

**GENERAL CONDITIONS – Job Order Contract
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ARTICLE 1 GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 ADJUSTMENT FACTOR

The "Adjustment Factor" means the Contractor's competitively bid price adjustment to the unit process as published in the Construction Task Catalog® (CTC). At a minimum, the Adjustment Factors must contain all Contractor's costs, including but not limited to home office overhead; insurance, bonds, and indemnification; project meetings, training, management and supervision; mobilization and close-out for the contract and each Job Order; project office staff and equipment; profit; subcontractor's overhead and profit; all taxes for which a waiver is not available including material sales tax and equipment rental; employee or subcontractor's wage rates ~~that exceed the prevailing wage rates~~; fringe benefits, payroll taxes, worker's compensation, insurance costs and any other payment mandated by law in connection with labor ~~that exceeds the labor rate allowances~~; cost of financing the work, and business risks such as the risk of a lower than expected volume of work, smaller than anticipated Job Orders, poor Subcontractor performance, and inflation or material cost fluctuations. The Adjustment Factor shall also include costs described by General Requirements (Division 1) listed in the project specifications and specifically excluded by the CTC, interface with University's Representatives, coordination with occupants, costs associated with removal, protection and repositioning of room contents, cleanup, and all other costs incurred in performing the Job Order Contract except costs covered by the CTC.

1.1.2 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, Contractor, any Subcontractor, the Project, the Job Order Work site(s), the Work, or the prosecution of the Work including without limitation the requirements set forth in Article 3.7.

1.1.3 APPLICATION FOR PAYMENT

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

1.1.4 BASE TERM

The term "Base Term" means the one-year period during which the University may issue and/or implement Job Orders to the Contractor

1.1.5 BENEFICIAL OCCUPANCY

The term "Beneficial Occupancy", which shall apply only to each individual Job Order, means the University's occupancy or use of any part of the Job Order Work in accordance with Article 9.

1.1.6 CERTIFICATE FOR PAYMENT

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

1.1.7 CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.8 CLAIM

See Article 4.3 of the General Conditions.

1.1.9 CONSTRUCTION TASK CATALOG®

The term "Construction Task Catalog®" means the comprehensive listing of specific repair or refurbishment tasks together with a specific unit of measure and a unit price. Also referred to as the CTC.

1.1.10 CONTRACT

The term "Contract", also referred to as "Job Order Contract", means the written Agreement between Contractor and University set forth in the Contract Documents.

1.1.11 CONTRACT DOCUMENTS

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

1.1.12 CONTRACTOR

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

1.1.13 COST OF EXTRA WORK

See Article 7.3 of the General Conditions.

1.1.14 DAY

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

1.1.15 DEFECTIVE WORK

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

1.1.16 DETAILED SCOPE OF WORK

The term "Detailed Scope of Work" means the complete description of services to be provided by the Contractor pursuant to an individual Job Order. The Detailed Scope of Work will include documentation for the individual Job Order. Documentation may include a narrative description of the Work and/or partial or full design documents depending on the complexity of the individual Job Order. The Detailed Scope of Work may also be referred to as the DSW.

1.1.17 DRAWINGS

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

1.1.18 EXCUSABLE DELAY

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

1.1.19 EXTRA WORK

The term "Extra Work" means Work beyond or in addition to the Work required by the Contract Documents. Extra Work specifically excludes work identified as scope of any and all existing Job Order Authorizations.

1.1.20 FIELD ORDER

See Article 7.2 of the General Conditions.

1.1.21 FINAL COMPLETION

The term "Final Completion" shall apply to only each individual Job Order and means the date at which the Job Order Work as been fully completed in accordance with the requirements of the Contract Documents pursuant to Article 9.8.1 if the General Conditions.

1.1.22 GUARANTEE TO REPAIR PERIOD

See Article 12.2 of the General Conditions.

1.1.23 HAZARDOUS MATERIAL

The term "Hazardous Material" means any substance or material identified as hazardous under any California or federal statute governing handling, disposal and/or cleanup of any such substance or material.

1.1.24 JOB ORDER

The term "Job Order" means Construction Document relating to a specific scope of Job Order Work under the Contract as defined by the Detailed Scope of Work, Job Order Sum, and Job Order Time stated in the Job Order. A Job Order may constitute all or part of the work. Each Job Order will include a Detailed Scope of Work, a firm fixed-price, a time duration for the completion of the Work and any special conditions that might apply to that specific Job Order such as Liquidated Damages.

1.1.25 JOB ORDER AUTHORIZATION

The term "Job Order Authorization" means the document issued by the University authorizing Contractor to perform the Job Order Work.

1.1.26 JOB ORDER MILESTONE

The term "Job Order Milestone" means any requirement in a Job Order that reflects a planned point in time for the start or completion of a portion of the Job Order Work measured from i) the date of the Job Order Authorization or ii) the date of another Job Order Milestone defined in said Job Order, as applicable.

1.1.27 JOB ORDER PROPOSAL

The term "Job Order Proposal", also referred to as "Proposal", is the Contractor's irrevocable offer to perform Work associated with a Job Order. It refers to the Contractor's prepared document quoting a firm fixed-price and schedule for the completion of a specific Scope of Work. The Job Order Proposal shall include a detailed cost proposal comprised of line items from the CTC, supporting documentation for any Non-Prepriced items, a construction schedule, a list of subcontractors and any other documentation that may be required by the University prior to the issuance of a Job Order including, but not limited to shop drawings, sketches, permits, and submittals as necessary.

1.1.28 JOB ORDER SCHEDULE

The term "Job Order Schedule" means the graphical representation of a practical plan, in accordance with the Specifications, to perform and complete the Work of a Job Order within the Job Order Time in accordance with Article 3.

1.1.29 JOB ORDER SUM

The term "Job Order Sum" means the amount of compensation stated in a Job Order for the performance of the applicable Job Order.

1.1.30 JOB ORDER TIME

The term "Job Order Time" means the number of days set forth in a Job Order within which Contractor must achieve Final Completion.

1.1.31 JOB ORDER WORK

The term "Job Order Work" means the Work of one or more Job Orders as may be modified.

1.1.32 JOINT SCOPE MEETING

The term "Joint Scope Meeting" means the meeting at the Work site attended by the University and the Contractor, at a minimum, to jointly prepare the scope of the work on a Job Order.

1.1.33 MAXIMUM CONTRACT VALUE

The term "Maximum Contract Value" means the maximum dollar value of Work specified in Article 1 of the Agreement that the University may order during the Base Term, and if exercised by the University, one or both Option Terms, of the Job Order Contract.

1.1.34 MINIMUM CONTRACT VALUE

The term "Minimum Contract Value" means the minimum dollar value of Work specified in Article 1 of the Agreement that the University must order under this Contract.

1.1.35 NON-PREPRICED ITEM

The term "Non-Prepriced Item", also referred to as NPP, means the Unit of Work that is not included in the Construction Task Catalog® but which is in the general scope and intent of this Contract.

1.1.36 OPTION TERM

The term "Option Term" means the additional time period beyond the expiration of the Base Term during which University may extend its right to implement and/or issue Job Orders to the Contractor.

1.1.37 PREPRICED ITEM

The Term "Prepriced Item" means an item of work included in the Construction Task Catalog® for which a unit price is given.

1.1.38 PROJECT

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

Contractors.

1.1.39 SEPARATE CONTRACTOR

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

1.1.40 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

See Article 3.12 of the General Conditions.

1.1.41 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.

1.1.42 SUBCONTRACTOR

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

1.1.43 SUPERINTENDENT

The term "Superintendent" means the person designated by Contractor to represent Contractor at the Job Order Work site in accordance with Article 3.

1.1.44 SUPPLEMENTAL JOB ORDER

See Article 7.2 of the General Conditions

1.1.45 TIER

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

1.1.46 UNEXCUSABLE DELAY

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

1.1.47 UNILATERAL CHANGE ORDER

See Article 7.2 of the General Conditions.

1.1.48 UNIT PRICE The term "Unit Price" means the price published in the Construction Task Catalog® for a specific repair or refurbishment task. The Unit Prices are fixed for the duration of the Contract. Each Unit Price is comprised of the Labor, Equipment and Materials cost to accomplish that specific task.

1.1.49 UNIVERSITY

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

1.1.50 UNIVERSITY'S BUILDING OFFICIAL

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

1.1.51 UNIVERSITY'S REPRESENTATIVE

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

1.1.52 UNIVERSITY'S RESPONSIBLE ADMINISTRATOR

The term "University's Responsible Administrator" means the person, or his or her authorized designee, who is authorized to execute the Agreement, Job Order Authorizations, Change Orders, Field Orders and other applicable Contract Documents on behalf of the University.

1.1.53 WORK

The term "Work" means all construction, services and other requirements of the Contract Documents as

modified by Change Order, whether completed or partially completed, and includes all labor, materials, equipment, tools, and services provided or to be provided by Contractor to fulfill Contractor'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 Contractor are the property of the University and are not to be used on other work.

1.3 INTERPRETATION

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

- .1 The Agreement,
- .2 The Supplementary Conditions,
- .3 The General Conditions,
- .4 The Specifications,
- .5 The individual Job Order,
- .6 Drawings,
- .7 The Construction Task Catalog@.

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

1.3.3 With respect to the Contract Documents, Addenda shall govern over other portions of the Contract Documents to the extent specifically noted; subsequent Addenda shall govern over prior Addenda only to the extent specifically noted.

1.3.4 Organization of the Specifications into various subdivisions and the arrangement of the Drawings shall not control Contractor 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 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 INFORMATION AND SERVICES PROVIDED BY UNIVERSITY

2.1.1 If required for performance of Job Order Work, as determined by University's Representative,

Project Name: 

University will make available a survey describing known physical characteristics, boundaries, easements, and utility locations for the Job Order Work site.

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

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

2.2 ACCESS TO JOB ORDER WORK SITE

2.2.1 University will provide, no later than the date designated in the Job Order Schedule accepted by University's Representative, access to the lands and facilities upon which the Work is to be performed, including such access and other lands and facilities designated in the Contract Documents for use by Contractor.

2.3 UNIVERSITY'S RIGHT TO STOP THE JOB ORDER WORK

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

2.4 UNIVERSITY'S RIGHT TO CARRY OUT THE JOB ORDER WORK

2.4.1 If Contractor fails to carry out Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services to maintain the Job Order 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 Contractor's expense. In such case, University will be entitled to deduct from payments then or thereafter due Contractor 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 Contractor are not sufficient to cover such amounts, Contractor shall pay the additional amount to University.

2.5 UNIVERSITY'S RIGHT TO REPLACE UNIVERSITY'S REPRESENTATIVE

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

ARTICLE 3 CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 Contractor and its Subcontractors shall review and compare each of the Contract Documents with the others and with information furnished or made available 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 Contractor or its Subcontractors.

3.1.2 Contractor and its Subcontractors shall take field measurements, verify field conditions, and carefully compare with the Contract Documents such field measurements, conditions, and other information

known to Contractor before commencing Job Order Work. Errors, inconsistencies, or omissions discovered at any time shall be promptly reported in writing to University's Representative.

3.1.3 If Contractor and its Subcontractors performs any construction activity involving an error, inconsistency, or omission referred to in Articles 3.1.1 and 3.1.2, without giving the notice required in those Articles and obtaining the written consent of University's Representative, Contractor shall be responsible for the resultant losses, including, without limitation, the costs of correcting Defective Work.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

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

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

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

3.3 LABOR AND MATERIALS

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

3.4 CONTRACTOR'S WARRANTY

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

3.5 TAXES

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

3.6 PERMITS, FEES, AND NOTICES

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

3.7 APPLICABLE CODE REQUIREMENTS

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

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

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

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

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

3.8 CONTRACTOR STAFF

3.8.1 Contractor shall employ a competent staff satisfactory to University. At minimum, a superintendent shall be in attendance at the Job Order Work site at all times during the performance of Job Order Work. Contractor shall include the name of the proposed Superintendent as part of each Job Order Proposal. With prior written authorization by the University, the Contractor may have a Superintendent supervise multiple jobs within close proximity. Superintendent shall represent Contractor and communications given to and received from Superintendent shall be binding on Contractor.

3.8.2 Failure to maintain a Superintendent on the Job Order Work 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 Job Order Work site. If, by virtue of issuance of said stop Work order, Contractor fails to complete the Job Order Work on time, Contractor will be assessed Liquidated Damages in accordance with the Agreement.

3.8.3 The Superintendent approved for each Job Order must be able to read, write and verbally communicate in English.

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

3.8.5 The Contractor must also employ an individual who is competent in performing Job Order pricing and preparation of Job Order Proposals. This individual may also be the Superintendent providing that Job Order Proposal preparation does not interfere with supervision and coordination of Job Order Work in progress.

3.9 SCHEDULES REQUIRED OF CONTRACTOR

3.9.1 Not Used.

3.9.2 For each Job Order, Contractor shall submit a Job Order Schedule and updated Job Order Schedules to University's Representative in the form and within the time limits required by the Specifications and acceptable to University's Representative. University's Representative will determine acceptability of the

Job Order Schedule and updated Job Order Schedules within the time limits required by the Specifications.

3.9.3 The Job Order Schedule, and updated Job Order Schedules, shall represent a practical plan to complete the Job Order Work within the Job Order Time. Schedules showing the Job Order Work completed in less than the Job Order Time may be acceptable if judged by University's Representative to be practical. Schedules showing the Work completed beyond the Job Order Time may be submitted under the following circumstances:

- .1 If accompanied by a Supplemental Job Order Request seeking an adjustment of the Job Order Time consistent the requirements of paragraph 8.4 for Adjustment of the Job Order Time for Delay; or
- .2 If the Job Order Time has passed, or if it is a practical impossibility to complete the Work within the Job Order Time, then the updated Job Order Schedule or fragnet schedule shall show completion at the earliest practical date.

University's Representative will timely review the updated Job Order Schedule or Fragnet Schedule submitted by Contractor. If University's Representative determines that additional supporting data are necessary to fully evaluate the updated Job Order Schedule or Fragnet Schedule, 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 updated Job Order Schedule or Fragnet Schedule or the deadline for furnishing such additional supporting data. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying approval of the updated Job Order Schedule or Fragnet Schedule. Acceptance of any schedule showing completion beyond the Contract Time by University's Representative shall not change the Job Order Time and shall be without prejudice right of the University. The Job Order Time, not the Job Order Schedule, shall control in the determination of liquidated damages payable by Contractor under Article 4 and Article 5 of the Agreement and in the determination of any delay under Article 8 of the General Conditions.

3.9.4 If a schedule showing the Job Order Work completed in less than the Job Order Time is accepted, Contractor shall not be entitled to extensions of the Job Order Time for Excusable Delays or Compensable Delays or to adjustments of the Job Order Sum for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Job Order Time.

3.9.5 Contractor shall prepare and keep current, to the reasonable satisfaction of University's Representative, a Submittal Schedule, in the form contained in the Exhibits, for each submittal, as required by the Specifications, and that are coordinated with the other activities in the Job Order Schedule.

3.9.6 The Job Order Schedule, and the Updated Job Order Schedules shall meet the following requirements:

- .1 Schedules must be suitable for monitoring progress of the Job Order Work.
- .2 Schedules must provide necessary data about the timing for University decisions and University furnished items.
- .3 Schedules must be in sufficient detail to demonstrate adequate planning for the Job Order Work.
- .4 Schedules must represent a practical plan to perform and complete the Job Order Work within the Job Order Time.

3.9.7 University's Representative's review of the form and general content of the Job Order Schedule, and Updated Job Order Schedules is for the purpose of determining if the above-listed requirements have been satisfied.

3.9.8 Contractor shall plan, develop, supervise, control, and coordinate the performance of the Job Order Work so that its progress and the sequence and timing of Job Order Work activities will permit completion within Job Order Time.

3.9.9 In preparing the Job Order Schedule and updated Job Order Schedules, Contractor shall obtain such information and data from Subcontractors as may be required to develop a reasonable and appropriate schedule for performance of the work and shall provide such information and data to the University's Representative upon request. Contractor shall continuously obtain from Subcontractors information and data about the planning for and progress of the Job Order Work and the delivery of equipment, shall

coordinate and integrate such information and data into updated Job Order Schedules, as appropriate, and shall monitor the progress of the Job Order Work and the delivery of equipment.

3.9.10 Contractor shall act as the expeditor of potential and actual delays, interruptions, hindrances, or disruptions for its own forces and those forces of Subcontractors, regardless of tier.

3.9.11 Contractor shall cooperate with University's Representative in the development of the Job Order Schedule and updated Job Order Schedules. University's Representative's acceptance of or its review comments about any schedule or scheduling data shall not relieve Contractor from its sole responsibility to plan for, perform, and complete the Job Order Work within the Job Order 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 Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Job Order Schedule shall not relieve Contractor from its sole responsibility to perform and complete the Job Order Work within the Job Order Time and shall not be a cause for an adjustment of the Job Order Time or the Job Order Sum.

3.10 AS-BUILT DOCUMENTS

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

3.11 DOCUMENTS AND SAMPLES AT JOB ORDER WORK SITE

3.11.1 Contractor shall maintain the following at the Job Order Work site:

- .1 One as-built copy of the Job Order Documents, in good order and marked to record current changes and selections made during construction.
- .2 The current accepted Job Order 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 and/or Job Order(s).

3.12 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES

3.12.1 Definitions:

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

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

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

3.12.4 Contractor shall perform no portion of the Job Order 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 Job Order Work shall be in accordance with approved submittals and the Contract Documents.

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

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

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

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

3.13 USE OF SITE AND CLEAN UP

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

3.13.2 Contractor shall, during performance of the Job Order Work, keep the Job Order Work site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish caused by Contractor. Contractor shall remove all excess dirt, waste material, and rubbish caused by the Contractor; tools; equipment; machinery; and surplus materials from the Job Order Work site and surrounding area at the completion of the Job Order Work.

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

3.14 CUTTING, FITTING, AND PATCHING

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

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

3.15 ACCESS TO WORK

3.15.1 University, University's Representative, their consultants, and other persons authorized by University will at all times have access to the Work wherever it is in preparation or progress. Contractor shall

provide safe and proper facilities for such access and for inspection.

3.16 ROYALTIES AND PATENTS

3.16.1 Contractor shall pay all royalties and license fees required for the performance of the Work. Contractor shall defend suits or claims resulting from Contractor'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.

3.17 DIFFERING SITE CONDITIONS

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

- .1 Subsurface or latent physical conditions at the site (including Hazardous Materials) which differ materially from those indicated in this Contract, or if not indicated in this Contract, in a specific Job Order Notification; 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 or specific Job Order.

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

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

3.17.3 Adjustments to the Job Order Sum and/or Job Order Time shall be subject to the procedures and limitations set forth in Articles 7 and 8.

3.18 CONCEALED, UNFORESEEN, OR UNKNOWN CONDITIONS OR EVENTS

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

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

In agreeing to bear the risk of concealed, unforeseen or unknown conditions or events, Contractor understands that, except and only to the extent provided otherwise in Articles 3.17, 7 and 8, concealed, unforeseen or unknown conditions or events shall not excuse Contractor from its obligation to achieve Final Completion of the Job Order Work within the Job Order Time, and shall not entitle the Contractor to an adjustment of the Job Order Sum.

3.18.2 If Contractor encounters concealed, unforeseen or unknown conditions or events that may require a change to the design shown in the Contract Documents, Contractor shall immediately notify University's Representative in writing such that University's Representative can determine if a change to the design is required. Contractor shall be liable to University for any extra costs incurred as the result of Contractor's failure to immediately give such notice.

3.18.3 If, as the result of concealed, unforeseen or unknown conditions or events, the University issues a Change Order or Field Order that changes the design from the design depicted in the Contract Documents, Contractor shall be entitled, subject to compliance all the provisions of the Contract, including those set forth in Articles 4, 7 and 8, to an adjustment of the Job Order Sum and/or Job Order Time, for the cost and delay resulting from implementing the changes to the design. Except as provided in this Article 3.18.3, or as may be expressly provided otherwise in the Contract, there shall be no adjustment of the Job Order Sum and/or Job Order Time as a result of concealed, unforeseen or unknown conditions or events. .

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

3.19 HAZARDOUS MATERIALS

3.19.1 The University shall not be responsible for any Hazardous Material brought to the site by the Contractor.

3.19.2 If the Contractor: (i) introduces and/or discharges a Hazardous Material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a Hazardous Material identified in the Contract Documents, the Contractor shall hire a qualified remediation contractor at Contractor's sole cost to eliminate the condition as soon as possible. Under no circumstance shall the Contractor perform Work for which it is not qualified. University, in its sole discretion, may require the Contractor to retain at Contractor's cost an independent testing laboratory.

3.19.3 If the Contractor encounters a Hazardous Material which may cause foreseeable injury or damage, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such material or substance (except in an emergency situation); and (iii) notify University (and promptly thereafter confirm such notice in writing)

3.19.4 Subject to Contractor's compliance with Article 3.19.3, the University shall verify the presence or absence of the Hazardous Material reported by the Contractor, except as qualified under Section 3.19.1 and 3.19.3, and, in the event such material or substance is found to be present, verify that the levels of the hazardous material are below OSHA Permissible Exposure Levels and below levels which would classify the material as a state of California or federal hazardous waste. When the material falls below such levels, Work in the affected area shall resume upon direction by the University. The Contract Time and Sum shall be extended appropriately as provided in Articles 7 and 8.

3.19.5 The University shall indemnify and hold harmless the Contractor from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was not shown on the Contract Documents or Information Available to Bidders; (ii) was not brought to the site by Contractor; and (iii) exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste. The indemnity obligation in this Article shall not apply to:

.1 claims, damages, losses or expenses arising from the breach of contract, negligence or willful misconduct of Contractor, its suppliers, its Subcontractors of all tiers and/or any persons or entities working under Contractor; and

.2 claims, damages, losses or expenses arising from a Hazardous Material subject to Article 3.19.2.

3.19.6 In addition to the requirements in Article 3.22, Contractor shall indemnify and hold harmless the University from and against claims, damages, losses and expenses, arising from a Hazardous Material on the Project site, if such Hazardous Material: (i) was shown on the Contract Documents or Information Available to Bidders; (ii) was brought to the site by Contractor; and (iii) exceeded OSHA Permissible Exposure Levels or levels which would classify the material as a state of California or federal hazardous waste. Nothing in this paragraph shall obligate the Contractor to indemnify University in the event of the sole negligence of the University, its officers, agents, or employees.

3.20 INFORMATION AVAILABLE TO BIDDERS

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

.1 The information is made available for the convenience of Bidders and is not a part of the Contract.

.2 The Contractor may rely on written descriptions of physical conditions included in the information to the extent such reliance is reasonable.

.3 Other components of the information, including but not limited to recommendations, may

not be relied upon by Contractor. University shall not be responsible for any interpretation of or conclusion drawn from the other components of the information by the Contractor.

3.21 LIABILITY FOR AND REPAIR OF DAMAGED WORK

3.21.1 Contractor shall be liable for any and all damages and losses to any Job Order Work (whether by fire, theft, vandalism, earthquake, flood or otherwise) prior to University's acceptance of the Job Order Work as fully completed except that Contractor shall not be liable for earthquake in excess of 3.5 on the Richter Scale, tidal wave, or flood, provided that the damages or losses were not caused in whole or in part by the negligent acts or omissions of Contractor, its officers, agents or employees (including all Subcontractors and suppliers of all tiers). As used herein, "flood" shall have the same meaning as in the builder's risk property insurance.

3.21.2 Contractor shall promptly repair and replace any Work or materials damaged or destroyed for which the Contractor is liable under Article 3.21.1.

3.22 INDEMNIFICATION

3.22.1 Contractor shall indemnify, defend and hold harmless University, University's consultants, University's Representative, University's Representative's consultants, and their respective directors, officers, agents, and employees from and against losses (including without limitation the cost of repairing defective work and remedying the consequences of defective work) arising out of, resulting from, or relating to the following:

- .1 The failure of Contractor to perform its obligations under the Contract.
- .2 The inaccuracy of any representation or warranty by Contractor 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 Contractor or any other Subcontractor, or anyone directly or indirectly employed by Contractor or any Subcontractor.
- .4 Any claim of damage or loss resulting from Hazardous Materials introduced, discharged, or disturbed by Contractor as required per Article 3.19.6.

3.22.2 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 Contractor shall fully indemnify, defend and hold harmless University and protect University from and against the same as provided in paragraph 3.22.1 above. In addition to the liability imposed by law upon the Contractor for damage or injury (including death) to persons or property by reason of the negligence of the Contractor, its officers, agents, employees or Subcontractors, which liability is not impaired or otherwise affected hereby, the Contractor shall defend, indemnify, hold harmless, release and forever discharge the University, its officers, employees, and agents from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent act, omission, or willful misconduct of the Contractor, its officers, agents, employees, or any of its Subcontractors, or anyone directly or indirectly employed by either of them or from the condition of the premises or any part of the premises while in control of the Contractor, its officers, agents, employees, or any of its Subcontractors or anyone directly or indirectly employed by either of them, arising out of the performance of the Work called for by this Contract. Contractor agrees that this indemnity and hold harmless shall apply even in the event of negligence of University, its officers, agents, or employees, regardless of whether such negligence is contributory to any claim, demand, loss, damage, injury, expense, and/or liability; but such indemnity and hold harmless shall not apply (i) in the event of the sole negligence of University, its officers, agents, or employees; or (ii) to the extent that the University shall indemnify and hold harmless the Contractor for Hazardous Materials pursuant to Article 3.19.5.

3.22.3 In claims against any person or entity indemnified under this Article 3.22 that are made by an employee of Contractor or any Subcontractor, a person indirectly employed by Contractor or any Subcontractor, or anyone for whose acts Contractor or any Subcontractor may be liable, the indemnification obligation under this Article 3.22 shall not be limited by any limitation on amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

3.22.4 The indemnification obligations under this Article 3.22 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

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

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1 ADMINISTRATION OF THE CONTRACT BY UNIVERSITY'S REPRESENTATIVE

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

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

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

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

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

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

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

4.1.8 University's Representative will be, in the first instance, the interpreter of the requirements of the

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

4.2 JOB ORDER PROCEDURES

4.2.1 As the need exists for performance under the terms of this Contract, the University will notify the Contractor of an existing Job Order requirement. Upon receipt of this notification, the Contractor shall respond to the needs of the University within two working days by establishing verbal contact with the University to further define the scope of the requirement and visiting the proposed work site in the company of the University's Representative, and participating in a Joint Scope Meeting which will include discussion and establishment of the following:

- .1 Project number and title
- .2 Existing site conditions
- .3 Methods and alter-natives for accomplishing work
- .4 Definition and refinement of requirements
- .5 Detailed scope of work
- .6 Requirements for plans, sketches, shop drawing etc.
- .7 Tentative work schedule
- .8 Preliminary quantity estimates

4.2.2 Upon completion of the Joint Scope Meeting, the University Representative will issue a Request for Job Order Proposal (RFP) and Detailed Scope of Work which requires that the Contractor prepare a proposal for the work under consideration.

4.2.3 The Contractor will prepare a Job Order Proposal which shall include but not be limited to:

- .1 Firm fixed-price proposal
- .2 Schedule in a form required by the University
- .3 Subcontractor List which includes (a) the name and the location of the place of business of each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement, or a subcontractor licensed by the state of California who, under subcontract to the Contractor, specifically fabricates and installs a portion of the work or improvement according to Detailed Scope of Work, in an amount in excess of 1/2 of 1 percent of the Contractor's total bid, (b) the portion of the work which will be done by each subcontractor. The Contractor shall list only one subcontractor for each such portion as is defined by the Contractor in its Job Order Proposal. By submitting the Job Order Proposal, Contractor represents that each Subcontractor, regardless of tier, has the appropriate current and active license(s) issued by the State of California Contractor's State License Board for the Work to be performed.
- .4 Any Drawings or other information required for the University to be able to review the price proposal.

4.2.4 The firm fixed-price proposal shall be calculated from either Prepriced Work Tasks or Non-Prepriced Work Tasks.

4.2.5 Prepriced Work Tasks shall identify the type and number of work units required from the Construction Task Catalog®. The price per unit set forth in the Construction Task Catalog® shall serve as the base price for the purpose of the operation of this article. The Contractor's Proposal shall include support documentation to indicate that adequate engineering and planning for the requirement has been done, and that the work units proposed are reasonable for the tasks to be performed. Documentation to be submitted with the Proposal shall include, but not be limited to, drawings, calculations, catalog cuts, specifications, and architectural renderings.

4.2.6 Non-Prepriced Work Tasks are units of work not included in the Construction Task Catalog® but within the general scope and intent of this contract. Such work requirements shall be incorporated into and made a part of this Contract for the Job Order to which they pertain, and may be incorporated into the Construction Task Catalog® if determined appropriate by the University at the base price determined in this Article. Non-prepriced work requirements shall be separately identified and submitted in the Work Order proposal. Information submitted in support of non-prepriced work shall include, but not be limited to, the following:

- .1 Complete specifications and technical data, including work unit content, work unit costs data, quality control and inspection requirements.
- .2 Work schedule specific to the Non-Prepriced Task, this will include an update for other Job Order Work concurrently under construction and how these projects will affect the new Job Order Work.
- .3 Pricing data submitted in support of non-prepriced work units shall include a cost or price analysis report, establishing the basis for selecting the approach proposed to accomplish the requirements. Unless otherwise directed by the University, costing data will be submitted demonstrating that the Contractor sought and received three quotes.
- .4 The final price submitted for Non-Prepriced Tasks shall be based on the lowest of the three quotes according to the following formula:

Contractor Performed Duties

A=Direct Labor Costs and Fringe Benefits per Prevailing Wage Rates.
B=Direct Material Costs (supported by quotes)
C=Direct Equipment Costs (supported by equipment amortization data)
D=Allowable Overhead Costs = A x 25%
(This includes Workers Compensation insurance).
E=Allowable Profit = (A+B+C) x 10%

Subcontractor Performed Duties

F=Cost of Subcontractors to Contractor (supported by quotes)
G=Contractor's Allowance for Subcontractor Cost =F x 10%

The final value of the NPP Task will be:

$A+B+C+D+E+F+G$

- .5 Following approval by the Owner/University of a Non- Prepriced Task and unit price, the Non- Prepriced Task unit price will be entered into the computer data base.
- .6 The total extended price for the Non- Prepriced Task will be determined by multiplying the unit price by the quantity required. The price offered in the Proposal will be determined by multiplying the total extended price by an adjustment factor of 1.0000.
- .7 After using a Non-Prepriced item on three separate Job Orders, the University and Contractor will agree on the unit price for the work item which will be fixed as a permanent prepriced item which will no longer require price justification and the unit price will not include any markup which is included in the Adjustment Factor.

4.2.7 The University reserves the right to reject a Contractor proposal based on unjustifiable quantities, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part. The Contractor has the obligation to confirm the quantities shown in the Contractor's proposals. The University has the right to require the Contractor to prove the quantities shown in the Proposals by providing additional documentation such as sketches, drawings or plans as necessary. The University also reserves the right to not award a Job Order if University's requirement is no longer valid. In these instances, the Contractor has no right of claim to recoup proposal expenses. ~~The University may pursue continuing valid requirements by other means where agreement was not reached with the Contractor.~~

4.2.8 By submitting a signed Proposal to the University, the Contractor is agreeing to accomplish the work outlined in the RFP for that particular Job Order. It is the Contractor's responsibility to include any necessary scope items in the Proposal prior to issuing it to the University. Errors and omissions in the proposal shall be the responsibility of the Contractor. The Contractor's Proposal shall be valid for the entire term of the Contract.

4.2.9 Before ordering any material or doing any work, the Contractor shall verify all measurements at the site of a specific Job Order, and shall be responsible for the correctness of same. No extra charge or compensation will be allowed on account of difference between actual dimensions and the measurements indicated in the RFP and Detailed Scope of Work. Any difference which may be found shall be submitted to the University for review and consideration before proceeding with the work.

4.2.10 When the word approximate is used in conjunction with measurements, quantities, dimensions, etc., it is the Contractors' responsibility to verify any and all such items prior to submission of the Proposal. Any Job Order awarded is for all services or work, as necessary, to repair, and remodel the facilities covered by the Job Order in accordance with all Contract terms and conditions. It shall also be the duty and responsibility of the Contractor to manage, and conduct the required work in the most effective and efficient manner possible and meet or exceed minimum critical rates or standards. No claims for additional moneys will be entertained when such claim is based upon a contention the Contract or Job Order fails to mention a specific item or component of facility covered by contract and the work is required in the normal course of operations.

4.2.11 Prior to issuing a Job Order Authorization, University will notify Contractor in writing, if University, after due investigation, objects to a Subcontractor or Superintendent proposed by BidderContractor, in which case BidderContractor shall propose a substitute acceptable to University. Substitution of Superintendent shall be made in accordance with Article 3 of the General Conditions. Substitution of a Subcontractor shall be made in accordance with Article 5 of the General Conditions. Failure of University to object to a proposed Subcontractor or Superintendent prior to authorization shall not preclude University from requiring replacement of the Subcontractor or Superintendent based upon information received subsequent to authorization, information which cannot be properly evaluated prior to authorization due to time constraints, or information relating to a failure to comply with the requirements of the Contract.

4.3 PROCESSING TIME LIMITS

4.3.1 After receiving the Request for Job Order Proposal Submittal, Contractor shall submit the proposal for the Job Order on or before the due date stated in the Request for Proposal (RFP) (14 days maximum unless otherwise specified).

4.3.2 Contractor shall make a thorough analysis of each Job Order and submit all Requests For Information (RFI's) within 7 days after issuance of any RFP. Submission of RFI's shall in no way extend the proposal due date unless deemed necessary by the University.

4.3.3 Contractor's project manager or agent shall be available for proposal review meetings within 48 hours of being notified by the University (via fax, e-mail, telephone, etc.). After review of the proposal, Contractor shall remove all inappropriate line items and adjust quantities as directed by the University.

4.3.4 Contractor shall submit a revised proposal within 24 hours of proposal review meeting. Upon review of revised proposal, the Contractor shall remove all line items or adjust quantities deemed inappropriate by the University's Representative and re-submit the proposal within 24 hours. No new line items, quantity increases or added modifiers will be accepted unless agreed to by the University during the second proposal review meeting.

4.3.5 Failure to comply may result in the Contractor being deemed non-responsive and could result in cancellation-termination of the Contract. The University may also deem the Contractor to be non-responsive in regard to any future JOC Contracts.

4.4 CONTRACTOR SUPPLEMENTAL JOB ORDER REQUESTS

4.4.1 Contractor may request changes to the Job Order Sum and/or Job Order Time for Extra Work or delays for completion of Job Order Work caused by the acts, errors, or omissions of the University, University's Representative, their agents or employees, materially differing site conditions, or Delays to Final Completion of the Work.

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

- .1 Timely submission of a Supplemental Job Order Request that meets the requirements of Articles 4.4.3.1, 4.4.3.2 and 4.4.3.3; and
- .2 If requested, timely submission of additional information requested by the University Representative pursuant to Article 4.2.3.3.

4.4.3 Supplemental Job Order Request:

- .1 Any changes to the Work of a Job Order will be done by issuance of a Supplemental Job Order. Any additions or deletions are therefore calculated using the appropriate item in the Construction Task Catalog®, multiplied by the quantity to be adjusted, multiplied by the appropriate Adjustment Factor. Time will be adjusted as appropriate.
- .2 A Supplemental Job Order Request will be deemed timely submitted if, and only if, it is submitted within 7 days of the date the Contractor discovers, or reasonably should discover the circumstances giving rise to the Supplemental Job Order Request, unless additional time is allowed in writing by University's Representative for submission of the Supplemental Job Order Request, provided that if :

- .1 the Supplemental Job Order Request includes compensation sought by a Subcontractor; AND
- .2 the Contractor requests in writing to the University's Representative, within the 7-day time period, additional time to permit Contractor to conduct an appropriate review of the Subcontractor Supplemental Job Order Request,

the time period for submission of the actual Supplemental Order Request shall be extended by the number of days specified in writing by the University's Representative.

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

- .1 a completed Cost Proposal with pricing from the CTC meeting the requirements of Article 7; OR
- .2 a partial Cost Proposal with pricing from the CTC and a declaration of what required information is not then known to Contractor. If Contractor failed to submit a completed Cost Proposal with the Job Order Request, Contractor shall submit a completed Cost Proposal meeting the requirements of Article 7 within 7 days of the date the Contractor submitted the Job Order Request unless additional time is allowed by the University's Representative.

- .4 Upon request of University's Representative, Contractor shall submit such additional information as may be requested by University's Representative for the purpose of evaluating the Supplemental Job Order Request. Such additional information may include:

- .1 If Contractor seeks an adjustment of the Job Order Time, written documentation demonstrating Contractor's entitlement to a time extension under Article 8.4, which shall be submitted within 15 days of the date requested. If requested, Contractor may submit a fragnet in support of its request for a time extension. The University may, but is not obligated to, grant a time extension on the basis of a fragnet alone which, by its nature, is not a complete schedule analysis. If deemed appropriate by University Representative, Contractor shall submit a more detailed schedule analysis in support of its request for a time extension.
- .2 If Contractor seeks an adjustment of the Job Order Sum or other monetary relief for delay, written documentation demonstrating Contractor's entitlement to such an adjustment under Article 7.3.9, which shall be submitted within 15 days of the date requested.
- .3 Any other information requested by the University's Representative for the purpose of evaluating the Supplemental Job Order Request, which shall be submitted by the deadline established by the University's Representative.

4.4.4 University's Representative will make a decision on a Supplemental Job Order Request, within a reasonable time, after receipt of a Supplemental Job Order Request. In the event the Supplemental Job Order Request is submitted pursuant to Article 8.4.1, the University's Representative shall promptly review and accept or reject it within thirty (30) days. A final decision is any decision on a Supplemental Job Order Request which states that it is final. If University's Representative issues a final decision denying a

Supplemental Job Order Request in whole or in part, Contractor may contest the decision by filing a timely Claim under the procedures specified in Article 4.6.

4.4.5 Contractor may file a written demand for a final decision by University's Representative on all or part of any Supplemental Job Order Request as to which the University's Representative has not previously issued a final decision pursuant to Article 4.4.4; such written demand may not be made earlier than the 30th day after submission of the Supplemental Job Order Request. Within 30 days of receipt of the demand, University's Representative will issue a final decision on the Supplemental Job 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 Supplemental Order Request in its entirety.

4.5 CHANGE ORDERS TO THE CONTRACT

4.5.1 The University and the Contractor may modify the Contract only by Change Order or by Job Order Authorization.

4.5.2 Contract Change Orders shall include, but are not limited to, additions to the Construction Task Catalog® and University's unilateral option to extend the Contract.

4.5.3 The University has two (2) unilateral options which may be exercised at any time subject to the following:

- .1 Each University option is for one year or the expenditure of the Maximum Contract Value of the option.
- .2 This provision provides a means to adjust the Adjustment Factors Base Term to the second and third year adjustment factors by using actual escalation/de-escalation as measured by the Construction Cost Index (CCI) published in the ENR (formally known as Engineering News Record). The CCI for closest published City shall be applied in the operation of this provision.
- .3 This clause will apply only to that period after one year and the period after the second year from the date of the original Contract award. The originally bid adjustment factors are valid for a one year period beginning with the date of Contract award.
- .4 CCI indices are published monthly. The "base year" for the purposes of this clause is the last 12-month period just prior to the month in which this Contract is awarded. The "base year index" is determined by summing the monthly CCI indices for each of the 12 months of the "base year" and dividing by 12. The result is the average CCI for the "base year."
- .5 The "second year period" for the purposes of the clause is the 12-month period following the "base year". The "second year extension index" is determined by summing the monthly CCI indices for the "second year period" and dividing by the number of months. The result is the average CCI for the "second year period." The "third year period" is the 12-month period following the "second year period". The "third year extension index" is determined by summing the monthly CCI indices for the "third year period" and dividing by the number of months.
- .6 The Price Adjustment for the "second year period" is determined by dividing the "second year index" by the "base year index." The "second year adjustment factor" for the second year period is determined by multiplying the Price Adjustment by the original adjustment factor. The Price Adjustment for the "third year period" is determined using the "third year index" divided by the "base year index". The "third year adjustment factor" for the third year period is determined by multiplying the Price Adjustment by the original adjustment factor.
- .7 All the above computations shall be carried to five (5) decimal places and then rounded to four (4) decimal places. Rounding of numbers shall be accomplished by increasing the fourth decimal place if the fifth decimal is equal to five or greater. If the fifth decimal place is equal to four or less, the fourth decimal shall remain unchanged.

4.5.4 The Construction Task Catalog® Prices are not subject to change during the course of this Contract.

4.6 CLAIMS

4.6.1 The term "Claim" means a written demand or assertion by Contractor seeking an adjustment or

interpretation of the terms of the Contract Documents, payment of money, extension of time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between University and Contractor arising out of or related to the Contract Documents or the performance of the Work. However, the term "Claim" shall not include, and the Claims procedures provided under this Article 4, including but not limited to arbitration, shall not apply to the following:

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

4.6.2 A Claim arises upon the issuance of a written final decision denying in whole or in part Contractor's Supplemental Job Order Request pursuant to Article 4.4.4.

4.6.3 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.
- .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 Contractor, that the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.
- .4 A certification, executed by each Subcontractor claiming not less than 5% of the total monetary amount sought by the claim, that the subcontractor's portion of the claim is filed in good faith. The certification must be made on the Claim Certification form, included in the Exhibits to the Contract. The language of the Claim Certification form may not be modified.
- .5 A statement demonstrating that a Supplemental Job Order Request was timely submitted as required by Article 4.4.3.
- .6 If a Cost Proposal or declaration was required by Article 4.4.3, a statement demonstrating that the Cost Proposal or the declaration was timely submitted as required by Article 4.4.3.
- .7 A detailed justification for any remedy or relief sought by the Claim, including to the extent applicable, the following:
 - .1 If the Claim involves Extra Work, a detailed cost breakdown of the amounts claimed, including the items specified in Article 7.3.2. An estimate of the costs 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 month during any periods costs are incurred. A cost record will be considered current if submitted within 30 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 Job Order Work site or incorporated into the Work, and other pertinent information; and iii) itemization of machinery and equipment including make, model, hours of use, dates of use and equipment rental rates of any rented equipment.
 - .2 If the Claim involves an extension of the Job Order Time, written documentation demonstrating the Contractor's entitlement to a time extension under Article 8.4,

- including the specific dates for which a time extension is sought and the specific reasons for entitlement of a time extension.
- .3 If the Claim involves an adjustment of the Job Order Sum for delay, written documentation demonstrating the Contractor's entitlement to such an adjustment, including but not limited to, a detailed time impact analysis of the Job Order Schedule. The Job Order Schedule must demonstrate Contractor's entitlement to such an adjustment.

4.7 ASSERTION OF CLAIMS

- 4.7.1 Claims by Contractor shall be first submitted to University's Representative for decision.
- 4.7.2 Notwithstanding the making of any Claim or the existence of any dispute regarding any Claim, unless otherwise directed by University's Representative, Contractor shall not cause any delay, cessation, or termination in or of Contractor's performance of the Work, but shall diligently proceed with performance of the Work in accordance with the Contract Documents.
- 4.7.3 Contractor shall submit a Claim in writing, together with all supporting data specified in Article 4.6.3, to University's Representative as soon as possible but not later than 30 days after the date the Claim arises under Article 4.6.2, provided that after written notification to the University's Representative within such time period, the time period for submission of the Claim shall be extended by the number of days specified in writing by the University's Representative where the Claim includes compensation sought by a Subcontractor and the Contractor requests an extension of time to permit it to discharge its responsibilities to conduct an appropriate review of the Subcontractor claim.
- 4.7.4 Strict compliance with the requirements of Articles 4.2, 4.3 and 4.4 are conditions precedent to Contractor's right to arbitrate or litigate a Claim. Contractor specifically agrees to assert no Claims in arbitration or litigation unless there has been strict compliance with Articles 4.2, 4.3, and 4.4. The failure of Contractor to strictly comply with the requirements of Articles 4.2, 4.3 and 4.4 constitutes a failure by Contractor to exhaust its administrative remedies with the University, thereby denying any court or arbitration panel of jurisdiction to adjudicate the Claim.

4.8 DECISION OF UNIVERSITY'S REPRESENTATIVE ON CLAIMS

4.8.1 University's Representative will timely review Claims submitted by Contractor. If University's Representative determines that additional supporting data are necessary to fully evaluate a Claim, University's Representative will request such additional supporting data in writing. Such data shall be furnished no later than 10 days after the date of such request. University's Representative will render a decision promptly and in any case within 30 days after the later of the receipt of the Claim or the deadline for furnishing such additional supporting data; provided that, if the amount of the Claim is in excess of \$50,000, the aforesaid 30-day period shall be 60 days. Failure of University's Representative to render a decision by the applicable deadline will be deemed a decision denying the Claim on the date of the deadline. The decision of University's Representative will be final and binding unless appealed in accordance with Articles 4.8.2, 4.8.3, and 4.8.4. The University's Representative's decision on a Claim or dispute will include a statement substantially as follows:

"This is a decision under Article 4.8 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."

4.8.2 If either Contractor 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 4.8.1 for University Representative to render a decision.

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

4.8.4 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 4.10. 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 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 American Arbitration Association ("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.

4.8.5 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.

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

4.9 MEDIATION

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

4.10 ARBITRATION

4.10.1 A demand for arbitration pursuant to Article 4.7 shall include a copy of the Claim presented to University's Representative pursuant to Article 4.6 and a copy of the decision of University's Representative pursuant to Article 4.7, 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.

4.10.2 Except as modified by this Article 4.10, arbitration shall be initiated and conducted in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. The following additional modifications shall be made to the aforesaid AAA rules:

- .1 Civil discovery shall be permitted for the production of documents and taking of depositions. Other discovery may be permitted in the discretion of the arbitrator. All disputes regarding discovery shall be decided by the arbitrator.
- .2 University's Representative and/or University's consultants, shall if required by agreement with University, upon demand by University join in and be bound by the Arbitration. University's Representative and University's consultants will have the same rights in any arbitration proceeding as are afforded by the AAA rules to Contractor and University.
- .3 Contractor's sureties shall be bound by any arbitration award and may join in any arbitration proceeding.
- .4 Except as provided in Articles 4.10.2.2. and 4.10.2.3 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, Contractor, and the joining party.
- .5 If more than one demand for arbitration is made by a party with respect to Claims referred to University's Representative, all such Claims shall be consolidated into a single arbitration unless the parties otherwise agree in writing.
 - .6 If total Claims are less than \$50,000, AAA expedited procedures as modified by this Article 4 shall apply. If total Claims are between \$50,000 and \$100,000 they shall be heard by a single arbitrator who shall be an attorney. If total Claims are in excess of \$100,000 and are submitted to arbitration, either by agreement or by failure to elect litigation the controversy shall be heard by a panel of three arbitrators, one of which shall be an attorney.
 - .7 No arbitrator shall be appointed and no discovery may be commenced prior to the date of Final Completion unless University and Contractor otherwise agree.
 - .8 The exclusive forum for determining arbitrability shall be the Superior Court of the State of California. AAA shall not submit to any arbitrator any matter concerning the arbitrability of the dispute if the arbitrability is contested.
 - .9 If the expedited procedures of the AAA are applicable, the AAA shall submit simultaneously to each party an identical list of 7 proposed arbitrators drawn from the National Panel of Commercial Arbitrators, and each party may strike 3 names from the list on a peremptory basis and return the list to AAA within 10 days from the date of receipt.
 - .10 Except as provided herein, the arbitration shall be conducted and enforced under California law, including the California Arbitration Act (California Code of Civil Procedure section 1280 and following). The Federal Arbitration Act shall not apply to the arbitration.

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

4.10.4 University may, but is not required, to assert as a counterclaim any matter arising out of the claims asserted by Contractor in the arbitration. University's failure to assert any such counterclaim in an arbitration shall be without prejudice to the University's right to assert the counterclaim in litigation or other proceeding.

4.11 WAIVER

4.11.1 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.

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

ARTICLE 5 SUBCONTRACTORS

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

5.1.1 Contractor shall list in each Job Order Proposal all Subcontractors that will perform work, labor, or render such services having a dollar value in excess of 0.5% of the Job Order. A Job Order Proposal shall include the following information when listing Subcontractors: 1) Work Activity; 2) name of Subcontractor; 3) city of Subcontractor's business location and 4) Subcontract Dollar Value. The failure to list, on the Job Order Proposal, and one of the items set forth above will result in the University treating the Job Order as if no Subcontractor was listed for the Work Activity and Contractor will thereby represent to University that

Contractor agrees that is it fully qualified to perform that portion of the Work and shall perform that Work Activity.

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

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

5.1.4 Except as hereinafter provided, any increase in the cost of the Job Order Work resulting from the replacement or substitution of a Subcontractor, as required by University or University's Representative pursuant to Article 5.1.3 shall be borne solely by Contractor and Contractor shall not be entitled to any increase in Job Order Sum or extension of Job Order Time on account of such replacement or substitution.

5.2 SUBCONTRACTUAL RELATIONS

5.2.1 Any part of the Work performed for Contractor by a first-tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, to assume toward Contractor all the obligations and responsibilities which Contractor assumes towards University by the Contract Documents, and to perform such portion of the Work in accordance with the Contract Documents. Each such subcontract shall preserve and protect the rights of University under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof will not prejudice such rights. Contractor shall cause each such subcontract to expressly include the following requirements:

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

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

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

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

ARTICLE 6 CONSTRUCTION BY UNIVERSITY OR BY SEPARATE CONTRACTORS

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

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

6.1.2 University will provide coordination of the activities of University's forces and of each Separate Contractor with Job Order Work of Contractor. Contractor shall participate with University and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Contractor shall make necessary revisions to the Job Order Schedule after such joint review.

6.2 MUTUAL RESPONSIBILITY

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

6.2.2 If a portion of Job Order Work is dependent upon the proper execution or results of other construction or operations by University or Separate Contractors, Contractor shall inspect such other construction or operations before proceeding with that portion of Job Order Work. Contractor shall promptly report to University's Representative apparent discrepancies or defects which render the other construction or operations unsuitable to receive Job Order Work. Unless otherwise directed by University's Representative, Contractor shall not proceed with the portion of Job Order Work affected until apparent discrepancies or defects have been corrected. Failure of Contractor to so report within a reasonable time after discovering such discrepancies or defects shall constitute an acknowledgment that the other construction or operations by University or Separate Contractors is suitable to receive Job Order 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 Contractor and Separate Contractors as to the responsibility under their respective contracts for maintaining the Job Order Work 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 Job Order Work by Supplemental Job Order or Field Order and modifications to any Contract Term or Condition by Change 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 Contractor may request a Supplemental Job Order under the procedures specified in Article 4.2.

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

7.1.4 Contractor shall proceed promptly with any changes in the Work, unless otherwise provided in the

relevant Supplemental Job Order or Field Order.

7.2 DEFINITIONS

7.2.1 A Supplemental Job Order is a Construction Document that sets forth modifications to Job Order Work (including the Detailed Scope of Work, the Job Order Sum, Job Order Time) and is stated in, or attached to, a Job Order Authorization.

7.2.2 A Change Order is a Contract Document (as shown in the Exhibits) which has been signed by both University and Contractor, and states their agreement, as applicable, to modification to any Contract term or condition.

7.2.3 A Unilateral Change Order may be issued by University, without the Contractor's signature, where the University determines that a modification to a Contract Term or Condition is required, even though no agreement has been reached between University and Contractor with regard to such change in the Work.

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

7.3 SUPPLEMENTAL JOB ORDER PROCEDURES

7.3.1 Contractor shall provide a Supplemental Job Order Request and Cost Proposal pursuant to Article 4.2 and this Article 7.3 of the General Conditions. Adjustments of the Job Order Sum resulting from Extra Work and Deductive Work shall be determined using one of the methods described in this Article 7.3. All changes to the work shall be priced in the same manner as the original Job Order. Adjustments of the Job Order Time shall be subject to the provisions in Article 8. Contractor's obligation to provide Cost Proposals shall be subject to the following:

- .1 The obligation of Contractor to provide Cost Proposals is not Extra Work, and shall not entitle the Contractor to an adjustment of the Job Order Sum or Job Order Time.
- .2 The failure of Contractor to timely provide a Cost Proposal pursuant to Article 4.4 and this Article 7.3.1 is a material breach of the Contract. Contractor shall be responsible for any delay in implementing a change for which Contractor failed to timely provide a Cost Proposal consistent with the requirements of Article 4.4 and this Article 7.3.1.

7.3.2 The term "Cost of Extra Work" as used in this Article 7.3 shall mean costs incurred or to be incurred by Contractor and each Subcontractor, regardless of tier involved, in the performance of Work scope not specified in an applicable Job Order. The Cost of Extra Work shall be determined using the same procedures in pricing the original Job Order. Any additions or deletions are therefore calculated by using the appropriate item(s) from the Construction Task Catalog® multiplied by the quantity to be adjusted multiplied by the appropriate adjustment factor.

7.3.3 Modifications to a specified scope of Job Order Work shall utilize the Adjustment Factors in effect when the Job Order was drafted.

7.3.4 For Work to be deleted by Supplemental Job Order, the reduction of the Job Order Sum shall be computed on the basis of one or more of the following:

- .1 If scope stated on the narrative scope of Work and detailed cost estimate is deleted by University, the cost of the Work will be deducted by Supplemental Job Order. The deduction will include the Contractor's Adjustment Factor for all work not performed or deleted from the original Job Order.

7.3.5 Except as provided in Articles 7 and 8, Contractor shall have no claim for damage or compensation for any delay, interruption, hindrance, or disruption.

7.4 FIELD ORDERS

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

- .1 A Field Order may state that it does or does not constitute a change in the Job Order Work.
- .2 If the Field Order states that it does not constitute a change in the Job Order Work and the Contractor asserts that the Field Order constitutes a change in the Job Order Work, in order to obtain an adjustment of the Job Order Sum or Job Order Time for the Work encompassed by the Field Order, Contractor must follow all procedures set forth in Article 4, starting with the requirement of submitting a timely Change Order Request within 7 days of Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Job Order Sum or Job Order 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 Job Order Work, the Work described in the Field Order shall be considered Extra Work and the Contractor shall be entitled to an adjustment of the Work Order Sum and Work Order Time, calculated under and subject to Contractor's compliance with the procedures for verifying and substantiating costs and delays in Articles 7 and 8.
- .4 In addition, if the Field Order states that it does constitute a change in Job Order Work, the Field Order may or may not contain University's estimate of adjustment of Job Order Sum and/or Job Order Time. If the Field Order contains an estimate of adjustment of Job Order Sum or Job Order Time, the Field Order is subject to the following:
 - .1 The Contractor shall not exceed the University's estimate of adjustment to Job Order Sum or Job Order Time without prior written notification to the University's Representative.
 - .2 If the Contractor asserts that the change in the Work encompassed by the Field Order may entitle Contractor to an adjustment of Job Order Sum or Job Order Time in excess of the University's estimate, in order not to be bound by University's estimate Contractor must follow all procedures set forth in Article 4, starting with the requirement of submitting a timely Change Order Request within 7 days of Contractor's receipt of the Field Order; failure to strictly follow those procedures is a bar to any Claim for an adjustment of the Job Order Sum or Job Order 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, Contractor shall promptly proceed to perform the Work as ordered in the Field Order notwithstanding any disagreement by the Contractor concerning whether the Work is extra.

7.5 WAIVER

7.5.1 A waiver of or failure by University or University's Representative to enforce any requirement in this Article 7 in connection with any adjustment of the Job Order 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 Job Order Sum.

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

ARTICLE 8 CONTRACT TIME

8.1 COMMENCEMENT OF THE JOB ORDER WORK

8.1.1 The date of commencement of Job Order Work shall be set forth in the Job Order Authorization for such Job Order. The date of commencement of Job Order Work shall not be postponed by the failure of Contractor, Subcontractors, or of persons or firms for whom Contractor is responsible, to act.

8.2 PROGRESS AND COMPLETION

8.2.1 By signing the Job Order Proposal:

- .1 Contractor represents to University that the Job Order Time is reasonable for performing

- .2 the Work and that Contractor is able to perform the Work within the Job Order Time.
- .2 Contractor agrees that University is purchasing the right to have the Contractor present on the Job Order Work site for the full duration of the Job Order Time, even if Contractor could finish the Job Order Work in less than the Job Order Time.

8.2.2 Contractor shall not, except by agreement or instruction of University in writing, commence operations on the Job Order Work site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by Contractor. The dates of commencement and Final Completion of the Work shall not be changed by the effective date of such insurance.

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

8.3 DELAY

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

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

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

8.4 ADJUSTMENT OF THE JOB ORDER TIME FOR DELAY

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

- .1 Condition Number One: 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 Job Order Work beyond the Job Order Time. Under this Article 8.4.1.2, if the Job Order Schedule shows Final Completion of the Work before expiration of the Job Order Time, a delay is critical if and only to the extent the delay pushes Final Completion of the Job Order Work to a date that is beyond the Job Order Time.:
- .2 Condition Number Two: Within 7 days of the date the Contractor discovers or reasonably should discover an act, error, omission or unforeseen condition or event causing the delay is likely to have an impact on the critical path of the Project, (even if the Contractor has not yet been delayed when the Contractor discovers or reasonably should discover the critical path impact of the act, error, omission or unforeseen condition giving rise to the delay) the Contractor submits both a timely and complete Change Order Request that meets the requirements of Article 4.2.
- .3 Condition Number Three: The delay is not caused by:
 - .1 A concealed, unforeseen or unknown condition or event except for a materially differing site condition pursuant to Article 3.17; or
 - .2 The financial inability, misconduct or default of the Contractor, a Subcontractor or supplier; or
 - .3 The unavailability of materials or parts.
- .4 Condition Number Four: The delay is caused by:
 - .1 Fire; or
 - .2 Strikes, boycotts, or like obstructive actions by labor organizations; or

- .3 Acts of God (As used herein, "Acts of God" shall include only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves); or
- .4 A materially differing site condition pursuant to Article 3.17; or
- .5 An error or omission in the Contract; or
- .6 The University's decision to change the scope of the Job Order Work, where such decision is not the result of any default or misconduct of the Contractor; or
- .7 The University's decision to suspend the Job Order Work, where such decision is not the result of any default or misconduct of the Contractor; or
- .8 The failure of the University (including the University acting through its consultants, Design Professionals, Separate Contractors or the University's representative) to perform any Contract obligation unless such failure is due to Contractor's default or misconduct.
- .9 "Adverse weather," but only for such days of adverse weather, or on-site conditions caused by adverse weather, 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 adverse weather for the purpose of determining whether Contractor is entitled to an adjustment in Job Order Time, both of the following conditions must be met:
 - .1 the day must be a day in which, as a result of adverse weather, less than one half day of critical path work is performed by Contractor; and
 - .2 the day must be identified in the Job Order Schedule as a scheduled work day.

8.4.2 If and only if a delay meets all four conditions prescribed in Article 8.4.1, then a time extension will be granted for each day that Final Completion of the Job Order Work is delayed beyond the Job Order Time, subject to the following:

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

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

8.5 WAIVER

8.5.1 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, 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.

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

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 PROGRESS PAYMENT

9.1.1 University agrees to pay monthly to Contractor, subject to Article 9.3.3, an amount equal to 95% of the sum of the following for each applicable Job Order, Contractor's total payment will be limited to:

Project Name: 

- .1 Cost of the Job Order Work in permanent place as of the date of the Contractor's Application For Payment.
- .2 Plus cost of materials not yet incorporated in the Work, subject to Article 9.2.5.3 Less amounts previously paid.

Under this Article 9.1.1, University may, but is not required to, pay Contractor more frequently than monthly.

9.1.2 After Final Completion of each Job Order and subject to Article 9.3.3, University will make any of the remaining progress payments for each applicable Job Order in full.

9.2 APPLICATION FOR PAYMENT

9.2.1 On or before the 10th day of the month or such other date as is established by the Contract Documents, Contractor shall submit to University's Representative an itemized Application For Payment for each Job Order, 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 sections of the Price Proposal Summary (as contained in the Job Order Proposal) based upon the percentage complete for each section.
- .3 Itemize retention.

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

9.2.3 If required by University, an Application For Payment shall be accompanied by (1) Certified Payroll, (2) a summary showing payments that will be made to Subcontractors covered by such application and conditional releases upon progress payment or final payment and (3) 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.

9.2.4 Contractor warrants that, upon submittal of an Application For Payment, all Job Order 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 Contractor, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

9.2.5 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 Job Order Work but already delivered and suitably stored either at the Job Order Work site or at some other appropriate location acceptable to University's Representative. In such case, Contractor shall furnish evidence satisfactory to University's Representative (1) of the cost of such materials and (2) that such materials are under the exclusive control of Contractor. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as acceptance of such materials nor relieve Contractor from sole responsibility for the care and protection of such materials; nor relieve Contractor from risk of loss to such materials from any cause whatsoever; nor relieve Contractor from its obligation to complete the Job Order 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.

9.3 CERTIFICATE FOR PAYMENT

9.3.1 If Contractor has submitted an Application For Payment in accordance with Article 9.2, 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 Contractor, a Certificate For Payment for such amount as University's Representative determines to be properly due.

9.3.2 If any such Application For Payment is determined not to be in accordance with Article 9.2, University will inform Contractor as soon as practicable, but not later than 5 working days after receipt. Thereafter, Contractor shall have 3 days to revise and resubmit such Application For Payment; otherwise University's Representative may issue a Certificate For Payment in the amount that University's Representative determines to be properly due without regard to such Application For Payment.

9.3.3 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 Job Order Work not remedied.
- .2 Third-party claims against Contractor or University arising from the acts or omissions of Contractor or Subcontractors.
- .3 Stop notices, including without limitations stop notices pertaining to prior Job Orders.
- .4 Failure of Contractor to make timely payments due Subcontractors for material or labor.
- .5 A reasonable doubt that the Work can be completed for the balance of the Job Order Sum then unpaid.
- .6 Damage to University or Separate Contractor for which Contractor is responsible.
- .7 Reasonable evidence that the Job Order Work will not be completed within the Job Order Time; and that the unpaid balance of the Job Order Sum would not be adequate to cover University's damages for the anticipated delay.
- .8 Failure of Contractor to maintain and update as-built documents.
- .9 Failure of Contractor 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 Job Order Work by Contractor without properly processed Shop Drawings.
- .12 Liquidated damages assessed in accordance with Article 5 of 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 Contractor to perform its obligations under the Contract Documents.

9.3.4 Subject to the withholding provisions of Article 9.3.3, University will pay Contractor the amount set forth in the Certificate For Payment no later than 10 days after the issuance of the Certificate For Payment.

9.3.5 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.

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

9.4 BENEFICIAL OCCUPANCY

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

- .1 University's Representative will make an inspection of the portion of the Job Order Work 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 Contractor as an acceptance by University of that portion of the Job Order Work which is to be occupied.
- .3 Beneficial Occupancy by University shall not constitute a waiver of existing claims of University or Contractor against each other.
- .4 Contractor shall provide, in the areas beneficially occupied and on a 24 hour and 7 day week basis as required, utility services, heating, and cooling for systems which are in operable condition at the time of Beneficial Occupancy. All responsibility for the operation

- and maintenance of equipment shall remain with Contractor while the equipment is so operated. Contractor shall submit to University an itemized list of each piece of equipment so operated with the date operation commences.
- .5 The Guarantee to Repair Periods, as defined in Article 12.2, will commence upon the occupancy date stated in the Certificate of Beneficial Occupancy except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Job Order Work for which University has not taken Beneficial Occupancy or issued a Certificate of Substantial Completion shall not commence until the University has taken Beneficial Occupancy for that portion of the Job Order Work or has issued a Certificate of Substantial Completion with respect to the entire Job Order.
 - .6 University will pay all normal operating and maintenance costs resulting from its use of equipment in areas beneficially occupied.
 - .7 University will pay all utility costs which arise out of the Beneficial Occupancy.
 - .8 Contractor shall not be responsible for providing security in areas beneficially occupied.
 - .9 University will use its best efforts to prevent its Beneficial Occupancy from interfering with the conduct of Contractor's remaining Job Order Work.
 - .10 Contractor shall not be required to repair damage caused by University in its Beneficial Occupancy.
 - .11 Except as provided in this Article 9.6, there shall be no added cost to University due to Beneficial Occupancy.
 - .12 Contractor shall continue to maintain all insurance required by the Contract in full force and effect.

9.5 FINAL COMPLETION AND FINAL PAYMENT

9.5.1 Upon receipt of notice from Contractor that the Job Order Work is ready for final inspection, University's Representative will make such inspection. Final Completion shall be when University's Representative determines that the Job Order 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 execute an Inspection Acceptance form for such Job Order within 10 days after Final Completion of such Job Order. After receipt of the final Application for Payment for such Job Order, if University's Representative determines that Final Completion of such Job Order has occurred, University's Representative will issue the final Certificate for Payment of such Job Order.

9.5.2 Neither final payment nor any retention shall become due for any Job Order until Contractor submits the following items to University's Representative for such Job Order:

- .1 The final Application for Payment and all submittals required in accordance with Article 9.3.
- .2 All guarantees and warranties procured by Contractor from Subcontractors, all operating manuals for equipment installed in the Job Order Work, 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.

9.5.3 The final payment for such Job Order shall be made, subject to the satisfaction of all other conditions to final payment, 35 days after University's execution of an Inspection Acceptance form for such Job Order.

9.5.4 Acceptance of final payment by Contractor with regard to a Job Order shall constitute a waiver of all claims with regard to such Job Order, except those previously made in writing and identified by Contractor as unsettled at the time of submission of the final Application for Payment with regard to such Job Order.

9.5.5 If requested in writing by Contractor at the time of the Final Completion of such Job Order, University will file a Notice of Completion within 10 days after Final Completion.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

10.2.2 Contractor shall erect and maintain, as required by existing conditions and performance of the Job Order 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 Job Order Work, Contractor shall exercise the utmost care and carry on such activities only under the supervision of properly qualified personnel.

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

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

ARTICLE 11 INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

11.1.1 Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and University from claims, such as for bodily injury, wrongful death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by Contractor, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The amounts of such insurance and any additional insurance requirements are specified in the Supplementary Conditions. See Article 3.21 regarding the scope and extent of Contractor's liability for repair of damaged Work.

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

- .1 **COMMERCIAL FORM GENERAL LIABILITY INSURANCE** covering all Work done by or on behalf of Contractor and providing insurance for bodily injury, wrongful death, personal injury, property damage, and contractual liability.

Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to Work required of Contractor by these Contract Documents. If the insurance under this Article 11.1.2.1 is written on a claims-made form, coverage shall continue for a period of not less than 3 years following termination of this Contract. Coverage shall provide for a retroactive date of placement prior to or coinciding with the effective date of this Contract.

- .2 BUSINESS AUTOMOBILE LIABILITY INSURANCE on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of Contractor and providing insurance for bodily injury and property damage.
- .3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE as required by Federal and State of California law. Contractor shall also require all of its Subcontractors to maintain this insurance coverage.

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

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

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

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

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

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

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

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

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

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

11.2 BUILDER'S RISK PROPERTY INSURANCE

11.2.1 University will provide its standard builder's risk property insurance, subject to the deductibles, terms and conditions, exclusions, and limitations as contained in the provisions of the policy. Limits established for builder's risk insurance coverage shall be based on the actual value of each Job Order and not on the overall Contract value. Such limits established for builder's risk insurance coverage shall in no way limit the liability of Contractor. 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. Contractor agrees that the University's provision of its standard builder's risk property insurance policy meets the University's obligation to provide builder's risk property insurance under the Contract and, in the event of a conflict between the provisions of the policy and any summary or description of the provisions contained herein or otherwise, the provisions of the policy shall control and shall be conclusively presumed to fulfill the University's obligation to provide such insurance. The proceeds under such insurance policies taken out by University insuring the Work and materials will be payable to University and Contractor as their respective interests, from time to time, may appear. Contractor shall be responsible for the deductible amount in the event of a loss. In addition, nothing in this Article 11.2 shall be construed to relieve Contractor of full responsibility for loss of or damage to materials not incorporated in the Work, and for Contractor's tools and equipment used to perform the Work, whether on the Job Order Work site or elsewhere, or to relieve Contractor of its responsibilities referred to under this Article 11. Materials incorporated in the Work, as used in this Article 11.2, shall mean materials furnished while in transit to, stored at, or in permanent place at the Job Order Work 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 Contractor.
- .2 Include a waiver of subrogation against Contractor, its Subcontractors, its agents, and employees.

11.2.3 Builder's risk insurance coverage under this Article 11.2 will expire as described in the builder's risk property insurance policy.

11.3 PERFORMANCE BOND AND PAYMENT BOND

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

11.3.2 The premiums for the Payment Bond and Performance Bond shall be paid by Contractor and be included in the Contractor's Adjustment Factor.

11.3.3 The Payment Bond and Performance Bond shall be in the amount of the Maximum Contract Value.

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

11.3.5 If the University elects to exercise its option for one or more Option Term(s), the Contractor furnish supplemental Payment and Performance Bonds in an amount equal to the Maximum Contract Value for the

Option Term(s) exercised by the University (unless the University instructs the Contractor otherwise in writing).

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

12.1.1 If a portion of the Job Order 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 Contractor's expense without adjustment of the Job Order Time or the Job Order Sum.

12.1.2 If a portion of the Job Order 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 Job Order Work and it shall be uncovered and replaced by Contractor. If such Job Work is in accordance with the Contract Documents, the costs of uncovering and replacing the Job Work shall be added to the Job Order Sum by Change Order; and if the uncovering and replacing of the Work extends the Job Order Time, an appropriate adjustment of the Job Order Time shall be made by Change Order. If such Work is not in accordance with the Contract Documents, Contractor shall pay such costs and shall not be entitled to an adjustment of the Job Order Time or the Job Order Sum.

12.2 CORRECTION OF DEFECTIVE WORK AND GUARANTEE TO REPAIR PERIOD

12.2.1 The term "Guarantee To Repair Period" applies only to each individual Job Order and means a period of one (1) year, unless a longer period of time is specified, commencing as follows:

- .1 For space beneficially occupied or for separate systems fully utilized prior to Final Completion pursuant to Article 9.4, from the first date of such Beneficial Occupancy or actual use, as established in a Certificate of Beneficial Occupancy.
- .2 For all Job Order Work other than .1 above, from the date of Final Completion.

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

12.2.3 If immediate correction of Defective Work is required for life safety or the protection of property and is performed by University or Separate Contractors, Contractor shall pay to University all reasonable costs of correcting such Defective Work. Contractor shall replace, repair, or restore to University's satisfaction any other parts of the Job Order 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 Contractor shall remove from the Job Order Work site portions of the Job Order Work and materials which are not in accordance with the Contract Documents and which are neither corrected by Contractor nor accepted by University.

12.2.5 If Contractor fails to commence correction of Defective Work within 10 days after notice from University or University's Representative or fails to diligently prosecute such correction to completion,

University may correct the Defective Work in accordance with Article 2.4; and, in addition, University may remove the Defective Work and store salvageable materials and equipment at Contractor's expense.

12.2.6 If Contractor fails to pay the costs of such removal and storage as required by 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. Contractor shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Contractor is liable to University, including compensation for University's Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Contractor is liable to University, the Job Order Sum shall be reduced by such deficiency. If there are no remaining payments due Contractor or the remaining payments are insufficient to cover such deficiency, Contractor shall promptly pay the difference to University.

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

ARTICLE 13 TERMINATION OR SUSPENSION OF THE CONTRACT

13.1 TERMINATION BY CONTRACTOR

13.1.1 Subject to Article 13.1.2, Contractor shall have the right to terminate the Contract and/or any Job Order(s) 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 Contractor, any Subcontractor, or any employee or agent of Contractor or any Subcontractor, due to an issuance of an order of a court or other public authority having jurisdiction or due to an act of government, such as a declaration of a national emergency making material unavailable.
- .2 University fails to perform any material obligation under the Contract 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 Contractor stating the nature of such default(s).
- .3 Repeated suspensions by University, other than such suspensions as are agreed to by Contractor under Article 13.3, which constitute in the aggregate more than 20% of the Job Order Time.

13.1.2 Upon the occurrence of one of the events listed in Article 13.1.1, Contractor may, upon 10 days additional notice to University and University's Representative, and provided that the condition giving rise to Contractor's right to terminate is continuing, terminate the Contract and/or any Job Order(s).

13.1.3 Upon termination by Contractor, University will pay to Contractor the sum determined by Article 13.4.4. Such payment will be the sole and exclusive remedy to which Contractor is entitled in the event of termination of the Contract and/or any Job Order(s) by Contractor pursuant to Article 13.1; and Contractor will be entitled to no other compensation or damages and expressly waives the same.

13.2 TERMINATION BY UNIVERSITY FOR CAUSE

13.2.1 University will have the right to terminate the Contract and/or any Job Order(s) for cause at any time after the occurrence of any of the following events:

- .1 Contractor becomes insolvent or files for relief under the bankruptcy laws of the United States.
- .2 Contractor makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
- .3 A receiver is appointed to take charge of Contractor's property.
- .4 Contractor fails to make progress to prepare an acceptable Job Order Proposal or to revise a proposal as directed by the University.
- .5 The commencement or completion of any Job Order Work activity on the critical path is 30 days behind the date set forth in the Job Order Schedule for such Job Order Work activity, and which results in an Unexcusable Delay. For a Contract with a Job Order Time of less than 300 days, the 30-day period shall be reduced to the number of days commensurate with 10% of the Job Order Time.
- .6 Contractor abandons the Work.

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

- .1 Contractor persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to prosecute the Work in accordance with the Contract Documents.
- .2 Contractor fails to make prompt payment of amounts properly due Subcontractors after receiving payment from University.
- .3 Contractor disregards Applicable Code Requirements.
- .4 Contractor persistently or materially fails to execute the Work in accordance with the Contract Documents.
- .5 Contractor is in default of any other material obligation under the Contract Documents.
- .6 Contractor persistently or materially fails to comply with applicable safety requirements.

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

13.2.4 If the Contract and/or any Job Order(s) is/are terminated by University as provided in this Article 13.2, Contractor shall not be entitled to receive any further payment until the expiration of 35 days after Final Completion of said Job Order and acceptance of all Work by University.

13.2.5 If the unpaid balance of the Job Order Sum(s) 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 Contractor. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Job Order Sum(s), Contractor shall pay such excess to University.

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

13.3 SUSPENSION BY UNIVERSITY FOR CONVENIENCE

13.3.1 University may, at any time and from time to time, without cause, order Contractor, in writing, to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to 90 days, as University may determine, with such period of suspension to be computed from the date of delivery of the written order. Such order shall be specifically identified as a "Suspension Order" under this Article 13.3. The Work may be

stopped for such further period as the parties may agree. Upon receipt of a Suspension Order, Contractor shall, at University's expense, comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within 90 days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Contractor and University, University shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.

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

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

13.4 TERMINATION BY UNIVERSITY FOR CONVENIENCE

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

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

- .1 Immediately discontinue the Work to the extent specified in the notice.
- .2 Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued.
- .3 Promptly cancel, on the most favorable terms reasonably possible, all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.
- .4 Thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Job Order Work 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 Contractor's obligations under Article 13.4.2, as to bona fide obligations assumed by Contractor prior to the date of termination.

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

- .1 The amount of each applicable Job Order Sum allocable to the portion of the Work properly performed by Contractor as of the date of termination, less sums previously paid to Contractor.
- .2 Plus previously unpaid costs of any items delivered to the Job Order Work 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 Contractor is entitled in the event of termination of the Contract and/or any Job Order(s) by University pursuant to Article 13.4; and Contractor will be entitled to no other compensation or damages and expressly waives same.

ARTICLE 14 STATUTORY AND OTHER REQUIREMENTS

14.1 PATIENT HEALTH INFORMATION

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

14.2 NONDISCRIMINATION

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

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

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

- .1 Contractor shall not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy) because of habit, local custom, or otherwise. All applicants for employment and employees are to be treated without regard to their race, color, religion, sex, age, ancestry, national origin, sexual orientation, handicap, veteran's status, medical condition (as defined in Section 12926 of the State of California Government Code), marital status, or citizenship (within the limits imposed by law or University's policy). Such equal treatment shall apply, but not be limited to, employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- .2 Contractor and all Subcontractors will permit access to their records of employment, employment advertisements, application forms, and other pertinent data and records by University or any appropriate agency of the State of California designated by University for the purposes of investigation to ascertain compliance with this Article 14.2. The outcome of the investigation may result in the following:
 - .1 A finding of willful violation of the provisions of this Contract or of the Fair Employment Practices Act may be regarded by University as (1) a basis for determining that Contractor is not a "responsible bidder" as to future contracts for which such Contractor may submit bids or (2) a basis for refusing to accept or consider the bids of Contractor for future contracts.
 - .2 University may deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has (1) investigated and determined that Contractor has violated the Fair Employment Practices Act and (2) issued an order under the State of California Government Code Section 12970 or obtained an injunction under Government Code Section 12973.
 - .3 Upon receipt of such written notice from the Fair Employment Practices

- Commission, University may notify Contractor that, unless it demonstrates to the satisfaction of University within a stated period that the violation has been corrected, Contractor's bids on future projects will not be considered.
- .4 Contractor agrees that, should University determine that Contractor has not complied with this Article 14.2, Contractor shall forfeit to University, as a penalty, for each day or portion thereof, for each person who was denied employment as a result of such non-compliance, the penalties provided in Article 14.3 for violation of prevailing wage rates. Such penalty amounts may be recovered from Contractor; and University may deduct any such penalty amounts from the Job Order Sum.
 - .5 Nothing contained in this Article 14.2 shall be construed in any manner so as to prevent University from pursuing any other remedies that may be available at law.
 - .6 Contractor shall meet the following standards for compliance and provide University with satisfactory evidence of such compliance upon University's request, which shall be evaluated in each case by University:
 - .1 Contractor shall notify its Superintendent and other supervisory personnel of the nondiscrimination requirements of the Contract Documents and their responsibilities thereto.
 - .2 Contractor shall notify all sources of employee referrals (including unions, employment agencies, and the State of California Department of Employment) of the nondiscrimination requirements of the Contract Documents by sending to such sources and by posting the Notice of Equal Employment Opportunity (EEO).
 - .3 Contractor or its representative shall, through all unions with whom it may have agreements, develop agreements that (1) define responsibilities for nondiscrimination in hiring, referrals, upgrading, and training and (2) implement an affirmative nondiscrimination program, in terms of the unions' specific areas of skill and geography, such that qualified minority women, nonminority women, and minority men shall be available and given an equal opportunity for employment.
 - .4 Contractor shall notify University of opposition to the nondiscrimination requirements of the Contract Documents by individuals, firms, or organizations during the term of the Contract.
 - .7 Contractor shall include the provisions of the foregoing Articles 14.2.3.2.1 through 14.2.3.2.6 in all subcontracts with Subcontractors, so that such provisions will be binding upon each such Subcontractor.

14.3 PREVAILING WAGE RATES

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

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

14.3.3 The State of California Department of Industrial Relations has ascertained the general prevailing per diem wage rates in the locality in which the Work is to be performed for each craft, classification, or type of worker required to perform the Work. A copy of the general prevailing per diem wage rates will be on file at University's principal facility office and will be made available to any interested party upon request. Contractor shall post a copy of the general prevailing per diem wage rates at the job site. By this reference, such schedule is made part of the Contract Documents. Contractor shall pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Contractor in the execution of the Work. Contractor shall cause all subcontracts to include the provision that all Subcontractors shall pay not less than the prevailing rates to all workers employed by such Subcontractors in the execution of the Work. Contractor shall forfeit to University, as a penalty, not more than \$50 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any portion of the Work done by Contractor or any Subcontractor. The amount of this penalty shall be

determined pursuant to applicable law. Such forfeiture amounts may be deducted from the Job Order Sum or sought directly from the surety under its Performance Bond if there are insufficient funds remaining in the Job Order Sum. Contractor shall also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Work, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment shall be made pursuant to section 17420 of the California Labor Code.

14.4 PAYROLL RECORDS

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

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

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

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

14.5 APPRENTICES

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

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

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

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

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

14.5.6 If Contractor or Subcontractors employ journeymen or apprentices in any apprenticeship craft or trade in the area of the jobsite, 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 jobsite are contributing, Contractor and Subcontractors shall contribute to the fund or funds in each craft or trade in which they employ journeymen or apprentices on the Job Order Work in the same amount or upon the same basis and in the same manner done by the other contractors. Contractor may include the amount of such contributions in computing its bid for the Contract; but if Contractor fails to do so, it shall not be entitled to any additional compensation therefor from University.

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

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

14.6 WORK DAY

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

15.1 GOVERNING LAW

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

15.2 SUCCESSORS AND ASSIGNS

15.2.1 University and Contractor respectively bind themselves and their successors, permitted assigns,

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

15.3 RIGHTS AND REMEDIES

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

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

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

15.4 SURVIVAL

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

15.5 COMPLETE AGREEMENT

15.5.1 The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract may be modified only by a written instrument signed by both parties or as provided in Article 7.

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 Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Contractor 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 of the last Job Order.

15.8 NOTICES

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

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

15.8.2 Such notices and other communications in Article 15.8.1 shall be deemed given and received upon

Project Name: [REDACTED]

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.

15.10 MUTUAL DUTY TO MITIGATE

15.10.1 University and Contractor shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.