for implementation of the intent of the Contract Documents, University's Representative will have the authority to require additional inspection or testing of the Work in accordance with the Contract Documents, whether or not such Work is fabricated, installed, or completed. However, no authority of University's Representative conferred by the Contract Documents nor any decision made in good faith either to exercise or not exercise such authority, will give rise to a duty or responsibility of University or University's Representative to Prime Trade Contractor, or any person or entity claiming under or through Prime Trade Contractor.

4.1.7 University's Representative will have the authority to conduct inspections as provided in the Contract Documents, to take Beneficial Occupancy and to determine the dates of Substantial Completion, Project Substantial Completion, and Final Completion; will receive for review and approval any records, written warranties, and related documents required by the Contract Documents and assembled by Prime Trade Contractor; and will issue a final Certificate For Payment upon Prime Trade Contractor's compliance with the requirements of the Contract Documents.

4.1.8 University's Representative will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Prime Trade Contractor. Should Prime Trade Contractor discover any conflicts, omissions, or errors in the Contract Documents; have any

questions about the interpretation or clarification of the Contract Documents; question whether Work is within the scope of the Contract Documents; or question that Work required is not sufficiently detailed or explained, then, before proceeding with the Work affected, Prime Trade Contractor shall notify University's Representative in writing and request interpretation, clarification, or furnishing of additional detailed instructions. University's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Prime Trade Contractor proceed with the Work affected before receipt of a response from University's Representative, any portion of the Work which is not done in accordance with University's Representative's interpretations, clarifications, instructions, or decisions shall be removed or replaced and Prime Trade Contractor shall be responsible for all resultant losses.

4.2 PRIME TRADE CONTRACTOR CHANGE ORDER REQUESTS

4.2.1 Prime Trade Contractor may request changes to the Contract Sum and/or Contract Time for Extra Work, materially differing site conditions, or Delays to Final Completion of the Work.

4.2.2 Conditions precedent to obtaining an adjustment of the Contract Sum and/or Contract Time, payment of money, or other relief with respect to the Contract Documents, for any other reason, are:

.1 Timely submission of a Change Order Request that meets the requirements of Articles 4.2.3.1 and 4.2.3.2 below; and

.2 If requested, timely submission of additional informational requested by the University Representative pursuant to Article 4.2.3.3 below.

4.2.3 Change Order Request:

4.2.3.1 A Change Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Prime Trade Contractor discovers, or reasonably should discover the circumstances giving rise to the Change Order Request, unless additional time is allowed in writing by University's Representative for submission of the Change Order Request.

4.2.3.2 A Change Order Request must state that it is a Change Order Request, state and justify the reason for the request, and specify the amount of any requested adjustment of the Contract Sum, Contract Time, and/or other monetary relief. If the Prime Trade Contractor requests an adjustment to the Contract Sum or other monetary relief, the Prime Trade Contractor shall submit the following with the Change Order Request:

- .1 a completed Cost Proposal in the form contained in the Exhibits meeting the requirements of Article 7 of the General Conditions; OR
- .2 a partial Cost Proposal and a declaration of what required information is not then known to Prime Trade Contractor. If Prime Trade Contractor failed to submit a completed Cost Proposal with the Change Order Request, Prime Trade Contractor shall submit a completed Cost Proposal meeting the requirements of Article 7 within 7 days of the date the Prime Trade Contractor submitted the Change Order Request unless additional time is allowed by the University's Representative.

4.2.3.3 Upon request of University's Representative, Prime Trade Contractor shall submit such additional information as may be requested by University's Representative for the purpose of evaluating the Change Order Request. Such additional information may include:

- .1 If Prime Trade Contractor seeks an adjustment of the Contract Sum or other monetary relief, actual cost records for any changed or extra costs (including without limitation, payroll records, material and rental invoices and the like), shall be submitted by the deadline established by the University's Representative, who may require such actual cost records to be submitted and reviewed, on a daily basis, by the University's Representative and/or representatives of the University's Representative.
- .2 If Prime Trade Contractor seeks an adjustment of the Contract Time, written documentation demonstrating Prime Trade Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, which shall be submitted within 15 days of the date requested.
- .3 If Prime Trade Contractor seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating Prime Trade Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, which shall be submitted within 15 days of the date requested.
- .4 Any other information requested by the University's Representative for the purpose of evaluating the Change Order Request, which shall be submitted by the deadline established by the University's Representative.

4.2.4 University's Representative will make a decision on a Change Order Request, within a reasonable time, after receipt of a Change Order Request. A final decision is any decision on a Change Order Request which states that it is final. If University's Representative issues a final decision denying a Change Order Request in whole or in part, the Prime Trade Contractor may contest the decision by filing a timely Claim under the procedures specified in Article 4.3 below.

4.2.5 Prime Trade Contractor may file a written demand for a final decision by University's Representative on all or part of any Change Order Request as to which the University's Representative has not previously issued a final decision pursuant to Article 4.2.4 above; such written demand may not be made earlier than the 30th day after submission of the Change Order Request. Within 30 days of receipt of the demand, University's Representative will issue a final decision on the Change Order Request. The University's Representative's failure to issue a decision within the 30-day period shall be treated as the issuance, on the last day of the 30-day period, of a final decision to deny the Change Order Request in its entirety.

4.3 CLAIMS

4.3.1 The term "Claim" means a written demand or assertion by Prime Trade Contractor seeking an adjustment or interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between University and Prime Trade Contractor arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and

the Claims procedures provided under this Article 4 , including but not limited to arbitration, shall not apply to the following:

- .1 Claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine.
- .2 Claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from liability for personal injury or death.
- .3 Claims by University, except as set forth in Article 4.7.4 of the General Conditions.
- .4 Claims respecting stop notices.

4.3.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Prime Trade Contractor's Change Order Request pursuant to Article 4.2.4 above.

4.3.3 A Claim must include the following:

- .1 A statement that it is a Claim and a request for a decision pursuant to Article 4.5 of the General Conditions.
- .2 A detailed factual narrative of events fully describing the nature and circumstances giving rise to the Claim, including but not limited to, necessary dates, locations, and items of work affected.
- .3 A certification, executed by Prime Trade Contractor, that the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.
- .4 A certification, executed by each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor's portion of the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified. Exhibit.
- .5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.3 above.
- .6 If a Cost Proposal or declaration was required by Article 4.2.3, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3.
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:
 - .1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Article 7.3.2 of the General Conditions. The cost breakdown must be provided even if the costs claimed have not been incurred when the Claim is submitted. To the extent costs have been incurred when the Claim is submitted, the Claim must include actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that costs claimed have actually been incurred. To the extent costs have

not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any periods costs are incurred. A cost record will be considered current if submitted within 7 days of the date the cost reflected in the record is incurred. At the request of the University's Representative, claimed extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged Extra Work on a daily basis). The cost breakdown must include an itemization of costs for i) labor including names, classifications, regular hours and overtime hours worked, dates worked, and other pertinent information; ii) materials stored or incorporated in the work including invoices, purchase orders, location of materials either stored or incorporated into the work, dates materials were transported to the project or incorporated into the work, and other pertinent information; and iii) itemization of machinery and equipment including make, model, serial number, hours of use, dates of use and equipment rental rates of any rented equipment

- Contract
- .2 If the Claim involves an extension of the Contract Time, written documentation demonstrating the Prime Trade Contractor's entitlement to a time extension under Article 8.4 of the General Conditions, including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension. The Master Project Schedule must demonstrate Prime Trade Contractor's entitlement to an adjustment of Contract Time under Article 8.4.
 - .3 If the Claim involves an adjustment of the Contract Sum for delay, written documentation demonstrating the Prime Trade Contractor's entitlement to such an adjustment under Article 7.3.9 of the General Conditions, including but not limited to, a detailed time impact analysis of the Master Project Schedule. The Master Project Schedule must demonstrate Prime Trade Contractor's entitlement to such an adjustment under Article 7.3.9.

4.4 ASSERTION OF CLAIMS

4.4.1 Claims by Prime Trade Contractor shall be first submitted to University's Representative for decision.

4.4.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by University's Representative, Prime Trade Contractor shall not cause any delay, cessation, or termination in or of Prime Trade Contractor's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.

4.4.3 Prime Trade Contractor shall submit a Claim in writing, together with the supporting data specified in Article 4.3.3 above, to University's Representative as soon as possible but not later than 30 days after the date the claim arises under Article 4.3.2 above.

4.4.4 Strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to Prime Trade Contractor's right to arbitrate or litigate a Claim. Prime Trade

Contractor specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4. The failure of Prime Trade Contractor to exhaust its administrative remedies with the University, thereby denying any court or arbitration panel of jurisdiction to adjudicate the Claim.

4.5 DECISION OF UNIVERSITY'S REPRESENTATIVE ON CLAIMS

4.5.1 University's Representative will timely review Claims submitted by Prime Trade Contractor. If University's Representative determines that additional supporting data are necessary to fully evaluate a Claim, University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid 30-day period shall be 60 days. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline. The decision of University's Representative will be final and binding unless appealed in accordance with Articles 4.5.2, 4.5.3, and 4.5.4 below.

The University's Representative's decision on a Claim or dispute will include a statement substantially as follows:

“This is a decision under Article 4.5 of the General Conditions of your contract. If you are dissatisfied with the decision, and if you complied with the procedural requirements for asserting claims specified in Article 4 of the General Conditions of your contract, you may have the right to arbitrate or litigate this decision. If you fail to take appropriate action with 30 days of the date of this decision, the decision shall become final and binding and not subject to further appeal.”

4.5.2 If either Prime Trade Contractor or University disputes University's Representative's decision on a Claim, such party (the "Disputing Party") must either provide written notice of its election to arbitrate or provide written notice of its election to litigate the Claim within 30 days after the decision of University's Representative or, if no decision has been issued, within 30 days from the date of the applicable deadline in Article 4.5.1 above for University Representative to render a decision.

4.5.3 If a notice of election to arbitrate or litigate is not given by either party within 30 days after the decision of University's Representative, University's Representative's decision on the Claim will be final and binding and not subject to appeal or challenge.

4.5.4 If the Disputing Party gives timely notice of its election to arbitrate the University's Representative's decision on a Claim, Disputing Party shall have the right, within 120 days after a Notice of Completion, or a Notice of Cessation, as applicable, is filed for the Contract, to make a demand for arbitration in accordance with Article 4.7 below. Failure to perfect a Claim for which a timely election to arbitrate has been made by the timely filing of a demand for arbitration and timely payment of all applicable and required fees to American Arbitration Association ("AAA") shall result in the University's Representative's decision on said Claim becoming final and binding and not subject to appeal or challenge. If the Disputing Party makes a timely demand for arbitration, and the amount of the Claim in question, when combined with all other Claims, if any, which are the subject of previously filed demands for arbitration that have not been resolved by settlement or arbitration award, is \$100,000 or more, then

the other party may elect to litigate all such Claims by filing a written notice with the AAA within 30 days after its receipt of notice from AAA of the Disputing Party's demand for arbitration of the Claim that raises the total amount of Claims subject to arbitration to \$100,000 or more. If the other party fails to give notice of its election to litigate within such 30-day period, it shall be deemed to have consented to arbitration and waived the right to litigate. If after commencement of arbitration the amount of unresolved Claims in arbitration are allowed to be increased to \$100,000 or more, through an AAA-allowed amendment or otherwise, either party may elect to litigate within 30 days following the date that the electing party first receives written notification from AAA that total Claims in arbitration equal or exceed \$100,000. If neither party gives notice of its election to litigate within such 30-day period as applicable, then both parties shall be deemed to have consented to arbitration and waived the right to litigate.

4.5.5 Any litigation shall be filed in the Superior Court of the State of California for the County in which the contract was to be performed.

4.5.6 The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Contract by negotiation.

4.6 MEDIATION

4.6.1 The parties may agree to mediate any controversy or Claim arising out of or relating to this Contract.

4.7 ARBITRATION

4.7.1 A demand for arbitration pursuant to Article 4.5 above shall include a copy of the Claim presented to University's Representative pursuant to Article 4.4 above and a copy of the decision of University's Representative pursuant to Article 4.5, if any. The demand shall state the amount in controversy, if any, and state the remedy sought. The demand shall identify the University's Responsible Administrator as the representative of the responding party and the Office of the General Counsel as counsel for the responding party. The demand shall be filed with the AAA and shall not be deemed to have been made until all applicable fees have been paid to the AAA by the demanding party. Copies of the demand and attachments shall be sent to University's Responsible Administrator as the representative of the responding party and the University's Office of General Counsel as attorney for the responding party, at the addresses set forth in the Project Directory, at the time the demand for arbitration is initiated with the AAA.

4.7.2 Except as modified by this Article 4.7, arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid AAA rules:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the Arbitration. University's Representative and University's consultants will have the same rights in any arbitration proceeding as are afforded by the AAA rules to Prime Trade Contractor and University.

- .3 Prime Trade Contractor's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.
- .4 Except as provided in Articles 4.7.2.2. and 4.7.2.3 above, no Subcontractor or other person shall have a right or obligation to join in or be a party to any arbitration proceeding provided for in this Article 4 either directly, by joinder, by consolidation or actions, by counterclaim or crossclaim, or otherwise without the express written consent of University, Prime Trade Contractor, and the joining party.
- .5 If more than one demand for arbitration is made by a party with respect to Claims referred to University's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
- .6 If total Claims are less than \$50,000, AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of \$100,000 and are submitted to arbitration, either by agreement or by failure to elect litigation the controversy shall be heard by a panel of three arbitrators, one of which shall be an attorney.
- .7 No arbitrator shall be appointed and no discovery may be commenced prior to the date of Final Completion unless University and Prime Trade Contractor otherwise agree.
- .8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.
- .9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 7 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.
- .10 Except as provided herein, the arbitration shall be conducted and enforced under California law, including the California Arbitration Act (California Code of Civil Procedure section 1280 and following). The Federal Arbitration Act shall not apply to the arbitration.

4.7.3 Unless University and Prime Trade Contractor otherwise agree in writing, the arbitration decision shall be binding upon the parties, made under and in accordance with the laws of the State of California, supported by substantial evidence, and in writing. If the total of all Claims or cross Claims submitted to arbitration is in excess of \$50,000, the award shall contain the basis for the decision, findings of fact, and conclusions of law. Any arbitration award shall be subject to confirmation, vacation, or correction under the procedures and on the grounds specified in the California Code of Civil Procedure including without limitation Section 1296. The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

4.7.4 University may, but is not required, to assert as a counterclaim any matter arising out of the claims asserted by Prime Trade Contractor in the arbitration. University's failure to assert any such

counterclaim in an arbitration shall be without prejudice to the University's right to assert the counterclaim in litigation or other proceeding.

4.8 WAIVER

4.8.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 4, including without limitation the requirements in Articles 4.2, 4.3, 4.4, and 4.5 of the General Conditions in connection with any Claim shall not constitute a waiver of, and shall not preclude the University or University's Representative from enforcing such requirements in connection with any other Claims.

4.8.2 The Prime Trade Contractor agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 5 SUBCONTRACTORS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Unless otherwise stated in the Contract Documents, Prime Trade Contractor shall submit in writing, prior to entering into subcontract agreements, the names and addresses of all Subcontractors proposed for the Work that were not previously listed in Prime Trade Contractor's Bid.

5.1.2 Any Subcontractor may be disqualified if University or University's Representative determines that such Subcontractor fails to meet the requirements of the Contract Documents or for any other reason.

5.1.3 In accordance with the Subletting and Subcontracting Fair Practices Act, nothing herein shall be deemed to entitle Prime Trade Contractor, without the approval of University, to substitute other subcontractors for those named in Prime Trade Contractor's List of Subcontractors and List of Changes in Subcontractors Due to Alternates contained in the completed Bid Form; and, except with such approval, no such substitution shall be made.

5.1.4 Except as hereinafter provided, any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor, as required by University or University's Representative pursuant to Article 5.1.1 above shall be borne solely by Prime Trade Contractor and Prime Trade Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time on account of such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for Prime Trade Contractor by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Prime Trade Contractor by the terms of the Contract Documents, to assume toward Prime Trade Contractor all the obligations and responsibilities which Prime Trade Contractor assumes towards University by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of University under the Contract Documents, with respect to the Work to

be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Prime Trade Contractor shall cause each such subcontract to expressly include the following requirements:

- .1 Subcontractor waives all rights that Subcontractor may have against University for damages caused by fire or other perils covered by builder's risk property insurance carried by Prime Trade Contractor or University, except for such rights Subcontractor may have to the proceeds of such insurance held by University under Article 11 of the General Conditions.
- .2 University and entities and agencies designated by University will have access to and the right to audit and the right to copy at University's cost all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.
- .3 Subcontractor recognizes the rights of University under Article 5.3, Contingent Assignment of Subcontracts, below and agrees, upon notice from University that University has elected to accept said assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by University, to execute a written agreement confirming that Subcontractor is bound to University under the terms of the subcontract.

5.2.2 Upon the request of University, Prime Trade Contractor shall promptly furnish to University a true, complete, and executed copy of any subcontract.

5.2.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and University, except when, and only to the extent that, University elects to accept the assignment of the subcontract with such Subcontractor pursuant to Article 5.3 below.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 Prime Trade Contractor hereby assigns to University all its interest in first-tier subcontracts now or hereafter entered into by Prime Trade Contractor for performance of any part of the Work. The assignment will be effective upon acceptance by University in writing and only as to those subcontracts which University designates in writing. University may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Prime Trade Contractor's rights under the Contract Documents. Such assignment is part of the consideration to University for entering into the Contract with Prime Trade Contractor and may not be withdrawn prior to Final Completion.

ARTICLE 6 CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS

6.1 UNIVERSITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 University reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Project site, including portions of the Work which have been deleted by Change Order. Prime Trade Contractor shall cooperate with University's forces and Separate Contractors.

6.1.2 University will provide coordination of the activities of University's forces and of each Separate Contractor with the Work of Prime Trade Contractor. Prime Trade Contractor shall participate with University and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so.

6.1.3 The Project, of which this Contract is a part, will include other contracts for work to be performed and work to be performed by the University on the same site. By entering into this Contract, Prime Trade Contractor acknowledges that University has the right to enter into such other contracts and to perform work, and that the work of said contracts and University may (i) be in close proximity to and/or performed contemporaneously with the work of this Contract, and (ii) result in delays in or disruptions to Prime Trade Contractor's Work. Prime Trade Contractor further agrees as follows:

- .1 The University shall afford Prime Trade Contractor, Separate Contractors or University forces reasonable opportunity for the introduction and storage of their materials and the execution of their work. Prime Trade Contractor shall properly connect and coordinate its construction and operations with the construction and operations of Separate Contractors and University forces, as required by the Contract Documents.
- .2 Prime Trade Contractor shall cooperate with Separate Contractors and University on the project site and will do nothing to delay, hinder, disrupt, or interfere with the work of Separate Contractors, or University. Prime Trade Contractor shall coordinate its work with the work of any Separate Contractor and agrees to attend any coordination meetings scheduled for this purpose by the University Representative. Any dispute between the Prime Trade Contractor and any Separate Contractor over how the work of the various trades should be coordinated, shall be promptly submitted by Prime Trade Contractor to the University Representative. Prime Trade Contractor agrees to cooperate with the development of, and to be bound by, any reasonable coordination plan directed by University Representative to address the dispute, even if Prime Trade Contractor does not agree with the coordination plan so developed. Prime Trade Contractor agrees that if its work is delayed, hindered, disrupted or interfered with by a Separate Contractor to the extent such delays, hindrances, disruptions, and interferences result in Prime Trade Contractor working beyond the Contract Time, through no fault of the Prime Trade Contractor, the Prime Trade Contract shall be subject to a time extension, but no compensation from the University, provided the Prime Trade Contractor complies with the requirements of the Prime Trade Contract for seeking a time extension, including without limitation, the requirements set forth in Articles 4, 7 and 8 of the General Conditions.
- .3 Prime Trade Contractor agrees that its sole remedy for damage or loss, including delay damages, suffered as a result of actions by a Separate Contractor, other than that specified in Article 6.1.3.2 above, shall be against such Separate Contractor, their officers, agents, employees, consultants, subcontractors and, if available, surety bonds. Prime Contractor further agrees to indemnify University, University Representative, their officers, agents, employees, consultants, or subcontractors for any damage or loss by a Separate Contractor allegedly caused by with the work of the Prime Contractor or Separate Contractor except as provided in Article 6.1.3.2 above.

6.2 MUTUAL RESPONSIBILITY

6.2.1 Prime Trade Contractor shall afford University and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Prime Trade Contractor shall connect, schedule, and coordinate its construction and operations with the construction and operations of University and Separate Contractors as required by the Contract Documents.

6.2.2 If a portion of the Work is dependent upon the proper execution or results of other construction or operations by University or Separate Contractors, Prime Trade Contractor shall inspect such other construction or operations before proceeding with that portion of the Work. Prime Trade Contractor shall promptly report to University's Representative apparent discrepancies or defects which render the other construction or operations unsuitable to receive the Work. Unless otherwise directed by University's Representative, Prime Trade Contractor shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Prime Trade Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by University or Separate Contractors is suitable to receive the Work, except as to defects not then reasonably discoverable.

6.3 UNIVERSITY'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises between Prime Trade Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Project site and surrounding areas free from waste materials and rubbish, University may clean up and allocate the cost between those firms it deems to be responsible.

ARTICLE 7 CHANGES IN THE WORK

7.1 CHANGES

7.1.1 University may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Field Order without invalidating the Contract and without notice to sureties. Absence of such notice shall not relieve such sureties of any of their obligations to University.

7.1.2 Prime Trade Contractor may request a Change Order under the procedures specified in Article 4.2 of the General Conditions.

7.1.3 A Field Order may be issued by University, does not require the agreement of Prime Trade Contractor, and shall be valid with or without the signature of Prime Trade Contractor.

7.1.4 Prime Trade Contractor shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

7.2 DEFINITIONS

7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both University and Prime Trade Contractor, and states their agreement upon all of the following:

- .1 A change in the Work, if any.

- .2 The amount of an adjustment of the Contract Sum, if any.
- .3 The amount of an adjustment of the Contract Time, if any.
- .4 A modification to any other Contract term or condition.

7.2.2 A Unilateral Change Order may be issued by University without Prime Trade Contractor's signature, where the University determines that a change in the Work requires an adjustment of the Contract Sum or Contract Time, even though no agreement has been reached between University and Prime Trade Contractor with regard to such change in the Work.

7.2.3 A Field Order (as shown in the Exhibits) is a Contract Document issued by the University that orders the Prime Trade Contractor to perform Work. A Field Order may, but need not, constitute a change in the Work and may, but need not, entitle Prime Trade Contractor to an adjustment of the Contract Sum or Contract Time.

7.3 CHANGE ORDER PROCEDURES

7.3.1 Prime Trade Contractor shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 and this Article 7.3 of the General Conditions. Adjustments of the Contract Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. Adjustments of the Contract Time shall be subject to the provisions in Article 8 of the General Conditions. Prime Trade Contractor's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of Prime Trade Contractor to provide Cost Proposals is not Extra Work, and shall not entitle the Prime Trade Contractor to an adjustment of the Contract Sum or Contract Time.
- .2 The failure of Prime Trade Contractor to timely provide a Cost Proposal pursuant to Article 4.2 and this Article 7.3.1 is a material breach of the Contract. Prime Trade Contractor shall be responsible for any delay in implementing a change for which Prime Trade Contractor failed to timely provide a Cost Proposal consistent with the requirements of Article 4.2 and this Article 7.3.1.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean actual costs incurred or to be incurred by Prime Trade Contractor and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Prime Trade Contractor demonstrates that the costs were actually incurred, if such costs have been incurred):

- .1 Straight-time wages or salaries for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
- .2 Fringe Benefits and Payroll Taxes for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
- .3 Overtime wages or salaries, specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.

- .4 Fringe Benefits and Payroll Taxes for overtime Work specifically authorized in writing by University's Representative, for employees employed at the Project site, or at fabrication sites off the Project site, in the direct performance of the Extra Work.
- .5 Costs of materials and consumable items which are furnished and incorporated into the Extra Work, as approved by University's Representative. Such costs shall be charged at the lowest price available to the Prime Trade Contractor but in no event shall such costs exceed competitive costs obtainable from other subcontractors, suppliers, manufacturers, and distributors in the area of the Project site. All discounts, rebates, and refunds and all returns from sale of surplus materials and consumable items shall accrue to University and Prime Trade Contractor shall make provisions so that they may be obtained.
- .6 Sales taxes on the costs of materials and consumable items which are incorporated into and used in the performance of the Extra Work pursuant to Article 7.3.2.5 above.
- .7 Rental charges for necessary machinery and equipment, whether owned or hired, as authorized in writing by University's Representative, exclusive of hand tools, used directly in the performance of the Extra Work. Such rental charges shall not exceed the current U. S. Army Corp of Engineers scheduled charges for the area in which the work is performed. Prime Trade Contractor shall attach a copy of said schedule to the Cost Proposal. The charges for any machinery and equipment shall cease when the use thereof is no longer necessary for the Extra Work.
- .8 Additional costs of royalties and permits due to the performance of the Extra Work.
- .9 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .8 above.

University and Prime Trade Contractor may agree upon rates to be charged for any of the items listed in this Article 7.3.2. Such agreed upon rates shall be subject to audit pursuant to Article 15.7 of the General Conditions. Prime Trade Contractor shall promptly refund to University any amounts (including associated mark-ups) in excess of the actual costs of such items.

7.3.3 Cost of Extra Work shall not include any of the following:

- .1 Superintendent(s).
- .2 Assistant Superintendent(s).
- .3 Project Engineer(s).
- .4 Project Manager(s).
- .5 Scheduler(s).
- .6 Estimator(s).
- .7 Drafting or Detailing.

- .8 Small tools (Replacement value does not exceed \$300).
- .9 Office expenses including staff, materials and supplies.
- .10 On-site or off-site trailer and storage rental and expenses.
- .11 Site fencing.
- .12 Utilities including gas, electric, sewer, water, telephone, facsimile, copier equipment.
- .13 Data processing personnel and equipment.
- .14 Federal, state, or local business income and franchise taxes.
- .15 Overhead and Profit.
- .16 Costs and expenses of any kind or item not specifically and expressly included in Article 7.3.2 above.

7.3.4 The term "Prime Trade Contractor Fee" shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Prime Trade Contractor for its own Work and the Work of all Subcontractors, for all costs and expenses not included in the Cost of Extra Work, whether or not such costs and expenses are specifically referred to in Article 7.3.3 above. The Prime Trade Contractor Fee shall not be compounded. The Prime Trade Contractor Fee shall be computed as follows:

- .1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the Prime Trade Contractor with its own forces.
- .2 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a Subcontractor with its own forces, plus 5% for the Prime Trade Contractor. Total combined Prime Trade Contractor and Subcontractor fee shall not exceed 20%.
- .3 Fifteen percent (15%) of the cost of that portion of the Work to be performed by a sub-subcontractor with its own forces, or any lower tier of Subcontractor, plus 5% for the Subcontractor, plus 5% for the Prime Trade Contractor. Total combined Prime Trade Contractor, Subcontractor and all sub-subcontractor fee shall not exceed 25%.

7.3.5 Compensation for Extra Work shall be computed on the basis of one or more of the following:

- .1 Where the Work involved is covered by Unit Prices contained in the Contract Documents, by application of the Unit prices stated in the Contract Documents to the quantities of the items involved.
- .2 Where Unit Prices are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to 7.3.1.

- .3 Where Prime Trade Contractor and University cannot agree upon a lump sum, by Cost of Extra Work plus Prime Trade Contractor Fee applicable to such Extra Work.

7.3.6 As a condition to Prime Trade Contractor's right to an adjustment of the Contract Sum, pursuant to Article 7.3.5.3 above, Prime Trade Contractor must keep daily detailed and accurate records itemizing each element of cost and shall provide substantiating records and documentation, including time cards and invoices. Such records and documentation shall be submitted to and approved by University's Representative on a daily basis.

7.3.7 For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following:

- .1 Unit Prices stated in the Contract Documents.
- .2 Where Unit Prices are not applicable, a lump sum agreed upon by University and Prime Trade Contractor, based upon the actual costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Articles 7.3.2 and 7.3.3 above, supported by a Cost Proposal pursuant to Article 7.3.1 above.

7.3.8 If any one Change involves both Extra Work and Deleted Work in the same portion of the Work, a Prime Trade Contractor fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Prime Trade Contractor Fee will be allowed only on the difference between the two amounts.

7.3.9 The Contract Sum will be adjusted for a delay if, and only if, Prime Trade Contractor demonstrates that all of the following five conditions are met:

- .1 Condition Number One: The delay results in an extension of the Contract Time pursuant to Article 8.4.1 of the General Conditions.
- .2 Condition Number Two: The delay is caused solely by one or more of the following:
 - .1 An error or omission in the Contract Documents; or
 - .2 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or
 - .3 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or
 - .4 The failure of the University or the University's Representative to timely perform any contract obligation where the failure to so perform is not the result of any default or misconduct of the Prime Trade Contractor; or
 - .5 A materially differing site condition pursuant to Article 3.17 of the General Conditions.

- .3 Condition Number Three: The delay is not concurrent with a delay that is:
 - .1 Critical under Article 8.4.1.2 of the General Conditions; and
 - .2 Caused by an event not listed in Article 7.3.9.2 above.
- .4 Condition Number Four: The delay is not caused, in whole or in part, by an event not listed in Article 7.3.9.2 above.
- .5 Condition Number Five: The delay is not caused, in whole or in part, by the default or misconduct of a Separate Contractor.

7.3.10 For each day of delay that meets all five conditions prescribed in above 7.3.9 the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to Prime Trade Contractor for Compensable Delays. Pursuant to Article 9.7.4 of the General Conditions, said daily rate shall not apply to delays occurring after Substantial Completion.

7.3.11 Except as provided in Articles 7 and 8 of the General Conditions, Prime Trade Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.3.12 If for any reason one or more of the conditions prescribed in Article 7.3.9 above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining an adjustment of the Contract Time under Article 7.3.10 above.

7.4 FIELD ORDERS

7.4.1 Field Orders issued by the University Representative shall be subject to the following:

- .1 A Field Order may state that it does or does not constitute a change in the Work.
- .2 If the Field Order states that it does not constitute a change in the Work and the Prime Trade Contractor asserts that the Field Order constitutes a change in the Work, in order to obtain an adjustment of the Contract Sum or Contract Time for the Work encompassed by the Field Order, Prime Trade Contractor must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of Prime Trade Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time arising from performance of the Work described in the Field Order.
- .3 If the Field Order states that it does constitute a change in the Work, the Work described in the Field Order shall be considered Extra Work and the Prime Trade Contractor shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to Prime Trade Contractor's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8 of the General Conditions.

- .4 In addition, if the Field Order states that it does constitute a change in the Work, the Field Order may or may not contain University's estimate of adjustment of Contract Sum and/or Contract Time. If the Field Order contains an estimate of adjustment of Contract Sum or Contract Time, the Field Order is subject to the following:
- .1 The Prime Trade Contractor shall not exceed the University's estimate of adjustment to Contract Sum or Contract Time without written authorization by University's Representative.
 - .2 If the Prime Trade Contractor asserts that the change in the Work encompassed by the Field Order may entitle Prime Trade Contractor to an adjustment of Contract Sum or Contract Time in excess of the University's estimate, in order not to be bound by University's estimate Prime Trade Contractor must follow all procedures set forth in Article 4 of the General Conditions, starting with the requirement of submitting a timely Change Order Request within 7 days of Prime Trade Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Contract Sum or Contract Time, in excess of the University's estimate, arising from performance of the Work described in the Field Order.

7.4.2 Upon receipt of a Field Order, Prime Trade Contractor shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the Prime Trade Contractor concerning whether the Work is extra.

7.5 VARIATION IN QUANTITY OF UNIT PRICE WORK

7.5.1 University has the right to increase or decrease the quantity of any Unit price item for which an estimated quantity is stated in the Bid Form.

7.6 WAIVER

7.6.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 7, including without limitation the requirements in Articles 7.3.6, 7.3.8, 7.3.9, 7.3.10, 7.3.11, or 7.3.12 above in connection with any adjustment of the Contract Sum, will not constitute a waiver of, and will not preclude the University or University's Representative from enforcing, such requirements in connection with any other adjustments of the Contract Sum.

7.6.2 The Prime Trade Contractor agrees and understands that no oral approval, either express or implied, of any adjustment of the Contract Sum by University or its agents shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 8 CONTRACT TIME

8.1 COMMENCEMENT OF THE WORK

8.1.1 The date of commencement of the Work shall be set forth in the Notice To Proceed. The date of commencement of the Work shall not be postponed by the failure of Prime Trade Contractor, Subcontractors, or of persons or firms for whom Prime Trade Contractor is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Agreement:

- .1 Prime Trade Contractor represents to University that the Contract Time is reasonable for performing the Work and that Prime Trade Contractor is able to perform the Work within the Contract Time.
- .2 Prime Trade Contractor represents to the University that the time for completion of the Project as shown in the Preliminary Master Project Schedule is reasonable.
- .3 Prime Trade Contractor agrees that University is purchasing the right to have the Prime Trade Contractor fully mobilized on the site from the earliest date for commencement of the Work shown on the Preliminary Master Project Schedule to the date shown for full completion of the Project as shown in the bidding documents.
- .4 Prime Trade Contractor agrees that the University is purchasing the right to have Prime Trade Contractor work on the Project site shared by the Prime Trade Contractor and Separate Contractors. Prime Trade Contractor recognizes that as a result of working at a shared Project site there will be a loss of productivity and disruption commensurate with a project of the type, size and complexity of the Project. Prime Trade Contractor agrees that the Contract Sum includes full compensation for such loss of productivity and disruption.

8.2.2 Prime Trade Contractor shall not, except by agreement or instruction of University in writing, commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 of the General Conditions to be furnished by Prime Trade Contractor. The dates of commencement and completion of the Work shall not be changed by the effective date of such insurance.

8.2.3 Prime Trade Contractor shall proceed expeditiously with adequate forces and shall achieve full completion of the Work within the Contract Time. If University's Representative determines and notifies Prime Trade Contractor that Prime Trade Contractor's progress is such that Prime Trade Contractor will not achieve full completion of the Work within the Contract Time, Prime Trade Contractor shall immediately and at no additional cost to University, take all measures necessary, including working such overtime, additional shifts, Sundays, or holidays as may be required to ensure that the entire Project is completed within the Contract Time. Upon receipt of such notice from University's representative, Prime Trade Contractor shall immediately notify University's Representative of all measures to be taken to ensure full Completion of the Work within the Contract Time. Prime Trade Contractor shall reimburse University for any extra costs or expenses (including the reasonable value of any services provided by University's employees) incurred by University as the result of such measures.

8.3 DELAY

8.3.1 Except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, by signing the Agreement, Prime Trade Contractor agrees:

- .1 to bear the risk of delays to the Work; and
- .2 that Prime Trade Contractor's bid for the Contract was made with full knowledge of this risk.

In agreeing to bear the risk of delays to the Work, Prime Trade Contractor understands that, except and only to the extent provided otherwise in Articles 7 and 8, the occurrence of events that delay the Work shall not excuse Prime Trade Contractor from its obligation to achieve completion of the Work within the Contract Time, and shall not entitle the Prime Trade Contractor to an adjustment of the Contract Sum.

8.4 ADJUSTMENT OF THE CONTRACT TIME FOR DELAY

8.4.1 Subject to Article 8.4.2 below, the Contract Time will be extended for each day of delay for which Prime Trade Contractor demonstrates that all of the following seven conditions have been met; a time extension will not be granted for any day of delay for which Prime Trade Contractor fails to demonstrate compliance with the seven conditions:

- .1 Condition Number One: At the time that the event causing the delay commences, the Prime Trade Contractor has complied with all Contract requirements for maintaining, submitting, and updating schedule information as required by the Contract Documents.
- .2 Condition Number Two: The delay is critical. A delay is critical if and only to the extent it delays a work activity that cannot be delayed without delaying completion of the entire Project beyond the Contract Time. Under this Article 8.4.1.2, if the Master Project Schedule shows completion of the entire Project before expiration of the Contract Time, a delay is critical if and only to the extent the delay pushes completion of the entire Project to a date that is beyond the Contract Time.
- .3 Condition Number Three: The delay is supported by the Master Project Schedule current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Master Project Schedule corroborates that it causes a delay to completion of the entire Project beyond the contractually specified date for full completion because of its effect on the operation referred to in Article 8.4.1.2 above. The requirement that a delay be supported will be excused if the event causing the delay commences before approval of the Prime Trade Contractor Schedule, provided that the absence of an approved Prime Trade Contractor Schedule is not due to the Prime Trade Contractor's failure to timely submit an acceptable Prime Trade Contractor Schedule.
- .4 Condition Number Four: Within 7 days of the date the Prime Trade Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition causing the delay, (even if the Prime Trade Contractor has not been delayed when the Prime Trade Contractor discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Prime Trade Contractor submits both a timely and

complete Change Order Request that meets the requirements of Article 4.2 of the General Conditions.

.5 Condition Number Five: The delay is not caused by:

- .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.17 of the General Conditions; or
- .2 The financial inability, misconduct or default of the Prime Trade Contractor, a Subcontractor or supplier; or
- .3 The unavailability of materials or parts.

.6 Condition Number Six: The delay is caused by:

- .1 Fire; or
- .2 Strikes, boycotts, or like obstructive actions by labor organizations; or
- .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
- .4 A materially differing site condition pursuant to Article 3.17 of the General Conditions; or
- .5 An error or omission in the Contract Documents; or
- .6 The University's decision to change the scope of the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or
- .7 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Prime Trade Contractor; or
- .8 The failure of the University or the University's representative to timely perform any Contract obligation unless such failure is due to Prime Trade Contractor's default or misconduct; or
- .9 The failure of a Separate Contractor to adhere to the Master Project Schedule; or
- .10 The failure of a Separate Contractor to timely perform any contract obligation due to its default or misconduct or
- .11 "Rainy weather," but only for such days of rain that are in excess of the number of days specified in the Supplementary Conditions. In order for a day to be considered a day of rainy weather for the purpose of determining whether Prime Trade Contractor is entitled to an adjustment in Contract Time, both of the following conditions must be met:

- .1 the day must be a day in which, as a result of rain, no critical path work is performed by Prime Trade Contractor or a Separate Contractor; and
 - .2 the day must be identified in the Master Project Schedule as a scheduled work day.
- .7 Condition Number Seven: Prime Trade Contractor has taken all reasonable measures to avoid and minimize the delay and, notwithstanding such measures, the delay occurred.

8.4.2 If and only if a delay meets all seven conditions prescribed in Article 8.4.1 above, then a time extension will be granted for each day that completion of the entire Project is delayed beyond the Contract Time, subject to the following:

- .1 When two or more delays (each of which meet all seven conditions prescribed in Article 8.4.1) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted pursuant to this Article 8.4.2, such concurrent critical delays shall be treated as a single delay for each such day.
- .2 Prime Trade Contractor shall be entitled to a time extension for a day of delay that meets all seven requirements of Article 8.4.1 if the delay is concurrent with a delay that does not meet all seven conditions of Article 8.4.1.

8.5 COMPENSATION FOR DELAY

- 8.5.1 To the maximum extent allowed by law, any adjustment of the Contract Sum as the result of delays shall be limited to the amounts specified in Article 7 of the General Conditions.
- 8.5.2 By signing the Agreement, the parties agree that the University is buying the right to do any or all of the following, which are reasonable and within the contemplation of the parties:
 - .1 To order changes in the Work, regardless of the extent and number of changes, including without limitation:
 - .1 Changes to correct errors or omissions, if any, in the Contract Documents.
 - .2 Changes resulting from the University's decision to change the scope of the Work subsequent to execution of the Contract.
 - .3 Changes due to unforeseen conditions.
 - .2 To suspend the Work or any part thereof.
 - .3 To delay the work, including without limitation, delays resulting from the failure of the University or the University's Representative to timely perform any Contract obligation and delays for University's convenience.

8.6 WAIVER

8.6.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 8, including without limitation the requirements in Article 8.4 above, in connection with any or all past delays shall not constitute a waiver of, and shall not preclude the University or University's Representative from enforcing, such requirements in connection with any present or future delays.

8.6.2 Prime Trade Contractor agrees and understands that no oral approval, either express or implied, of any time extension by University or its agents shall be binding upon University unless and until such approval is ratified by execution of a written Change Order.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 COST BREAKDOWN

9.1.1 Within 10 days after receipt of the Notice of Selection as the apparent lowest responsible Bidder, and with the Agreement, Prime Trade Contractor shall submit to University's Representative a Cost Breakdown of the Contract Sum in the form contained in the Exhibits. The Cost Breakdown shall itemize as separate line items the cost of each Work Activity and all associated costs, including but not limited to warranties, as-built documents, overhead expenses, and the total allowance for profit. Insurance and bonds shall each be listed as separate line items. The total of all line items shall equal the Contract Sum. The Cost Breakdown, when approved by the University's Representative, shall become the basis for determining the cost of Work performed for Prime Trade Contractor's Applications for Payment.

9.2 PROGRESS PAYMENT

9.2.1 University agrees to pay monthly to Prime Trade Contractor, subject to Article 9.4.3 below, an amount equal to 95% of the sum of the following:

- .1 Cost of the Work in permanent place as of the date of the Prime Trade Contractor's Application For Payment...
- .2 Plus cost of materials not yet incorporated in the Work, subject to Article 9.3.5 below.
- .3 Less amounts previously paid.

Under this Article 9.2.1, University may, but is not required, to pay Prime Trade Contractor more frequently than monthly.

9.2.2 After Substantial Completion and subject to Article 9.4.3 below, University will make any of the remaining progress payments in full.

9.3 APPLICATION FOR PAYMENT

9.3.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, Prime Trade Contractor shall submit to University's Representative an itemized Application For Payment, for the cost of the Work in permanent place, as approved by University's Representative, which has been completed in accordance with the Contract Documents, less amounts previously paid.

The Application For Payment shall be prepared as follows:

- .1 Use the form contained in the Exhibits.
- .2 Itemize in accordance with the Cost Breakdown.
- .3 Include such data substantiating Prime Trade Contractor's right to payment as University's Representative may reasonably require, such as invoices, certified payrolls, daily time and material records, and, if securities are deposited in lieu of retention pursuant to Article 9.5 below, a certification of the market value of all such securities as of a date not earlier than 5 days prior to the date of the Application For Payment.
- .4 Itemize retention.

9.3.2 Applications For Payment shall not include requests for payment on account of (1) changes which have not been authorized by Change Orders or (2) amounts Prime Trade Contractor does not intend to pay a Subcontractor because of a dispute or other reason.

9.3.3 If required by University, an Application For Payment shall be accompanied by (1) a summary showing payments that will be made to Subcontractors covered by such application and conditional releases upon progress payment or final payment and (2) unconditional waivers and releases of claims and stop notices, in the form contained in the Exhibits, from each Subcontractor listed in the preceding Application For Payment covering sums disbursed pursuant to that preceding Application For Payment.

9.3.4 Prime Trade Contractor warrants that, upon submittal of an Application For Payment, all Work, for which Certificates For Payment have been previously issued and payment has been received from University, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Prime Trade Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.3.5 At the sole discretion of University, University's Representative may approve for inclusion in the Application For Payment the cost of materials not yet incorporated in the Work but already delivered and suitably stored either at the Project site or at some other appropriate location acceptable to University's Representative. In such case, Prime Trade Contractor shall furnish evidence satisfactory to University's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of Prime Trade Contractor. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Prime Trade Contractor from sole responsibility for the care and protection of such materials; nor relieve Prime Trade Contractor from risk of loss to such materials from any cause whatsoever; nor relieve Prime Trade Contractor from its obligation to complete the Work in accordance with the Contract; nor act as a waiver of the right of University to require fulfillment of all terms of the Contract. Nothing contained within this article 9.3.5 shall be deemed to obligate University to agree to payment for any non-

incorporated materials or any part thereof, payment being in the sole and absolute discretion of University.

9.4 CERTIFICATE FOR PAYMENT

9.4.1 If Prime Trade Contractor has submitted an Application For Payment in accordance with Article 9.3 above, University's Representative shall, not later than 5 working days after the date of receipt of the Application For Payment, issue to University, with a copy to Prime Trade Contractor, a Certificate For Payment for such amount as University's Representative determines to be properly due.

9.4.2 If any such Application For Payment is determined not to be in accordance with Article 9.3 above, University will inform Prime Trade Contractor as soon as practicable, but not later than 5 working days after receipt. Thereafter, Prime Trade Contractor shall have 3 days to revise and resubmit such Application For Payment; otherwise University's Representative may issue a Certificate For Payment in the amount that University's Representative determines to be properly due without regard to such Application For Payment.

9.4.3 Approval of all or any part of an Application For Payment may be withheld, a Certificate For Payment may be withheld, and all or part of a previous Certificate For Payment may be nullified and that amount withheld from a current Certificate For Payment on account of any of the following:

- .1 Defective Work not remedied.
- .2 Third-party claims against Prime Trade Contractor or University arising from the acts or omissions of Prime Trade Contractor or Subcontractors.
- .3 Stop notices.
- .4 Failure of Prime Trade Contractor to make timely payments due Subcontractors for material or labor.
- .5 A reasonable doubt that the Work can be completed for the balance of the Contract Sum then unpaid.
- .6 Damage to University or Separate Contractor for which Prime Trade Contractor is responsible.
- .7 Reasonable evidence that the Work will not be completed within the Contract Time; and that the unpaid balance of the Contract Sum would not be adequate to cover University's damages for the anticipated delay.
- .8 Failure of Prime Trade Contractor to maintain and update as-built documents.
- .9 Failure of Prime Trade Contractor to submit schedules or their updates as required by the Contract Documents.
- .10 Failure to provide conditional or unconditional releases from an Subcontractor or supplier, if such waiver(s) have been requested by University's Representative.

- .11 Performance of Work by Prime Trade Contractor without properly processed Shop Drawings.
- .12 Anticipated liquidated damages commensurate with the number of days the Prime Trade Contractor fails to complete a critical activity by the date shown on the Master Project Schedule.
- .13 Anticipated costs for acceleration under Article 2.6.3 of the General Conditions.
- .14 Liquidated damages assessed in accordance with Article 5 of the Agreement.
- .15 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
- .16 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.
- .17 Any other failure of Prime Trade Contractor to perform its obligations under the Contract Documents.

9.4.4 Subject to the withholding provisions of Article 9.4.3 above, University will pay Prime Trade Contractor the amount set forth in the Certificate For Payment no later than 10 days after the issuance of the Certificate For Payment.

9.4.5 Neither University nor University's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

9.4.6 Neither a Certificate For Payment nor a progress payment made by University will constitute acceptance of Defective Work.

9.5 DEPOSIT OF SECURITIES IN LIEU OF RETENTION AND DEPOSIT OF RETENTION INTO ESCROW

9.5.1 At the request and expense of Prime Trade Contractor, a substitution of securities may be made for any monies retained by University under Article 9.2 of the General Conditions to ensure performance under the Contract Documents. Securities equivalent in value to the retention amount required by the Contract Documents for each Certificate For Payment shall be deposited by Prime Trade Contractor with a state or federally chartered bank in the State of California ("Escrow Agent"), which shall hold such securities pursuant to the escrow agreement referred to in Article 9.5.3 below until final payment is due in accordance with Article 9.8 of the General Conditions. Securities shall be valued as often as conditions of the securities market warrant, but in no case less than once per month. Prime Trade Contractor shall deposit additional securities so that the current market value of the total of all deposited securities shall be at least equal to the total required amount of retention.

9.5.2 Alternatively to Article 9.5.1 above, and at the request and expense of Prime Trade Contractor, University will deposit retention directly with Escrow Agent. Prime Trade Contractor may direct the investment of such deposited retention into interest bearing accounts or securities, and such deposits or securities shall be held by Escrow Agent upon the same terms provided for securities deposited by Prime Trade Contractor.

9.5.3 A prerequisite to the substitution of securities in lieu of retention or the deposit of retention into escrow shall be the execution by Prime Trade Contractor, University, and Escrow Agent of an Escrow Agreement for Deposit of Securities in Lieu of Retention and Deposit of Retention in the form contained in the Exhibits. The Prime Trade Contractor shall submit the Selection of Retention Options and the Escrow Agreement for Deposit of Securities in Lieu of Retention and Deposit of Retention not later than the date when 50% of the Work has been completed. The terms of such escrow agreement are incorporated into the requirements of this Article 9.5.

9.6 BENEFICIAL OCCUPANCY

9.6.1 University reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Work at any time prior to Project Substantial Completion or Final Completion upon 10 days' notice to Prime Trade Contractor. Such occupancy or use is herein referred to as "Beneficial Occupancy." Beneficial Occupancy shall be subject to the following conditions:

.1 University's Representative will make an inspection of the portion of the Project to be beneficially occupied and prepare a list of items to be completed or corrected prior to Final Completion. Prior to Beneficial Occupancy, University will issue a Certificate of Beneficial Occupancy on University's form.

.2 Beneficial Occupancy by University shall not be construed by Prime Trade Contractor as an acceptance by University of that portion of the Work which is to be occupied.

.3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or Prime Trade Contractor against each other.

.4 Prime Trade Contractor shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation and maintenance of equipment shall remain with Prime Trade Contractor while the equipment is so operated. Prime Trade Contractor shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.

.5 The Guarantee to Repair Periods, as defined in Article 12.2 of the General Conditions, will commence upon the first dates of actual occupancy or use of portions of the Work actually occupied and equipment or systems fully utilized. Equipment or systems shall not be considered fully utilized until all parts of the Project served by the equipment or systems are actually occupied and used.

.6 University will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.

.7 University will pay all utility costs which arise out of the Beneficial Occupancy.

.8 Prime Trade Contractor shall not be responsible for providing security in areas beneficially occupied.

.9 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Prime Trade Contractor's remaining Work.

.10 Prime Trade Contractor shall not be required to repair damage caused by University in its Beneficial Occupancy.

.11 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.

.12 Prime Trade Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

9.7 SUBSTANTIAL COMPLETION

9.7.1 "Substantial Completion" means the stage in the progress of the Work, as determined by University's Representative, when the Work is complete and in accordance with the Contract Documents except only for completion of minor items which do not impair University's ability to occupy and fully utilize the Work for its intended purpose..

9.7.2 When Prime Trade Contractor gives notice to University's Representative that the Work is substantially complete, unless University's Representative determines that the Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, University's Representative will inspect the Work, and prepare and give to Prime Trade Contractor a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Prime Trade Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of Prime Trade Contractor to complete all Work in accordance with the Contract Documents. University's Representative will make an inspection to determine whether the Work is substantially complete. If University's Representative's inspection discloses any item, whether or not included on the list, which must be completed or corrected before Substantial Completion, Prime Trade Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. Prime Trade Contractor shall then submit a request for another inspection by University's Representative to determine Substantial Completion. Costs for additional inspection by University's Representative shall be deducted from any monies due and payable to Prime Trade Contractor.

9.7.3 When University's Representative determines that the Work is substantially complete, University's Representative will prepare a Certificate of Substantial Completion for the Work on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Substantial Completion.

9.7.4 When University's Representative determines that all work of the Project is substantially complete, University's Representative will arrange for inspection by University's Building Official and other officials, as appropriate, for the purpose of issuing a Certificate of Occupancy. After a Certificate of Occupancy has been issued by the University's Building Official, the University's Representative will prepare a Certificate of Substantial Completion for the Project on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Project Substantial Completion and the responsibilities of University and Prime Trade Contractor for security, maintenance, utilities, insurance, and damage to the Work.

9.7.5 Unless otherwise provided in the Certificate of Substantial Completion for the Project, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion for the

Project, shall commence on the date of Project Substantial Completion except that Project Substantial Completion shall not commence the Guarantee to Repair Period for any equipment or systems that:

- .1 Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the University has neither Beneficially Occupied nor accepted as Substantially Complete); or
- .2 Are not accepted by the University.

The Guarantee To Repair Period for equipment or systems which become fully operational and accepted subsequent to Project Substantial Completion will begin on the date of their written acceptance by University.

9.7.6 The daily rate included in the Agreement and specifically identified as the rate to be paid to Prime Trade Contractor for Compensable Delays shall not apply to any delays occurring after Substantial Completion.

9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Final Completion of this Prime Trade Contract shall be when University's Representative determines that (i) the Work of this Prime Contract is fully completed in accordance with the requirements of the Contract Documents, (ii) the work of all Prime Trade Contractors is fully completed in accordance with the terms of their respective contracts for the Project and (iii) a Certificate of Occupancy has been issued by the University's Building Official. Only one Final Inspection will occur for the Project; this single Final Inspection will be for all of the Work of Prime Trade Contractor as well as for all of the work of other Prime Trade Contractors. The Final Inspection will be scheduled by University's Representative at such time as University's Representative is in receipt of written notifications from Prime Trade Contractor and all other Separate Contractors that the full completion of the Work and work (respectively) has been achieved. University will file a Notice of Completion within ten (10) days after Final Completion. After receipt of the Final Application For Payment, if University's Representative determines that Final Completion has occurred, University's Representative will issue the final Certificate For Payment.

9.8.2 Neither final payment nor any retention shall become due until Prime Trade Contractor submits the following items to University's Representative:

- .1 The final Application For Payment and all submittals required in accordance with Article 9.3 of the General Conditions.
- .2 All guarantees and warranties procured by Prime Trade Contractor from Subcontractors, all operating manuals for equipment installed in the Project, as-built documents, and all other submittals required by the Contract Documents.
- .3 The final Distribution of Contract Dollars in the form contained in the Exhibits.

9.8.3 The final payment shall be made, subject to the satisfaction of all other conditions to final payment, 35 days after the filing of the Notice of Completion.

9.8.4 Acceptance of final payment by Prime Trade Contractor shall constitute a waiver of all claims, except those previously made in writing and identified by Prime Trade Contractor as unsettled at the time of the final Application For Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Prime Trade Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 Prime Trade Contractor shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to the following:

- .1 Employees involved in the Work and other persons who may be affected thereby.
- .2 The Work in place and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody, or control of Prime Trade Contractor or Subcontractors.
- .3 Other property at the Project site and adjoining property.

10.2.2 Prime Trade Contractor shall erect and maintain, as required by existing conditions and performance of the Work, adequate safeguards for safety and protection, including providing adequate lighting and ventilation, posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities.

10.2.3 When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the Work, Prime Trade Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

10.2.4 Prime Trade Contractor shall designate a responsible member of Prime Trade Contractor's organization at the Project site whose duty shall be the prevention of accidents. That person shall be the Superintendent, unless otherwise designated by Prime Trade Contractor in writing to University and University's Representative.

10.2.5 Prime Trade Contractor shall not load or permit any part of the Work or the Project site to be loaded so as to endanger the safety of persons or property.

10.3 EMERGENCIES

10.3.1 In an emergency affecting the safety of persons or property, Prime Trade Contractor shall act to prevent or minimize damage, injury, or loss. Prime Trade Contractor shall promptly notify University's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Prime Trade Contractor's action.

ARTICLE 11 INSURANCE AND BONDS

11.1 PRIME TRADE CONTRACTOR'S INSURANCE

11.1.1 Prime Trade Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and University from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Prime Trade Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions. See Article 3.20 of the General Conditions regarding the scope and extent of Prime Trade Contractor's liability for Repair of Damaged Work.

11.1.2 The following policies and coverages shall be furnished by Prime Trade Contractor:

- .1 COMMERCIAL FORM GENERAL LIABILITY INSURANCE covering all Work done by or on behalf of Prime Trade Contractor and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Prime Trade Contractor by these Contract Documents. If the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall continue for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.
- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of Prime Trade Contractor and providing insurance for bodily injury and property damage.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. Prime Trade Contractor shall also require all of its Subcontractors to maintain this insurance coverage.

11.1.3 The coverages required under this Article 11 shall not in any way limit the liability of Prime Trade Contractor.

11.1.4 Certificates of Insurance, as evidence of the insurance required by these Contract Documents and on the form contained in the Exhibits, shall be submitted by Prime Trade Contractor to University. The Certificates of Insurance shall provide for no cancellation or modification of coverage without 30 days (10 days for non payment of premium) prior written notice to University.

11.1.5 In the event Prime Trade Contractor does not comply with these insurance requirements, University may, at its option, provide insurance coverage to protect University; and the cost of such insurance shall be paid by Prime Trade Contractor and may be deducted from the Contract Sum.

11.1.6 Prime Trade Contractor's insurance as required by Article 11.1.2 above, shall, by endorsement to the policies, include the following:

- .1 University, University's officers, agents, employees, consultants, University's Representative, and University's Representative's consultants, regardless of whether or not identified in the Contract Documents or to Prime Trade Contractor in writing, will be included as additional insureds for and relating to the Work to be performed by Prime Trade Contractor and Subcontractors. This requirement shall apply to claims, costs, injuries, or damages, but only in proportion to and to the extent such claims, costs, injuries, or damages are caused by or result from the negligent acts or omissions of Prime Trade Contractor and Subcontractors. This requirement shall not apply to Worker's Compensation and Employer's Liability Insurance.
- .2 A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurers' liability."
- .3 A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policies referred to herein by one or more insureds hereunder for which another insured hereunder may be liable, then the policies shall cover such insureds against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurers' limits of liability as set forth in the insuring agreements."
- .4 University, University's consultants, University's Representative, and University's Representative's consultants will not by reason of their inclusion as insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- .5 Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by University, University's consultants, University's Representative, and University's Representative's consultants. This provision, however, shall only apply as per the stipulations of Article 11.1.6.1 above.

11.1.7 The form and substance of all insurance policies required to be obtained by Prime Trade Contractor shall be subject to approval by University. All policies required by Articles 11.1.2.1, 11.1.2.2, and 11.1.2.3 above shall be issued by companies with ratings and financial classifications as specified in the Supplementary Conditions.

11.1.8 Prime Trade Contractor shall, by mutual agreement with University, furnish any additional insurance as may be required by University. Prime Trade Contractor shall provide Certificates of Insurance evidencing such additional insurance.

11.1.9 The Certificate of Insurance shall show (1) all companies affording coverage and (2) the name of the insured exactly in the manner as shown on the Bid Form. The name of the insured must be the name under which the entity is licensed by the Prime Trade Contractors State License Board.

11.1.10 If insurance company refuses to use the Certificate of Insurance form as contained in the Exhibits, it must provide a Certificate of Insurance evidencing compliance with this Article 11 and Special Provisions 1 through 4 on the Certificate of Insurance Exhibit by including an endorsement to its Certificate of Insurance form covering Special Provisions 1 through 4 exactly as these provisions appear on the Certificate of Insurance Exhibit.

11.1.11 At the request of University, Prime Trade Contractor shall submit to University copies of the policies obtained by Prime Trade Contractor.

11.2 BUILDER'S RISK PROPERTY INSURANCE

11.2.1 University will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. A copy of the University's standard builder's risk property insurance policy is available at the University's Facility office. In addition, a summary of the provisions of the policy is included as an Exhibit to the Contract. Prime Trade Contractor agrees that the University's provision of its standard builder's risk property insurance policy meets the University's obligation to provide builder's risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University's obligation to provide such insurance. The proceeds under such insurance policies taken out by University insuring the Work and materials will be payable to University and Prime Trade Contractor as their respective interests, from time to time, may appear. Prime Trade Contractor shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve Prime Trade Contractor of full responsibility for loss of or damage to materials not incorporated in the Work, and for Prime Trade Contractor's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve Prime Trade Contractor of its responsibilities referred to under this Article 11. Materials incorporated in the Work, as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Project site.

11.2.2 Insurance policies referred to under this Article 11.2 shall:

- .1 Include a provision that the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by Prime Trade Contractor.
- .2 Include a waiver of subrogation against Prime Trade Contractor, its agents, employees.

11.2.3 Builder's Risk insurance coverage under this Article 11.2 will end on the earliest of the following:

- .1 sixty (60) days after the date a Certificate of Occupancy for the entire Project is issued by the University; or

- .2 sixty (60) days after the date a Certificate of Occupancy for a part of the Project is issued by the University, but coverage will end only for the part of the Project covered by such Certificate of Occupancy ; or
- .3 the date of Final Completion established by the University in any Notice of Completion issued by the University.

11.3 PERFORMANCE BOND AND PAYMENT BOND

11.3.1 Prime Trade Contractor shall furnish bonds covering the faithful performance of the Contract (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms contained in Exhibits 3 and 2.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Contract Sum.

11.3.3 The Payment Bond and Performance Bond shall be in effect on the date the Contract is signed by University.

11.3.4 Prime Trade Contractor shall promptly furnish such additional security as may be required by University to protect its interests and those interests of persons or firms supplying labor or materials to the Work. Prime Trade Contractor shall furnish supplemental Payment and Performance Bonds each in the amount of the current Contract Sum at the request of the University.

11.3.5 Surety companies used by Prime Trade Contractor shall be, on the date the Contract is signed by University, an admitted surety insurer (as defined in the California Code of Civil Procedure Section 995.120).

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by Prime Trade Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Work is covered contrary to University's Representative's request or direction, or contrary to the requirements of the Contract Documents, it must, if required in writing by University's Representative, be uncovered for University's Representative's observation and be replaced at Prime Trade Contractor's expense without adjustment of the Contract Time or the Contract Sum.

12.1.2 If a portion of the Work has been covered, which is not required by the Contract Documents to be observed or inspected prior to its being covered and which University's Representative has not specifically requested to observe prior to its being covered, University's Representative may request to see such Work and it shall be uncovered and replaced by Prime Trade Contractor. If such Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Prime Trade Contractor shall pay such costs and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee To Repair Period" means a period of 1 year, unless a longer period of time is specified, commencing as follows:

- .1 For any work of the Project not described as incomplete in the Certificate of Substantial Completion for the Project, on the date of Project Substantial Completion.
- .2 For space beneficially occupied or for separate systems fully utilized prior to Project Substantial Completion pursuant to Article 9.6 of the General Conditions, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.
- .3 For all work of the Project other than .1 or .2 above, from the date of Final Completion.

12.2.2 Prime Trade Contractor shall (1) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee To Repair Period and (2) replace, repair, or restore to University's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Prime Trade Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from University's Representative or University, but in no case later than 10 days after receipt of such notice; and Prime Trade Contractor shall diligently and continuously prosecute such correction to completion. Prime Trade Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for University's Representative's services and expenses. Prime Trade Contractor shall perform corrective Work at such times that are acceptable to University and in such a manner as to avoid, to the extent practicable, disruption to University's activities.

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by University or Separate Contractors, Prime Trade Contractor shall pay to University all reasonable costs of correcting such Defective Work. Prime Trade Contractor shall replace, repair, or restore to University's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Defective Work or the correction of such Defective Work.

12.2.4 Prime Trade Contractor shall remove from the Project site portions of the Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Prime Trade Contractor nor accepted by University.

12.2.5 If Prime Trade Contractor fails to commence correction of Defective Work within 10 days after notice from University or University's Representative or fails to diligently prosecute such correction to completion, University may correct the Defective Work in accordance with Article 2.4; and, in addition, University may remove the Defective Work and store salvageable materials and equipment at Prime Trade Contractor's expense.

12.2.6 If Prime Trade Contractor fails to pay the costs of such removal and storage as required by Articles 12.2.4 and 12.2.5 above within 10 days after written demand, University may, without prejudice

to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Prime Trade Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Prime Trade Contractor is liable to University, including compensation for University's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Prime Trade Contractor is liable to University, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Prime Trade Contractor or the remaining payments are insufficient to cover such deficiency, Prime Trade Contractor shall promptly pay the difference to University.

12.2.7 Prime Trade Contractor's obligations under this Article 12 are in addition to and not in limitation of its warranty under Article 3.4 of the General Conditions or any other obligation of Prime Trade Contractor under the Contract Documents. Enforcement of Prime Trade Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies University may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations of Prime Trade Contractor under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of Prime Trade Contractor to correct the Work and in no way limits either Prime Trade Contractor's liability for Defective Work or the time within which proceedings may be commenced to enforce Prime Trade Contractor's obligations under the Contract Documents.

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY PRIME TRADE CONTRACTOR

13.1.1 Subject to Article 13.1.2 below, Prime Trade Contractor shall have the right to terminate the Contract only upon the occurrence of one of the following:

.1 Provided that University has not commenced reasonable action to remove any order of a court within the 90 day period, the Work is stopped for 90 consecutive days, through no act or fault of Prime Trade Contractor, any Subcontractor, or any employee or agent of Prime Trade Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.

.2 University fails to perform any material obligation under the Contract Documents and fails to cure such default within 30 days or University has not commenced to cure such default within 30 days where such cure will require a reasonable period beyond 30 days and diligently prosecutes the same to completion, after receipt of notice from Prime Trade Contractor stating the nature of such default.

.3 Repeated suspensions by University, other than such suspensions as are agreed to by Prime Trade Contractor under Article 13.3 below, which constitute in the aggregate more than 20% of the Contract Time.

13.1.2 Upon the occurrence of one of the events listed in Article 13.1.1 above, Prime Trade Contractor may, upon 10 days additional notice to University and University's Representative, and provided that the condition giving rise to Prime Trade Contractor's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by Prime Trade Contractor, University will pay to Prime Trade Contractor the sum determined by Article 13.4.4 of the General Conditions. Such payment will be the sole and exclusive remedy to which Prime Trade Contractor is entitled in the event of termination of the Contract by Prime Trade Contractor pursuant to this Article 13.1; and Prime Trade Contractor will be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY UNIVERSITY FOR CAUSE

13.2.1 University will have the right to terminate the Contract for cause at any time after the occurrence of any of the following events:

.1 Prime Trade Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.

.2 Prime Trade Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.

.3 A receiver is appointed to take charge of Prime Trade Contractor's property.

.4 The commencement or completion of any Work activity is 14 days or more behind the date set forth in the Master Project Schedule for such Work activity, and which results in an Unexcusable Delay.

.5 Prime Trade Contractor abandons the Work.

13.2.2 Upon the occurrence of any of the following events, University will have the right to terminate the Contract for cause if Prime Trade Contractor fails to promptly commence to cure such default and diligently prosecute such cure within 5 days after notice from University, or within such longer period of time as is reasonably necessary to complete such cure:

.1 Prime Trade Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.

.2 Prime Trade Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.

.3 Prime Trade Contractor disregards Applicable Code Requirements.

.4 Prime Trade Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.

.5 Prime Trade Contractor is in default of any other material obligation under the Contract Documents.

.6 Prime Trade Contractor persistently or materially fails to comply with applicable safety requirements.

13.2.3 Upon any of the occurrences referred to in Articles 13.2.1 and 13.2.2 above, University may, at its election and by notice to Prime Trade Contractor, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Prime Trade Contractor; accept the assignment of any or all of the subcontracts; and then complete the Work by any method University may deem expedient. If requested by University, Prime Trade Contractor shall remove any part or all of Prime Trade Contractor's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Prime Trade Contractor fails to do so, University may remove or store, and after 90 days sell, any of the same at Prime Trade Contractor's expense.

13.2.4 If the Contract is terminated by University as provided in this Article 13.2, Prime Trade Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion and acceptance of all Work by University.

13.2.5 If the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for University staff time, plus all losses sustained, including any liquidated damages provided under the Contract Documents, such excess shall be paid to Prime Trade Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Prime Trade Contractor shall pay such excess to University.

13.2.6 No termination or action taken by University after termination shall prejudice any other rights or remedies of University provided by law or by the Contract Documents upon such termination; and University may proceed against Prime Trade Contractor to recover all Losses suffered by University.

13.3 SUSPENSION BY UNIVERSITY FOR CONVENIENCE

13.3.1 University may, at any time and from time to time, without cause, order Prime Trade Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 90 days, as University may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Article 13.3. The Work may be stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Prime Trade Contractor shall, at University's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Prime Trade Contractor and University, University shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.

13.3.2 If a Suspension Order is canceled or expires, Prime Trade Contractor shall continue with the Work. A Change Order will be issued to cover any adjustments of the Contract Sum or the Contract Time necessarily caused by such suspension. Any Claim by Prime Trade Contractor for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. Prime Trade Contractor agrees that submission of its claim within said 21 days is an express condition precedent to its right to Arbitrate or Litigate such a claim.

13.3.3 The provisions of this Article 13.3 shall not apply if a Suspension Order is not issued by University. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

13.4 TERMINATION BY UNIVERSITY FOR CONVENIENCE

13.4.1 University may, at its option, terminate this Contract, in whole or from time to time in part, at any time by giving notice to Prime Trade Contractor. Upon such termination, Prime Trade Contractor agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Prime Trade Contractor, University shall pay Prime Trade Contractor in accordance with Article 13.4.4 below.

13.4.2 Upon receipt of notice of termination under this Article 13.4, Prime Trade Contractor shall, unless the notice directs otherwise, do the following:

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
- .4 Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Project site or in transit thereto.

13.4.3 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and, subject to Prime Trade Contractor's obligations under Article 13.4.2 above, as to bona fide obligations assumed by Prime Trade Contractor prior to the date of termination.

13.4.4 Upon such termination, University shall pay to Prime Trade Contractor the sum of the following:

- .1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Prime Trade Contractor as of the date of termination, less sums previously paid to Prime Trade Contractor.
- .2 Plus an amount equal to the lesser of \$50,000 or 5% of the difference between the Contract Sum and the amount of the Contract Sum allocable to the portion of the Work properly performed by Prime Trade Contractor as of the date of termination.
- .3 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
- .4 Plus any proven Losses with respect to materials and equipment directly resulting from such termination.
- .5 Plus reasonable demobilization costs.

.6 Plus reasonable costs of preparing a statement of the aforesaid costs, expenses, and Losses in connection with such termination.

The above payment shall be the sole and exclusive remedy to which Prime Trade Contractor is entitled in the event of termination of the Contract by University pursuant to this Article 13.4; and Prime Trade Contractor will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14 STATUTORY AND OTHER REQUIREMENTS

14.1 NOT USED

14.2 NONDISCRIMINATION

14.2.1 For purposes of this Article 14.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.2.2 Prime Trade Contractor shall comply and shall ensure that all Subcontractors comply with Section 12900 through 12996, of the State of California Government Code.

14.2.3 Prime Trade Contractor agrees as follows during the performance of the Work:

.1 Prime Trade Contractor shall not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy) because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy). Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

.2 Prime Trade Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Article 14.2. The outcome of the investigation may result in the following:

- .1 A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by University as (1) a basis for determining that Prime Trade Contractor is not a "responsible bidder" as to future contracts for which such Prime Trade Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of Prime Trade Contractor for future contracts.

- .2 University may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Prime Trade Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.
- .3 Upon receipt of such written notice from the Fair Employment Practices Commission, University may notify Prime Trade Contractor that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, Prime Trade Contractor's bids on future projects will not be considered.
- .4 Prime Trade Contractor agrees that, should University determine that Prime Trade Contractor has not complied with this Article 14.2, Prime Trade Contractor shall forfeit to University, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 14.3 below for violation of prevailing wage rates. Such penalty amounts may be recovered from Prime Trade Contractor; and University may deduct any such penalty amounts from the Contract Sum.
- .5 Nothing contained in this Article 14.2 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.
- .6 Prime Trade Contractor shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University's request, which shall be evaluated in each case by University:
 - .1 Prime Trade Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
 - .2 Prime Trade Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
 - .3 Prime Trade Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, non-minority women, and minority men shall be available and given an equal opportunity for employment.
 - .4 Prime Trade Contractor shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.

- 7 Prime Trade Contractor shall include the provisions of the foregoing Articles 14.2.3.1 through 14.2.3.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

14.3 PREVAILING WAGE RATES

14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.3.2 Prime Trade Contractor shall comply and shall ensure that all Subcontractors comply with Sections 1770, 1771, 1772, 1773, 1774, and 1775 of the State of California Labor Code. Compliance with these sections is required by this Contract.

14.3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. Prime Trade Contractor shall post a copy of the general prevailing per diem wage rates at the job site. By this reference, such schedule is made part of the Contract Documents. Prime Trade Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Prime Trade Contractor in the execution of the Work. Prime Trade Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Prime Trade Contractor shall forfeit to University, as a penalty, not more than \$50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Prime Trade Contractor or any Subcontractor. The amount of this penalty shall be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Contract Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Contract Sum. Prime Trade Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

14.4 PAYROLL RECORDS

14.4.1 For purposes of this Article 14.4, the term Subcontractor shall not include suppliers, manufacturers, or distributors.

14.4.2 Prime Trade Contractor and all Subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, worker, or other employee employed in connection with the Work. All payroll records shall be certified as being true and correct by Prime Trade Contractor or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Prime Trade Contractor on the following basis:

.1 A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.

.2 A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.

.3 A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of Prime Trade Contractor or Subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Prime Trade Contractor awarded the Contract or performing the Contract shall not be marked or obliterated.

14.4.3 Prime Trade Contractor shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Prime Trade Contractor shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Prime Trade Contractor shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Article 14.4 or with the State of California Labor Code Section 1776, Prime Trade Contractor shall have 10 days in which to comply following receipt of notice specifying in what respects Prime Trade Contractor must comply. Should noncompliance still be evident after the 10 day period, Prime Trade Contractor shall forfeit to University, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the Contract Sum.

14.5 APPRENTICES

14.5.1 For purposes of this Article 14.5, the term Subcontractor shall not include suppliers, manufacturers, and distributors.

14.5.2 Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by Prime Trade Contractor and Subcontractors as apprentices. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training.

14.5.3 Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the Work in the craft or trade to which the apprentice is indentured.

14.5.4 When Prime Trade Contractor or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Prime Trade Contractor or Subcontractors shall 1) send contract award information to the applicable joint apprenticeship committee that can supply apprentices to the site of the public work

and 2) apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the area of the Project site, for a certificate approving Prime Trade Contractor or Subcontractors under the apprenticeship standards for the employment and training of apprentices in the area of the Project site. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeypersons who shall be employed in the craft or trade on the Work. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than 1 hour of apprentice work for every 5 hours of journeyperson work, except as permitted by law. Prime Trade Contractor or Subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeypersons fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

14.5.5 "Apprenticeship craft or trade," as used in this Article 14.5, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

14.5.6 If Prime Trade Contractor or Subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the area of the Project site, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other Prime Trade Contractors in the area of the Project site are contributing, Prime Trade Contractor and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Work in the same amount or upon the same basis and in the same manner done by the other contractors. Prime Trade Contractor may include the amount of such contributions in computing its bid for the Contract; but if Prime Trade Contractor fails to do so, it shall not be entitled to any additional compensation therefor from University.

14.5.7 In the event Prime Trade Contractor willfully fails to comply with this Article 14.5, it will be considered in violation of the requirements of the Contract.

14.5.8 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Prime Trade Contractor or Subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

14.6 WORK DAY

14.6.1 Prime Trade Contractor shall not permit any worker to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. Prime Trade Contractor shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Contract by Prime Trade Contractor, or any Subcontractor, for each day during which such worker is required or permitted to work more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Article 14.6 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Prime Trade Contractor and each Subcontractor shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed on the Project, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

15.1.1 The Contract shall be governed by the law of the State of California.

15.2 SUCCESSORS AND ASSIGNS

15.2.1 University and Prime Trade 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 its obligations under the Contract.

15.3 RIGHTS AND REMEDIES

15.3.1 All University'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 University under the Contract Documents or otherwise available at law or in equity.

15.3.2 No action or failure to act by University or University'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 University or University'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.

15.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against University, University's Representative, or Prime Trade Contractor.

15.4 SURVIVAL

15.4.1 The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, including all warranties, indemnities, payment obligations, and University's right to audit Prime Trade Contractor's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.

15.5 COMPLETE AGREEMENT

15.5.1 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 7 of the General Conditions.

15.6 SEVERABILITY OF PROVISIONS

15.6.1 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.

15.7 UNIVERSITY'S RIGHT TO AUDIT

15.7.1 University and entities and agencies designated by University will have access to and the right to audit and the right to copy at University's cost all of Prime Trade Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Prime Trade Contractor shall preserve all such records and other items for a period of at least 3 years after Final Completion.

15.8 NOTICES

15.8.1 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:

- .1 Personally delivered.
- .2 Sent by facsimile copy where receipt is confirmed.
- .3 Sent by courier where receipt is confirmed.
- .4 Sent by registered or certified mail, postage prepaid, return receipt requested.

15.8.2 Such notices and other communications in Article 15.8.1 above 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 Agreement. Such street addresses may be changed by notice given in accordance with this Article 15.8.

15.9 TIME OF THE ESSENCE

15.9.1 Time limits stated in the Contract Documents are of the essence of the Contract.

Exhibit G
Supplemental Basic Services

Listed below are supplemental Basic Services that shall be part of the CM's scope per this Agreement. None of the services listed shall provide additional authority, as defined and limited in Article 2.6.8 (CM Limit of Authority) of this Agreement.

{FOR ANY SERVICE OR SCOPE ITEM NOT USED IN YOUR PROJECT; PLEASE REMOVE ITEM DESCRIPTION AND REPLACE WITH "NOT USED"}

1. CM GENERAL PROJECT PROVISIONS

1.1. Staffing

1.1.1. The CM shall provide full-time on-site construction management staff as follows:

{INSERT NAMES AND JOB TITLE}

1.1.2. CM shall provide other services as are reasonable and necessary to assist the University in the maintenance of the project budget and schedule.

1.1.3. The CM shall provide a full-time Project Manager on site with the authority to commit resources of the firm to monitor, manage and administer all phases of the project activities and to help achieve the completion of all construction. CM shall provide all necessary qualified personnel to perform CM services under this Agreement. CM shall provide the names of all personnel to the University's Designated Administrator for prior approval. Key personnel to be assigned to the work by the CM for the term of this Agreement are shown under 1.1.1. No key personnel shall be assigned to or from the Project without prior approval of the University's Designated Administrator. If the CM's personnel fail to perform to the University's satisfaction, the University may, upon written notice of fifteen (15) calendar days, cause the CM to remove such person(s) from the project and replace them with another staff personnel acceptable to the University's Designated Administrator.

2. CM PRE-CONSTRUCTION SERVICES

2.1. Project Control/Estimating

2.1.1. Within fifteen (15) days of the Notice to Proceed, the CM shall develop and implement integrated management control systems, utilizing both manual and automated procedures (using the University's format and systems as requested) to support such functions as planning, organizing, scheduling, budgeting, reporting progress and expenditures, and identifying and documenting problems and solutions. CM shall not implement management control system until the integrated management control system has been reviewed and accepted in writing by the University's Designated Administrator.

2.1.2. CM shall prepare and submit to the University, an independent written Project Construction Cost Estimate based on the documents submitted by Design Professional for Design Development at both 50% and 100% submittals, and at the end of the backcheck of the corrected 100% submittal. CM shall meet with Design Professional to reconcile discrepancies between its estimate and Design Professionals estimate. The estimate will be based on detailed quantity takeoffs of the design drawings and specifications. The CM shall obtain University's Designated Administrator's written approval of estimate format and structure prior to proceeding with estimate.

- 2.1.3. The CM shall develop a Project Procedures Manual in conjunction with Design Professional(s) and approved by the University's Designated Administrator for all major project activities including, but not limited to, roles and responsibilities; project directories; communications protocols; project tracking forms; general administration processes and monthly reports; budget reporting and control; management of the schedule; design review; value analysis; bidding process; claims avoidance; project documentation and control; and other relevant information.
- 2.1.4. The CM shall prepare a comprehensive critical path schedule, Preliminary Master Project Schedule, showing all project related construction activities; including sequencing and durations for work tasks of The Prime Trade Contractors. The Preliminary Master Schedule shall be able to be filtered per each Prime Trade Contractor to illustrate their planned basic construction sequence and interface with other Prime Trade Contractors. In the preparation of the Preliminary Master Project Schedule, the CM shall investigate the procurement lead-time required for delivery of time-critical items and incorporate these into the Preliminary Master Project Schedule.
- 2.1.5. CM shall prepare a detailed work plan identifying all CM tasks required for the completion of work as provided in this Agreement.
- 2.1.6. Within fifteen (15) days from the execution of this Agreement, the CM shall submit to University's Designated Administrator the proposed scheduling system it plans to use for its scheduling effort on the project. The scheduling software should be Primavera P3 or approved equal. Approval for any proposed equal shall be in writing from the University's Designated Administrator.

2.2. CM Design/Construction Development Phase Services

- 2.2.1. CM shall assist University's design reviews by scheduling and coordinating reviews and compiling and conveying University's comments to the Design Professional.
- 2.2.2. The CM shall review equipment and furniture design with University's Designated Administrator to assist with proper coordination with bid packages for the building construction. Provide assistance and field coordination as necessary with contracts for installation of built-in furnishings and fixtures to coordinate with building occupancy.
- 2.2.3. At the end of Design Development, the CM shall provide a list of recommended alternates for each bid package.
- 2.2.4. Prior to bidding and based on projected bid market conditions, the CM shall recommend in writing to the University's Designated Administrator the percentage of bid contingency to carry for each bid package.
- 2.2.5. CM shall schedule and conduct a final constructability review on the 100% submitted documents.

2.3. CM Bid Phase Services

- 2.3.1. The CM shall be responsible, with the assistance of the Design Professional and the University's Designated Administrator, for sequencing, assembly, scope definition and preparation of bid packages and all cover information for individual packages to assure that all items as indicated in Contract Documents, including coordination of details, are included with bid documents. The CM shall analyze the bid packages, identify elements of uncertainty or risk prior to the bidding, endeavor to eliminate

conflicts, duplications and omissions and mitigate the University's exposure to bidding error through instructions to bidders.

- 2.3.2. The CM shall assemble bid packages in a complete, coordinated and most cost-effective manner for the University. CM shall obtain all necessary design documents from the Design Professional and assist the University's Designated Administrator in arranging for printing, binding, wrapping and delivery to the bidders, and shall assist with maintaining a list of bidders receiving the Bid Documents. The University shall be responsible for all postage, delivery and printing costs.
- 2.3.3. The CM shall review, recommend and estimate allowances, alternates, unit prices and other requirements for inclusion in the bid packages.
- 2.3.4. The CM shall assist the University's Designated Administrator in developing lists of possible bidders to solicit bids for the Prime Trade Contractor bid package and provide pre-bid Prime Trade Contractor qualification criteria when requested by the University's Designated Administrator. The CM shall conduct an outreach effort to attract broad interest among qualified bidders. The CM shall contact potential bidders to develop a sufficient pool of bidders. The CM shall secure the commitment to bid from a minimum of three (3) bidders for each Prime Trade Contract.
- 2.3.5. The CM shall assist the University's Designated Administrator as directed, in responding to Prime Trade Contractor questions during the bid period and at pre-bid conferences, pre-construction conferences and walk-throughs. The CM shall coordinate dissemination of the Design Professional's response as required.
- 2.3.6. The CM shall evaluate the bids received in detail for technical deficiencies. The CM shall analyze the bid results for potential error, review the apparent low bids for Prime Contractor responsiveness and compliance with all University General Conditions and compliance with the Contract Documents, and shall recommend award or other action. The CM shall assist the University's Designated Administrator in determining if potential a bidder is non-responsive, CM shall provide a debriefing of the decision to that Prime Trade Contractor. The CM shall review the bid results for such bidding climate issues as bid responsiveness, adequacy in the number of bidders and the spreading or grouping of bid results. CM shall make recommendations as to which add or delete alternatives to award.
- 2.3.7. The CM shall assist the University's Designated Administrator in recording bids received. The CM shall prepare spreadsheet analyses comparing the lowest responsible bids with the cost estimate for that bid package.

3. CM CONSTRUCTION PHASE SERVICES

3.1. General Conditions

- 3.1.1. Provide and mobilize project site office, including procurement and installation of trailer(s), utility hookup for trailer(s), providing the following: office equipment and reasonable furniture, telephone and facsimile equipment, copy machine, computer equipment with e-mail, photographic equipment and other equipment and supplies necessary to provide all services under this Agreement.
- 3.1.2. The CM shall be responsible for fencing the perimeter of the site and maintaining the fence for the duration of construction.

3.2. Coordination/Management of Prime Trade Contractors and Construction Work

- 3.2.1. As directed by the University's Designated Administrator, and per this Agreement, CM shall manage and administer all phases of construction activities in an effort to

achieve the completion of all Prime Trade Contractors within the requirements of the Prime Trade Contract Documents. The CM shall coordinate the work of the Prime Trade Contractors to optimize efficiency and minimize conflict and interference between the various Prime Trade Contractors on-site.

- 3.2.2. The CM's construction management responsibility shall include using its proactive efforts to assure the Prime Trade Contractors are meeting all the terms of the Contract Documents, including insurance, bonding and all other University General Conditions. CM shall provide on-site quality control and inspection to ensure substantial compliance with documents, drawings and contract specifications, schedule coordination and information coordination for all construction activities on the construction site such as parking and construction staging areas. CM shall schedule and coordinate testing and inspection services. This will include coordination with the Prime Trade Contractors of the scheduling of all University's Inspectors, Fire Marshall, Test Labs, Materials Inspectors and other inspections as required.
- 3.2.3. The CM's control of the project in general shall not include the immediate direction of the specific means and methods of Prime Trade Contractors' activities or forces, or their scheduling of individual work tasks; except for that required to create, update or revise the Master Project Schedule and to assure the project is completed within the project time.
- 3.2.4. The CM's responsibility shall include timely coordination of the Master Schedule between Prime Trade Contractors, conflict resolution and using the CM's efforts to resolve and expedite resolutions of any work that may be disputed between Prime Trade Contractors. The CM shall notify University and take other immediate action as allowed by this Agreement, as necessary, to correct noncompliance with the Contract Document.
- 3.2.5. The CM shall determine the adequacy of Prime Trade Contractors' personnel, equipment, safety programs and availability of materials and supplies. If these items are determined inadequate, the CM shall develop a plan of recovery with the Prime Trade Contractor(s) and shall enforce the applicable provisions of the Contract Documents within its authority given by this Agreement. Should the Prime Trade Contractor be judged unable to perform per its Prime Trade Contract, the CM shall notify University's Designated Administrator in writing immediately and recommend follow-up actions, including acting on performance bond, terminating Prime Trade Contractor work, if necessary, or engaging a replacement Prime Trade Contractor.
- 3.2.6. The CM shall conduct and record regular Mechanical/Electrical/Plumbing coordination meetings to review Coordination Drawings and other coordination issues with all related Prime Trade Contractors.
- 3.2.7. Prior to close-up of concealed areas, the CM shall coordinate all Campus Fire Marshall, OSHPD, and all other applicable inspections with the University's Inspector and create a punch list and distribute to all affected Prime Trade Contractors.
- 3.2.8. Conduct regular walk-throughs of the project with University management and project personnel, including at least two (2) formal reviews by University Facilities Maintenance staff at appropriate comment periods.
- 3.2.9. Coordinate the delivery, storage and inventory of University-supplied materials and equipment to the Prime Trade Contractor.
- 3.2.10. The CM shall continuously require and follow up with Prime Trade Contractors about their job site maintenance and their conformance in providing a safe work place. CM shall enforce all safety-related requirements in the Contract Documents. CM shall

assure that at all times, access to the site in case of fire or other campus emergency shall be maintained. The CM shall monitor security of site for safety and impacts on neighboring facilities adjacent to the site and take immediate action, if required, when non-compliant conditions are discovered.

- 3.2.11. The CM shall assure that Prime Trade Contractors do not damage existing utilities; and protect trees and root systems both during demolition and construction.
- 3.2.12. CM shall develop and monitor an overall Safety Program for the project. The program shall be in compliance with applicable Federal, State and University regulations and Campus Standards. The CM shall review, monitor and coordinate the implementation of individual Prime Trade Contractors' Safety Programs. The CM shall confirm that Prime Trade Contractors' Safety Programs include, but are not limited to, weekly formal safety tours, weekly Safety Toolbox Meetings (with documented minutes), and daily check of safety of the Project. The CM's Project Superintendent, or his/her designated representative, shall be responsible for implementing, controlling and monitoring the CM's own Safety Program and reviewing and monitoring the Prime Trade Contractors' Safety Programs.
- 3.2.13. The CM shall direct the initial startup and testing of utilities, building, electrical and mechanical systems and equipment. The CM shall coordinate Prime Trade Contractor's training of University's facilities maintenance and other personnel in conjunction with the University's Designated Administrator. The CM shall videotape the Prime Trade Contractors' training sessions for future reference and provide a copy of the videotape to University with other project closeout documents.
- 3.2.14. The CM shall coordinate all required utility shut downs, road closures, traffic closures, and the like. This coordination shall follow procedures at the Facility, and or direction, as provided by the University Designated Administrator.

3.3. Project/Contract Administration

- 3.3.1. The CM shall review Prime Trade Contracts, bonds, insurance certificates and schedules of values and shall draft Notices to Proceed for University's Designated Administrator signature.
- 3.3.2. The CM shall serve as the administrative focal point for all activity and information between the University, the Design Professional, the Prime Trade Contractors and other construction activity. All instructions from the Design Professional to the Prime Trade Contractors will be forwarded through CM with copies to the University. Inquiries of the Design Professional from the Prime Trade Contractors will be forwarded through CM to the Design Professional and, simultaneously, to the consulting engineers and the University's Designated Administrator.
- 3.3.3. CM shall attend and record all project meetings. Provide on-site and associated construction site logistics review and control. Conduct and record regular weekly construction progress meetings and all other meetings as may be necessary for the orderly progress of the work, to coordinate and schedule activities of Prime Trade Contractors, design professionals, University staff and others as required. The CM shall keep minutes of all meetings and distribute these as directed by the University's Designated Administrator.
- 3.3.4. CM shall track and transmit documents to regulatory agencies (when not a requirement by Prime Trade Contractors) for review and advise the University's Designated Administrator of potential problems in completion of such reviews.
- 3.3.5. The CM shall coordinate efforts between Prime Trade Contractors and Design Professional to clarify interpretation of plans and specifications. CM shall work with

Design Professional on the interpretation of plans and specifications. CM shall review all requests for clarification and appropriateness prior to forwarding to Design Professionals. All routine requests shall normally be either forwarded or rejected within one (1) working day from time of receipt. CM shall notify the University's Designated Administrator, immediately, in writing, in cases of a disagreement on interpretation that cannot be resolved between the Prime Trade Contractor and Design Professionals. In such notification, CM shall make a recommendation as to the interpretation for final resolution by the University. While clarification of contract documents is primarily the responsibility of Design Professional, the CM shall ensure that these clarifications and responses are timely, meaningful and in the best interests of University and shall follow through until resolution is achieved. The CM shall track outstanding requests until resolved.

- 3.3.6. CM shall assist University's Designated Administrator in administration of Contract Administration provisions of the University/Design Professional's contract during the construction support phase, including coordination of site trips.
- 3.3.7. The CM shall coordinate and administer the shop drawing review and approval process and advise Design Professionals of any unusual site conditions or Contract Document requirements affecting shop drawing approvals. The CM's Master Project Schedule shall establish submittal schedules that allow sufficient time for review and interpretation. The CM shall verify and document that the shop drawing process is adhering to the submittal schedule. The CM shall review submittals for format, compliance and general completeness prior to forwarding to Design Professional for review. The CM shall be responsible for forwarding or rejecting all routine submittals expeditiously and processing in time frames stipulated in Prime Trade Contract specifications.
- 3.3.8. The CM shall prepare and provide written monthly progress reports by the first Tuesday of the following month, including information on progress, problems, potential solutions, schedule and fiscal conditions, and meet with the University's Designated Administrator on an as-needed basis. Provide copies in electronic format and hard copy to the University for off-site storage backup on a monthly basis. CM shall assemble, deliver and distribute five (5) copies of the monthly report with one additional loose-leaf master copy. In addition to the monthly report, CM shall furnish to University upon reasonable request such other reports, schedules, logs, minutes or plans as directed by University's Designated Administrator.
- 3.3.9. CM shall utilize forms, formats and standards approved by University's Designated Administrator.
- 3.3.10. Provide sufficient 35mm dated photographs and/or digital photos and/or videos to show general construction progress on a biweekly basis throughout the duration of construction. The minimum quantity and viewpoints shall be mutually agreed to by the University's Designated Administrator and the CM. Provide negatives, electronic files or copies of video tapes to University's Designated Administrator as requested.
- 3.3.11. The CM shall review all progress payment requests and approve or modify them before recommending payment by the University. Track all Prime Contractor payment requests and project fiscal transactions per University practices or approved alternative. Provide cash flow reports and projections compatible with University's practices and procedures or approved alternative. CM shall identify variances between actual and budgeted or estimated costs, incorporate changes as they occur and shall advise the University's Designated Administrator whenever projected costs materially vary from the budget. CM shall report accounting records to University on a monthly basis, or as an exception, more often as reasonably requested by the University's Designated Administrator.

- 3.3.12. The CM shall monitor and enforce Prime Trade Contractors maintenance of an on-site set of record (as-built) drawings for all work that includes all approved addenda, Requests for Information (RFIs), Change Orders (COs), and Letters of Instruction (LOIs). Collate and maintain an accurate set of current working documents on-site at all times with backup (monthly, or as needed) stored off-site to prevent loss from vandalism, fire, etc. The CM shall deliver as-built plans to the Design Professional to develop record drawings and specifications within sixty (60) days of Final Completion. CM shall review record drawings and specifications for accuracy.
- 3.3.13. CM shall coordinate and administer scheduling, sequencing, change order requests, submittals, shop drawings, inspections, testing, etc. and constructability issues among the Design Professionals, University and Prime Trade Contractors. Contract administration services shall include: review comments, recommendations and tracking of all field-related construction services and information between CM, Design Professional, and all Prime Trade Contractors. Provide other communications and documentation as required to promote progress on the project. The CM shall implement a Field Log System. This system will be used for tracking Requests for Information, Submittals, proposed and actual Field Orders and proposed and actual Change Orders and their status and will provide a data base which presents a chronology, including Field Orders completed, in progress, planned and projected and Change Orders completed, in progress, planned and projected. The Field Log System shall be in a relational database so that the relation between RFI's, Field Orders, Change Orders, and the like can be followed readily. The CM shall use Primavera Expedition or approved equal. Approval for any proposed equal shall be in writing from the University's Designated Administrator.
- 3.3.14. The CM shall review and advise the University's Designated Administrator on Prime Trade Contractors critical path schedule submittal; and shall coordinate with other Prime Trade Contractor critical path schedules and the Preliminary Master Project Schedule bid with the Contract Documents, and incorporate those schedules into the project's Master Project Schedule. The CM shall submit the finalized Master Project Schedule to the University's Designated Administrator for acceptance. Once accepted by the University's Designated Administrator, the CM shall control and administer the Master Project Schedule, within the limits of 2.6.9 of the Agreement. The CM shall monitor Prime Trade Contractors' performance for compliance with the Master Project Schedule per the Contract Documents. The Master Project Schedule should track both planned and actual schedule throughout project. CM shall update the Master Project Schedule and monitor the critical path monthly or more frequently, as necessary, to avoid delays. The CM shall review the Master Project Schedule with the University's Designated Administrator periodically as required by the University's Designated Administrator. The CM shall be responsible for obtaining and maintaining information from the Prime Trade Contractors affecting the schedule, including deliveries of construction materials and equipment and communicating schedule expectations and commitments thoroughly and clearly to all Prime Trade Contractors.
- 3.3.15. The CM shall maintain, monitor and update a Cost Control Spreadsheet. The Cost Control Spreadsheet shall compare the original Project Budget with the current Project cost, identify expenditures to date, state the budget required for completion of each bid package (including each category of Work within each bid package), identify actual and anticipated Change Orders, track the status of the construction contingency, and predict the current estimated total Project cost. All major changes and cost factors shall be described in a narrative that shall be attached to the Cost Control Spreadsheet. The current month's narrative shall identify any changes from the estimate in the previous month's report.
- 3.3.16. The CM shall monitor commissioning of all equipment and building systems. Collect, organize and distribute all maintenance manuals and equipment documentation in a timely manner.

- 3.3.17. CM shall provide written notice to the University's Designated Administrator when notified by the Prime Trade Contractor in accordance with the Contract Documents that the work is ready for final inspection.
- 3.3.18. The CM shall Coordinate and administer closeout procedures as described in the Contract Documents and approved by the University's Designated Administrator to accomplish timely completion of Prime Trade Contracts. The CM shall secure from the Prime Trade Contractor and transmit to the University's Designated Administrator required guarantees, warranties, bonds, waivers, all keys, manuals, record drawings, maintenance stocks and originals of all other contract papers, including correspondence. Two (2) summary record books of all paint, equipment, carpet, etc. vendors, colors and types of equipment actually used for the project shall be secured from the Prime Trade Contractors and transmitted to the University's Designated Administrator organized for easy retrieval of information.
- 3.3.19. CM shall coordinate, consolidate and administer with the University's Designated Administrator and the Design Professional, the development and completion of a list of deficiencies (punch list) to determine completion of work and the subsequent correction of such deficiencies. Provide follow-up on any items failing inspection for timely completion.
- 3.3.20. The CM shall include a performance evaluation of each Prime Trade Contractor and their listed subcontractors, prepared for the closeout of each Prime Trade Contract.
- 3.3.21. The CM shall produce a weekly Inspection Progress Report that shall identify daily weather conditions, work activity, daily manpower, equipment, and visitors. All manpower and equipment shall be referenced to work activities on the Master Project Schedule.

3.4. Changes/Delays/Disputes/Claims

- 3.4.1. The CM shall draft Field Orders, when warranted, for University's Designated Administrator signature to ensure work proceeds without delay. CM shall coordinate a review of Field Orders for any design impact with the Design Professional.
- 3.4.2. When CM receives change order requests from the Prime Trade Contractors, CM shall evaluate them for validity and proposed cost, identify and record the source, negotiate satisfactory solutions for the requests and recommend approval or denial to University. The CM shall provide analysis of Change Order Requests to include, but not limited to, analyzing the validity of Prime Trade Contractor's estimates, determining the source of the change, analyzing and reporting effects of the Change Order Requests on overall Project cost, budget and schedule, and coordinate a review for any design impact with the Design Professional. The CM shall track implementation and completion of approved Change Orders in a timely manner.
- 3.4.3. CM shall analyze deficiencies in the Contract Documents at the time of discovery to proactively assist the University in determining potential impact.
- 3.4.4. CM shall assist University's Designated Administrator in resolving technical, architectural, engineering, testing, surveying, scheduling, sequencing and estimating issues, including change order cost and validating design and other changes during construction.
- 3.4.5. The CM shall provide its best effort to expeditiously resolve claims and disputes between Prime Trade Contractors, or Prime Trade Contractors and Design Professional, or Prime Trade Contractors and Separated Contractors or University Forces with minimum disruption to the project. CM shall assist University's

Designated Administrator in review and resolution of claims and disputes of the work of Prime Trade Contractors. CM shall maintain documentation and records on all relevant decisions and facts relating to claims and disputes on an ongoing basis. Records shall be maintained in an orderly manner and copied to the University's Designated Administrator on a regular basis. All documentation of the Project construction shall become the property of the University at the conclusion of the Project. The CM shall provide analysis, recommendation and a brief summary of each claim or dispute issue based on the size and complexity of the claim or dispute. When a notice of potential claim or dispute is filed by any person (Prime Trade Contractor, subcontractor, any person or entity providing labor, services or materials to the project), applicable information shall be developed and filed by the CM in a timely manner mutually determined so as to avoid adverse impact to the resolution of the claim or dispute. An issue is considered a claim when the CM receives notice of a claim as required by the Contract Documents. If a claim is not resolved by completion of Project Closeout, a summary of the claim shall be filed by the CM. The summary shall include an analysis of the claim in relation to the requirements of the Construction Documents. When a claim or dispute is filed, the following information shall be reviewed, updated, tracked and filed as required according to its appropriateness based on the size and complexity of the claim or dispute: any formal data, pertinent data and records such as daily Prime Trade Contractor reports, progress pay reports, special meeting notes, reports; documentation related to pertinent conversations with Prime Trade Contractors, Design Professional, Separate Contractors, University Forces or other pertinent parties; inspection reports; captioned and dated photos and/or videotapes; applicable portions of the Master Project Schedule, including comparison of as-built schedule vs. planned; highlighted drawings, shop drawings, specifications related to the claim or dispute; relevant correspondence; and any other documentation that supports the position of the University, Prime Trade Contractor, CM, Design Professionals, etc.

- 3.4.6. CM shall advise University's Designated Administrator whenever the progress of the work falls behind the Master Project Schedule, notify University's Designated Administrator in writing and direct Prime Trade Contractors to submit and execute a plan of recovery. If it is determined by CM and the University that the progress of the work is delayed by any fault of the Prime Trade Contractors, CM shall direct the Prime Trade Contractor(s) at the Prime Trade Contractor's own expense, per terms in the Prime Trade Contract, to work such overtime, or provide additional work forces, or provide additional materials and equipment as necessary to make up for all time lost. Should Prime Trade Contractor be judged unable to perform per the Master Project Schedule, CM shall notify the University's Designated Administrator in writing immediately and recommend follow-up actions including terminating Prime Contractor work, if necessary. The CM and the University shall decide what action to take to keep project on schedule.

CONSTRUCTION MANAGEMENT AGREEMENT

TABLE OF CONTENTS

ARTICLE 1 - GENERAL PROVISIONS	1
1.1 GENERAL REQUIREMENTS	1
1.2 CONSTRUCTION MANAGER STANDARD OF CARE	2
1.3 DEFINITIONS	2
ARTICLE 2 - Version A: CM'S SERVICES AND RESPONSIBILITIES - BASIC SERVICES	3
2.1 GENERAL	3
2.2 SCHEMATIC DESIGN PHASE	3
2.3 DESIGN DEVELOPMENT PHASE	4
2.4 CONSTRUCTION DOCUMENTS PHASE	4
2.5 BIDDING PHASE	5
2.6 CONSTRUCTION PHASE	5
2.7 RECORD DOCUMENTS	6
2.8 INDEPENDENT REVIEWS	6
ARTICLE 3 - CM'S SERVICES AND RESPONSIBILITIES - ADDITIONAL SERVICES	6
3.1 PRE-CONSTRUCTION PHASES	6
3.2 CONSTRUCTION PHASE	6
3.3 POST-CONSTRUCTION	6
3.4 GENERAL	6
ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES	6
4.1 ADMINISTRATION	6
4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS	7
ARTICLE 5 - COMPENSATION	7
5.1 COMPENSATION FOR BASIC SERVICES	7
5.2 COMPENSATION FOR ADDITIONAL SERVICES	8
5.3 REIMBURSABLE EXPENSES	8
ARTICLE 6 - PAYMENTS	9
6.1 PAYMENTS FOR BASIC SERVICES	9
6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES	9
6.3 PROJECT SUSPENSION	9
ARTICLE 7 - CM'S RECORDS AND FILES	9
ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS, MATERIALS AND SYSTEMS	9
ARTICLE 9 - DISPUTES	10
9.1 NEGOTIATION	10
9.2 MEDIATION	10
9.3 ARBITRATION OR LITIGATION	10
9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE	11
ARTICLE 10 - INDEMNIFICATION AND INSURANCE	11
10.1 INDEMNIFICATION	11
10.2 INSURANCE REQUIREMENTS	12
ARTICLE 11 - STATUTORY REQUIREMENTS	13
A. NONDISCRIMINATION	13
B. PREVAILING WAGE RATES	14
C. PAYROLL RECORDS	14
D. APPRENTICES	15
E. WORK DAY	16
F. PATIENT HEALTH INFORMATION	16
ARTICLE 12 - EXTENT OF AGREEMENT	16
12.1 AUTHORITY OF AGREEMENT	16
12.2 EXHIBITS	16
12.3 THIRD-PARTY BENEFICIARIES	16
ARTICLE 13 - FEDERAL AND STATE GRANTS	17
ARTICLE 14 - NOTICES	17
14.1 UNIVERSITY	17
14.2 CONSTRUCTION MANAGER	17
ARTICLE 15 - SUCCESSORS AND ASSIGNS	17
15.1 CM'S DEATH OR INCAPACITATION	17
ARTICLE 16 - TERMINATION OF AGREEMENT	17
16.1 UNIVERSITY-INITIATED TERMINATION	18

16.2	CM-INITIATED TERMINATION.....	18
16.3	DOCUMENTS AND MATERIALS	18

NOTE: THIS CM AGREEMENT IS INTENDED FOR USE WITH THE OPTION A EDPA

CONSTRUCTION MANAGEMENT AGREEMENT
VERSION A

between
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
and
THE CONSTRUCTION MANAGER

This AGREEMENT is made on the {DAY} day of {MONTH} in the year {YEAR}
between The Regents of the University of California, A California corporation, hereinafter called "University", and {INSERT THE NAME OF THE CONSTRUCTION MANAGER} hereinafter called "CM",

1. IF THE FIRM IS A CORPORATION, USE THE CORPORATE TITLE.

2. IF THE FIRM IS A PARTNERSHIP LIST THE NAMES OF ALL OF THE PARTNERS. IF THE PARTNERSHIP IS OPERATING AS A "DOING BUSINESS AS" (DBA) FIRM, INCLUDE THE DBA NAME. FOR A GENERAL PARTNERSHIP, STIPULATE AFTER ALL LISTED NAMES THE TERM "Co-Partners".

3. IF THE FIRM IS A SOLE PROPRIETORSHIP, LIST THE NAME OF THE INDIVIDUAL, FOLLOWED BY THE WORDS "an Individual." IF THE SOLE PROPRIETORSHIP IS OPERATING AS A DBA FIRM, INCLUDE THE DBA NAME.}, for the following project:

NOTE: THE FACILITY NAME, PROJECT NUMBER, AND PROJECT NAME MUST BE THE SAME AS THOSE RECORDED FOR FUNDING PURPOSES.

UNIVERSITY OF CALIFORNIA, {FACILITY}

PROJECT NUMBER: {PROJECT NO.}

{PROJECT NAME}{

PROJECT DESCRIPTION: {USE THE SAME PROJECT DESCRIPTION AS THAT SHOWN ON THE EXECUTIVE DESIGN PROFESSIONAL AGREEMENT (EDPA).}

CONSTRUCTION BUDGET: {ENTER THE SAME DOLLAR AMOUNT AND THE APPROPRIATE ENR CONSTRUCTION COST INDEX AS THAT SHOWN ON THE EDPA.} \${AMOUNT}

ENR CONSTRUCTION COST INDEX: { }

ARTICLE 1 - GENERAL PROVISIONS

1.1 GENERAL REQUIREMENTS

1.1.1 This Agreement shall be governed by the laws of the State of California.

1.1.2 In the event of a conflict between the provisions of any exhibit to this Agreement and the Agreement, the provisions of this Agreement shall govern.

1.1.3 University's exercise of any of its rights or remedies prescribed in this Agreement shall not relieve CM from responsibility for damages or other losses incurred or to be incurred by University as a result of CM's breach of its obligations under this Agreement.

1.1.4 Time is of the essence for this Agreement.

July 25, 2011

CMA

1

Construction Management Agreement

1.1.5 CM shall cooperate with University, its designees, and Contractor in furthering the interests of University.

1.2 CONSTRUCTION MANAGER STANDARD OF CARE

1.2.1 CM, its officers, agents, employees, subcontractors, consultants and any persons or entities for whom CM is responsible, shall provide all services pursuant to this Agreement in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project (including its contracting mode).

1.3 DEFINITIONS

Unless defined differently herein, terms used in this Agreement shall have the same meaning as those used in University's Bidding Documents General Conditions (Exhibit A).

NOTE: EXHIBITS MUST ALSO INCLUDE THE FACILITY'S STANDARD SPECIFICATIONS, DIVISION 1, GENERAL REQUIREMENTS.

1.3.1 *As-builts (As-built Drawings and Specifications).* The term "As-builts" shall mean the record copy of the Contract Documents prepared by the Construction Contractor to record as-built conditions, current changes, and selections made during construction.

1.3.2 *Construction Budget.* The term "Construction Budget" shall mean the University's written statement of funds available to pay for the cost of construction.

1.3.3 *Construction Cost Index.* The term "Construction Cost Index" shall mean the Engineering News Record's (ENR) Construction Cost Index for the time period designated by University. The 20 cities average is used as a benchmark.

1.3.4 *Construction Documents.* The term "Construction Documents" shall mean the drawings and specifications, prepared by the Design Professional, setting forth in detail the requirements for the construction of the Project.

1.3.5 *Contract Documents.* The term "Contract Documents" shall mean the Advertisement for Bids, Instruction to Bidders, Supplementary Instructions to Bidders, Bid Form, Agreement, General Conditions, Supplementary Conditions, Affirmative Action Program, Exhibits to the Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion and all other items identified in the Construction Contract Agreement.

1.3.6 *Coordination.* The term "Coordination" shall mean that the documents shall be consistent and in conformance each part with all other parts.

1.3.7 *Estimated Project Construction Cost.* The term "Estimated Project Construction Cost" shall mean CM's written estimate in the form specified by University (Exhibit C, Supplemental Requirements to the Executive Design Professional Agreement), of the total Construction Cost of the project at the various stages of the design process.

1.3.8 *Project.* The term "Project" shall mean the project described on page 1 of this Agreement.

1.3.9 *Project CM.* The term "Project CM" shall mean the specific University-approved CM named in this Agreement who is assigned to the Project, and is CM's designated principal or staff member, as the designated person in charge of providing all services required by this Agreement.

1.3.10 *Project Program.* The term "Project Program" (Exhibit H to the Executive Design Professional Agreement) is a written statement of University's design objectives, constraints, and criteria, including space requirements and relationships, flexibility and expendability, special equipment and systems, and Project site requirements.

1.3.11 *Project Schedule.* The term "Project Schedule" shall mean the schedule prepared by CM for University showing Project milestones, funding, design, design review, construction, and other deadlines applicable to the Project.

1.3.12 *Record Documents.* The term "Record Documents" shall mean the Design Professional's record drawings and final specifications made from the As-built documents received from the Construction Contractor.

July 25, 2011

1.3.13 *Bidding Documents.* The term "Bidding Documents" shall mean those documents prepared and furnished by University for the purpose of obtaining bids from contractors to construct the Project, including without limitation, the General Conditions and General Requirements which are hereby incorporated by reference.

1.3.14 *University.* The term "University" shall mean The Regents of the University of California.

{NOTE: IN VERSION A OF THE AGREEMENT, THE PERSON IN 1.3.15 AND 1.3.16 CANNOT BE THE SAME. IN VERSION A, DESIGN PROFESSIONAL IS ALWAYS UNIVERSITY REPRESENTATIVE AND UNIVERSITY'S DESIGNATED ADMINISTRATOR IS THE CM.}

1.3.15 *University Representative.* The term "University Representative" shall mean the person named as the Design Professional's principal or staff member designated as the Project {Architect OR Engineer} in the Executive Design Professional Agreement.

1.3.16 *University's Designated Administrator.* The term "University's Designated Administrator" shall mean the individual acting as CM pursuant to subparagraph 2.1.1 of this Agreement.

ARTICLE 2 - Version A: CM'S SERVICES AND RESPONSIBILITIES - BASIC SERVICES

Basic services to be provided by CM consist of the services described in this Article 2.

2.1 GENERAL

2.1.1 CM shall designate a principal or a staff member to act as CM's representative. This representative shall remain in charge of all professional services for the Project under this Agreement, who so long as the representative's performance continues to be acceptable to University shall remain in charge unless a substitution is approved in writing by the University. University-approved CM representative shall be the person named below:

{NAME OF UNIVERSITY-APPROVED CONSTRUCTION MANAGER REPRESENTATIVE}

If for any reason the person designated as CM representative in this Article 2 becomes unavailable, the University may terminate this Agreement for convenience under Article 16. This right to terminate the Agreement for convenience shall be in addition to, and shall not limit, any other rights or remedies available to the University.

2.1.2 CM shall be the University's Designated Administrator.

2.1.3 CM shall abide by all regulations imposed by authorities having jurisdiction over the Project.

2.1.4 CM shall assist University and Design Professional in fulfilling the requirements of the authorities and funding agencies whose interests bear on the design, cost, and construction of the Project.

2.1.5 CM shall cooperate with other professionals University may employ for related work.

2.1.6 To the extent required by University, CM shall consult with authorized employees, agents, and representatives of University relative to the design and construction of the Project.

2.1.7 CM shall monitor the Design Professional's work to ensure that it is performed in accordance with Exhibit C, (Supplemental Requirements to the Executive Design Professional Agreement attached as an Exhibit).

2.2 SCHEMATIC DESIGN PHASE

{NOTE: IF SCHEMATIC DESIGN SERVICES ARE NOT APPLICABLE, RETAIN THE HEADING AND ADD THE WORDS "NOT USED" AFTER 2.2.1. DELETE 2.2.2 AND MOVE 2.2.3, 2.2.4 AND 2.2.5 TO DESIGN DEVELOPMENT PHASE OR A LATER PHASE IF DESIGN DEVELOPMENT IS NOT APPLICABLE. DELETE 2.2.6 AND 2.2.7.}

2.2.1 CM shall evaluate the Project Program, Project site, and Project Budget, and shall make recommendations to University regarding possible design, site, or construction alternatives.

July 25, 2011

2.2.2 CM shall prepare a written independent Estimated Project Construction Cost for the Project Program based upon the unit cost per square foot for similar types of projects. The estimate shall use the Construction Specification Institute format for itemizing costs by Work Activity. If requested by University, CM shall meet with Design Professional to reconcile discrepancies between its estimate and the Design Professional's estimate.

2.2.3 CM shall develop a Schedule Control System in consultation with University and Design Professional which shall be the basis upon which the CM monitors and evaluates the progress of the Project. The Schedule Control System shall be in accordance with the Project Schedule, and shall define design, construction, and University occupancy phases, delineating the responsibilities of University, Design Professional, CM and Contractor. The Schedule Control System shall be subject to written approval by University. The Schedule Control System shall consist of the following two elements:

.1 A detailed time-scaled logic diagram depicting the durations and responsibilities for all activities, including University's procurement of equipment and materials with long lead times prior to selection of the Contractor.

.2 A summary diagram showing the major milestones identified in the time-scaled logic diagram.

2.2.4 CM shall develop a Cost Control System, in consultation with University which shall be the basis upon which CM monitors all Project costs. The Cost Control System shall be in accordance with the Capital Improvement Budget (Project Budget), (Exhibit E). The Cost Control System shall be used by CM to report the status of the Project Budget and Project costs in a Monthly Cost Report. The Monthly Cost Report shall reflect all encumbrances and expenses and shall provide cost projections through Project completion. Major deviations from the previous month's report shall be annotated and explained in the subsequent Monthly Cost Report. With the exception of Estimated Project Construction Costs, which are provided by CM and Design Professional, all cost information for the Monthly Cost Report will be provided by University. The Cost Control System must be approved in writing by University.

2.2.5 CM shall promptly report to University any non-conformity or potential problems with University's Project objectives of quality construction, timely completion, and economy, with University's Project Program, Construction Budget, and Project Schedule.

2.2.6 CM shall review Design Professionals submittals of outline specifications as required by the Executive Design Professional Agreement, for purposes of determining consistency with the Project Program, Project Budget, and Project Schedule. Inconsistencies shall be reported in writing to University. As requested by University, CM shall meet with Design Professional to discuss its review findings.

2.2.7 CM shall prepare and submit to University, an independent written Estimated Project Construction Cost based on the documents submitted by Design Professional for this phase. The estimate shall be in the form included in Exhibit C, Supplemental Requirements to the Executive Design Professional Agreement. This estimate shall expand upon, and update the estimate prepared for the Project Program phase. If requested by University, CM shall meet with Design Professional to reconcile discrepancies between its estimate and Design Professionals estimate.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 CM shall consult with University, Design Professional, and others, as approved by University, in order to analyze, evaluate, and make recommendations regarding elements of the Project site, including Contractor access, storage, site offices, Project site limit lines, coordination with existing or proposed utility systems, and the effect of construction on adjacent buildings, walkways, and streets.

2.3.2 CM shall review Design Professionals submittals of Design Development documents and evaluate the proposed Project design features, systems and materials, and recommend alternatives that would, in the CM's opinion, increase constructability, lessen the construction time, or reduce the Project Budget without deviating from minimum Project Program requirements. CM's written evaluation to University shall include conclusions, alternatives, and recommendations (including energy conservation alternatives). As requested by University, CM shall meet with Design Professional to discuss its review findings.

2.3.3 CM shall prepare and submit to University an updated written Estimated Project Construction Cost based on the documents submitted by Design Professional in this phase. This estimate shall reflect the character of the Project and the character of the selected mechanical and electrical systems in greater detail than the Schematic Design estimate.

2.4 CONSTRUCTION DOCUMENTS PHASE

July 25, 2011

2.4.1 CM shall review Design Professionals submittals for this phase at 50% and 100% to determine whether the documents adequately describe the quality, configuration, size and relationships of all components to be incorporated into the Project, whether the Construction Documents are consistent with the Project Program (including the gross and assignable floor areas), the Construction Budget and the Project Schedule.

2.4.2 CM shall work with Design Professional to tailor University's Division 1 to the specific requirements of the Project.

2.4.3 CM shall confirm that the Drawings and Specifications are consistent with the University's General Conditions and the Division 1 tailored for the Project.

2.4.4 CM shall check for coordination of the documents in terms of consistency and conformity each part with all other parts.

2.4.5 CM shall backcheck the resubmittal of 100% documents to ensure that all corrections have been made to the 100% submittal.

2.4.6 CM shall develop a recommendation list of cost items that the Contractor should include in its cost breakdown (as required by the General Conditions, Exhibit A). CM shall use the Construction Specification Institute format, and submit this list to University for inclusion in the Construction Documents.

2.4.7 CM shall prepare a Representative Construction Schedule for inclusion in the Construction Documents.

2.4.8 If required by University, CM shall schedule and conduct a final constructability review on the 100% submitted documents.

2.4.9 CM shall prepare and submit to University, an independent written Estimated Project Construction Cost based on the documents submitted by Design Professional for this phase at both 50% and 100% submittals, and at the end of the backcheck of the corrected 100% submittal. If requested by University, CM shall meet with Design Professional to reconcile discrepancies between its estimate and Design Professionals estimate.

2.5 BIDDING PHASE

2.5.1 CM shall provide University with an analysis of market conditions prior to the publication of the Advertisement for Bids, recommend release dates of bidding documents and the duration of the bidding period for the Project, or for portions of the Work, as applicable, and advise University of the likelihood of obtaining bids that are within the Construction Budget.

2.5.2 CM shall assist University and Design Professional in developing prequalification criteria, and preparation of prequalification documents, as requested by University.

2.5.3 CM shall actively encourage contractors with known expertise on projects of similar size and scope to bid on the Project.

2.5.4 As requested by University, CM shall assist with preparation and conducting the pre-bid conferences, and assist in the preparation of required Addenda to be issued by University.

2.5.5 If requested by University, CM shall assist University and Design Professional in reviewing individual construction bids submitted for the Project and prepare a report (1) summarizing the bid results, (2) comparing the lowest responsible bid with the current Construction Budget, and (3) where prequalification has not been utilized, evaluating whether the contractor and subcontractors listed in the lowest responsible bid meet the applicable minimum experience requirements set forth in the Construction Documents.

2.5.6 If the lowest responsible bid received exceeds the Construction Budget by more than 10% University may, at its discretion, exercise the options available to it under subparagraph 2.5.4 of the Executive Design Professional Agreement, and direct CM to suggest programmatic or other changes in the Project scope or quality, or both, that would reduce the Project's Construction Cost.

2.6 CONSTRUCTION PHASE

2.6.1 CM shall assist University and Design Professional as requested in the preparation of the pre-construction meeting. CM shall prepare matrix charts of Design Professionals staff and responsibilities, University's staff and responsibilities, and CM's staff and responsibilities in accordance with the Executive Design Professional Agreement.

July 25, 2011

2.6.2 CM shall assist University and Design Professional in monitoring written communications between Design Professionals University's Administrator and Contractor.

2.6.3 CM shall assist Design Professional, as requested by University and Design Professional, in the resolution of disputes.

2.6.4 CM shall maintain, monitor, and update the Cost Control System. The monthly Cost Report shall compare the original Project Budget with the current Project cost, identify expenditures to date, state the budget required for completion of each major category of Work, identify actual and anticipated Change Orders, and predict the current estimated total Project cost. All major changes and cost factors shall be described in a narrative that shall be attached to the Monthly Cost Report. The current month's report narrative shall identify any changes from the estimate in the previous month's report.

2.6.5 CM shall assist University and Design Professional in evaluating Contractor Change Order Requests, and make written recommendations regarding such requests.

2.6.6 CM shall assist in negotiations with Contractor as requested by University.

2.6.7 CM shall assist Design Professional, as requested by University, in obtaining back-up documentation, shop drawings, and materials submittals from Contractor.

2.7 RECORD DOCUMENTS

2.7.1 CM shall receive Design Professionals Record Documents, evaluate their completeness and recommend to University in writing whether to accept or reject said documents.

2.8 INDEPENDENT REVIEWS

2.8.1 CM shall participate, and conduct, if requested by University, all independent reviews required by the Executive Design Professional Agreement.

ARTICLE 3 - CM'S SERVICES AND RESPONSIBILITIES - ADDITIONAL SERVICES

Unless required to be performed as part of basic services, the services described in this Article 3 are additional services. These Additional Services shall be paid for by University, as provided in this Agreement, in addition to the compensation for Basic Services. CM shall provide Additional Services only when and as authorized in a written Amendment signed by University. No Additional Services shall be compensable unless so authorized.

3.1 PRE-CONSTRUCTION PHASES

3.2 CONSTRUCTION PHASE

3.3 POST-CONSTRUCTION

3.4 GENERAL

ARTICLE 4 - UNIVERSITY RIGHTS AND RESPONSIBILITIES

4.1 ADMINISTRATION

July 25, 2011

4.1.1 University will designate, in writing, an Administrator who will act on behalf of University with respect to this Agreement. CM shall accept directives only from University's named Administrator and not from other University employees. University may replace University's named administrator at its sole option; if this replacement is made, University will notify CM in writing.

4.2 PROVISION OF INFORMATION, SURVEYS, AND REPORTS

4.2.1 University has furnished the information and reports set forth in subparagraph 12.2.1, which are hereby incorporated and made a part of this Agreement.

4.2.2 University will have the right to make changes to the Project Program, Exhibit H of the Executive Design Professional Agreement (Exhibit A). When such changes increase the duties of CM beyond those reasonably and customarily provided in Basic Services, CM shall be compensated in accordance with this Agreement.

4.2.3 University will have the right to make reasonable changes to its Bidding Documents and CM shall be bound by such changes. When such changes increase the duties of CM, beyond those reasonably and customarily provided in Basic Services, CM shall be compensated in accordance with this Agreement.

4.2.4 University shall furnish information to CM for purposes of updating the Project Schedule as dates and durations applicable to the Project such as funding deadlines, review periods, anticipated periods of Project suspension, and construction deadlines become known.

4.2.5 The services, information, surveys, and reports required by this Article 4 will be furnished at University's expense.

4.2.6 University will furnish copies of Drawings, Specifications, and other Project-related documents deemed necessary by University and CM for the performance of CM's services under this Agreement.

4.2.7 University will provide CM with a Project site office equipped with a telephone, a photocopy machine, and reasonable furnishings, as determined by University.

ARTICLE 5 - COMPENSATION

University will compensate CM for the scope of services provided, in accordance with this Article 5 and with the other terms and conditions of this Agreement as follows:

5.1 COMPENSATION FOR BASIC SERVICES

5.1.1 The fee for Basic Services shall be computed as follows:

For services rendered in accordance with this Agreement, the basis for compensation shall be a lump-sum fee in the amount \$ { }, payable {CHOOSE ONE OF THE FOLLOWING:

Upon completion of each project phase, after the review and approval by University in accordance with the following schedule:

<u>PHASE OR STAGE COMPLETED</u>	<u>RATES OF PORTIONS OF TOTAL FEES TO BE PAID AT COMPLETION</u>
Schematic Design Phase	{ %}
Design Development Phase	Increase to { %}
Construction Documents Phase	Increase to { %}
Bidding Phase (Award of Construction Contract)	Increase to { %} (or a proportional percentage when a

July 25, 2011

Construction Management Agreement

portion of the Project is awarded)

Construction Phase

(Proportional monthly payments of 30% of the fee, prorated to the proportion of the Project construction that is certified as complete)

Construction Completed

Increase to { %}

Receipt and approval of Design Professional's

Increase to 100%

Record Documents

OR;

Proportional monthly payments for a period of {NUMBER} months, the duration of this contract, unless otherwise extended by amendment.}

5.1.2 University reserves the right to withhold monies for services not received as part of Basic Services which extend beyond the duration of this Agreement unless an Amendment is issued by University for extension of services.

5.2 COMPENSATION FOR ADDITIONAL SERVICES

5.2.1 For the Additional Services of CM, as described in Article 3, compensation shall be in accordance with the attached Rate Schedule, (Exhibit B).

5.2.2 University reserves the right to change time and scope of the Work. If University changes either time or scope, the CM's fees shall be adjusted in accordance with the attached Rate Schedule, (Exhibit B).

5.2.3 If the duration of this Agreement exceeds or is extended by {NUMBER} calendar days through the fault of University, Design Professional, or Contractor and through no fault of CM, compensation for any Basic Services provided during this extended period of the construction phase of the construction contract shall be adjusted to compensate CM for any additional costs reasonably incurred by CM as the result of such delay, provided University has approved such adjustments in advance. These extended Basic Services shall be approved, in writing, by University and shall not include Basic Services that would have been performed under this Agreement had the initial duration of the Agreement not been substantially exceeded or extended.

5.3 REIMBURSABLE EXPENSES

5.3.1 For Reimbursable Expenses, as described in this Paragraph 5.3, only actual costs will be reimbursed. Paid invoices or other proof of payment shall be submitted when requesting reimbursement.

5.3.2 Reimbursable Expenses are paid in addition to the compensation for Basic and Additional Services and are actual expenditures made by CM in the interest of the Project, for the following expenses:

{NOTE: THE FACILITY HAS THE OPTION TO CHANGE SUBPARAGRAPH 5.3.2 AS NEEDED.}

.1 Transportation and living expenses while traveling outside the {NAME OF REGION} area. Transportation, lodging, and per diem expenses for travel between the CM's offices and the Project site are not reimbursable. Transportation expenses shall be paid on the same basis and shall be subject to the same conditions as those in effect for employees of University, pursuant to Exhibit C. These expenses shall not be compensable unless authorized, in writing, in advance by University.

.2 Expenses for postage, handling, and delivery for Drawings, Specifications, and other documents, deemed necessary by University.

.3 Expenses for data processing and photographic production techniques when used in connection with Additional Services (Article 3).

July 25, 2011

Construction Management Agreement

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8

ARTICLE 6 - PAYMENTS

6.1 PAYMENTS FOR BASIC SERVICES

6.1.1 Payments for Basic Services, as defined in Article 2, shall be made as stipulated in subparagraph 5.1.1.

{NOTE: IF EQUAL MONTHLY PAYMENTS ARE CHOSEN IN SUBPARAGRAPH 5.1.1 ADD THE FOLLOWING:

6.1.2 CM shall submit monthly invoices to University setting forth in detail the services rendered during the previous month. Such services shall be allocated to Basic Services (a proportional monthly amount), authorized Additional Services, authorized reimbursable expenses, and any adjustments to the lump-sum amount stipulated in Article 5. Upon University's request, the invoice shall be substantiated by CM's payroll and other cost records and shall be submitted with an affidavit that the invoiced services were performed, that the invoiced costs were incurred, and that the cost records from the invoice was prepared are true and correct.}

6.2 PAYMENTS FOR ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 Payments for CM's Additional Services, as defined in Article 3, and for Reimbursable Expenses, as defined in paragraph 5.3, shall be made monthly after presentation of CM's statement of services rendered, or expenses incurred, with invoices, receipts and other justification thereof.

6.3 PROJECT SUSPENSION

6.3.1 If the Project is suspended or abandoned for more than {NUMBER} consecutive months, and such suspension was not scheduled at the beginning of the Project, as provided under subparagraph 4.2.2, CM shall be compensated for all authorized services performed prior to the receipt of written notice from University of such suspension or abandonment, together with Reimbursable Expenses then due. If the Project is resumed after being suspended for more than {NUMBER} consecutive months, CM's compensation shall be adjusted to compensate CM for any additional costs reasonably incurred as the result of the suspension.

ARTICLE 7 - CM'S RECORDS AND FILES

7.1 Books and records relating to this Agreement shall be maintained in accordance with generally accepted accounting principles. University or University's authorized representative shall have access to, the right to audit and the right to copy pertinent parts of CM's books and records. CM's records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; vendor agreements; purchase orders; leases; original estimates; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under this Agreement. All such books and records shall be preserved for a period of at least 3 years from the date of Final Payment under this Agreement.

7.2 CM shall make files available for inspection and copying by University upon reasonable notice. University or University's authorized representative shall have access to the CM's premises and records for inspection and auditing during normal business hours, shall be allowed to interview CM employees pursuant to the provisions of this Article, and be provided adequate and appropriate work space in order to conduct audits in compliance with this Article. The provisions of this Article shall also apply to parent, affiliate, and subsidiary companies as necessary to verify costs associated with this Agreement.

ARTICLE 8 - OWNERSHIP AND USE OF DOCUMENTS, MATERIALS AND SYSTEMS

8.1 All systems, materials and documents developed for and with University resources shall become the property of University, whether or not the Project for which they are developed is executed. Upon completion of CM's Basic Services and Additional Services under this Agreement, CM shall promptly provide to University, all Project documents, correspondence (including internal and external correspondence), systems and materials, excluding CM's internal accounting books and records addressed in Article 7. CM shall be permitted to retain copies for information and reference at CM's expense.

July 25, 2011

8.2 University will not defend, indemnify or save harmless CM, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that University's use of systems, materials or documents is contrary to or in violation of any copyright, patent, trade secret, trade name, trade mark, or any proprietary, contractual or legal right pertaining to their use.

8.3 At all times during the term of this Agreement, all files related in any way to the Project, including all documents, correspondence (including internal and external correspondence), systems and materials, both electronic and hard copy format, shall be maintained by the CM pursuant to the University's filing protocol and stored on site, unless otherwise agreed by the University and the CM. The University or the University's representative shall have access to and the right to copy all such files at any time during the term of this Agreement.

ARTICLE 9 - DISPUTES

9.1 NEGOTIATION

9.1.1 The parties will attempt in good faith to resolve any controversy or Claim arising out of or relating to this Agreement by negotiation.

9.2 MEDIATION

9.2.1 Within 60 days, but no earlier than 30 days following the earlier of (1) receipt of notice by the other party from the American Arbitration Association (AAA) of the disputing party's demand for arbitration or (2) receipt by the other party of the disputing party's notice of election to litigate, the parties shall submit the matter to non-binding mediation administered by the AAA under its construction industry mediation rules, unless waived by mutual stipulation of both parties.

9.3 ARBITRATION OR LITIGATION

9.3.1 Disputes arising from this Agreement between CM and University which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows:

.1 ARBITRATION WITH CONTRACTOR

.1 If any claim arises under the Construction Contract Documents for the Project and is submitted to arbitration, and either Contractor or University claims that the acts or omissions of CM are involved, in whole or in part, any claim by University against CM arising out of or in connection therewith may be asserted, at the option of University, against CM in the same arbitration proceeding which shall be conducted under the procedures specified in the General Conditions of the construction contract.

.2 LITIGATION WITH CONTRACTOR

.1 If any claim arises under the Construction Contract Documents for the Project and is submitted to litigation, and either Contractor or University claims that the acts or omissions of CM are involved, in whole or in part, any claim by University against CM arising out of or in connection therewith may be asserted, at the option of University, against CM in the same litigation.

.3 ARBITRATION WITHOUT CONTRACTOR

.1 Disputes arising from this Agreement between CM and University which cannot be settled through negotiation or mediation, and which are not resolved by arbitration or litigation pursuant to subparagraphs 9.3.1.1 and 9.3.1.2 shall be subject to arbitration without Contractor conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid Rules of the AAA:

.1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.

.2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the arbitration.

.3 Concurrent disputes subject to this subparagraph 9.3.1.3.3 shall be consolidated into a single arbitration unless the parties otherwise agree in writing.

.4 No hearing shall be held prior to final completion of the Project unless University and CM otherwise agree in writing.

.5 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California.

.6 If total claims are less than \$50,000, AAA expedited procedures as modified by this Article 9 shall apply. If total claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total claims are in excess of \$100,000 and are submitted to arbitration, the controversy shall be heard by a panel of 3 arbitrators, one of which shall be an attorney.

.7 The AAA shall submit simultaneously to each party to the dispute an identical list of at least 10 names of persons chosen from the National Panel of Commercial Arbitrators, and each party to the dispute shall have 10 days from the date of receipt in which to cross off any names objected to, number the remaining names in order of preference and return the list to AAA. If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 5 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.

.4 Unless University and CM otherwise agree in writing, the arbitration decision shall be made under and in accordance with the laws of the State of California, supported by substantial evidence, and in writing. If the total of all claims or cross claims submitted to arbitration is in excess of \$50,000 the award shall contain the basis for the decision, findings of fact, and conclusions of law.

Any arbitration award shall be subject to confirmation, vacation, or correction under the procedures and on the grounds specified in the California Code of Civil Procedure including without limitation Section 1296.

The expenses and fees of the arbitrators and the administrative fees of the AAA shall be divided among the parties equally. Each party shall pay its own counsel fees, witness fees, and other expenses incurred for its own benefit.

9.4 PERSONAL INJURY, WRONGFUL DEATH OR PROPERTY DAMAGE

9.4.1 Claims for personal injury, wrongful death, or property damage (other than property damage to University) shall not be subject to arbitration under subparagraph 9.3.1.3.

ARTICLE 10 - INDEMNIFICATION AND INSURANCE

10.1 INDEMNIFICATION

10.1.1 CM shall indemnify, defend, and hold harmless University and its Regents, officers, employees, agents, and representatives (collectively, "Indemnitee"), against all liability, demands, claims, costs, damages, injury including death, settlements, and expenses (including without limitation, interest and penalties) incurred by Indemnitee ("Losses") arising out of the performance of services or CM's other obligations under this Agreement, but only in proportion to and to the extent such Losses are caused by or result from (1) the negligent acts or omissions of CM, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom CM is

responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Agreement; or (3) willful misconduct by Indemnitor.

10.1.2 The indemnification obligations under this Article 10 shall not be limited by any assertion or finding that (1) the person or entity indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnitor. The obligation to defend shall arise regardless of any claim or assertion that Indemnitor caused or contributed to the Losses; provided however, that Indemnitor's reasonable defense costs (including attorney and expert fees) will be reimbursed in proportion to the determination of Indemnitor's fault.

10.1.3 CM shall indemnify, defend, and save harmless Indemnitor from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorney's fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any person or entity in consequence of the use on the Project by Indemnitor of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Agreement.

10.1.4 Nothing in this Agreement, including the provisions of this Article 10, shall constitute a waiver or limitation of any rights which Indemnitor may have under applicable law, including without limitation, the right to implied indemnity.

NOTE: COVERAGE AMOUNTS TO BE LISTED BELOW SHOULD BE EVALUATED FOR EACH AGREEMENT AND DISCUSSED WITH FACILITY RISK MANAGEMENT OFFICE. LIMITS SHOULD BE ESTABLISHED TO REALISTICALLY PROTECT UNIVERSITY. REFER TO THE LATEST REVISION OF BUSINESS AND FINANCE BULLETIN NO. BUS 63.

10.2 INSURANCE REQUIREMENTS

CM, at CM's sole cost and expense, shall insure its activities in connection with this Agreement and shall obtain, keep in force, and maintain insurance as listed below. The coverages required under paragraph 10.2 shall not in any way limit the liability of CM.

10.2.1 Either Comprehensive Form General Liability Insurance (Contractual, products, and completed operations coverages included) with a combined single limit of no less than \${NUMBER} per occurrence, or Commercial-Form General Liability Insurance with coverage and minimum limits of liability as follows:

- | | | |
|----|---|------------|
| .1 | Each Occurrence | \${AMOUNT} |
| .2 | Products and Completed Operations (Aggregate) | \${AMOUNT} |
| .3 | Personal and Advertising Injury | \${AMOUNT} |
| .4 | General Aggregate | \${AMOUNT} |

10.2.2 Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles, with a combined single limit of no less than \$1,000,000 per accident.

10.2.3 Professional Liability Insurance, with minimum limits of liability as follows:

- | | | |
|----|-----------------|-------------|
| .1 | Each Occurrence | \${ AMOUNT} |
| .2 | Aggregate | \${ AMOUNT} |

10.2.4 If the above insurance (subparagraphs 10.2.1 and 10.2.3) is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Payment on this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of this Agreement and shall include, without limitation coverage for professional services as called for in this Agreement. Insurance required by subparagraphs 10.2.1-10.2.3 shall be (i) issued by companies that have a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's) or (ii) guaranteed, under terms consented to by the University (such consent to not be unreasonably withheld), by companies with a Best rating of A- or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's).

July 25, 2011

Construction Management Agreement

10.2.5 Workers' Compensation as required and under the Workers' Compensation Insurance and Safety Act of the State of California, as amended from time to time. Insurance required by this subparagraph 10.2.5 shall be issued by companies (i) that have a Best rating of B+ or better, and a financial classification of VIII or better (or an equivalent rating by Standard & Poor or Moody's); or (ii) that are acceptable to the University.

10.2.6 CM, upon execution of this Agreement, shall furnish University with Certificate of Insurance evidencing compliance with this Article 10, including the following requirements:

.1 CM shall have the insurance company complete University's form, Certificate of Insurance (Exhibit D). It alone constitutes evidence of insurance.

.2 Provide that coverage cannot be canceled without advance written notice to University, in accordance with policy provisions.

.3 If insurance policies are canceled for non-payment, University reserves the right to maintain policies in effect by continuing to make the policy payments and assessing the cost of so maintaining the policies against CM.

.4 The General Liability Insurance policy and the Business Automobile Liability Insurance policy shall name The Regents of the University of California as an Additional Insured. As respects Professional Liability include Contractual Liability Coverage or endorsements to the insurance policies for Contractual Liability Coverage for a breach of professional duty in the rendering of or failure to render professional services to others by the Design Professional or for which the Design Professional is legally liable as a result of the performance of others.

.5 The General Liability and the Professional Liability insurance policies shall apply to the negligent acts, or omissions of CM, its officers, agents, employees, and for CM's legal responsibility for the negligent acts or omissions of its consultants and anyone directly or indirectly under the control, supervision, or employ of CM or CM's consultants.

ARTICLE 11 - STATUTORY REQUIREMENTS

A. NONDISCRIMINATION

CM agrees as follows during the performance of the Work:

CM shall provide equal treatment to, and shall not willfully discriminate against or allow harassment of any employee or applicant for employment on the basis of: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). CM will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. Such equal treatment shall apply, but not be limited to the following: employment; upgrade; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CM also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The CM will, in all solicitations or advertisements for employees placed by or on behalf of the CM, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin; sexual orientation; physical or mental disability; veteran's status; medical condition (as defined in Section 12926 of the State of California Government Code and including cancer-related medical conditions and or genetic characteristics); genetic information (as defined in the Genetic Information Nondiscrimination Act of 2008 and including family medical history); marital status; gender identity, pregnancy, or citizenship (within the limits imposed by law or University's policy) or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed

services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

B. PREVAILING WAGE RATES

1. For purposes of this Article, the term subcontractor or subconsultant shall not include suppliers, manufacturers, or distributors.
2. CM shall comply and shall ensure that all subcontractors comply with Section 1770, and the applicable sections that follow, including Section 1775 of the State of California Labor Code. References to "Covered Services" hereinafter shall mean services performed pursuant to this Agreement that are covered by the aforementioned provisions as implemented by the State of California Department of Industrial Relations.
3. The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code for each craft, classification, or type of worker required to perform the Covered Services hereunder. A schedule of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. By this reference, such schedule is made part of this Agreement. CM shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by CM in the execution of the Covered Services hereunder. CM shall cause all subcontracts or subconsultant agreements to include the provision that all subcontractors shall pay not less than the prevailing wage rates to all workers employed by such subcontractor in the execution of the Covered Services hereunder. CM shall forfeit to University, as a penalty, not more than \$50 for each calendar day, or portion thereof, for each worker that is paid less than the prevailing wage rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Covered Services hereunder performed by CM or any subcontractor or subconsultant. The amount of this penalty shall be determined by the Labor Commissioner pursuant to applicable law. Such forfeiture amounts may be deducted from the CM fee. CM shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Covered Services hereunder, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker.

C. PAYROLL RECORDS

1. CM and all subcontractors shall keep an accurate payroll record, showing the name, address, social security number, job classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyworker, apprentice, or other employee employed in connection with the Covered Services hereunder. All payroll records shall be certified as being true and correct by CM or subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of CM on the following basis:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records shall be made available for inspection upon request to University, the State of California Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State of California Division of Industrial Relations.
 - c. A certified copy of all payroll records shall be made available upon request by the public for inspection or copies thereof made; provided, however, that the request by the public shall be made to either University, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. The public shall not be given access to such records at the principal offices of CM or subcontractors. Any copy of the records made available for inspection as copies and furnished upon request to the public or any public agency by University shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of CM awarded the Agreement or performing the Agreement shall not be marked or obliterated.

2. CM shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. CM shall inform University of the location of such payroll records for the written authorization, including the street address, city, and county; and CM shall, within 5 working days, provide notice of change of location of such records. In the event of noncompliance with the requirements of this Paragraph or with the State of California Labor Code Section 1776, CM shall have 10 days in which to comply following receipt of notice specifying in what respects CM must comply. Should noncompliance still be evident after the 10-day period, CM shall forfeit to University, as a penalty, \$25 for each day, or portion thereof, for each worker, until strict compliance is accomplished. Such forfeiture amounts may be deducted from the CM fee.

D. APPRENTICES

1. Only apprentices, as defined in the State of California Labor Code Section 3077, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4, Division 3, of the State of California Labor Code, are eligible to be employed by CM and subcontractors as apprentices for the Covered Services hereunder. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and written apprentice agreements under which the apprentice is training.

2. Every apprentice shall be paid the standard wage to apprentices, under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only for the Covered Services hereunder in the craft or trade to which the apprentice is indentured.

3. When CM or subcontractors employ workers in any apprenticeship craft or trade for the Covered Services hereunder, CM or subcontractors shall apply to the joint apprenticeship committee, which administers the apprenticeship standards of the craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, for a certificate approving CM or subcontractors under the apprenticeship standards for the employment and training of apprentices in the locality so identified. The committee will issue a certificate fixing the number of apprentices or the ratio of apprentices to journeyworkers who shall be employed in the craft or trade on the Covered Services hereunder. The ratio will not exceed that stipulated in the apprenticeship standards under which the joint apprenticeship committee operates; but in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work, except as permitted by law. CM or subcontractors shall, upon the issuance of the approval certificate in each such craft or trade, employ the number of apprentices or the ratio of apprentices to journeyworkers fixed in the certificate issued by the joint apprenticeship committee or present an exemption certificate issued by the Division of Apprenticeship Standards.

4. "Apprenticeship craft or trade," as used in this Paragraph, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

5. If CM or subcontractors employ journeyworkers or apprentices in any apprenticeship craft or trade in the locality, if any, listed in the written authorization for the performance of construction, alteration, demolition or repair work as defined in Section 1720 of the State of California Labor Code, and there exists a fund for assisting to allay the cost of the apprenticeship program in the trade or craft, to which fund or funds other contractors in the locality so identified are contributing, CM and subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Covered Services hereunder in the same amount or upon the same basis and in the same manner done by the other contractors. CM may include the amount of such contributions in computing its compensation under the Agreement; but if CM fails to do so, it shall not be entitled to any additional compensation therefore from University.

6. In the event CM willfully fails to comply with this Paragraph 11D, it will be considered in violation of the requirements of the Agreement.

7. Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by CM or subcontractors of journeyworker trainees who may receive on-the-job training to enable them to achieve journeyworker status in any craft or trade under standards other than those set forth for apprentices.

E. WORK DAY

1. CM shall not permit any worker providing Covered Services to labor more than 8 hours during any 1 day or more than 40 hours during any 1 calendar week, except as permitted by law and in such cases only upon such conditions as are provided by law. CM shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Agreement by CM, or any subcontractors or subconsultant, for each day during which such worker is required or permitted to work providing Covered Services more than 8 hours in any 1 day and 40 hours in any 1 calendar week in violation of the terms of this Paragraph or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the compensation otherwise due under this Agreement. CM and each subcontractor or subconsultant shall keep, or cause to be kept, an accurate record showing the actual hours worked each day and each calendar week by each worker employed under this Agreement, which record shall be kept open at all reasonable hours to the inspection of University, its officers and agents, and to the inspection of the appropriate enforcement agency of the State of California.

F. PATIENT HEALTH INFORMATION

1. Contractor acknowledges that its employees, agents, subcontractors, consultants and others acting on its behalf may come into contact with Patient Health Information ("PHI") while performing work at the Project Site. This contact is most likely rare and brief (e.g. walking through a clinic where patient files may be visible, overhearing conversations between physicians while working or touring a hospital, noticing a relative or acquaintance receiving treatment in a University facility, etc.). Contractor shall immediately notify University Representative of any such contact. Any and all forms of PHI should not be examined closer, copied, photographed, recorded in any manner, distributed or shared. Contractor will adopt procedures to ensure that its employees, agents and subcontractors refrain from such activity. If Contractor, its employees, agents or subcontractors do further examine, copy, photograph, record in any manner, distribute or share this information, Contractor will report such actions immediately to the University Representative. Contractor will immediately take all steps necessary to stop any such actions and will ensure that no further violations of this contractual responsibility will occur. Contractor will report to University Representative within five (5) days after Contractor gives University Representative notice of the event/action of the steps taken to prevent future occurrences.

ARTICLE 12 - EXTENT OF AGREEMENT

12.1 AUTHORITY OF AGREEMENT

12.1.1 This Agreement represents the entire and integrated agreement between University and CM and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both University and CM.

12.2 EXHIBITS

12.2.1 This Agreement includes the following exhibits attached hereto:

- Exhibit A: Executive Design Professional Agreement with all Exhibits
- Exhibit B: Rate Schedule
- Exhibit C: Transportation, Per Diem and Mileage Reimbursement Schedule
- Exhibit D: Certificate of Insurance
- Exhibit E: Capital Improvement Budget (Project Budget)

12.3 THIRD-PARTY BENEFICIARIES

12.3.1 Nothing contained in this Agreement is intended to make the construction Contractor or any construction Subcontractor (regardless of tier), any employee or agent of the construction Contractor or any Subcontractor or any person, including Design

July 25, 2011

Professional, any consultant of Design Professional (regardless of tier), a third-party beneficiary of any obligations between University and CM.

ARTICLE 13 - FEDERAL AND STATE GRANTS

In the event that a federal or state grant or other federal or state financing is used in the funding of this Project, CM shall permit the funding agency or its designee access to, and grant the funding agency the right to examine documents covering the services performed under this Agreement. CM shall comply with applicable federal or state agency requirements including, but not limited to, the requirements regarding hours, overtime compensation, nondiscrimination, and contingent fees.

ARTICLE 14 - NOTICES

14.1 UNIVERSITY

Any notice may be served upon University by delivering it, in writing, to University at the address set forth on the last page of this Agreement, or by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to University at the aforementioned or by sending a facsimile of the notice to University's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

14.2 CONSTRUCTION MANAGER

Any notice may be served upon CM by delivering it, in writing, to CM at the address set forth on the last page of this Agreement, by depositing it in a United States Postal Service deposit box with the postage fully prepaid and with the notice addressed to CM at the aforementioned address, or by sending facsimile of the notice to CM's facsimile number set forth on the last page of this Agreement. Notice is effective only if and when it is actually received.

ARTICLE 15 - SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon University and CM and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any monies due or to become due hereunder, may be assigned by CM without the prior written consent and approval of University.

15.1 CM'S DEATH OR INCAPACITATION

15.1.1 If CM transacts business as an individual, upon CM's death or incapacitation, University may, at its option, terminate this Agreement as of the date of such event. If so terminated, neither CM nor CM's estate shall have any further right to perform hereunder, and University shall pay CM or the estate the compensation payable under Article 5 for any services rendered prior to this termination not theretofore paid. This compensation shall be reduced by the amount of additional costs that will be incurred by University by reason of this termination.

15.1.2 If there is more than one CM, and any one of them dies or becomes incapacitated, and the others continue to render the services covered herein, University will make payments to those continuing as though there had been no such death or incapacitation; University will not be obliged take any account of the person who died or became incapacitated, or to make any payment to this person or this person's estate. These provisions shall apply in the event of progressive or simultaneous occasions of death or incapacitation among any group of persons named as CM herein if death or incapacitation befalls the last member of this group before the services under this Agreement are fully performed, then the rights set forth under subparagraph 15.1.1 shall apply.

ARTICLE 16 - TERMINATION OF AGREEMENT

July 25, 2011

16.1 UNIVERSITY-INITIATED TERMINATION

16.1.1 If University determines that CM has failed to perform in accordance with the terms and conditions of this Agreement, University may terminate all or part of the Agreement for cause. This termination shall be effective if CM does not cure its failure to perform within 10 days (or more, if authorized in writing by University) after receipt of a notice of intention to terminate from University specifying the failure in performance. If a termination for cause does occur, University will have the right to withhold monies otherwise payable to CM until the Project is completed. If University incurs additional costs, expenses, or other damages due to the failure of CM to properly perform pursuant to the Agreement, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to CM upon completion of the Project. If the costs, expenses, or other damages incurred by University exceeds the amount withheld, CM shall be liable to University for the difference.

16.1.2 University may terminate this Agreement for convenience at any time upon written notice to CM, in which case University will pay CM in full for all services performed and all expenses incurred under this Agreement up to and including the effective date of termination. In ascertaining the services actually rendered to the date of termination, consideration will be given to both completed Work and Work in progress, whether delivered to University or in the possession of CM, and to authorized Reimbursable Expenses. No other compensation will be payable for anticipated profit on unperformed services.

16.2 CM-INITIATED TERMINATION

16.2.1 CM may terminate this Agreement for cause if University fails to cure a material default in performance within a period of 30 days, or such longer period as CM may allow, after receipt from CM of a written termination notice specifying the default in performance. In the event of termination for cause by CM, University will pay CM in accordance with subparagraph 16.1.2.

16.3 DOCUMENTS AND MATERIALS

16.3.1 In the event of Agreement termination by either party for any reason, University reserves the right to receive, and CM shall promptly provide to University, all documents and materials prepared by CM for the Project. In the event of termination, any dispute regarding the amount to be paid under Article 16 shall not derogate from the right of University to receive and use such documents or materials.

IN WITNESS WHEREOF, UNIVERSITY and CONSTRUCTION MANAGER have executed this Agreement as of the date first written above (see Cover Page).

CONSTRUCTION MANAGER FIRM NAME:

By: {NAME} {TITLE}

(Signature) (Date)

CONSTRUCTION MANAGER FIRM ADDRESS: { }

CONSTRUCTION MANAGER FACSIMILE NUMBER: { }

EMPLOYER IDENTIFICATION NUMBER: { }

**UNIVERSITY SIGNATURE IS NOT TO BE AFFIXED TO THIS DOCUMENT
UNTIL IT HAS BEEN SIGNED BY CONSTRUCTION MANAGER.**

**THE PERSON SIGNING FOR UNIVERSITY MUST HAVE DELEGATED AUTHORITY TO DO SO.
THIS DELEGATION MUST BE MADE IN WRITING BY THE FACILITY CHANCELLOR OR BY THE LABORATORY DIRECTOR,
AND IT MUST BE MADE IN ACCORDANCE WITH THE REGENTS' STANDING ORDER 100.4.**

UNIVERSITY: THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: {NAME} {TITLE}

(Signature) (Date)

UNIVERSITY ADDRESS: University of California, {FACILITY NAME}, {MAILING ADDRESS}

UNIVERSITY FACSIMILE NUMBER: {NUMBER}

July 25, 2011