

**2007 Reno Competition**  
**University of California, Irvine**  
**General Conditions (Revised)**  
**September 1, 2006**

## RECITALS

The documents included in the Request for Proposals and the Design Builder's Proposal, incorporated herein, and designated as part of the Contract Documents are provided by the University to establish the scope, level of quality and design intent, and the reporting procedures for the development and construction of the entire Project. The Design Builder shall comply with the Contract Sum, the Contract Time, the Preliminary Schedule or approved Contract Schedule as applicable, the Project Program, the performance specifications, the building massing, building heights and setbacks, public spaces, landscape design, and the general architectural character of the building described in the Criteria Documents. By incorporating the Design Builder's Proposal as a part of this Contract, the University does NOT accept any provision of the Design Builder's Proposal that is not in conformance with the criteria of the Request for Proposals.

In consideration of the mutual agreements, covenants and conditions set forth below, and the Recitals set forth above, the adequacy of which is hereby acknowledged, Design Builder and University agree as follows:

## ARTICLE 1

### GENERAL

#### 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, Design Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.

##### 1.1.2 APPLICATION FOR PAYMENT

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

##### 1.1.3 ARCHITECT OF RECORD

The term "Architect of Record" means the Design Professional identified in the Supplementary Conditions that is licensed in the State of California and employed or commissioned by the Design Builder to prepare design documents and construction documents.

##### 1.1.4 BENEFICIAL OCCUPANCY

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

##### 1.1.5 CEQA

The term "CEQA" means the California Environmental Quality Act, Public Resources Code Section 21000 et seq.

##### 1.1.6 CERTIFICATE FOR PAYMENT

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

##### 1.1.7 CERTIFICATE OF SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions

1.1.8 CHANGE ORDER

See Article 7.2 of the General Conditions

1.1.9 CHANGE ORDER REQUEST

The term "Change Order Request" means a proposal for a Change Order submitted by the Design Builder to the University, either at the request of the University, or at the Design Builder's own initiative.

1.1.10 CLAIM

See Article 4.3 of the General Conditions.

1.1.11 COMPENSABLE DELAY

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

1.1.12 CONSTRUCTION DOCUMENTS

The term "Construction Documents" means the plans and specifications prepared by the Design Builder for the Project, approved by the University. The Construction Documents shall set forth in detail all items necessary to complete the construction (other than such details customarily provided by others during construction) of the Project in accordance with the Contract Documents (subject to their completion following commencement of the Construction Phase). All amendments and modifications to the Plans and Specifications must be approved by the University in writing.

1.1.13 CONSTRUCTION DOCUMENTS PHASE

The term "Construction Documents Phase" means the period of time set forth in the Agreement beginning with the issuance of the approval of Design Development Phase. This is also referred to within the Contract Documents as "Phase 2" and the two terms may be used interchangeably. The scope of the Construction Documents Phase is further defined in the "Scope of Work" Exhibit. The term "Phase 2 Time" is defined in Article 5 of the Agreement.

1.1.14 CONSTRUCTION NOTICE TO PROCEED

The term "Construction Notice to Proceed" means the written notice given by the University to the Design Builder advising that the Site is available to the Design Builder and directing the Design Builder to commence the Construction Phase of the Project.

1.1.15 CONSTRUCTION PHASE

The term "Construction Phase" means the period of time set forth in the Agreement beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of the Project. This term is also referred to within the Contract Documents as "Phase 3" and the two terms may be used interchangeably. The scope of the Construction Phase is further defined in the "Scope of Work" Exhibit. The term "Phase 3 Time" is defined in Article 5 of the Agreement.

1.1.16 CONSTRUCTION WORK

The term "Construction Work" means that portion of the Work consisting of the provision of labor, materials, furnishings, equipment and services in connection with the construction of the Project as set forth in the Contract Documents.

1.1.17 CONTRACT

The term "Contract" means the written Agreement between Design Builder and University set forth in the Contract Documents

1.1.18 CONTRACT DOCUMENTS

The term "Contract Documents" means all documents listed in Article 3 of the Agreement

1.1.19 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 any of the Notices to Proceed or ii) the date of another Contract Milestone defined in the Contract Documents, as applicable.

1.1.20 CONTRACT SCHEDULE

The term "Contract Schedule" means the graphical representation of a practical plan, in accordance with the Specifications, to perform and complete the Work within the Contract Time. The detailed requirements for the Contract Schedule are stated in Article 3 of the General Conditions.

1.1.21 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.

1.1.22 CONTRACT TIME

The term "Contract Time" means the number of days set forth in the Agreement within which Design Builder must achieve Final Completion of the Work, as adjusted by Change Order

1.1.23 COST OF EXTRA WORK

See Article 7.3 of the General Conditions

1.1.24 CRITERIA DOCUMENTS

The term "Criteria Documents" means, but is not limited to, the portions of the Contract Documents which constitute an outline of design requirements. Scope of Work, Project Program, Performance Specifications and Drawings

1.1.25 DAY

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

1.1.26 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.

1.1.27 DESIGN BUILDER

The term "Design Builder" means the person or firm identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number

1.1.28 DESIGN BUILDER FEE

See Article 7.3 of the General Conditions.

1.1.29 DESIGN DEVELOPMENT PHASE

The term "Design Development Phase" shall mean the period of time set forth in the Agreement beginning with the issuance of the Notice to Proceed for Phase 1. This is also referred to within the Contract Documents as "Phase 1" and the two terms may be used interchangeably. The scope of the Design Development Phase is further defined in the "Scope of Work" Exhibit. The term "Phase 1 Time" is defined in Article 5 of the Agreement.

1.1.30 DESIGN MATERIALS

The term "Design Materials" shall mean any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by, or for, the Design Builder: (1) to the University under the Contract Documents; or (2) developed or prepared by or for the Design Builder specifically to discharge its duties under the Contract Documents.

1.1.31 DESIGN PROFESSIONAL

The term "Design Professional" shall mean individuals or entities that will provide Design Builder with the required architectural, engineering, and other professional services required for the coordinated design of the Project and the administration of construction.

1.1.32 DESIGN WORK

The term "Design Work" shall mean the portion of the Work consisting of the design services and design deliverables required to be provided in connection with the design of the Project as set forth in the Contract Documents.

1.1.33 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.

1.1.34 EQUIPMENT MANUFACTURER

The term "Equipment Manufacturer" shall mean any Separate Contractor that fabricates and/or supplies any University-provided equipment which is installed in the Project by the Design Builder.

1.1.35 EXCUSABLE DELAY

The term "Excusable Delay" means a delay that entitles the Design Builder 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.

1.1.36 EXTRA WORK

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

1.1.37 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.38 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 of the General Conditions.

1.1.39 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions

1.1.40 GOVERNMENTAL APPROVALS

The term "Governmental Approvals" means those governmental (including agency) actions required to be obtained by the University and necessary for the completion of the Project.

1.1.41 HAZARDOUS MATERIALS

The term "Hazardous Materials" means those items identified in Article 3.10 of the General Conditions.

1.1.42 INDEMNIFIED PARTIES

The term "Indemnified Parties" means the University, its agents, officers, representatives, consultants, and employees.

1.1.43 MAXIMUM ACCEPTANCE COST

The term "Maximum Acceptance Cost" means the amount identified as such in the Request for Proposals.

1.1.44 OPTIONS

See Article 2 of the Agreement.

1.1.45 PROJECT

The term "Project" means the total design and construction of the Work under the Contract and all other work, labor, equipment, and materials necessary to accomplish the Project. The Project may include design or construction work performed by University or by Separate Contractors.

1.1.46 SEPARATE CONTRACTOR

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

1.1.47 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.20 of the General Conditions.

1.1.48 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.

1.1.49 SUBCONTRACTOR

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

1.1.50 SUBSTANTIAL COMPLETION

See Article 9.7 of the General Conditions.

1.1.51 SUPERINTENDENT

The term "Superintendent" means the person designated by Design Builder to represent Design Builder at the Project site, in accordance with Article 3 of the General Conditions.

1.1.52 TIER

The term "tier" means the contractual level of a Subcontractor or supplier or consultant with respect to Design Builder. For example, a first-tier Subcontractor is under subcontract with Design Builder, a second-tier Subcontractor is under subcontract with a first-tier Subcontractor, and so forth.

1.1.53 UNEXCUSABLE DELAY

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

1.1.54 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions

1.1.55 UNIVERSITY

The term "University" or "the University" means The Regents of the University of California, Owner of the Project.

1.1.56 UNIVERSITY'S BUILDING OFFICIAL

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

1.1.57 UNIVERSITY'S REPRESENTATIVE

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

1.1.58 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.

1.1.59 WORK

The term "Work" means all labor, materials, equipment, tools, and services, including Design Professional services, and other requirements of the Contract Documents as modified by Change Order, whether completed or partially completed, provided or to be provided by Design Builder to fulfill Design Builder's obligations. The Work may constitute the whole or 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, Design Builder are the property of the University. The University and Design Builder explicitly agree that all materials and documents developed in the performance of this Contract are the property of the University. The University shall have the right to use all drawings, designs, specifications, notes and any other documentation and other work developed in the performance of this Contract for the Project, or in connection with the Project, including without limitation future additions, alterations, connections, repairs, information, reference, use or occupancy and the right to re-use details of the design on any other University work, all without the Design Builder's consent and at no additional cost to the University.
- 1 2 2. University will defend, indemnify and save harmless Design Builder Professional, its officers, agents and employees from any costs or claims for damages arising from University's use on other projects of the Contract Documents, the Drawings and Specifications, or the designs depicted in them, if any of the foregoing have been provided to the University by the Design Builder.
- 1 2 3. Notwithstanding Article 1 2.2 above, University will not defend, indemnify or save harmless Design Builder Professional, its officers, agents, or employees from any costs or claims asserted or imposed by any person or entity claiming that University's use of the Contract Documents, the Drawings and Specifications, or the designs depicted in them is contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual or legal right pertaining to their use.

## 1.3 INTERPRETATION

- 1 3 1. The intent of the Contract Documents is to include all necessary criteria to establish the scope and quality for completion of the Work by the Design Builder. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design Builder shall be required to the extent consistent with, and reasonably inferable from, the Contract Documents.
- 1 3 2. In the case of conflict between terms of the Contract Documents, the following order of precedence shall apply:
- 1 The Agreement shall control over the Supplementary Conditions.
  - 2 The Supplementary Conditions shall control over the General Conditions.
  - 3 The General Conditions shall control over the Exhibits.
  - 4 Where no order of precedence is stated, the more expensive of the requirements shown or specified shall be controlling.
- 1 3 3. The University and Design Builder acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Proposal Documents upon which the Design Builder based its response(s) to the Request for Proposals. The University and Design Builder explicitly agree that documents having the higher quality requirements control over any conflicting requirements of other documents.
- 1 3 4. Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Design Builder in dividing the Work among Subcontractors or in establishing the extent of work to be performed by any trade.
- 1 3 5. Unless otherwise stated in the Contract Documents, technical words and abbreviations contained in the Contract Documents are used in accordance with commonly understood design professional and construction industry meanings; and non-technical words and abbreviations are used in accordance with their commonly understood meanings.
- 1 3 6. 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 non-limiting 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.

- 1.3.7 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 FEE AND PERMIT REQUIREMENTS

- 2.1.1 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.
- 2.1.2 Design Builder 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, as reasonably required by the Work, but in no event later than the date designated in the Construction Notice to Proceed, access to the lands and facilities upon which the construction Work is to be performed, including such access to other lands and facilities designated in the Contract Documents for use by Design Builder.

#### 2.3 UNIVERSITY'S RIGHT TO STOP THE WORK

- 2.3.1 If Design Builder 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 Design Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated by Design Builder. Design Builder 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 Design Builder or any other party to exercise the right to stop the Work.

#### 2.4 UNIVERSITY'S RIGHT TO CARRY OUT THE WORK

- 2.4.1 If Design Builder fails to carry out the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, with respect to either the design or construction phases, to maintain the Contract 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, University may, without prejudice to other remedies University may have, correct such failure at Design Builder's expense. In such case, University will be entitled to deduct from payments then or thereafter due Design Builder the cost of correcting such failure, including without limitation compensation for the additional services and expenses of University's consultants made necessary thereby. If payments then or thereafter due Design Builder are not sufficient to cover such amounts, Design Builder 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 Design Builder, replace University's Representative with a new University's Representative. Upon receipt of notice from University informing Design Builder of such replacement and identifying the new University's Representative, Design Builder shall recognize such person or firm as University's Representative for all purposes under the Contract Documents.

**ARTICLE 3**  
**DESIGN BUILDER**

**3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY DESIGN BUILDER; SINGLE POINT RESPONSIBILITY OF DESIGN BUILDER**

- 3.1.1 In addition to the examination and reviews performed, and obligations assumed, incidental to making the representations set forth in Article 10 of the Agreement, Design Builder 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 Design Builder.
- 3.1.2 Design Builder is responsible for the design and construction of the Project and shall provide all services pursuant to this Contract 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). The Design Builder shall be solely responsible for any and all design errors including, but without limitation, errors, inconsistencies or omissions in the Construction Documents. Design Builder shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information known to Design Builder 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 Design Builder performs any design and/or 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, Design Builder shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.
- 3.1.4 The University does not assume any obligation to employ the Design Builder's services or pay Design Builder royalties of any type as to future programs that may result from the Work performed under this Contract.
- 3.1.5 Design Builder shall be responsible for all plotting, printing, copying and distribution cost of any and all documents required in connection with the Work.
- 3.1.6 Design Builder agrees that it has single point responsibility for the design and construction of this Project.

**3.2 DESIGN, SUPERVISION AND CONSTRUCTION PROCEDURES**

- 3.2.1 Design Builder shall supervise, coordinate, and direct the Work using Design Builder's best skill and attention. Design Builder shall be solely responsible for, and have control over, the entire design effort, construction means, methods, techniques, sequences, procedures, and the coordination of all portions of the Work, including, but without limitation, landscape and site work, utilities, and building systems.
- 3.2.2 Design Builder shall be responsible to University for acts and omissions of Design Builder's agents, employees, and Subcontractors, and their respective agents and employees.
- 3.2.3 Design Builder 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 Design Builder.
- 3.2.4 Design Builder 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 To facilitate communications and the management of the design process, the Design Builder shall establish and maintain a local office for the duration of the design process
- 3.2.6 The Design Builder is not required to produce the entire Construction Documents package in the local office; however, the Design Builder shall provide the appropriate management and design staff in the local office to provide the University with the current status of, and the capability to properly update, the design documents.
- 3.2.7 The Design Builder is required to deliver to the University, if requested, any and all design materials including, but not limited to, calculations, preliminary drawings, construction drawings, shop drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the prosecution of the design work.
- 3.2.8 Design Builder shall at all times participate in, and implement, the CEQA mitigation process and ensure performance as required in the Contract Documents.
- 3.2.9 Design Builder is responsible for preparation of the Construction Documents for the entire Project.
- 3.2.10 Design Builder is responsible for construction of the entire Project as required by the Contract Documents
- 3.2.11 Design Builder shall at all times maintain good discipline and order among its employees and subcontractors. Design Builder 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, Design Builder shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other things necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work

### **3.4 DESIGN BUILDER'S WARRANTY**

- 3.4.1 Design Builder warrants to University that all labor, materials, equipment and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Work will be free of liens, claims and security interests of third parties; that the Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the Contract Documents. If required by University's Representative, Design Builder shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality and quantum of such evidence shall be within the sole discretion of the University's Representative. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

### **3.5 TAXES**

- 3.5.1 Design Builder shall pay all sales, consumer, use, income, payroll and similar taxes for the Work or portions thereof provided by Design Builder.

### **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 2.1.1 of the General Conditions, Design Builder shall secure, and pay for, all permits, approvals, government fees, licenses, and inspections necessary for the proper execution and performance of the Work. Design Builder shall deliver to University all original licenses, permits, and approvals obtained by Design Builder 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 Design Builder shall perform the Work in accordance with the following Applicable Code Requirements and all code requirements listed in the Scope of Work:

- 1 All laws, statutes, the most recent building codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Design Builder, any Subcontractor, the Project, the Project site, the Work, or the prosecution of the Work.
- 2 Applicable sections in the State of California Labor Code
- 3 All Applicable Code Requirements relating to nondiscrimination, payment of prevailing wages, payroll records, apprentices, and work day.

3.7.2 Design Builder 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). Design Builder shall promptly notify University's Representative in writing if Design Builder becomes aware during the performance of the Work that the Contract Documents are at variance with Applicable Code Requirements.

3.7.3 If Design Builder performs Work which it knows or should know is contrary to Applicable Code Requirements, without prior notice to University and University's Representative, Design Builder 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 Design Builder 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 Construction Work. Superintendent shall represent Design Builder and communications given to, and received from, Superintendent shall be binding on Design Builder. Failure to maintain a Superintendent on the Project site at all times 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, Design Builder fails to complete the Contract on time, Design Builder will be assessed Liquidated Damages in accordance with the Agreement.

3.8.2 The Superintendent approved for the Project must be able to read, write and verbally communicate in English. 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 Construction Work at the Project site when Work is in progress. In addition, the Design Builder will provide all Key Personnel shown in the Exhibits for the time periods stipulated.

### 3.9 TOXIC MATERIALS

3.9.1 The Design Builder is responsible for unforeseen site conditions and toxic materials to the extent described in the Contract Documents and/or that could be reasonably inferred by the Design Builder based on its experience and expertise on similar projects in urban areas.

### 3.10 HAZARDOUS MATERIALS

3.10.1 The Design Builder agrees that it is solely responsible for investigating and performing remedial actions on all hazardous materials and other related environmental requirements located on the Project site. For the purposes of this Contract, hazardous materials shall also include, but are not limited to, underground storage tanks. Any hazardous materials that are encountered beyond those described in the Contract Documents or Proposal Documents, or which reasonably could not have been discovered within the time permitted, may properly be the subject of a Change Order Request. The University agrees that the Design Builder cannot be considered a hazardous materials generator of any such materials in existence on the Site at the time it is given possession of the Site.

- .1 "Hazardous materials" means any substance: the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto, including, without limitations, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.* ("CERCLA"), as amended, or the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 *et seq.* ("RCRA"); which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any regulatory agency or instrumentality of the United States; the presence of which on the Site causes or threatens to cause a nuisance upon the Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Site; the presence of which on adjacent properties could constitute a trespass by the Design Builder or the University; or as defined in the California Health and Safety Code.
  - .2 "Underground Storage Tank" shall have the definition assigned to that term by Section 9001 of RCRA, 42 U.S.C. Section 6991, and also shall include: any tank of one thousand one hundred (1,100) gallons or less capacity used for storing motor fuel; any tank used for storing heating oil for consumption on the premises where stored; any septic tank; and any pipes connected to the above items.
  - .3 "Environmental Requirements" means all applicable laws, statutes, regulations, rules, ordinances, codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentality's of the University of California, State of California, and United States and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: all requirements, including, but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of hazardous materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of hazardous materials; and all requirements pertaining to the protection of the health and safety of employees or the public.
- 3.10.2 The indemnification provisions in Article 3.28 of the General Conditions, "Indemnification", are applicable to this Article in its entirety.

### 3.11 CONSTRUCTION DOCUMENTS

#### 3.11.1 Construction Documents

- .1 Upon receipt of the Notice to Proceed for Phase 2, the Design Builder shall instruct the Architect of Record to commence the design of the building systems and the preparation of the Construction Documents. The Construction Documents shall provide information customarily necessary in documents for projects of similar size, complexity, and quality. The Construction Documents shall include all information required by the building trades to complete the construction of the Project, other than such details customarily developed by others during construction. The University's review of the construction documents shall be conducted in accordance with the approved Contract Schedule with procedures set forth in Article 3.16 of the General Conditions relating to Schedule. Such review shall not relieve the Design Builder from its responsibilities under this Contract. Such review shall not be deemed an approval or waiver by the University of any deviation from, or of the Design Builder's failure to comply with, any provision or requirement of the Contract Documents, unless such deviation or failure has been identified as such in writing in the document submitted by the Design Builder and approved by the University.
- 2 However, it is acknowledged by the parties hereto that inherent in a design build concept, bridging or otherwise, the production and review of Construction Documents may be a continuing process with portions thereof completed at different times. The Design Builder will limit the Construction Document packages for construction to a reasonable number, not more than that stipulated in the Supplementary Conditions, unless approved in writing by the University. Contract Schedule shall

indicate the times for the University to review the completion of each such portion of the Construction Documents and a reasonable time for review of same.

- .3 The Design Builder shall submit completed packages of the Construction Documents for review by the University of California, the California State Fire Marshal, and the California State Architect at the times indicated on the Contract Schedule and as defined in the Scheduling Specification. Review meetings between the Design Builder and the University of California to review the Construction Document packages, shall be scheduled and held so as not to delay the Work. After reviewing the Construction Documents package for conformance to the Criteria Documents, the University will issue a Construction Notice to Proceed to the Design Builder.
- .4 The Construction Documents for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to the University for review.

#### 3.11.2 Shop Drawings, Product Data, Samples, Materials, and Equipment

- .1 Shop drawings means drawings, submitted to Design Builder by subcontractors, manufacturers, supplier or distributors, showing in detail the proposed fabrication and assembly of building elements and the installation (*e.g.*, form, fit, and attachment details) of materials or equipment.
- .2 Design Builder shall coordinate all submittals and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and the Design Builder's Construction Documents and shall indicate its approval thereon as evidence of such coordination and review.
- .3 Materials and equipment incorporated in the Work shall match the approved samples within tolerances appropriate to the items, and as may be described in the Contract Documents.
- 4 The Design Builder shall submit shop drawings approved by the Architect of Record and samples of submittals that relate to finish materials and products.
- 5 Any variation in quality must be approved by the University.

#### 3.11.3 Field Engineering

- .1 The Design Builder shall retain and pay expenses of a civil engineer or land surveyor to establish on the Site the required reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.
- .2 The Design Builder shall locate and protect control points prior to starting Work on the Project site and preserve permanent reference points during construction, and shall require the engineer or surveyor to replace control points which become lost or destroyed.

#### 3.11.4 Geotechnical and Survey

- 1 The University has provided the Design Builder with a geotechnical report which includes supporting data, findings and recommendations; and also with a legal description and a project survey that are included in the Contract Documents. The Design Work shall be consistent with both the findings and recommendations of the geotechnical report and legal description and project survey.
- 2 The Design Builder shall verify the location and depth (elevation) of all existing utilities and services before performing any excavation Work.

### 3.12 MONTHLY REPORTS

- 3.12.1 The Design Builder shall prepare and submit to the University, during both the Construction Documents Phase and the Construction Phase, monthly reports on the Work accomplished during the prior monthly period. Such reports shall be prepared in a manner and in a format approved by the University. Reports shall

be furnished at the time of submission of each monthly application for payment. The monthly report shall also set forth the Design Builder's projected progress for the forthcoming month.

### **3.13 OTHER REPORTS**

- 3.13.1 The Design Builder will cooperate with the University in preparing, or causing to be prepared, all or part of, periodic project reports required by the State Public Works Board and other state or federal agencies.

### **3.14 NOTICES OF LABOR DISPUTE**

- 3.14.1 If Design Builder has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of the Work, Design Builder shall immediately give notice including all relevant information to the University.
- 3.14.2 Design Builder agrees to insert the substance of this Article including this Article 3.14.2, in any subcontract to which a labor dispute may delay the timely performance of the Work, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or Design Builder, as the case may be, of all relevant information concerning the dispute.

### **3.15 GUARANTEE**

- 3.15.1 The Design Builder unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of two (2) years from the date of Final Completion, unless a longer guarantee period is specifically called for in the Contract Documents. The Design Builder shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the guarantee period specified in the Contract Documents, without any expense whatsoever to the University; ordinary wear and tear and abuse excepted.
- 3.15.2 The Design Builder further agrees, within fourteen (14) days, or as such shorter period as may be designated for emergency repairs, after being notified in writing by the University, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the Design Builder shall commence and execute, with due diligence, all work necessary to fulfill the terms of the guarantee. If the University finds that the Design Builder fails to perform any of the work under the guarantee, the University may elect to have the work completed at the Design Builder's expense and the Design Builder will pay costs of the work upon demand. The University will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses necessarily incurred upon the Design Builder's refusal to pay the above costs.
- 3.15.3 Notwithstanding the foregoing Article 3.15.2, in the event of an emergency constituting an immediate hazard to health or safety of University employees, property, or licensees, the University may undertake, at the Design Builder's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the Design Builder not being in accordance with the requirements of the Contract Documents.

### **3.16 SCHEDULES REQUIRED OF DESIGN BUILDER**

- 3.16.1 The Preliminary Schedule provided with the Request for Proposal provides the Design Builder schedule information to illustrate all Contract Milestones and any anticipated overlap of Phases. The Design Builder shall develop its required Contract schedules for review and approval by University based on and consistent with such Preliminary Schedule.
- 3.16.2 Design Builder shall submit an initial Contract Schedule and updated Contract Schedules to University's Representative in the form and within the time limits required by the Contract Documents. University's Representative will determine acceptability of the Contract Schedule and updated Contract Schedules within the time limits required by the Contract Documents.



- 3.16.3 The Contract Schedule and updated Contract Schedules shall represent a practical plan to complete the Work within the Contract Time. Schedules showing completion of the Work beyond the Contract Time as reflected in the Preliminary Schedule shall not be acceptable. Schedules showing the Work completed in less than the Contract Time as reflected in the Preliminary Schedule may be acceptable if judged by University's Representative to be practical. However, acceptance of such a schedule by University's Representative shall not change the Contract Time. The Contract Time, not the Contract Schedule, shall control in the determination of liquidated damages payable by Design Builder under Article 4 and Article 5 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.
- 3.16.4 If a Contract Schedule showing the Work completed in less than the Contract Time is accepted, Design Builder shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Contract Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.
- 3.16.5 Design Builder shall prepare and keep current, to the satisfaction of University's Representative, a schedule of submittals that is in the form contained in the Exhibits, as required by the Specifications, and that is coordinated with the Contract Schedule.
- 3.16.6 The Contract Schedule and the updated Contract Schedules shall meet the following requirements:
- .1 Schedules must be suitable for monitoring progress of the Work
  - .2 Schedules must provide necessary data about the timing of University decisions and University furnished items
  - .3 Schedules must be in sufficient detail to demonstrate adequate planning of the Work.
  - .4 Schedules must represent a practical plan to perform and complete the Work within the Contract Time.
- 3.16.7 University's Representative's review of the form and general content of the Contract Schedule and updated Contract Schedules is for the purpose of determining if the above-listed requirements have been satisfied.
- 3.16.8 Design Builder 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 accepted Contract Schedule.
- 3.16.9 Design Builder shall continuously obtain from Subcontractors information and data about the planning for, and progress of, the Work and the delivery of equipment, shall coordinate and integrate such information and data into updated Contract Schedules, and shall monitor the progress of the Work and the delivery of equipment.
- 3.16.10 Design Builder 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.
- 3.16.11 Design Builder shall cooperate with University's Representative in the development of the Contract Schedule and updated Contract Schedules. Design Builder shall plan and schedule all of its Work based on the assumption that the University will exercise its Option for Phase 3 within 30 days of the completion of Phase 2 unless otherwise directed in writing by the University. After the University exercises its Option for Phase 3, the Design Builder shall modify its Contract Schedule to reflect the actual date that the University exercises its Option for Phase 3.
- 3.16.12 University's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve Design Builder from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Acceptance of or review comments about any schedule shall not transfer responsibility for any schedule to University's Representative or University nor imply their agreement with (1) any assumption upon which such schedule is based or (2) any matter underlying or contained in such schedule. Failure of University's Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design Builder that Design Builder, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule shall not relieve Design Builder from its sole

responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Contract Sum.

3.16.13 Design Builder shall perform the Work in accordance with the accepted Contract Schedule.

### **3.17 AS-BUILT DOCUMENTS**

3.17.1 Design Builder shall maintain one (1) 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 and approved shall be noted on the As-built set. Notations shall reflect the actual materials, equipment and installation methods used for the Work; 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 Design Builder 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 as required by the Scope of Work.

### **3.18 DOCUMENTS AND SAMPLES AT PROJECT SITE**

3.18.1 Design Builder 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 Contract 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.

### **3.19 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES**

3.19.1 Definitions:

- 1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by Design Builder 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 Design Builder to illustrate or describe materials or equipment for some portion of the Work.
- 3 Samples are physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.19.2 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 Design Builder proposes to conform to the information given and the design concept expressed in the Contract Documents.

3.19.3 Design Builder 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 Design Builder that are not required by the Contract Documents may be returned without action by University's Representative.

3.19.4 Design Builder 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.

- 3.19.5 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design Builder 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.
- 3.19.6 If Design Builder discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Design Builder shall notify University's Representative and receive instruction before proceeding with the affected Work. Design Builder shall be responsible to correct to the satisfaction of University, any conflicts, omissions, or errors in Shop Drawings or other submittals.
- 3.19.7 Design Builder 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 Design Builder 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. Design Builder 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.
- 3.19.8 Design Builder 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.
- 3.19.9 University will review first resubmittal of Shop Drawing at its cost. University reserves the right to reduce the Contract Sum by Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.

### **3.20 USE OF SITE AND CLEAN UP**

- 3.20.1 Design Builder shall confine operations at the Project site to areas permitted by law, ordinances, permits, and the Contract Documents. Design Builder shall not unreasonably encumber the Project site with materials or equipment.
- 3.20.2 Design Builder 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 Design Builder. Design Builder shall remove all excess dirt, waste material, and rubbish caused by the Design Builder; tools; equipment; machinery; and surplus materials from the Project site and surrounding area at the completion of the Work.
- 3.20.3 Personnel of Design Builder 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.

### **3.21 CUTTING, FITTING, AND PATCHING**

- 3.21.1 Design Builder 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.
- 3.21.2 Design Builder shall not endanger the Work, the Project, or adjacent property by cutting, digging, or otherwise. Design Builder shall not cut or alter the work of any Separate Contractor without the prior consent of University's Representative.

### **3.22 ACCESS TO WORK BY UNIVERSITY**

- 3.22.1 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. Design Builder shall provide safe and proper facilities for such access and for inspection.

### 3.23 ROYALTIES AND PATENTS

- 3 23 1 Design Builder shall pay all royalties and license fees required for the performance of the Work. Design Builder shall defend suits or claims resulting from Design Builder's or any Subcontractor's infringement of patent rights and shall indemnify, defend and hold harmless University and University's Representative from losses on account thereof.

### 3.24 DIFFERING SITE CONDITIONS

- 3 24 1 If Design Builder encounters any of the following conditions at the site, Design Builder 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 24 2 Design Builder 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 Design Builder fulfills the following conditions:
- 1 Design Builder fully complies with Article 3 24 1 above; and
  - 2 Design Builder 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 24 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.

### 3.25 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

- 3 25 1 Except and only to the extent provided otherwise in Articles 3 24, 7 and 8 of the General Conditions, by signing the Agreement, Design Builder 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 Design Builder's Price Proposal Form 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, Design Builder understands that, except and only to the extent provided otherwise in Articles 3 24, 7 and 8 of the General Conditions, concealed, unforeseen or unknown conditions shall not excuse Design Builder from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Design Builder to an adjustment of the Contract Sum.
- 3 25 2 If, as the result of concealed, unforeseen or unknown conditions or events, the University issues a Change Order or Field Order that changes design details from those details depicted in the Criteria Documents, Design Builder shall be entitled, subject to compliance with all the provisions of the Contract, including those set forth in Articles 4, 7 and 8 of the General Conditions, to an adjustment of the Contract Sum and/or Contract Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Article 3 25 2, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Contract Sum and/or Contract Time as a result of concealed, unforeseen or unknown conditions or events

- 3.25.3 Design Builder shall, as a condition precedent to any adjustment in Contract Sum or Contract Time under this Article 3.25.3, 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).

### 3.26 INFORMATION AVAILABLE TO BIDDERS

- 3.26.1 Any information provided pursuant to REQUEST FOR PROPOSALS is subject to the following provisions:
- .1 The information is made available for the convenience of Proposers and is not a part of the Contract.
  - 2 The Design Builder 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 Design Builder. University shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Design Builder.

### 3.27 LIABILITY FOR AND REPAIR OF DAMAGED WORK

- 3.27.1 Design Builder 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 Design Builder 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 Design Builder shall be liable for any deductible(s) and any amount(s) 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 Design Builder, 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.
- 3.27.2 Design Builder shall promptly repair and replace any Work or materials damaged or destroyed for which the Design Builder is liable under Article 3.27.1 above.

### 3.28 INDEMNIFICATION

- 3.28.1 Design Builder shall indemnify, defend and hold harmless (with counsel approved by University) 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 Design Builder to perform its obligations under the Contract
  - .2 The inaccuracy of any representation or warranty by Design Builder given in accordance with or contained in the Contract Documents.
  - 3 Any claim of damage or loss by any Subcontractor against University arising out of any alleged act or omission of Design Builder or any other Subcontractor, or anyone directly or indirectly employed by Design Builder or any Subcontractor.
- 3.28.2 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 Design Builder shall fully indemnify, defend and hold harmless University and protect the University from and against the same. In addition to the liability imposed by law upon the Design Builder for damage or injury (including death) to persons or property by reason of the negligence of the Design Builder, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Design Builder 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 Design Builder, 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 Design Builder, 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. Design Builder 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.

- 3.28.3 In claims against any person or entity indemnified under this Article 3.28 that are made by an employee of Design Builder or any Subcontractor, a person indirectly employed by Design Builder or any Subcontractor, or anyone for whose acts Design Builder or any Subcontractor may be liable, the indemnification obligation under this Article 3.28 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Design Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 3.28.4 The indemnification obligations under this Article 3.28 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- 3.28.5 Design Builder 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 Design Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.
- 3.28.6 Design Builder shall indemnify Separate Contractors from and against losses arising out of the negligent acts, omissions, or willful misconduct of Design Builder, any Subcontractor, anyone directly or indirectly employed by either of them, or anyone for whose acts either of them may be liable.
- 3.28.7 Design Builder 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 arising out of the performance of services or Design Builder's other obligations under this Contract, but only in proportion to and to the extent such losses are caused by or result from (1) the negligent acts or omissions of Design Builder, its officers, agents, employees, subcontractors, consultants, or any person or entity for whom Design Builder is responsible (collectively, "Indemnitor"); (2) the breach by Indemnitor of any of the provisions of this Contract; or (3) willful misconduct by Indemnitor.
- 3.28.8 The indemnification obligations under this Article 3.28 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 Indemnitee. The obligation to defend shall arise regardless of any claim or assertion that Indemnitee caused or contributed to the losses. Indemnitor's reasonable defense costs (including attorney and expert fees) incurred in providing a defense for Indemnitees shall be reimbursed by University except to the extent such defense costs arise, under principles of comparative fault, from Indemnitor's (a) negligent acts or omissions; (b) breach of any of the provisions of this Contract; or (c) willful misconduct.
- 3.28.9 Design Builder shall indemnify, defend, and save harmless Indemnitee 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 Indemnitee of the Design Materials or Construction Documents (including any method, process, product, concept specified or depicted) supplied by Indemnitor in the performance of this Contract.

- 3.28.10 Nothing in this Contract, including the provisions of this Article 3, shall constitute a waiver or limitation of any rights which Indemnitee may have under applicable law, including without limitation, the right to implied indemnity.

## ARTICLE 4

### ADMINISTRATION OF THE CONTRACT

#### 4.1 ADMINISTRATION OF THE CONTRACT BY UNIVERSITY'S REPRESENTATIVE

- 4.1.1 University's Representative will provide limited 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.

The University shall designate, from time to time, one or more representatives authorized to act on the University's behalf with respect to the Project, together with the scope of his/her respective authority. Functions for which this Contract provides will be performed by the University may be delegated by the University only by written notice to the Design Builder from the University. The Design Builder shall not be entitled to rely on directions (nor shall it be required to follow the directions) from anyone outside the scope of that person's authority as set forth in written authorization pursuant to this Contract. Directions and decisions made by University's Representative within his/her respective authority shall be binding on the University.

- 4.1.2 During the term of this Contract, University's Representative shall have the right to review Design Builder's Design Professionals' Work at such intervals as deemed appropriate by University's Representative. However, no actions taken during such review or site visit by University's Representative shall relieve Design Builder of any of its obligations of single-point responsibility for the design and construction of this Project nor form the basis for a Claim if such actions extend the Contract Completion Date beyond the Contract Time.
- 4.1.3 University's Representative will not have control over, will not be in charge of, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely Design Builder's responsibility.
- 4.1.4 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, University and Design Builder shall communicate through University's Representative. Except when direct communication has been specifically authorized in writing by University's Representative, communications by Design Builder 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 Design Builder. Communications by Design Builder and Subcontractors with Separate Contractors shall be through University's Representative. Design Builder shall not rely on oral or other non-written communications.
- 4.1.5 Based on University's Representative's Project site visits, review of Design Work, and evaluations of Design Builder's Applications For Payment, University's Representative will recommend amounts, if any, due Design Builder 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 to not exercise such authority, will give rise to a duty or responsibility of University or University's Representative to Design Builder, or any person or entity claiming under, or through, Design Builder.
- 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 and Final Completion; will receive for review and approval any records, written warranties, and related documents.



required by the Contract Documents and assembled by Design Builder; and will issue a final Certificate For Payment upon Design Builder'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 Design Builder. Should Design Builder discover any conflicts, omissions, or errors in the Construction Documents or 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; then, before proceeding with the Work affected, Design Builder shall notify University's Representative in writing and request interpretation, or clarification. University's Representative's response to questions and requests for interpretations, clarifications, instructions, or decisions will be made with reasonable promptness. Should Design Builder 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 Design Builder shall be responsible for all resultant losses.

#### 4.2 DESIGN BUILDER CHANGE ORDER REQUESTS

- 4.2.1 Design Builder 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 information requested by the University's 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 Design Builder 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 Design Builder requests an adjustment to the Contract Sum or other monetary relief, the Design Builder 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 Design Builder. If Design Builder failed to submit a completed Cost Proposal with the Change Order Request, Design Builder shall submit a completed Cost Proposal meeting the requirements of Article 7 within 7 days of the date the Design Builder 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, Design Builder 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 Design Builder 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 Design Builder seeks an adjustment of the Contract Time, written documentation demonstrating Design Builder's entitlement to a time extension under Article 8.4, which shall be submitted within 15 days of the date requested unless the University's Representative requires an earlier submission.
- 3 If Design Builder seeks an adjustment of the Contract Sum or other monetary relief for delay, written documentation demonstrating Design Builder'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, Design Builder may contest the decision by filing a timely Claim under the procedures specified in Article 4.3 of the General Conditions.

4.2.5 Design Builder 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 of the General Conditions; 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 Design Builder 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 Design Builder 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 that 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 Design Builder's Change Order Request pursuant to Article 4.2.4 of the General Conditions.

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 Design Builder, 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.
- 5 A statement demonstrating that a Change Order Request was timely submitted as required by Article 4.2.4 of the General Conditions.
- 6 If a Cost Proposal or declaration was required by Article 4.2.3 of the General Conditions, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.2.3 of the General Conditions.
- 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.
  - 2 Design Builder shall be responsible for all errors and omissions contained within the Construction Documents.
  - 3 If the Claim involves an extension of the Contract Time, written documentation demonstrating the Design Builder'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 Contract Schedule must demonstrate Design Builder's entitlement to an adjustment of Contract Time under Article 8.4 of the General Conditions.
  - 4 If the Claim involves an adjustment of the Contract Sum for delay, written documentation demonstrating the Design Builder'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 Contract Schedule. The Contract Schedule must demonstrate Design Builder's entitlement to such an adjustment under Article 7.3.9 of the General Conditions.

#### 4.4 ASSERTION OF CLAIMS

- 4.4.1 Claims by Design Builder 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, Design Builder shall not cause any delay, cessation, or termination in or of Design Builder's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.
- 4.4.3 Design Builder shall submit a Claim in writing, together with all supporting data specified in Article 4.3.3 of the General Conditions, 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 of the General Conditions.
- 4.4.4 Design Builder agrees that strict compliance with the requirements of Articles 4.2, 4.3, and 4.4 of the General Conditions are conditions precedent to Design Builder's right to arbitrate or litigate a Claim. Design Builder 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 of the General Conditions. The failure of Design Builder to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4 of the General Conditions constitutes a failure by Design Builder 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 Design Builder. 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 of the General Conditions.

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 within 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 Design Builder or University disputes University's Representative's decision on a Claim, such party (the "Disputing Party") must either provide a 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 of the General Conditions for University's Representative to render a decision.
- 4.5.3 If a demand for arbitration or, if applicable, notice of election to 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 of the General Conditions. 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 of the General Conditions shall be in writing and shall include a copy of the Claim presented to University's Representative pursuant to Article 4.4 of the General Conditions and a copy of the decision of University's Representative pursuant to Article 4.5 of the General Conditions, 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 at 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 Design Builder and University.

3 Design Builder'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 cross-claim, or otherwise without the express written consent of University, Design Builder, 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 whom 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 Design Builder 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.
- 4.7.3 Unless University and Design Builder 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 Design Builder in the arbitration. University's failure to assert any such counterclaim in the 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 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 Design Builder 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 Design Builder shall submit to the University's Representative after selecting Subcontractors, an updated Expanded List of Subcontractors, along with their respective addresses, telephone numbers, e-mail addresses and contractor's license numbers. The Expanded List of Subcontractors shall be provided no later than thirty (30) days after the date which University provides Letter of Design Review. If the Project is to proceed on a fast track/phased basis as identified in the exhibits, then a Letter of Design Review will be issued by the University for each such design.
- 5.1.2 The University has the right to request all documentation that supports the Design Builder's selection of a Subcontractor. The University shall have the right of final approval as to the qualification(s) of a Subcontractor to perform its designated scope of work. Within the University's sole discretion, any Subcontractor may be deemed not qualified to perform work on the Project if University or University's Representative determines that the Subcontractor fails to meet the requirements of the Contract Documents, or for any other reason.
- 5.1.3 The Subcontractors listed by Design Builder shall only be substituted in strict accordance with the "Subletting and Subcontracting Fair Practices Act" and upon the written consent of the University. Only upon compliance with the "Subletting and Subcontracting Fair Practices Act" and with the written consent of the University shall a substitution be made.
- 5.1.4 Any increase in the cost of the Work resulting from the replacement or substitution of a Subcontractor pursuant to above Article 5.1.3 or as required by the University or University's Representative pursuant to above Article 5.1.2, shall be borne solely by Design Builder. Design Builder shall not be entitled to any increase in Contract Sum or an extension of Contract Time due to such replacement or substitution.

#### 5.2 SUBCONTRACTUAL RELATIONS

- 5.2.1 Any part of the Work performed for Design Builder 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 Design Builder by the terms of the Contract Documents, to assume toward Design Builder all the obligations and responsibilities which Design Builder 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. Design Builder 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 Design Builder 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 of the General Conditions, Contingent Assignment of Subcontracts, 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

- .4 Design Builder is responsible for reviewing and coordinating the Work of and among his subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, errors or omissions.

5.2.2 Upon the request of University, Design Builder 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 of the General Conditions, Contingent Assignment of Subcontracts

### **5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

- 5.3.1 Design Builder hereby assigns to University all its interest in first-tier subcontracts now or hereafter entered into by Design Builder 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 Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to University for entering into the Contract with Design Builder 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. Design Builder 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 Design Builder. Design Builder shall participate with University and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Design Builder shall make necessary revisions to the Contract Schedule after such joint review.

#### 6.2 MUTUAL RESPONSIBILITY

- 6.2.1 Design Builder shall afford University and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities. Design Builder 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, Design Builder shall inspect such other design or construction or operations before proceeding with that portion of the Work. Design Builder shall promptly report to University's Representative apparent discrepancies or defects which render the other design, construction or operations unsuitable to receive the Work. Unless otherwise directed by University's Representative, Design Builder shall not proceed with the portion of the Work affected until apparent discrepancies or defects have been corrected. Failure of Design Builder 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 Design Builder 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 Design Builder 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 Design Builder, and shall be valid with or without the signature of Design Builder.
- 7.1.4 Design Builder shall proceed promptly with any changes in the Work, unless otherwise provided in the relevant Change Order or Field Order.

**7.2 CHANGES DEFINITIONS**

- 7.2.1 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both University and Design Builder, and states their agreement, as applicable, to any of the following:
  - .1 A change in the Work.
  - .2 The amount of an adjustment of the Contract Sum.
  - .3 The amount of an adjustment of the Phase 2 Fee or Phase 3 Fee.
  - .4 The amount of an adjustment of the Contract Time.
  - .5 The amount of an adjustment of the Phase 2 Time or Phase 3 Time.
- 7.2.2 A Unilateral Change Order may also be issued by University, without Design Builder's signature, where University determines that a change in the Work requires an adjustment of the Contract Sum or Contract Time as University believes to be properly due Design Builder, even though no agreement has been reached between University and Design Builder 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 Design Builder to perform Work. A Field Order may, but need not, constitute a change in the Work and may, but need not, entitle Design Builder to an adjustment of the Contract Sum or Contract Time.

**7.3 CHANGE ORDER PROCEDURES**

- 7.3.1 Design Builder shall provide a Change Order Request and Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3. 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. Design Builder's obligation to provide Cost Proposals shall be subject to the following:
  - .1 The obligation of Design Builder to provide Cost Proposals is not Extra Work, and shall not entitle the Design Builder to an adjustment of the Contract Sum or Contract Time.
  - .2 The failure of Design Builder to timely provide a Cost Proposal pursuant to Article 4.2 of the General Conditions and this Article 7.3.1 is a material breach of the Contract. Design Builder shall be responsible for any delay in implementing a change for which Design Builder failed to timely provide a

Cost Proposal consistent with the requirements of Article 4.2 of the General Conditions 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 Design Builder and each Subcontractor regardless of tier involved, and shall be limited to the following (to the extent the Design Builder demonstrates that the costs are both reasonable and 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 Design Builder 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 Design Builder 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. Design Builder 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 Cost for revisions in the Design Development Documents or Construction Documents, when such revisions are inconsistent with approvals or instructions previously given by University. Revisions made necessary by adjustments in University's program or project budget such costs to be computed at the hourly rates specified in the Design Professional Rate Schedule in the Exhibits.
- .10 The cost for Insurance and Bonds shall not exceed 2% of items .1 through .9 above.

University and Design Builder 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. Design Builder 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 Incidental 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.
  - .17 Costs in Article 7.3.2.9 in excess of the hourly rates included in the Design Professional Rate Schedule.
- 7.3.4 The term "Design Builder Fee" shall mean the full amount of compensation, both direct and indirect (including without limitation all overhead and profit), to be paid to Design Builder 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 Design Builder Fee shall not be compounded.
- The Design Builder Fee shall be computed as follows when the change impacts the Construction Work, or for the portion of the change that is related to Construction Work:
- .1 Fifteen percent (15%) of the cost of that portion of the Extra Work to be performed by the Design Builder 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 Design Builder. Total combined Design Builder 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 Design Builder. Total combined Design Builder, Subcontractor and all sub-subcontractor fee shall not exceed 25%.
  - .4 Notwithstanding the foregoing, the Design Builder Fee for additional Design Work under 7.3.2.9 of the General Conditions shall be 5% of the cost of such additional Design Work performed by a Design Professional. The cost of such additional Design Work shall be computed using the hourly rates in the Exhibits. The fee for the Design Professional Subcontractors shall be the overhead/profit rate specified in the Design Professional Rate Schedule.

- 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 to the quantities of the items involved.
  - 2 Where the Work involved is not covered by Unit Prices contained in the Contract Documents, by application of the Unit Prices agreed upon by University and Design Builder.
  - 3 Where the Work involved requires revisions to the Design Development Documents or the Construction Documents when such revisions are inconsistent with approvals or instructions previously given by University, including revisions made necessary by adjustments in University's program or project budget, by application of the hourly rates reflected in the Design Professional Rate Schedule.
  - 4 Where Articles 7.3.5.1, 7.3.5.2 and 7.3.5.3 above are not applicable, a mutually agreed upon lump sum supported by a Cost Proposal pursuant to Article 7.3.1 of the General Conditions.
  - 5 If University and Design Builder cannot agree upon a lump sum, by Cost of Extra Work plus Design Builder Fee applicable to such Extra Work.
- 7.3.6 As a condition to Design Builder's right to an adjustment of the Contract Sum, pursuant to Article 7.3.5.5 above, Design Builder 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 Unit Prices agreed upon by University and Design Builder.
  - 3 Where Unit Prices are not applicable, a lump sum agreed upon by University and Design Builder, 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 and 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 Design Builder Fee will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, a Design Builder 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, Design Builder 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 caused by University and not as a result of Design Builder's failure to conform to criteria documents, performance standards, Construction Documents, or 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 Design Builder; or
    - 3 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; 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 Design Builder
  - .5 A materially differing site condition pursuant to Article 3.24 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 an event which occurs during the performance of Phase 1
- 7.3.10 For each day of delay that meets all five conditions prescribed in Article 7.3.9 above, the Contract Sum will be adjusted by the daily rate included in the Agreement and specifically identified as the rate to be paid to Design Builder for Compensable Delays as agreed upon for the applicable Phase. 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, Design Builder 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's 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 Design Builder 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, Design Builder 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 Design Builder'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 Design Builder shall be entitled to an adjustment of the Contract Sum and Contract Time, calculated under and subject to Design Builder'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 Design Builder 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 Design Builder asserts that the change in the Work encompassed by the Field Order may entitle Design Builder 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 Design Builder 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 Design Builder'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, Design Builder shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the Design Builder 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 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 Design Builder 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 Phase of the Work shall be set forth in the applicable Notice To Proceed. The date of commencement of the Work shall not be postponed by the failure of Design Builder, Subcontractors, or of persons or firms for whom Design Builder is responsible, to act

#### 8.2 PROGRESS AND COMPLETION

- 8.2.1 By signing the Agreement:

- .1 Design Builder represents to University that the Contract Time is reasonable for performing the Work and that Design Builder is able to perform the Work within the Contract Time.
- 2 Design Builder agrees that University is purchasing the right to have the Design Builder present on the Project site for the full duration of the Contract Time applicable to the Construction Phase, even if Design Builder could finish the Contract in less than the Contract Time.

- 8.2.2 Design Builder 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 Design Builder. The dates of commencement and Final Completion of the Work shall not be changed by the effective date of such insurance.

- 8.2.3 Design Builder shall proceed expeditiously with adequate forces and shall achieve Final Completion of the Work within the Contract Time. If University's Representative determines and notifies Design Builder that Design Builder's progress is such that Design Builder will not achieve Final Completion of the Work within the Contract Time, Design Builder 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 Design Builder will achieve Final completion of the Work within the Contract Time. Upon receipt of such notice from University's representative, Design Builder shall immediately notify University's Representative of all measures to be taken to ensure Final Completion of the Work within the Contract Time. Design Builder 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, Design Builder agrees:

- .1 to bear the risk of delays to the Work; and
- .2 that Design Builder's Proposal for the Contract was made with full knowledge of this risk

In agreeing to bear the risk of delays to the Work, Design Builder understands that, except and only to the extent provided otherwise in Articles 7 and 8 of the General Conditions, the occurrence of events that delay the Work shall not excuse Design Builder from its obligation to achieve Final Completion of the Work within the Contract Time, and shall not entitle the Design Builder 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 Design Builder 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 Design Builder fails to demonstrate compliance with the seven conditions:



- 1 Condition Number One: At the time that the event causing the delay commences, the Design Builder has complied with all Contract requirements for maintaining, submitting, and updating Contract Schedules.
- 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 Final Completion of the Work to a date that is beyond the Contract Time.
- 3 Condition Number Three: The delay is supported by the Contract Schedule (or, if appropriate, the Preliminary Schedule), current at the commencement of the event giving rise to the delay. A delay is supported only to the extent the Contract Schedule (or, if appropriate, the Preliminary Schedule) corroborates that it causes a delay to Final Completion of the Work beyond the contractually specified date for Final 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 Contract Schedule, provided that the absence of an approved Contract Schedule is not due to the Design Builder's failure to timely submit an acceptable Proposed Contract Schedule.
- 4 Condition Number Four: Within 7 days of the date the Design Builder discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay, (even if the Design Builder has not been delayed when the Design Builder discovers or reasonably should discover the act, error, omission or unforeseen condition giving rise to the delay) the Design Builder submits 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 3.24 of the General Conditions; or
  - 2 The financial inability, misconduct or default of the Design Builder, a Subcontractor or supplier; or
  - 3 The unavailability of materials or parts; or
  - 4 An error or omission in the Contract Documents caused by Design Builder or Design Builder's Design Consultants.
- 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 3.24 of the General Conditions; or
  - 5 An error or omission in the Contract Documents caused by the University; 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 Design Builder; or
  - 7 The University's decision to suspend the Work, where such decision is not the result of any default or misconduct of the Design Builder; or
  - 8 The failure of the University or the University's Representative to timely perform any Contract obligation unless such failure is due to Design Builder's default or misconduct.

9 "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 Design Builder 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 Design Builder; and
- 2 The day must be identified in the Contract Schedule as a scheduled work day.

7 Condition Number Seven: Design Builder 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 Final Completion of the Work 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 above) 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 Design Builder shall be entitled to a time extension for a day of delay that meets all seven requirements of Article 8.4.1 above if the delay is concurrent with a delay that does not meet all seven conditions of Article 8.4.1 above.

8.4.3 If for any reason one or more of the seven conditions prescribed in Article 8.4.1 above is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time under Article 8.4.2 above.

## 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. Such adjustment shall, to the maximum extent allowed by law, constitute payment in full for all delay related costs (including costs for disruption, interruption and hindrance, general conditions, on and off-site overhead and profit) of Design Builder, its Suppliers and Subcontractors of all tiers and all persons and entities working under or claiming through Design Builder in connection with the Project.

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 caused by University. 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 Design Builder 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 Construction Notice to Proceed for Phase 3, Design Builder 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 Design Builder's Applications for Payment.

**9.2 PROGRESS PAYMENT**

- 9.2.1 University agrees to pay monthly to Design Builder, subject to Article 9.4.3 of the General Conditions, an amount equal to 95% of the sum of the following:

1. Cost of the Construction Work in permanent place as of the date of the Design Builder's Application For Payment
2. Cost of materials not yet incorporated in the Construction Work, subject to Article 9.3.5 of the General Conditions.
3. Less amounts previously paid.
4. During the Design Work, the University shall pay Design Builder monthly a uniform amount prorated, based on the Contract Time and Contract Sum associated with either Design Development or Construction Documents Phase.

Under this Article 9.2.1, University may, but is not required to, pay Design Builder more frequently than monthly.

- 9.2.2 After Substantial Completion and subject to Article 9.4.3 of the General Conditions, 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, Design Builder 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 as applicable.
3. Include such data substantiating Design Builder'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 of the General Conditions, 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 as applicable.
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 Design Builder 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 Design Builder 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 Design Builder, 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 Construction 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, Design Builder 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 Design Builder. 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 Design Builder from sole responsibility for the care and protection of such materials; nor relieve Design Builder from risk of loss to such materials from any cause whatsoever; nor relieve Design Builder 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 Design Builder 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 Design Builder, 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 Design Builder as soon as practicable, but not later than 5 working days after receipt. Thereafter, Design Builder 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 Design Builder or University arising from the acts or omissions of Design Builder or Subcontractors.
  - 3 Stop notices
  - 4 Failure of Design Builder to make timely payments due Subcontractors.
  - 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 Design Builder 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 Design Builder to maintain and update as-built documents.
  - 9 Failure of Design Builder to submit schedules or their updates as required by the Contract Documents.
  - .10 Failure to provide conditional or unconditional releases from any Subcontractor or supplier, if such waiver(s) have been requested by University's Representative
  - .11 Performance of Work by Design Builder without properly processed Shop Drawings.
  - 12 Liquidated damages assessed in accordance with the Agreement
  - 13 Failure to provide updated Reports of Subcontractor Information and Self-Certifications, as applicable.
  - .14 Failure to provide a Final Distribution of Contract Dollars with final Application for Payment.
  - .15 Any other failure of Design Builder to perform its obligations under the Contract Documents
- 9.4.4 Subject to the withholding provisions of Article 9.4.3 of the General Conditions, University will pay Design Builder 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 Design Builder, a substitution of securities may be made for any monies retained by University under Article 9.2 above 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 Design Builder 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. Design Builder 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 Design Builder, University will deposit retention directly with Escrow Agent. Design Builder 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 Design Builder.
- 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 Design Builder, 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 Design Builder 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 Construction Work at any time prior to Substantial Completion or Final Completion upon 10 days' notice to Design Builder. 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 Design Builder as an acceptance by University of that portion of the Construction Work which is to be occupied.
  - .3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or Design Builder against each other.
  - .4 Design Builder 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 Design Builder while the equipment is so operated. Design Builder shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.
  - .5 University will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
  - .6 University will pay all utility costs which arise out of the Beneficial Occupancy.
  - .7 Design Builder shall not be responsible for providing security in areas beneficially occupied.
  - .8 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Design Builder's remaining Work.
  - .9 Design Builder shall not be required to repair damage caused by University in its Beneficial Occupancy.
  - .10 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.
  - .11 Design Builder 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 Construction Work, as determined by University's Representative, when the Construction 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 Construction Work for its intended purpose and a Certificate of Occupancy has been issued by the University's Building Official.
- 9.7.2 When Design Builder gives notice to University's Representative that the Construction Work is substantially complete, unless University's Representative determines that the Construction Work is not sufficiently complete to warrant an inspection to determine Substantial Completion, University's Representative will inspect the Construction Work, and prepare and give to Design Builder a comprehensive list of items to be completed or corrected before establishing Substantial Completion. Design Builder 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 Design Builder to complete all Construction Work in accordance with the Contract Documents. University's Representative will make an inspection to determine whether the Construction 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, Design Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. Design Builder 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 Design Builder.

9.7.3 When University's Representative determines that the Construction Work 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 on University's form as contained in the Exhibits, which, when signed by University, shall establish the date of Substantial Completion and the responsibilities of University and Design Builder for security, maintenance, utilities, insurance, and damage to the Construction Work.

9.7.4 Unless otherwise provided in the Certificate of Substantial Completion, the Guarantee To Repair Period for the Work covered by the Certificate of Substantial Completion, shall commence on the date of Substantial Completion of the Construction Work except that 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 Substantial Completion will begin on the date of their written acceptance by University

9.7.5 The daily rate included in the Agreement and specifically identified as the rate to be paid to Design Builder for Compensable Delays shall not apply to any delays occurring after the Work is substantially completed.

## 9.8 FINAL COMPLETION AND FINAL PAYMENT

9.8.1 Upon receipt of notice from Design Builder that the Work is ready for final inspection, University's Representative will make such inspection. Final Completion shall be when University's Representative determines that the Work is fully completed and in accordance with the Contract Documents including without limitation satisfaction of all "punch list" items and determines that a Certificate of Occupancy has been issued by the University's Building Official. University will file a Notice of Completion within 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 Design Builder 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 Design Builder 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 Design Builder shall constitute a waiver of all claims, except those previously made in writing and identified by Design Builder 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 Design Builder 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 Design Builder 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 Construction Work and other persons who may be affected thereby
- 2 The Construction 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 Design Builder or Subcontractors.
- 3 Other property at the Project site and adjoining property.

- 10.2.2 Design Builder 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 Construction Work, Design Builder shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

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

- 10.2.5 Design Builder shall not load, or permit any part of the Construction 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, Design Builder shall act to prevent or minimize damage, injury, or loss. Design Builder shall promptly notify University's Representative, which notice may be oral followed by written confirmation, of the occurrence of such an emergency and Design Builder's action.

**ARTICLE 11**  
**INSURANCE AND BONDS**

**11.1 DESIGN BUILDER'S INSURANCE**

11.1.1 Design Builder 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 Design Builder, 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 3.27 of the General Conditions regarding the scope and extent of Design Builder's liability for Repair of Damaged Work.

11.1.2 The following policies and coverage shall be furnished by Design Builder:

1. COMMERCIAL FORM GENERAL LIABILITY INSURANCE covering all Work done by or on behalf of Design Builder 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 Design Builder by these Contract Documents. However, if the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall survive for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement 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 Design Builder 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. Design Builder shall also require all of its Subcontractors to maintain this insurance coverage.
4. PROFESSIONAL LIABILITY INSURANCE to insure its activities in connection with this Contract and shall obtain, keep in force, and maintain as required by the Supplementary Conditions. However, if the insurance under this Article 11.1.2.4 is written on a claims-made basis, it shall be maintained continuously for a period no less than three (3) years following termination of this Contract or Final Completion, whichever occurs later. 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 Contract and shall include, without limitation coverage for professional services as called for in this Contract.

11.1.3 The coverages required under this Article 11 shall not in any way limit the liability of Design Builder.

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 Design Builder 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 Design Builder 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 Design Builder and may be deducted from the Contract Sum.

11.1.6 Design Builder's insurance as required by Article 11.1.2 above, shall, by endorsement to the policies and the Certificates of Insurance, 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 Design Builder in writing, will be included as insureds for, and relating to, the Work to be performed by Design Builder 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 such insureds. This requirement shall not apply to Professional Liability Insurance and 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
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- 11.1.7 The form and substance of all insurance policies required to be obtained by Design Builder shall be subject to approval by University. All policies required by above Articles 11.1.2.1, 11.1.2.2, 11.1.2.3 and 11.1.2.4 shall be issued by companies with ratings and financial classifications as specified in the Supplementary Conditions.
  - 11.1.8 Design Builder shall, by mutual agreement with University and at University's cost, furnish any additional insurance as may be required by University. Design Builder 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 Price Proposal Form. The name of the insured must be the name under which the entity is licensed by the Design Builders State License Board
  - 11.1.10 If insurance company refuses to use the Certificate of Insurance form as contained in Exhibits, it must provide a Certificate of Insurance evidencing compliance with this Article and Special Provisions 1 through 4 on the Certificate of Insurance Exhibit by including an endorsement to its 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, Design Builder shall submit to University copies of the policies obtained by Design Builder.

## **11.2 BUILDER'S RISK PROPERTY INSURANCE**

11.2.1 If and only if the Lump Sum Base Proposal exceeds \$200,000, 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. Design Builder 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 Construction Work and materials will be payable to University and Design Builder as their respective interests, from time to time, may appear. Design Builder 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 Design Builder of full responsibility for loss of or damage to materials not incorporated in the Construction Work, and for Design Builder's tools and equipment used to perform the Work, whether on the Project site or elsewhere, or to relieve Design Builder 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 Design Builder.
- 2 Include a waiver of subrogation against Design Builder, its agents, and 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 Design Builder 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 the Exhibits.

11.3.2 The Payment Bond and Performance Bond shall each be in the amount of the Lump Sum Base Proposal.

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 Design Builder 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. Design Builder 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 Design Builder shall be, on the date the Contract is signed by University, listed in the latest published State of California, Department of Insurance list of "Insurers Admitted to Transact Surety Insurance in This State."

11.3.6 The premiums for the Payment Bond and Performance Bond shall be paid by Design Builder

## ARTICLE 12

### UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

#### 12.1 UNCOVERING OF WORK

- 12.1.1 If a portion of the Construction 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 Design Builder's expense without adjustment of the Contract Time or the Contract Sum.
- 12.1.2 If a portion of the Construction 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 Construction Work and it shall be uncovered and replaced by Design Builder. If such Construction Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Construction Work shall be added to the Contract Sum by Change Order; and if the uncovering and replacing of the Construction Work extends the Contract Time, an appropriate adjustment of the Contract Time shall be made by Change Order. If such Construction Work is not in accordance with the Contract Documents, Design Builder 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 2 years, unless a longer period of time is specified, commencing as follows:
- 1 For any Construction Work not described as incomplete in the Certificate of Substantial Completion, on the date of Substantial Completion.
  - 2 For space beneficially occupied or for separate systems fully utilized prior to 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 Construction Work other than .1 or .2 above, from the date of Final Completion.
- 12.2.2 Design Builder 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. Design Builder 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 Design Builder shall diligently and continuously prosecute such correction to completion. Design Builder 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. Design Builder 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, Design Builder shall pay to University all reasonable costs of correcting such Defective Work. Design Builder shall replace, repair, or restore to University's satisfaction any other parts of the Construction 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 Design Builder shall remove from the Project site portions of the Construction Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Design Builder nor accepted by University.

- 12.2.5 If Design Builder 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 of the General Conditions; and, in addition, University may remove the Defective Work and store salvageable materials and equipment at Design Builder's expense.
- 12.2.6 If Design Builder fails to pay the costs of such removal and storage as required by above Articles 12.2.4 and 12.2.5 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. Design Builder shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Design Builder 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 Design Builder is liable to University, the Contract Sum shall be reduced by such deficiency. If there are no remaining payments due Design Builder or the remaining payments are insufficient to cover such deficiency, Design Builder shall promptly pay the difference to University.
- 12.2.7 Design Builder'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 Design Builder under the Contract Documents. Enforcement of Design Builder'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 Design Builder under the Contract Documents. Establishment of the Guarantee To Repair Period relates only to the specific obligation of Design Builder to correct the Work and in no way limits either Design Builder's liability for Defective Work or the time within which proceedings may be commenced to enforce Design Builder's obligations under the Contract Documents.

## ARTICLE 13

### TERMINATION OR SUSPENSION OF THE CONTRACT

#### 13.1 TERMINATION BY DESIGN BUILDER

13.1.1 Subject to below Article 13.1.2, Design Builder 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 Design Builder, any Subcontractor, or any employee or agent of Design Builder 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 Design Builder stating the nature of such default(s)
- 3 Repeated suspensions by University, other than such suspensions as are agreed to by Design Builder 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, Design Builder may, upon 10 days additional notice to University and University's Representative, and provided that the condition giving rise to Design Builder's right to terminate is continuing, terminate the Contract.

13.1.3 Upon termination by Design Builder, University will pay to Design Builder the sum determined by Article 13.4.4 of the General Conditions. Such payment will be the sole and exclusive remedy to which Design Builder is entitled in the event of termination of the Contract by Design Builder pursuant to this Article 13.1; and Design Builder 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 Design Builder becomes insolvent or files for relief under the bankruptcy laws of the United States
- 2 Design Builder 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 Design Builder's property.
- 4 The commencement or completion of any Work activity is 14 days or more behind the date set forth in the Contract Schedule for such Work activity, and which results in an Unexcusable Delay
- 5 Design Builder 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 Design Builder 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 Design Builder 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 Design Builder fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.
  - .3 Design Builder disregards Applicable Code Requirements
  - .4 Design Builder persistently or materially fails to execute the Work in accordance with the Contract Documents.
  - .5 Design Builder is in default of any other material obligation under the Contract Documents.
  - .6 Design Builder 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 Design Builder, terminate the Contract and take possession of the Project site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design Builder; 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, Design Builder shall remove any part or all of Design Builder's materials, supplies, equipment, tools, and construction equipment and machinery from the Project site within 7 days of such request; and if Design Builder fails to do so, University may remove or store, and after 90 days sell, any of the same at Design Builder's expense.
- 13.2.4 If the Contract is terminated by University as provided in this Article 13.2, Design Builder 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 Design Builder. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Contract Sum, Design Builder 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 Design Builder 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 Design Builder, 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, Design Builder 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 Design Builder 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, Design Builder 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 Design Builder for an adjustment of the Contract Sum or the Contract Time shall be made within 21 days after the end of the Work suspension. Design Builder 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 Design Builder. Upon such termination, Design Builder agrees to waive any claims for damages, including loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design Builder, University shall pay Design Builder in accordance with Article 13.4.4 below.
- 13.4.2 Upon receipt of notice of termination under this Article 13.4, Design Builder 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 Design Builder's obligations under Article 13.4.2 above, as to bona fide obligations assumed by Design Builder prior to the date of termination.
- 13.4.4 Upon such termination, University shall pay to Design Builder the sum of the following:
- 1 The amount of the Contract Sum allocable to the portion of the Work properly performed by Design Builder as of the date of termination, less sums previously paid to Design Builder.
  - 2 Plus previously unpaid costs of any items delivered to the Project site which were fabricated for subsequent incorporation in the Work.
  - 3 Plus any proven losses with respect to materials and equipment directly resulting from such termination.
  - 4 Plus reasonable demobilization costs.
  - 5 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 Design Builder is entitled in the event of termination of the Contract by University pursuant to this Article 13.4; and Design Builder will be entitled to no other compensation or damages and expressly waives same.

## ARTICLE 14

### STATUTORY AND OTHER REQUIREMENTS

#### 14.1 NONDISCRIMINATION

- 14.1.1 For purposes of this Article 14.1, the term Subcontractor shall not include suppliers, manufacturers, or distributors.
- 14.1.2 Design Builder shall comply and shall ensure that all Subcontractors comply with Sections 12900 through 12996 of the State of California Government Code.
- 14.1.3 Design Builder agrees as follows during the performance of the Work:
- 1 Design Builder 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 Design Builder 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 14.1. 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 Design Builder is not a "responsible bidder" as to future contracts for which such Design Builder may submit bids, or (2) a basis for refusing to accept or consider the bids of Design Builder 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 Design Builder 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 Design Builder that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, Design Builder's Proposals on future projects will not be considered.
    - 4 Design Builder agrees that, should University determine that Design Builder has not complied with this Article 14.1, Design Builder 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 14.2 below for violation of prevailing wage rates. Such penalty amounts may be recovered from Design Builder; and University may deduct any such penalty amounts from the Contract Sum.
    - 5 Nothing contained in this Article 14.1 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.

- 6 Design Builder 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 Design Builder shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
  - 2 Design Builder 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 Design Builder 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 Design Builder 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 Design Builder shall include the provisions of the foregoing Articles 14.1.3.2.1 through 14.1.3.2.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

#### 14.2 PREVAILING WAGE RATES

- 14.2.1 For purposes of this Article 14.2, the term Subcontractor shall not include suppliers, manufacturers, or distributors.
- 14.2.2 Design Builder 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.
- 14.2.3 The State of California Department of Industrial Relations has ascertained the general prevailing *per diem* wage rates in the locality in which the Construction 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. Design Builder 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. Design Builder shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Design Builder in the execution of the Construction Work. Design Builder 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 Construction Work. Design Builder 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 Design Builder 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. Design Builder 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 Construction 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.

#### 14.3 PAYROLL RECORDS

- 14.3.1 For purposes of this Article 14.3, the term Subcontractor shall not include suppliers, manufacturers, or distributors.
- 14.3.2 Design Builder 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 Construction Work. All payroll records shall be certified as being true and correct by Design Builder or Subcontractors keeping such records; and the payroll records shall be available for inspection at all reasonable hours at the principal office of Design Builder 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 Design Builder 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 Design Builder awarded the Contract or performing the Contract shall not be marked or obliterated.
- 14.3.3 Design Builder 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. Design Builder shall inform University of the location of such payroll records for the Project, including the street address, city, and county; and Design Builder 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 14.3 or with the State of California Labor Code Section 1776, Design Builder shall have 10 days in which to comply following receipt of notice specifying in what respects Design Builder must comply. Should noncompliance still be evident after the 10-day period, Design Builder 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.

#### 14.4 APPRENTICES

- 14.4.1 For purposes of this Article 14.4, the term Subcontractor shall not include suppliers, manufacturers, and distributors.
- 14.4.2 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 Design Builder 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.
- 14.4.3 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 Construction Work in the craft or trade to which the apprentice is indentured.
- 14.4.4 When Design Builder or Subcontractors employ workers in any apprenticeship craft or trade on the Work, Design Builder 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 Design Builder 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 Construction 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 journey person work, except as permitted by law. Design Builder 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.

- 14.4.5 "Apprenticeship craft or trade," as used in this Article 14.4, shall mean a craft or trade determined as an apprenticeship occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.
- 14.4.6 If Design Builder 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 contractors in the area of the Project site are contributing, Design Builder and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeyworkers or apprentices on the Construction Work in the same amount or upon the same basis and in the same manner done by the other contractors. Design Builder may include the amount of such contributions in computing its Proposal for the Contract; but if Design Builder fails to do so, it shall not be entitled to any additional compensation therefore from University.
- 14.4.7 In the event Design Builder willfully fails to comply with this Article 14.4, it will be considered in violation of the requirements of the Contract.
- 14.4.8 Nothing contained herein shall be considered or interpreted as prohibiting or preventing the hiring by Design Builder 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.

#### 14.5 CONSTRUCTION WORK WORK-DAY

- 14.5.1 Design Builder 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. Design Builder shall forfeit to University, as a penalty, \$25 for each worker employed in the execution of this Contract by Design Builder, 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 14.5 or in violation of the provisions of any law of the State of California. Such forfeiture amounts may be deducted from the Contract Sum. Design Builder 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 This Contract shall be governed by the laws of the State of California

#### 15.2 SUCCESSORS AND ASSIGNS

15.2.1 University and Design Builder 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 Design Builder.

#### 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 Design Builder'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 Design Builder's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Design

Builder shall preserve all such records and other items during the performance of the Contract and 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 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 above Article 15.8.1 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